



## BASICS of IPA, 1932 :-



→ IPA 1932 came into force 1<sup>st</sup> Oct. 1932.



→ It applies to the whole of India

→ Section 1-74 (It was earlier a part of ICA, 1872)

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→ When two or more persons come together they are individually called = **PARTNERS**

→ Collectively they are called = **FIRM**

→ They conduct business under a name = **FIRM Name**

④

## ★ SECTION 4 :- PARTNERSHIP :-

- ★ (1) When two or more **Persons**
- ★ (2) Who have **agreed** = Agreement / Partnership **DEED**.
- (3) to earn **Profit** & share profit (Loss-?)
- (4) of a **BUSINESS** - (charity / donation / NGO - ?)
- (5) (Carried on by ALL) or (ANY of them) (acting for ALL).

Mutual Agency \*

★ Element 1 : Two or More Persons :-

★ → Minimum = 2 , Max = 50 (As per sec 464 of TCA 2013)

★ → Natural person :-

Minor = Cannot (But <sup>yes</sup> with consent of all Partners  $\$$  for benefit of Partnership)

Unsound mind = Cannot

5/5 ✓ Majority ✗ 3/5 ✗

→ Legal person :- Who is recognised in the eyes of law.  
:- Company / LLP = Yes but P. Firm = No

Element 2 :- AGREEMENT :- It is must (entered by all)  
:- Oral / Writing = Preferred is Writing  
:- Express / Implied = C.A.M.

★ 3 = BUSINESS :-

★ Any kind of TOP = Trade / Occupation / Profession is essential with motive of Acquisition of gains. If no such intention appear then No partnership.

★ 4 Sharing of PROFIT ⇒ It is an essential element BUT  
NOT A TRUE TEST OF P.

→ Sharing of losses is not an essential element rather it is optional and a choice, hence not compulsory.

→ If one partner gets all the profit = No Partnership.

If one partner gets all the losses = Yes Partnership.

★ How to share Profit / Losses :-

★ (1) As per the agreement = Deed

★ (2) If Agreement = Silent then -

Profit [ Sharing ] PSR = equally 1:1:1

Loss [ Ratio ] LSR = As per PSR .



	<u>P</u>	<u>K</u>	<u>C</u>	=	<u>PROFIT</u>	<u>P</u>
①	1	: 1	: 1	=	Equally	✓
②	1	: 0	: 0	=	only 1 P all profit	X

Sharing  
of  
Profit  
is an  
EE.

PROFIT & LOSS = equally

③	1	: 1	: 1	=	<u>Loss</u> <u>Equally</u>	✓
④	1	: 1	: 0	=	<u>Unequally</u>	✓
	1	: 0	: 0	=	only 1 P loss full	✓

