

Summary Writing

Partnership Act, 1932

Indian Partnership Act, 1932 : Unit 1

Definitions: (Section 4)

① # Partnership: is relation between persons who have agreed to share profits of the business carried on by all or any of them acting for all.

Partners: Persons who have entered into Partnership.

Collectively called firm.

Firm name: Name under which business is carried on is called firm name.

Elements of Partnership

1. Partnership is association of two or more persons:
 - Only persons recognised by law can form Partnership
 - therefore, a partnership firm cannot be a partner of another firm.
 - Minor can only be a partner with consent of all partners and admitted to benefits of Partnership.
 - As per section 464 of Companies Act, maximum 50 Partners can form Partnership.
2. Partnership must be result of an Agreement:
 - A Partnership agreement must be Voluntary and contractual.

- Agreement can be express or Implied
- Agreement may be oral or written.

3. Business: - Business includes every trade, occupation or Profession.

- Business is essential and formed with motive of acquisition of gains.

- There can be no Partnership where there is no intention to carry on business.

4. Agreement to Share Profits:

- Sharing of profit is essential feature of Partnership.

- Agreement to share losses is not essential
- However, generally loss is also shared in Profit sharing ratio.

5. Business Carried on by all or Any of them acting for all:

- This is Cardinal Principle of Partnership law.

- In other words Mutual Agency i.e. Every Partner shall bind firm as well as other Partner.

- Partners are Principal as well as Agent of other Partners.

[Case: K.D. Kamath & Co.]

Section 6: Mode of Determination of Partnership / True test of Partnership:

1. Agreement: Partnership is created by Agreement not by status like HUF.
2. Sharing of Profits: This essential element to determine partnership, however, sharing of Profit is just Prima Facie evidence of Partnership as there are certain persons apart from Partners who share profit such as:
 - * Lender of Money
 - * Servant or Agent (as remuneration)
 - * Widow or Child of deceased Partner.

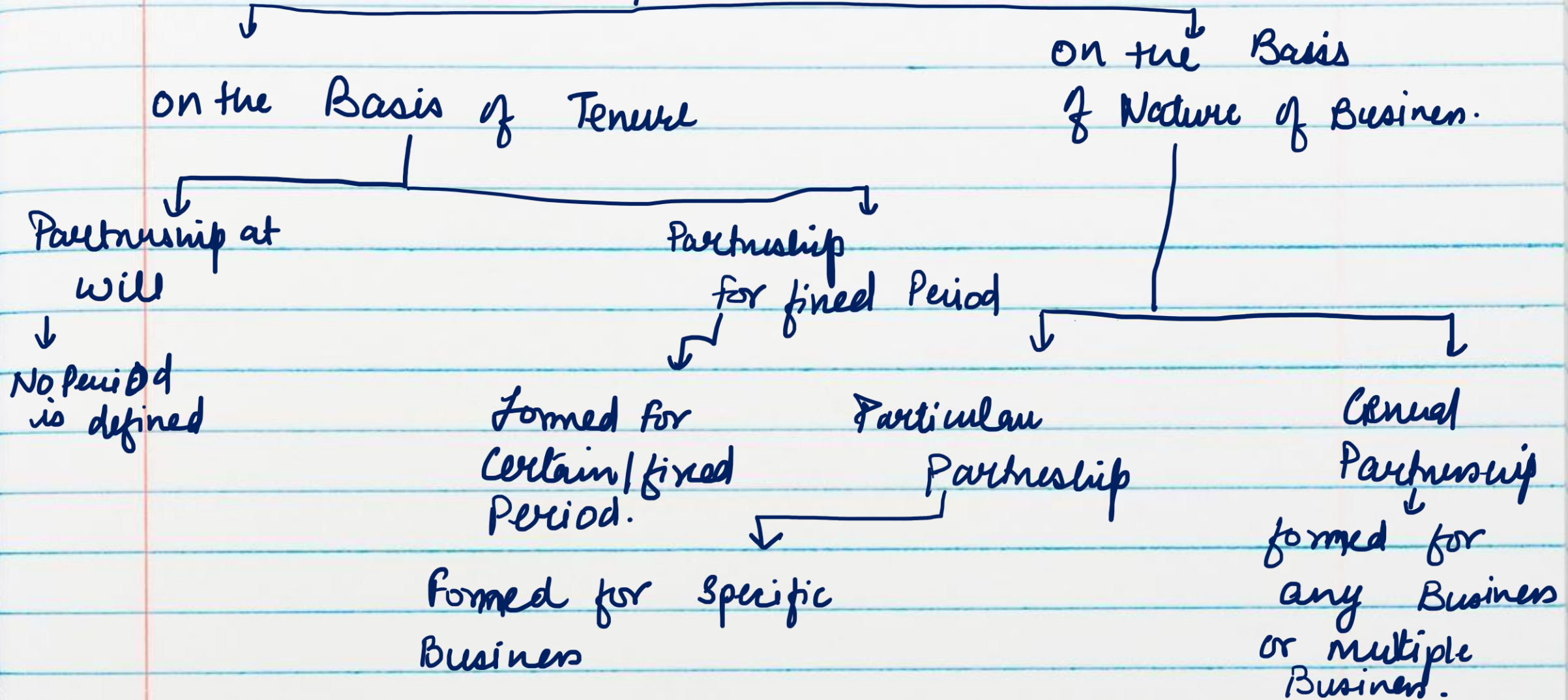
* Previous owner or Part owner who shares Goodwill.

