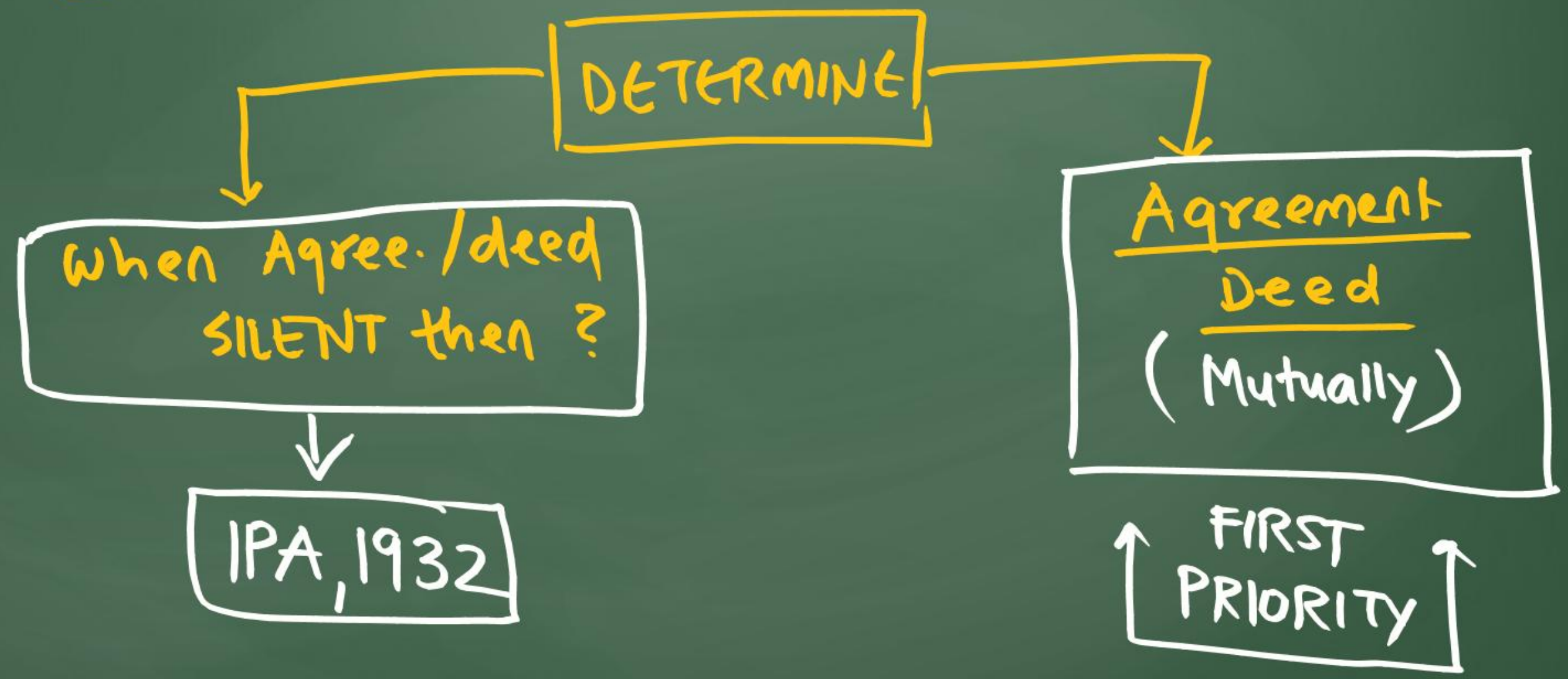




How to Determine Rights / Liabilities of the (P)?



Banner

AS mutually decided
by the (P).

Subject to the contract
between the partners

→ Agreement / Deed

{ In the absence of any
contract to contrary }



If Banner is silent – Come to the ACT

Section - 11



SECTION 10 :- FRAUD → ORDINARY COURSE OF BUSINESS



FIRM means all **P**.

RIGHT. - Why? Mutual Agency

↓
Recover the loss from Such **P**.

DU
indemnity to the Firm for the loss → All **P**

अर्थात्

{ Make the loss = Good }

If due to any act or conduct by a **P** a fraud takes place during conduct of BIZ then such partner will indemnify & make the loss good to the Firm

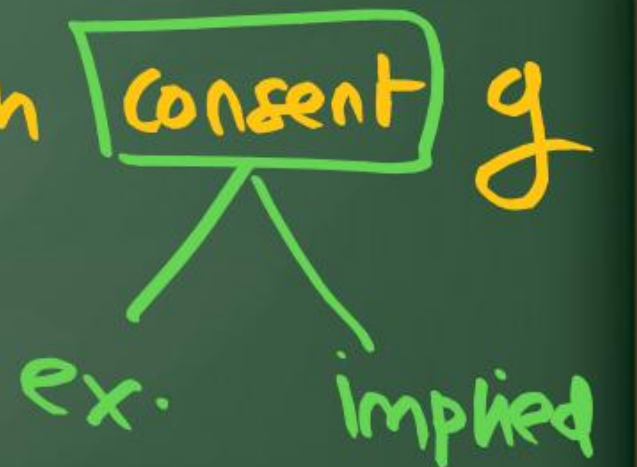
If due to such fraud → Firm / all the **P** becomes liable then they will Recover the loss from him