PROFIT equally But losses

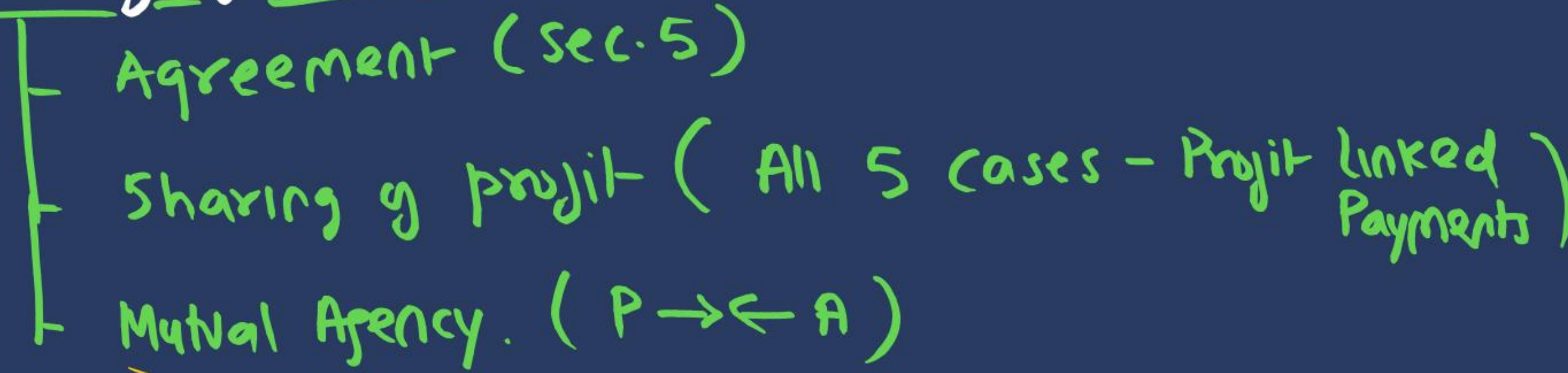
Loss  
Sharing  
is  
Not an  
EE

★ Section 5 :- Agreement

★ Partnership is formed on the basis of  
★ Agreement / Contract and not as per the  
Status. Eg : HUF members are not partners.

☆☆☆ Complete flow of the topic :-

- Sec 4 → Def<sup>n</sup> = Partnership / Partner / Firm - name
- Sec 5 → Agreement = Not by status eg. HUF
- Sec 6 → Determining of existence of Partnership



⑤

EE

True testing P

1 2/more

Sec. 5 include

2 Agreement

✓

3 Business

All 5 cases

4 Sh. Buyit

✓

5 MA

✓



## ★ Mutual Agency :- (5)

★ → This is a CARDINAL principle of partnership law.

★ → An act of one partner during / for the business of the firm → is in fact an act of all the partners

★ → Every partner plays 2 roles i.e. of a Principal and an Agent. It means every partner is P & A of each other for the purpose of Business.

# ★ ★ ★ TRUE Test of Partnership :-

## Sharing of PROFIT (VS) Mutual Agency :-

★ Sharing of Profit is an essential element. But

★ It is a **PRIMA FACIE** Evidence and not a

Conclusive evidence.

★ It means :- If Mutual Agency is not present then there is No partnership.

★ Cases where sharing of Profit is there but No (P).

★ PROFIT Linked payment :-

★ Refer next sheet — Answer Where sec. 6 with True test of partnership & all 5 cases of Profit linked payment are also covered.

Next  
Sheet

★ Sharing of profit is not a conclusive evidence. It can be an essential element to create a partnership or a prima facie evidence but not a conclusive evidence

★ Profit linked payments does not automatically make someone partner in a business.

★ Cases where profit sharing does not convert into a partnership

are as follows :-

- (1) Lender of money receiving interest <sup>in the form of % of Profit</sup> ~~or any amount~~.
- (2) Any employee or servant or agent receiving any amount as percentage of profit. Eg: Bonus for an employee.
- (3) Any widow or child receiving Annuity  
(of a deceased partner.)



- (4) Previous owner or past owner receiving money in the name of Goodwill / Share  $\neq$  does not make him a partner.
- (5) Co-owners receiving money from property holding jointly, does not make them partners.

We need to check partnership as per Section 6 of IPA, 1932

which will check all the relevant facts & real intention &

conduct of the partners. True test of partnership

- includes -
- (1) Agreement should be present
  - (2) Sharing of profit
  - (3) Mutual Agency.



★ ★ ★ Case law on test of Partnership :-

★ ★ ★ Murzamull → No partnership

- because
- NO TIC - deed
  - NO Records (BoA)
  - NO Bank A/c
  - NO intimation to Local Autho.

⇒ KD Kamath →

Even if few powers are exclusive <sup>100%</sup> to only one partner like borrowing, banking etc. It does not destruct Partnership



# Partnership Agreement / DEED ⇒



⇒ May be oral / written = PREFERRED = WRITTEN

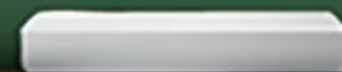


⇒ Express / Implied

⇒ Stamped = as per Stamp Act, 1899.