8. Mutual Agency: This is cardinal Principle of Partnership law. and is conclusive evidence of Partnership.
Each partner carrying on business is principal as well as agent of other partner.

Case: Santiranjana Das Gupta V. Dasyran Murjani.

Note: Read ~~Part~~ Difference between Partnership and
→ other entities from Book

Kinds of Partnership :



Partnership Deed:

- Partnership is result of an agreement
- It can be written or oral.
- If Partnership comprises of Immovable Property then, deed must be written, stamped and registered.

Partnership deed may contain following information:

1. Name of Partnership firm
2. Name of Partners
3. Nature and Place of Business
4. Duration of Partnership
5. Commencement of Partnership
6. Capital contribution of Partners
7. Profit sharing ratio.
8. Admission & Retirement
9. Salary, Commission, Interest on Capital etc.
10. Provision of settlement of Accounts.

Types of Partnership#

1. Active or Actual or Ostensible Partner:

- A person who becomes partner by Agreement.
- who actively participates in conduct of Partnership
- On retirement, he must give public notice to safeguard himself from liabilities of acts of other Partners.

2. Sleeping or Dormant Partner:

- A person who is Partner by Agreement.
- who DOES NOT actively participate in conduct of Partnership
- On Retirement, No Public notice is needed.

3. Nominal Partner:

- Who lend his name to firm
- Does not have real interest in firm.
- Not entitled to share profits
- Does not take part in conduct of Business
- Liable to third party.

4. Partner in Profit only:

- Entitled to share only Profits of firm
- Not liable for losses
- Liable towards third party for all acts of Profits only.

5. Incoming Partner:

A Person admitted as partner into an already existing firm with consent of all other partners.

6. Outgoing Partner:

A Partner who leaves firm in which rest of the partners continue to carry on business. Outgoing Partner needs to give public notice of retirement.

7. Partner by Holding out or Partner by Estoppel:
Where person holds himself as partner or allows others to do so than for creditors, who

upon such faith acted, shall be liable
for them.

Unit 2 : Indian Partnership Act, 1932

Section 9 to 13: Partner's rights and duties:

Section 9: General Duties of a Partner:

- (a) Carry on business with greatest common advantage.
- (b) To be just and faithful to each other
- (c) Share/Render true accounts.