★ SECTION - 11 ⇒

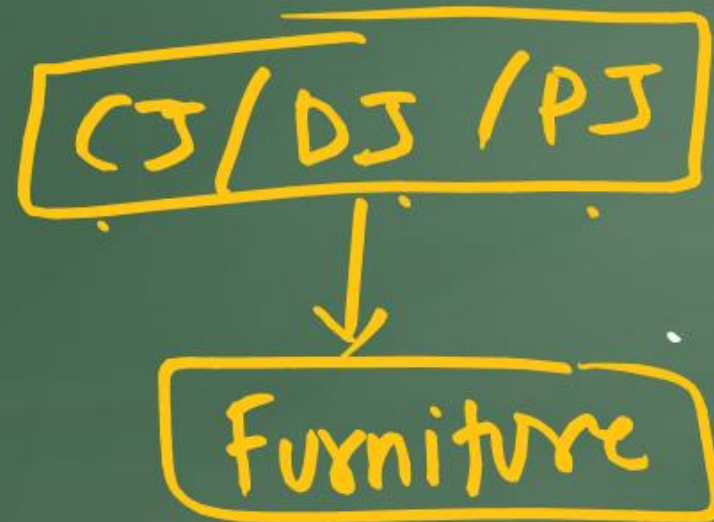
★ → Mutual Rights & Duties of partners are determined as per agreement b/w the partners.

★ → It can be expressed / Implied both.

→ Changes / Vary ? ⇒ It can be varied with **Consent** of all the partners.



★ RESTRAINT OF TRADE in Partnership :-



(DJ) →
अलग से
Furniture.

Sec. 27 ICA

(रोक) Restraint of Trade

Agree/Deed
Silent

Other Biz

← You can Do.

Agree/Deed
Expressly

You CANNOT do

★ Reasonable ★

★ SECTION 12 = CONDUCT OF (P)

★ (a) Participate in BIZ = Every partner has a Right
Subject to the contract blw the partner → If
agreement says then Yes.

★ (b) Every (P) must perform their duties diligently.

(c) Decision Making ⇒ Every (P) has a right to be
CONSULTED.

★ Consent of ALL → When change in Nature of BIZ.
★ (special nature)

★ MAJORITY ✓ → when ordinary nature / BIZ related.

(d) Right to access $\left\{ \begin{array}{l} \text{Active} \\ \text{Books} \end{array} \right\}$ | inspect $\left\{ \begin{array}{l} \text{Active} \\ \text{sleeping} \end{array} \right\}$ (e) Legal heir / Agent $\left\{ \begin{array}{l} \text{access} \\ \text{LR} \end{array} \right\}$ | inspect ✓

- ★ SECTION 13 ⇒ Generally. to receive
 - ★ (A) Remuneration = A partner is not entitled to receive Remuneration in addition to share of Profit
 - ★ (Express) Subject to the agreement = Yes = Yes
 - | | | | | |
|---|------------------------------|---|---|-------------------------|
| } | In the absence of the Agree. | } | ⇒ | Customary. |
| | | | | Continued usage of Firm |
-

(B) Sharing of P/L :- As per the agreement (Express)

⇓

No connection with PSR.

\$ If Agree absence = EQUAL (PSR) ✓

⇓ (LSR)

★ (c) Interest on Capital :-

★ Generally No INT. on the Capital. But

- ★ (1) express agreement
- (2) Trade - custom
- (3) Statutory provision

(D) Interest on Advances

Any amount given by the partner over & above the Capital.

In such case -
P will receive = INT. 6%
Per annum

★ Int. on Capital will be given upto date of dissolution of Firm
but Int. on Advance keep running after dissolution as well upto
the date of Repayment.



Dissolution of Firm.

Capital = Int.
Adv. = Int.

01/11
दिनांक

Int on Capital

A	3L	✓
B	2L	
C	1L	

01/09
Dissolve

$$\frac{\text{Advance MR. A}}{200,000} = \frac{\text{Int. on Adv}}{\text{Up to}}$$

01/11
Repayment

A Advance 200,000
द्वारा से

Mr. A - 300,000 [C] - Int up to 01/09
 - 200,000 [A] - up to 01/11

★ (E) Indemnification

★ Right of every (P) to be
★ Indemnified by the FIRM

भरपाई करना

→ For the acts done by the
- payment & liabilities

① (P) in ORDINARY COURSE of
BUSINESS.

② (P) in case emergency as well

Relate sec. 21 to protect

the firm from LOSS :- ORDINARY PRUDENCE

(F) Indemnification

by (P) → To → the FIRM

Sec. 10
FRAUD.

Sec. 13 (d)
Wilful negligence

Indemnify FIRM

⇒ In Sec. 21
All acts done by (P) in emergency will
Bind the Firm.

★ SECTION 18:-

★ → Every (P) is an agent of the Firm

★ → ONLY for the acts done for the Business of Firm

★ → Partners have mutual Agency which means they can bind each other & everyone is a (P) as well as (A)

→ Partners have Community / Common Int. in the Assets

and liab. of the partnership unlike Agents, they don't have

★ SECTION 19 ⇒ Implied authority
★ An act done by a partner can bind the firm or
★ all the partners if it fulfills the condition given in

Section 22 :- (Mode)

- ① Act should be done in the usual way of Business.
- ② It should be under the scope of authority of the (P).
- ③ It should be in the name of FIRM or in a manner which expresses / implies the intention to bind the firm

Implied authority is different for all kinds of Businesses.