⇒ Immovable property = Stamping + Written + Registered (R)

⇒ No formalities are given but include such matters





# Content of Deed :-



① Name — FIRM<sup>1</sup>  
— Partners<sup>2</sup>



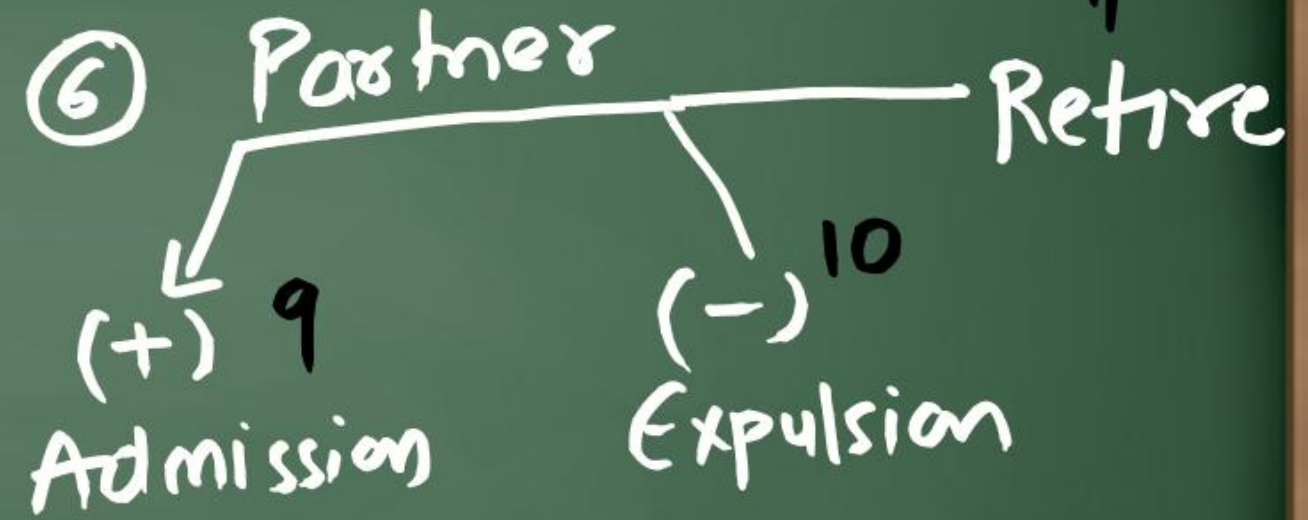
② D — Date<sup>3</sup>  
— Duration<sup>4</sup>

③ Place of Business<sup>5</sup>

④ Ratio — Capital<sup>6</sup>

— PSR<sup>7</sup>

⑤ Capital — Interest ?<sup>8</sup>



⑦ Firm = dissolve<sup>12</sup>  
↓  
A/c settlement

You can add/delete  
Provision in the deed

# Summary of KINDS

Partnership = 1 YR = **Fixed** Period

WILL - sec. 7. [ No duration and No Provision to determine ]

## DURATION

Written Notice To all other Partners

with Intention to dissolve (P)

**Fixed duration**

**1 YR**

Complete  
एक साल

फिर भी  
Continue

Automatically  
convert → WILL

## BUSINESS

→ PARTICULAR = Single adventure / Purpose (No time duration)  
It will dissolve on completion of Adv. / Project

→ General → For Biz in general

★ liability  
 ★ of all P  
 ★ in case of  
 PP Extends  
 only to parti-  
 -cular event  
 but this is not  
 the case in  
 General partnership

Particular  
PKC



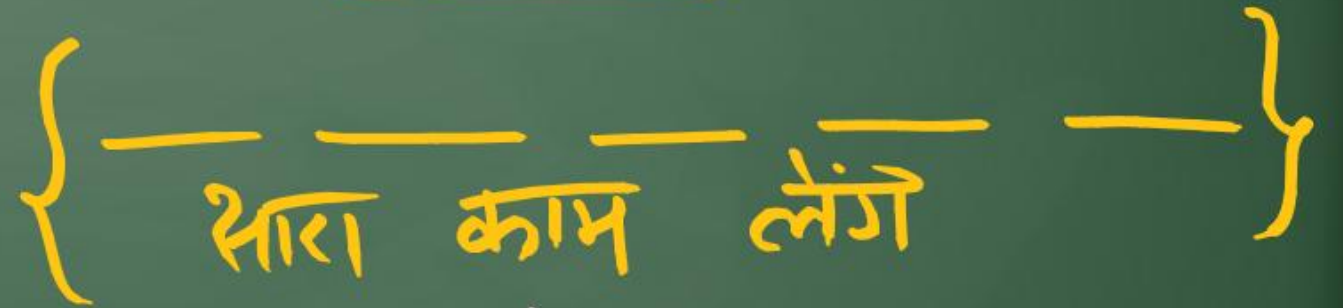
BRIDGE

All (P) liability  
 ?