Section 10: Duty to Indemnify losses caused by fraud:
Partners shall indemnify firm for any losses caused by fraud.

Section 11: Determination of rights and duties of partners:

- 11(1): Mutual rights and duties of partners are determined by contract between partners i.e. Partnership Deed.
- 11(2) Agreement in restraint of trade is allowed with which a person is partner of firm.

Section 12: Conduct of Business:

1. Every Partner has right to participate in Business.
2. Every Partner is Bound to perform his duties diligently.
3. In case of difference in opinion, decision is taken by majority of partners.
4. Every Partner has right to access and to inspect or take copy of books of firm.
5. In the event of death of a partner, his heir or legal representative can access or inspect or take copy of Books of firm.

Section 13: Mutual rights and liabilities: Subject to contract:

1. Partners are not entitled to receive remuneration.
2. Partners are entitled to share profits equally.
3. Partners are entitled for interest on capital only out of profits.
4. In case of any amount received from Partner over Capital, Partner shall be eligible for interest @ 6% PA on such advance.
5. Firm shall indemnify partner for any amount paid over and above Capital in ordinary prudence.
6. Partner shall indemnify firm for loss caused by fraud.

Section 14 and 15: Property of firm:

Section 14: Property of firm is referred as joint stock, common stock, joint estate etc and are collectively called partnership assets and it includes goodwill.

Section 15: Application of Property of firm:

Property of firm shall be held and used by partners exclusively for purpose of business.

Section 16: Personal Profit earned by Partners:

- (a) If partners derives any profit for himself from any transaction of firm or by using property / name of firm then he shall account for such profits and pay to firm.
- (b) If partner carries on any business of same nature as competing with firm, he shall account for and pay entire profit to firm.

Section 17: Rights and Duties of Partners after change in firm: If:

- (a) New Partner comes in or (b) any partner goes out via death or retirement or (c) doing any business other than business for which firm was originally formed or (d) fixed period expired in Partnership for fixed Pd. Then, Rights and Duties shall remain same.

Section 18 to 22: Partner's Rights | Mutual Agency | Implied Authority:

Section 18: Every partner is an agent of firm as well as other partners for the purpose of Business.

Section 19: Implied Authority of Partners as agent of firm:

Any act done by partners in usual way shall bind firm and is called Implied Authority.

19(2): Implied authority includes:

- (i) Submit dispute relating to business to arbitration
- (ii) Open Bank account on own name
- (iii) Compromise or relinquish any claim
- (iv) Withdraw suit against / on behalf of firm.

- (V) Admit liability against firm
- (Vi) Transfer Immovable Property from firm
- (vii) Acquire Immovable Property
- (viii) Enter into Partnership on firm's behalf.

Section 22: Mode of Doing act to bind firm:

Any instrument or document of firm shall be executed on ~~behalf~~ behalf of firm by Partner's.

Section 20: Extension and Restriction of Partner's Implied authority:
Implied authority of partner may extend or restrict if a person with whom he is dealing knows such restriction or know or believe him as partner.

Section 21: Partner's authority in emergency
A partner has authority to do any act for the purpose of protecting firm from loss. In emergency, such acts shall bind firm.

Section 23: Effect of Admission by a Partner:

When a partner acts or does any work in ordinary course of business, such act shall bind firm if it is done within Partner's Authority.

Section 24: Effect of Notice to Acting Partner

A Partner who habitually acts in business of firm & is active Partner in firm, does anything except fraud, with or without consent of other partners and such act is within his scope than such act shall bind firm.

Section 25 to 27:

Section 25: Liability of Partner for acts of firm:

Partners are jointly and severally responsible to third party for all acts of firm that comes under scope of business.

Section 26: Liability of firm for wrongful acts of a partner:

as much as
firm is liable ~~to~~ Partner for any loss caused to third party by wrongful acts of partner, if done in ordinary course of business and with authority of partner.