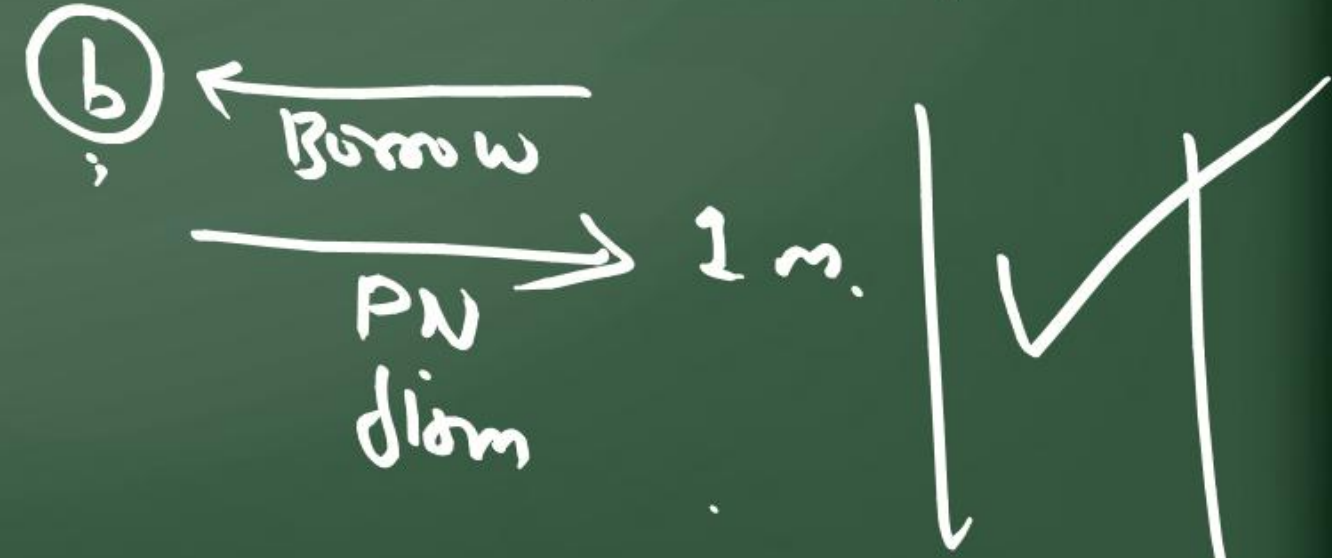
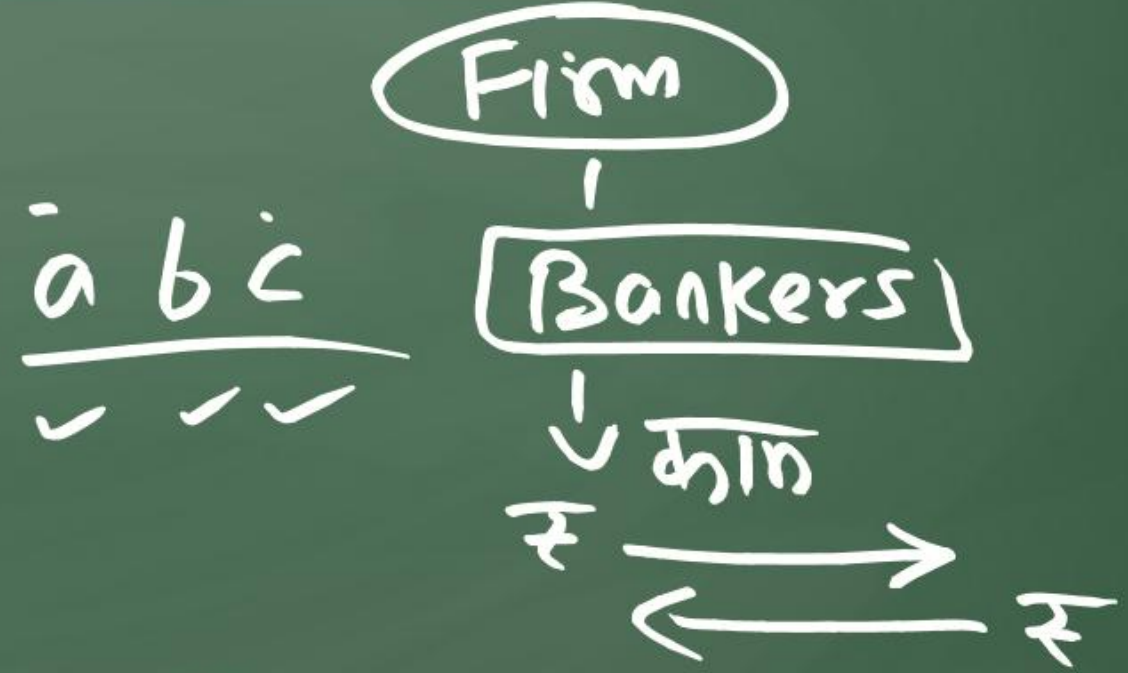
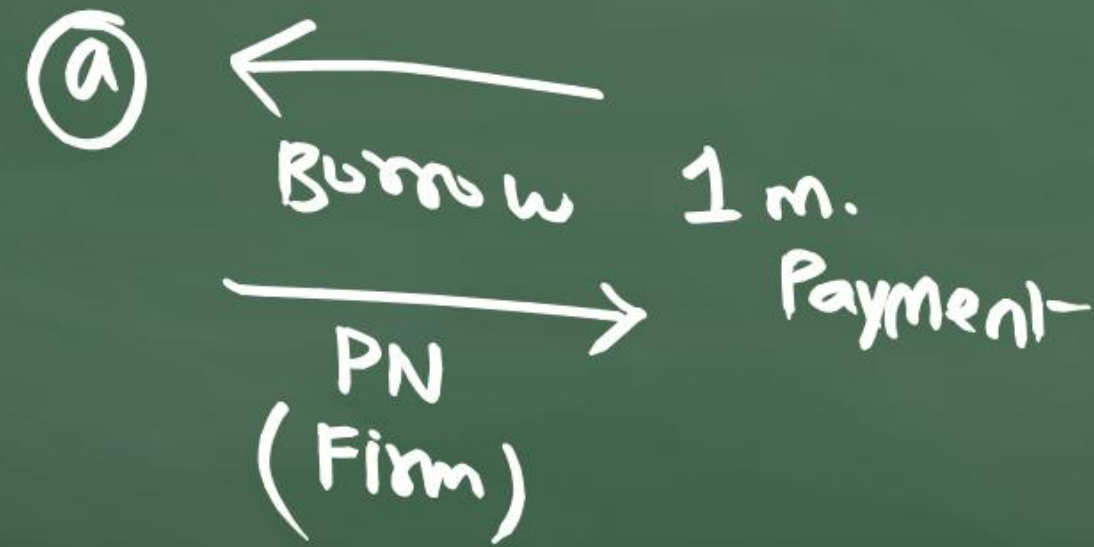
B.AD.S किसी Property की W.AL. पर Partnership करके enter करना