All P will be liable  
 only for  
 Particular adv. only  
 event

General

PKC



↓  
 Liability of All (P)  
 extends to all the  
 events.

**BASIS**

⑤ VL Partnership R = optional

⑤ LL Co. = Compulsory

(1) \* Separate legal status

P. has no separate legal status from its P.

Members are distinct from the company

(2) \* Separate Pro-

Joint estate of all P

✓

(3) PS/ALP

No. of P. - 2 - 50

2 - 200  
7 - unlimited

(4) \* Agency (MA)

PRESENT. (Every P-A)  
Par.

Members are not Agent of the Co.

(5) \* Transfer of sh.

P K C | yes. only if all P. give  
↓  
C J | CONSENT.

Pvt | AOA.  
Public



# BASIS

# Partnership

# CLUBS



① DEF<sup>n</sup>

always for Business  
with motive of Acq. of  
Gains

Association of Person  
object = Not to earn  
Profit.



② Relationship

Partners

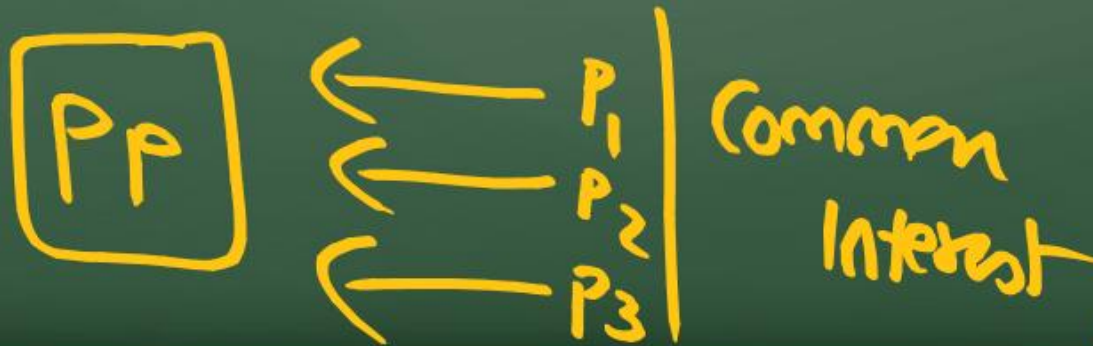
Members.

③ Dissolve

Ⓟ - change - Partnership  
Change

Change in Membership  
No change in CLUB.

④ Interest  
in Property



Members have No Int  
in the Club's Property

1

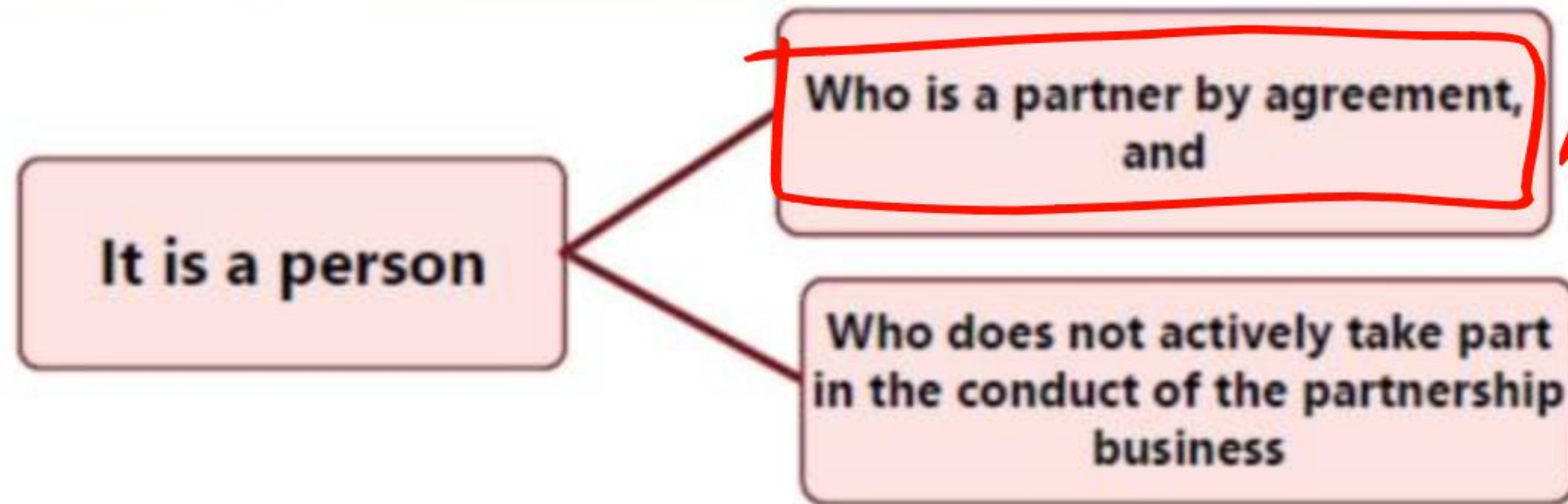
# Active or Actual or Ostensible partner