Section 27: Liability of firm for Mis application By Partners:

Where Partners act within his authority and he receives money from third Party and misapplies that money or

when money or property comes in firm's custody & Partner misapplies same than such Partner as well as firm shall be liable.

Section 29: Rights of transferee of Partner's Interest:

Rights of Transferee:

(a) During continuance of Partnership transferee is not entitled to interfere with conduct of business or require accounts or inspect Books of Accounts

(b) On the event of Dissolution or Retirement of transferring partner, transferee shall be entitled to receive share of assets of firm and also to ascertain share he will be entitled to Books of account.

Section 30: Minor Partner :

A minor cannot be a partner in firm unless gets consent of all partners and shall be a partner if agreed in deed as well.

Rights :

- ① Right to receive Agreed share of Profit -
- ② Right to access Books of accounts & take copy too .

3. He can sue partners for accounts, Payment of Share etc.

4. On attaining Majority, he shall elect to be a partner or not within 6 months of Majority. ~~or~~
if he elects to be partner, he is entitled to Share, Profits & losses.

If he does not elect, his share is not liable for acts of firm and he shall give public notice.

Liability before Attaining Majority :

(a) Liability shall be confined to extent of his share.

2. Minor is not personally liable.

3. Minor cannot be insolvent

liability after Attaining majority:

- * become personally liable to third party.
- * His share generally remains same.
- * If not elected as Partner: His rights will continue as minor
- * He shall not be personally liable.

* He is entitled to sue partners for his share of property and profits.

Section 31 to 35

Section 31: Introduction of a Partner:
New partner ~~can~~ can be admitted in firm with consent of all existing partners and such partner shall not be liable for anything done before its admission.

Section 32: Retirement of Partner:-

- ① Partner may retire with
 - consent of all other partners
 - with express agreements by partners.→ by giving Notice in writing to all partners, if partnership is at will.
- ② To discharge from future liabilities, Partner shall give public notice
- ③ Notice to be given by retiring partner or by continuing partners.

Section 33: Expulsion of a Partner :

1. When Power of Expulsion existed in contract between Partners.
2. When Power is exercised by majority of Partners
3. It is exercised in good faith.

Good faith is tested as follows:

- a) Expulsion must be in interest of Partnership
- b) Partner to be expelled is served with notice
- c) He is given opportunity of being heard.

If all above is satisfied, Expulsion is valid.

Section 34: Insolvency of a Partner

- When a Partner is adjudicated as Insolvent :
 - He ceases to be a Partner
 - He is not liable to firm (His estate)
 - firm is not liable for his acts
 - firm may or may not be dissolved due to Partner's insolvency.

Section 35: Liability of Estate of deceased Partner:

In case of Death of a Partner, Estate of Deceased partner, shall be liable Only upto his death. i.e.

~~But~~ In event of Death, no public notice is needed for removing ~~deceased~~ deceased partner's liability, he shall ~~not~~ only be liable for transactions upto his death.

Section 36: Rights of Outgoing Partner to Carry on Competing Business:

Outgoing Partner may carry on business competing with firm, subject to:

1. He shall not use firm's name,
2. neither represents himself ^{as} ~~with~~ carrying on firm's business,

3. not shall solicit customers of Partnership firm.

Section 37: Right of Outgoing Partners to Share
Subsequent Profits:

where any partner of firm ceases to be a partner by death or otherwise, he must receive his final settlement from firm.

If such partner does not receive said amount then either shall be provided interest on such amount or shall get share of future profits of firm.

Section 38: Revocation of Continuing Guarantee:

When continuing guarantee is given to firm or third party in respect of transaction of firm, then such guarantee shall be revoked for all future transactions of firm.

Unit 3: Registration and Dissolution of firms.

Registration of firms:

Section 58: Steps of Application of Registration:

1) A statement in prescribed form along with prescribed fees shall be sent to registrar of area where place of business is situated along with following information:

- firm's name
- Principal Place of Business
- any other Place of Business
- Date of joining of partners
- name and ~~addr~~ address of all partners,
- Duration of firm etc.