- B – Bank account in his own name
- AD – Resolve Dispute Arbitration
- S – Settle or give up any claim
- P – IMM Property (+/-)
- W – Withdraw legal cases
- AL – Admit liability
- P – Enter partnership



Implied authority is different - just diff. Business



★ SECTION 20 = Extension & Restriction of Implied Authority.

★ ⇒ Implied authority may be extended or restricted by the contract b/w the partners but it should be done with the consent of ALL partners.
(Not Majority)

⇒ III party cannot hold the firm liable → If [mean individual partner will be liable]

- ① he has knowledge of such restriction or
- ② he does not know that he is dealing with a Partner.

★ SECTION 23 :- ADMISSION BY A PARTNER.

★ When a partner admits or accepts any kind of
★ fact or liability to a 3rd party then the whole
★ firm will be held liable. But after fulfilling condⁿ:-

(1) It should be for P. Business &

(2) In ordinary course of Biz.

⇒ Third party can use such admission as evidence against the firm in case of dispute.

example :-

Generally Rule
Sec. 29



Twist

= (R) = defect यादी था
 = conceal यादी है |
 Do not tell P/Q.

Fraud

Sec. 24
Inoperative

P/Q
≠
liable.

★ SECTION 24 :- NOTICE TO A PARTNER (जुकर)

★ If a partner has a notice or knowledge of an act, fact or defect then it is presumed that all the partners have notice of the same.

★ Conditions :- (1) Notice to an ACTIVE partner.

(2) It should be an Actual notice

(3) It should be for Firm's BUSINESS.

Exception :- Sec. 24 is inoperative in case of Fraud or Misrepresentation by a (P). [Firm will not be liable].

★ SEC. 25 :- Liability of a Partner for Acts of the Firm

★ Every partner is liable jointly & severally for the

★ acts of the Firm (means act of all the partners)

to III parties.

★ Conditions :- Acts which are :- under the authority & For the Business.

★ Acts for which partners / Firm is held liable must have been done while he was a partner [Dissolution of Firm is Immaterial]

★ SEC. 26 :- Liability of the Firm for wrongful act
★ of a Partner.

- ★
- ⇒ All the partners / Firm
 - ⇒ will be held liable for
 - ⇒ any kind of negligent act by a partner
 - ⇒ done in ordinary course of BIZ & under authority

27 LIABILITY OF FIRM FOR MISAPPLICATION BY PARTNERS ✓



Two type (clauses) of misapplication by partners –

Clause (a) covers the case –

Money comes directly to the partner custody and not firm's custody

Where a partner acts within his authority

He receives money or property belonging to the 3rd party

Misapplies that money or property

Money did not reach the firm. Misapplied directly by the partner

Clause (b) covers the case –

Money comes to the custody of the firm and then misapplied by the partner

WITHIN CUSTODY OR NOT → The firm would be liable in both the cases.



SECTION 27 :- Liability of Firm for Misapplication by Partner

where a partner misapplies the funds / money / property which belongs to a third party and he has acted within his authority & for Business.

Then there could be two situations namely :-

(a) Money / Property is in direct custody of the partner.

(b) ————— is in custody of the firm and later Partner misapplies it. Firm will be liable in both the cases.

★ Exception - Sec. 27 :-

★ Firm will not be held liable if partner receives
(All Partners)
★ Such money/property :-

- ① Beyond his authority and
- ② Not for the usual Business.

Unless :- (means firm will be held liable if :-

Money / property ends up with the firm or
under the control of other partners.



Existing partner

Continuing Partners

Surviving partners

31 = Admission / Incoming partner.