- ❖ Who actively participates in the conduct of partnership / business
- ❖ He acts as an agent of other partners for all acts done in the ordinary course of business.
- ❖ In the event of his retirement, he must give a public notice in order to absolve himself of liabilities for acts of other partners done after his retirement.

पदम ←





Agreement ✓

- ❖ Who does not actively participates in the conduct of partnership / business
- ❖ They share profits and losses and
- ❖ are liable to the third parties for all acts of the firm.
- ❖ They are, however, NOT required to give public notice of their retirement from the firm.
- ❖ His insanity does not dissolve the firm

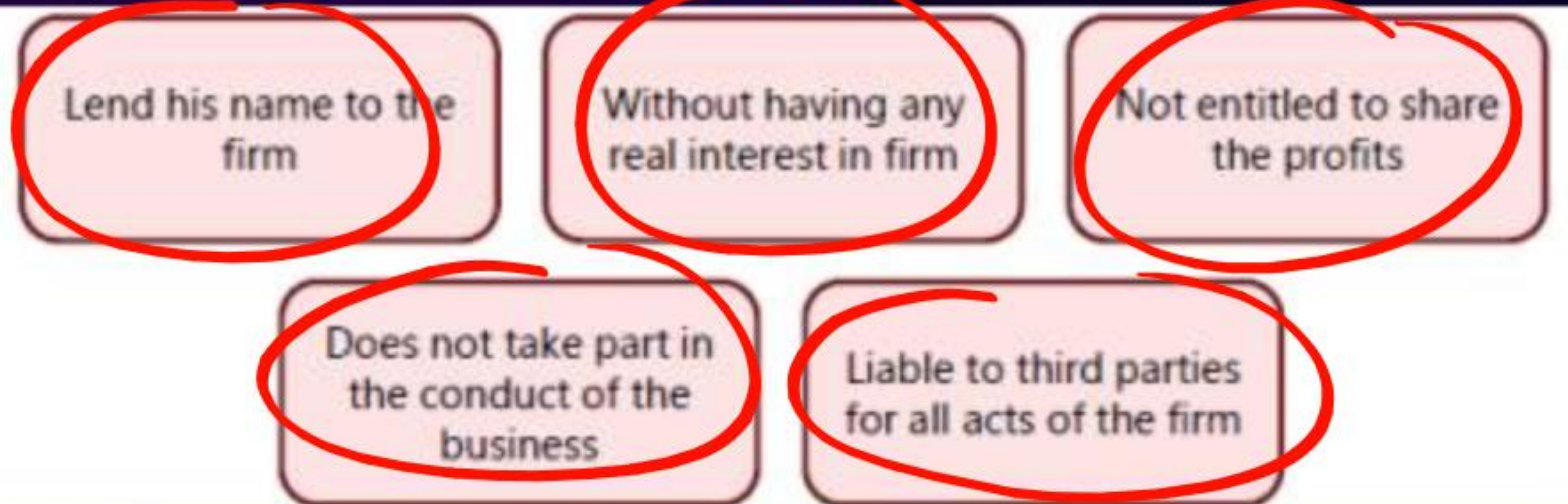
Insanity of sleeping ≠ Dissolve X

# 3

## Nominal Partner



- ❖ A person who lends his name to the firm,
- ❖ without having any real interest in it, is called a nominal partner.
- ❖ He is not entitled to share the profits of the firm.
- ❖ Neither he invests in the firm nor takes part in the conduct of the business. ❖ His insanity does not dissolve the firm
- ❖ He is, however, liable to third parties for all acts of the firm.