2. ~~All~~ All partners shall sign statement and verify same.

3. Firm shall not contain any of following words: such as Crown, Emperor, Empress, Empire, Imperial, King, Queen, Royal etc.

Section 59: Registration:

When Registrar is satisfied with information provided, he shall record entry of firm in Register of Firms and shall issue Certificate of Registration.

Section 59A: Late fees: ₹ 100 per year of delay or part thereof.

Section 69: Consequences of Non-Registration:
Following are the consequences if firm is not registered:

- ① No suit in civil court by firm or other co-partners against third party.
- ② No relief to partners for set off claims except upto ₹ 100
- ③ Aggrieved Partner cannot sue other partners or firm.
- ④ Third Party can sue firm.

Exceptions: Non Registration does not effect following rights:

- ① Right of third party to sue firm.
- ② Right of Partners to sue for dissolution of firms.
- ③ Power of official Assignee or Receiver of court in case of Insolvency.
- ④ Right to claim set off upto ₹ 100
- ⑤ Right of legal representative of deceased Partner to sue firm

for ~~the~~ share of property or accounts.

Dissolution of Partnership Firm.

Section 39: Dissolution of Partnership between all partners of firm is called Dissolution of firm.

Note: Please refer book for D/w Dissolution of Partnership and Dissolution of firm.

Modes of Dissolution of firm

↓
Dissolution without
order of Court
↓

↓
Dissolution
by Court

- ① Dissolution by Agreement (Section 40):
Right to partners to dissolve
partnership by agreement with
consent of all partners.
- ② Compulsory Dissolution (Sec. 41)
 - by adjudication of Partners as Insolvent
 - by happening of any event that makes

- 1) Insanity / unsound
mind
- 2) Permanent Incapacity
(should not be temporary)
- 3) Misconduct: Anything
results in adverse effect ^{on} business
- ④ Persistent breach of contract

business unlawful

③ Dissolution on happening of certain contingencies:

(a) where firm is constituted for fixed period & term is expired

(b) where firm is constituted to carry out one or more adventure

(c) By Death of Partner

(d) By adjudication of partner as Insolvent

④ Dissolution by Notice of Partnership at will.

Eg: Embezzlement

Keeping wrongdoers accounts
Holding more cash than Allowed

Refusal to show accounts.

⑤ Transfer of Interest:
(without consent of other Partners)

⑥ Perpetual losses

⑦ Just & equitable ground: like:
Dead lock in management, partners
are not in talking terms, loss of
substratum, gambling in stock
exchange.

Consequences of Dissolution (Section 45-55)

(a) Liability for acts of partners done after dissolution:

- If no notice of dissolution is given to third party then:

Partners shall be liable of all acts done after dissolution in firm's name.

Except in following cases:

- ① Estate of deceased partner
- ② Insolvency
- ③ Dormant partner

(b) Right of Partners to have business wound up after dissolution (Section 46):

All assets must be disposed off and liabilities must be paid, surplus to be distributed & if, losses, then must be called.

(c) Continuing Authority of Partners for purpose of winding up (Section 47)

If there is any outstanding or unfinished transaction is there at the time of winding up then Partners shall remain liable for the same.

(Q) Mode of Settlement of Partnership Accounts (Section 48): following are the rules of settlement post dissolution:

① losses: needs to be paid first out of profits, than capital & lastly by partners individually.

② Assets of the firm shall be applied as follows:

- * In paying debt of firm to third party
- * In paying each partner any amount over & above capital.
- * Payment of capital to partners

* If any residue left, divided amongst partners in share of profit.

E) Payment of firm debt and of separate debt (Section 49):

(i) Property of firm shall be applied in payments of debt of firm, if any surplus than partners apply to separate debt

(ii) Separate property in payment of separate debt first & if any surplus than can be used for payment of firm's debt.