32 = Retirement / outgoing partner

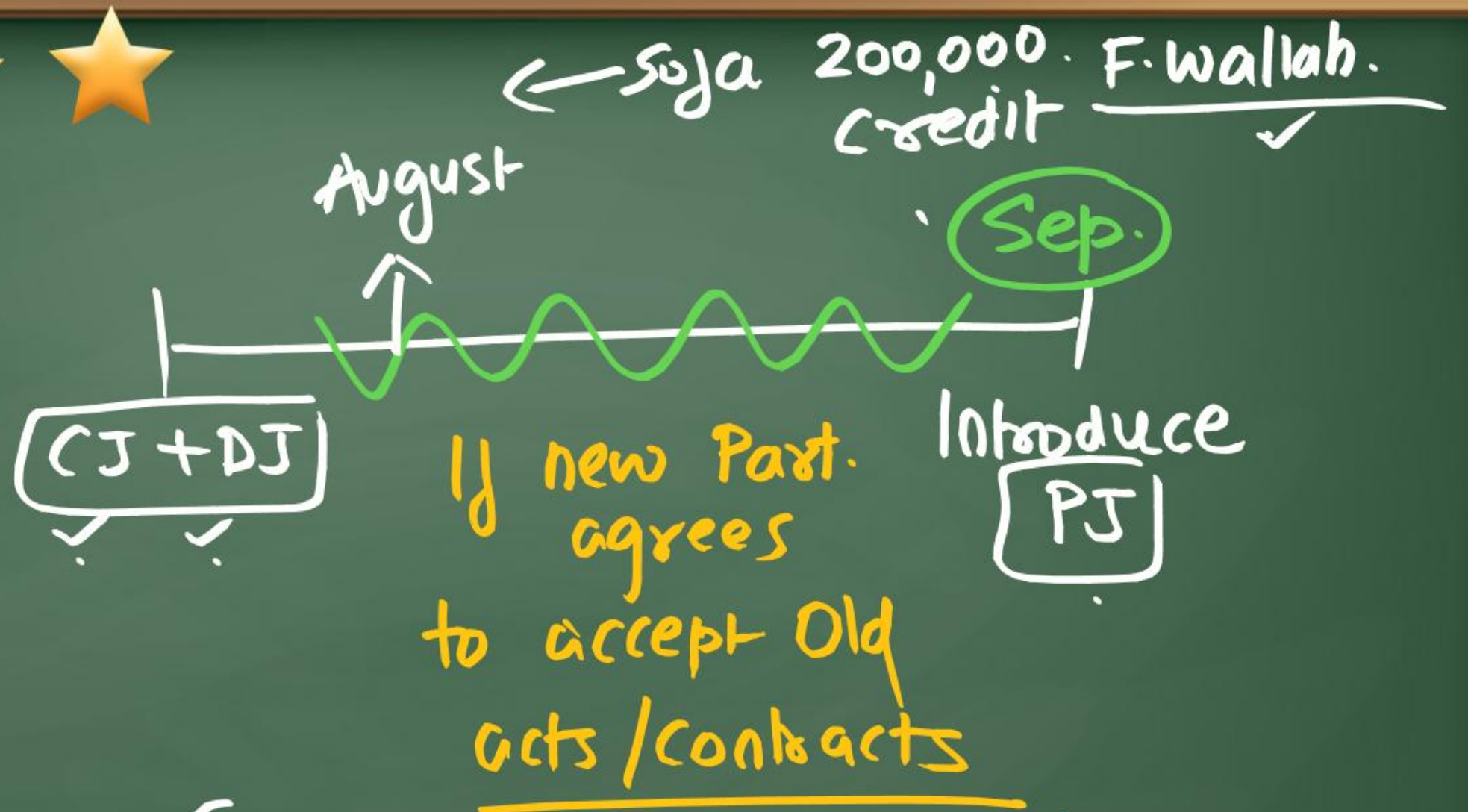
33 = Expulsion = Expelled partner

34 = Insolvent partner

35 = Death = Deceased partner

Generally, 

PJ = liable for acts
contracts
after his
admission



Novation

← New agreement

- Old P Consent = CJ + DJ

New P → = PJ

Creditor / III = F. Wallah

★ SECTION 31 :- Admission of a Partner →

★ Ground Rule :- ① Subject to the contract b/w partners.
★ ② Consent of All the partners.

⇒ New Partner is liable only for debts, liabilities, contract done after his admission. [Not before]

⇒ But, he may become liable if → he agrees and :-
there is a new agreement (Novation) with consent of :-

→ Old partners (all)

→ New partner

→ CREDITOR / III Party

Compulsory

★ SECTION 32: RETIREMENT OF A Partner.

★ Ground Rule :- ① consent of all partners

② Express agreement.

★ ③ P. @ will = Written notice to all.

⇒ RL of RP = RP will be liable for all the acts/contracts done before the Retirement and until the public Notice is given. Hence he is not liable for acts done after his Retirement



RP Can be discharged for old acts/contracts } = Yes [New agreement - b/w Ill party & partner of Reconstituted firm

★ Public Notice can be given by - RP or other partners.

★ ⇒

★ ⇒ RP will not be liable if III party^{is} dealing with the firm without knowing (RP) was a partner.

★ SECTION 33 - Expulsion of Partner

★ Generally you cannot expel a partner but if all the

★ conditions are met then you can :-

- ★ (1) power in the express agreement
- ★ (2) consent of majority
- ★ (3) Good faith → Test = 1) PF Interest
2) Notice
3) DoBH (opp. of being heard)
- } If Not then expulsion will be null and void

★ If expulsion is not valid ^(Invalid) = No Impact on PF [will = Continue
Dissolve (x)]

★ R/D of Expelled Partner = Same as RP = 32(2)(3)(4) | PN IS REQUIRED



SECTION 34 :- Insolvency of a Partner :-



① When a partner is adjudicated by the court through an order as insolvent, such partner ceases (रोकना) to be partner from such date

of order of Adjudication.

[From the date of Order]

② Firm and IP^{का} (Estate) will not be liable to each other.

③ Remaining competent partner may decide to continue the Biz hence dissolution of firm is not compulsory.

PN is not Required



SEC.	DESCRIPTION	PN.
32	RETIRE.	✓
33	Expel.	✓
34	Insolvent	X
35	Death	X

★ SECTION 35 :- DECEASED Partner.

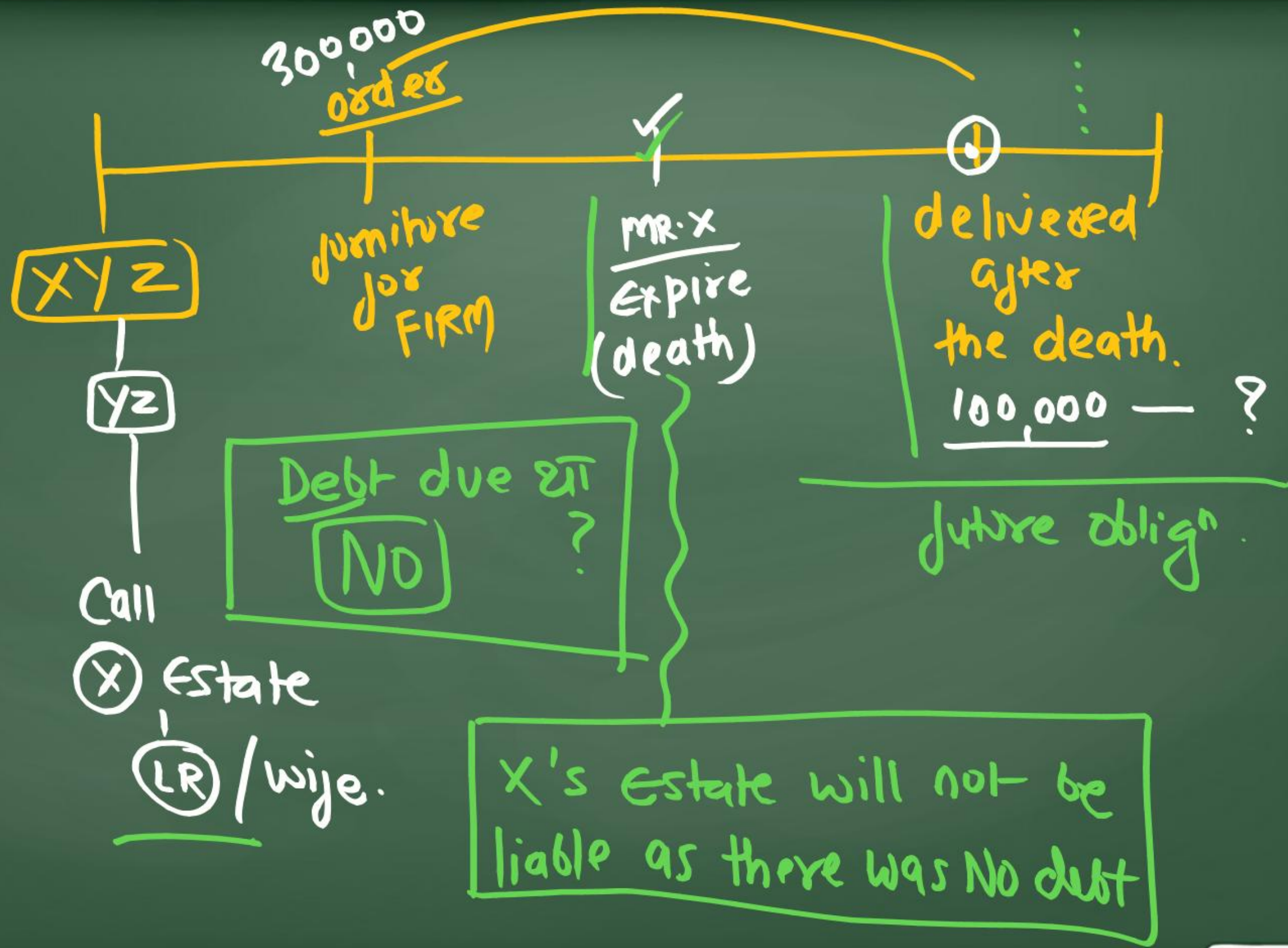
★ ⇒ on the death of a partner ordinary firm
★ dissolves BUT

Surviving partners may
decide to continue the BIZ
as per the agreement.

⇒ This does not apply when the no. of P is 2.

⇒ liability of deceased partner's Estate ⇒ No liab.
for future obligation. PN IS NOT REQUIRED

F. Wallah
↓
court
↓
decree
↓
Surviving Part.



300,000
orders

XYZ

YZ

Call

(X) Estate

(LR) / wije.

furniture
for
FIRM

Debt due 211?
NO

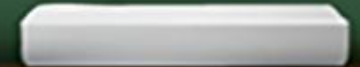
MR. X
Expire
(death)

delivered
after
the death.

100,000 - ?

future obligⁿ

X's Estate will not be
liable as there was NO debt



★ SEC. 14 :- Partnership property

★ Common / Joint stock | Assets.
Estate

★ ① R I P = Rights / Int / Property
Contribute

✓ ② Acquire / purchase - BIZ

✓ ③ Goodwill.

A partner's personal property will be treated as PP if :-

① Intended to be used for P. Firm BIZ only
\$

② Agreement b/w the P & the Firm.

Just a mere fact that the property is used by the firm does not mean it is a PP.

15

APPLICATION OF THE PROPERTY OF FIRM



(USE कल)

- ❖ The property of the firm shall be held and used **exclusively** for the purpose of the firm.
only for BIZ
- ❖ In partnership, there is a **community of interest** which all the partners take in the property of the firm.
- ❖ But that **does not** mean that during the subsistence of the partnership,
❖ a particular partner has **any proprietary interest** in the assets of the firm.
अकेला Partner मालिक (X)
- ❖ Every partner of the firm has a right to get his share of profits
❖ till the firm subsists and Share ✓
- ❖ he has also a right to see that all the **assets** of the partnership
❖ are **applied** to and used for the **purpose** of partnership business.



16 PERSONAL PROFIT EARNED BY PARTNERS



a. If a partner derives any profit for himself -

Subject to the contract between the partners



i. from any transaction of the firm, or

ii. from the use of the property or

iii. business connection of the firm or the firm name.

iv. he shall account for that profit and pay it to the firm;

Return ✓

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.

Return.

★ SECTION 29 :- Transfer of Partner's Interest :-

- ★ (1) A partner's interest can be transferred just like any other tangible property.
- ★ (2) Such assignment can be done through sale, mortgage or by any action of court.
- (3) Such person do not enjoy the same benefit or privileges as the OP partner.
- (4) Transfer of Int. can be done with $\left\{ \begin{array}{l} \text{consent of} \\ \text{all the P} \end{array} \right\}$ $\left\{ \begin{array}{l} \text{Tee} \\ \text{Rights} \end{array} \right\}$ \Rightarrow



⇒ He is entitled to receive the share of profit but he cannot challenge it or question it. means he is bound to accept it.



⇒ He is not entitled to :-

(a) Take part in the conduct of the BIZ.
[Interjere]

(b) He cannot take accounts or inspect BOA except in the case of dissolution of the firm to determine / ascertain his share in the assets of the firm.

★ SECTION - 30 :- MINOR → Sheet 1

- ★ (1) Any contract with a minor is void-ab-initio (Generally)
- ★ (2) But minor can be admitted as a partner in a PF with consent of all (P) \$ for the benefit of the firm. He can be a beneficiary in a firm.
- (3) He can be admitted in an EXISTING FIRM with at least 2 Major partners.

(4) RIGHT ⇒ { Agreed Share in } (2) Minor can access, inspect \$ take copy of BOA if needed.

Basic-Main (1) { P-Property & Profit }

★ Sheet 2 ⇒ SUE? Generally - NO. But
★ does what? | He can sue only when he is severing
★ Payment/Share of Profit | (Separate होना) his connection with
the Firm. ③

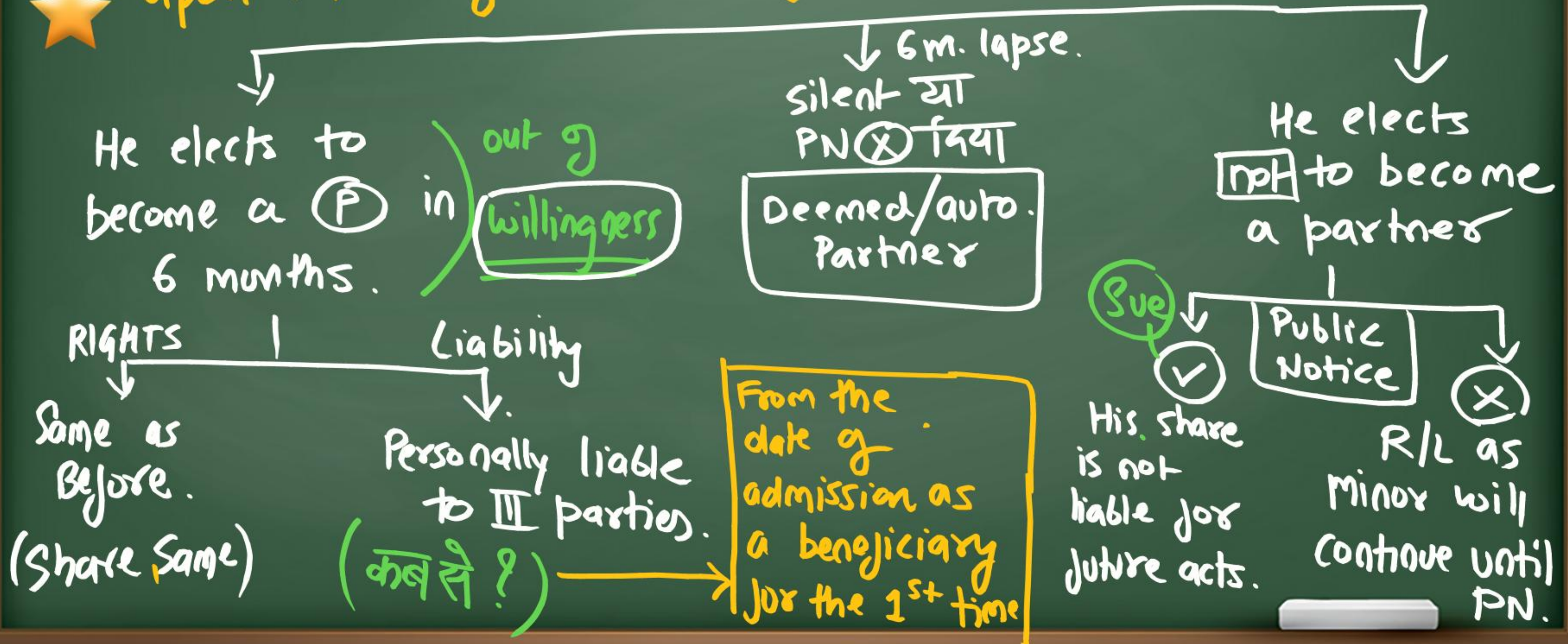
liability of a (Minor) partner :- During (minority)*

- (1) A minor cannot be held personally liable.
- (2) A minor cannot be insolvent (His share ⇒ official assignee)
- (3) A minor's liability will be limited to his share in $\left. \begin{array}{l} \text{PROP.} \\ \$ \\ \text{Profit} \end{array} \right\}$

What about his liability after attaining majority? ⇒ Next page

★ Sheet 3 :- Minor and Major :-

- ★ He has to decide in 6 months of attaining majority (OR)
- ★ upon knowledge (Notice) of being a partner





RIGHTS

1. Rights of a Minor :

"PASTES":

- a. **Profits Share** - A minor partner has a right to his agreed share of the profits and property of the firm.
- b. **Accounts Access** - He can have access to, inspect and copy the accounts of the firm.
- c. **Suing (when severing connection)** - He can sue the partners for accounts or for payment of his share but only when severing his connection with the firm, and not otherwise.
- d. **Time to Elect (6 months after majority)** - On attaining majority, he may within 6 months elect to become a partner or not to become a partner.
- e. **Entitlement (to share if becomes partner)** - If he elects to become a partner, then he is entitled to the share to which he was entitled as a minor.
- f. **Share (not liable for acts after public notice if opts out)** - If he does not, then his share is not liable for any acts of the firm after the date of the public notice served to that effect.

✓



SECTION 36 = Competing Business

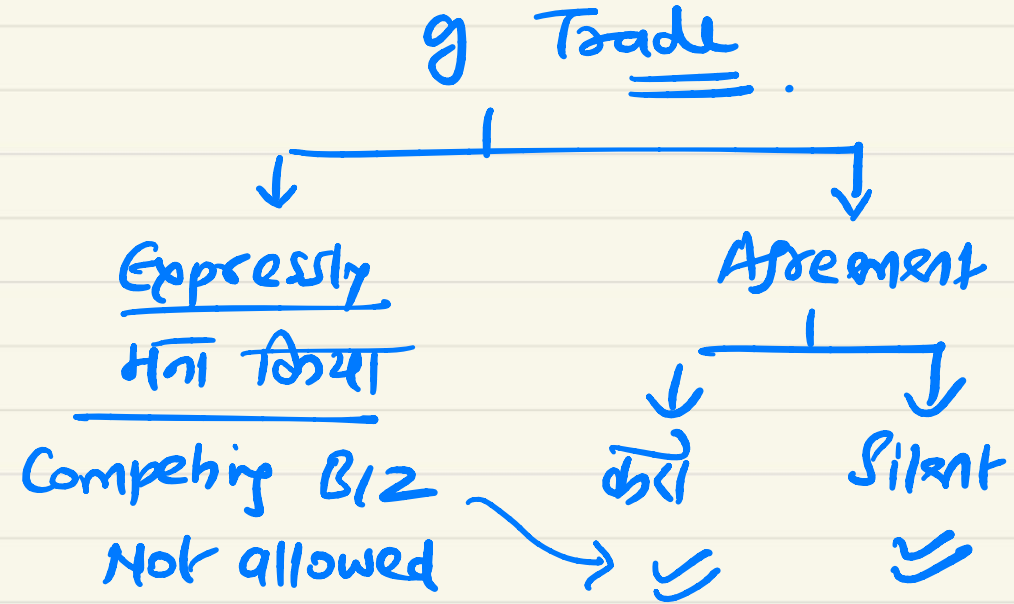


⇒ An outgoing partner **MAY** have a competing BIZ but he

Ignore - sec. 27 ICA 1872
Agreement in Restraint

Cannot :-

- ① Use the Firm Name (X)
- ② Represent himself as carrying on BIZ of the Firm.
- ③ Solicit $\left\{ \begin{matrix} \text{Persons} \\ \text{Persons} \end{matrix} \right\}$ = Jim's dealing



Section 16 ⇒ Personal profit made by the Partner WHILE he is a partner in the firm

Sec. 36 = Rights of OG Partner.

SECTION 37 = Rights of OG to Share Subsequent Profit



When surviving partners or continuing partners carry on the firm's business with/using the partnership property (Firm's prop.) and they have not settled final accounts / settlement of the outgoing partner. **In the absence of contract to contrary = Banner**

In such case, outgoing partner / estate / representative, they are entitled to receive :- either

- ① His share of profit made since he ceased to be a partner
- ② Interest @ 6% on the amount of his share in firm's property

OR

38

REVOCAION OF CONTINUING GUARANTEE BY CHANGE IN FIRM ✓✓



A continuing guarantee given ^{by} a firm or to third party in respect of the transaction of a firm is **REVOKED** in the absence of an agreement to the contrary, Banner's ★

as to future transactions from the date of any change in the constitution of the firm.

Continuing Guarantee :-