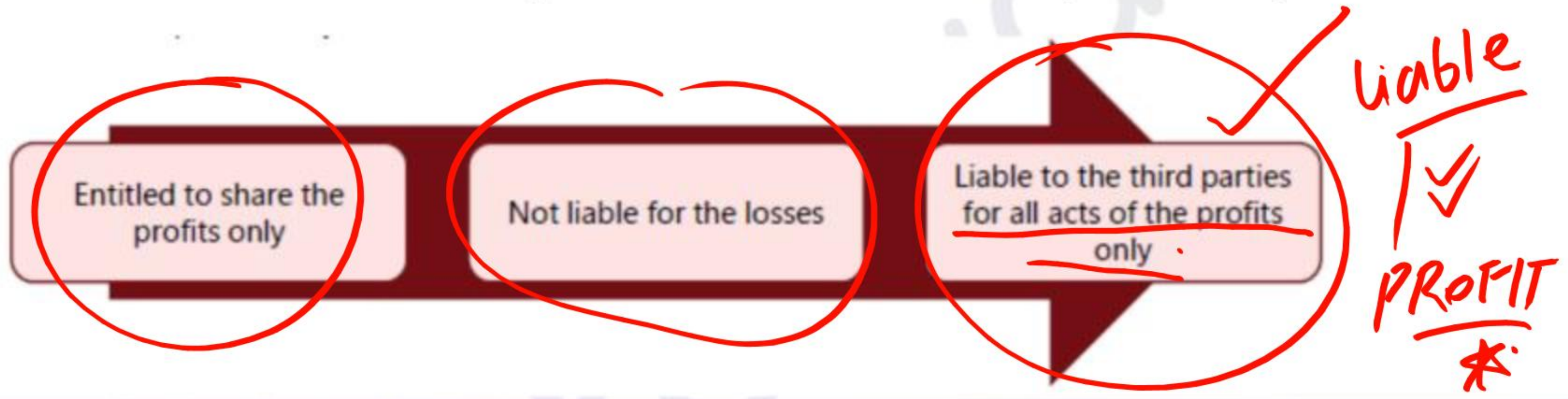


# 4

## Partner in profits only



- ❖ A partner who is entitled to share the profits only
- ❖ without being liable for the losses is known as the partner for profits only and
- ❖ Also liable to the third parties for all acts of the profits only.



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## Incoming Partner ★ ★ ★

- ❖ A person who is admitted as a partner into an already existing firm
- ❖ with the consent of all the existing partners is called as "incoming partner".
- ❖ Such a partner is NOT liable for any act of the firm done BEFORE his admission as a partner. ✓ ✗ *Refer Unit - 2*

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## Outgoing / Retiring Partner

- ❖ A partner who leaves a firm *Retirement, expulsion, insolvency, death*
- ❖ in which the rest of the partners continue to carry on business is called a retiring or outgoing partner.
- ❖ Such a partner remains liable to third parties for
- ❖ all acts of the firm UNTIL public notice is given of his retirement.

Notice - Except - Insolvency and Death = PN is not required.

7

# Partner by Estoppel

VIMP.

## Partner by holding out (Section 28)



- ❖ Partnership by holding out is also known as partnership by estoppel.
- ❖ 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 <sup>VIRAT</sup> creditors may be presumed to have acted.
- ❖ A person may himself, by his words or conduct have induced others to believe that he is a partner or ex/imp.
- ❖ he may have allowed others to represent him as a partner.
- ❖ The result in both the cases is identical.

**This Partner will be liable only to whom he has represented and Not to the whole world**

# ★ PARTNER BY HOLDING OUT / ESTOPPEL = 28

★ → When a person represents himself falsely as a partner or let another person represent him as a partner and **ex/imp**.

★ → When a creditor / III party relies / believes on such false representation

→ then such person will be called P. by Holding out & he cannot deny his liability.

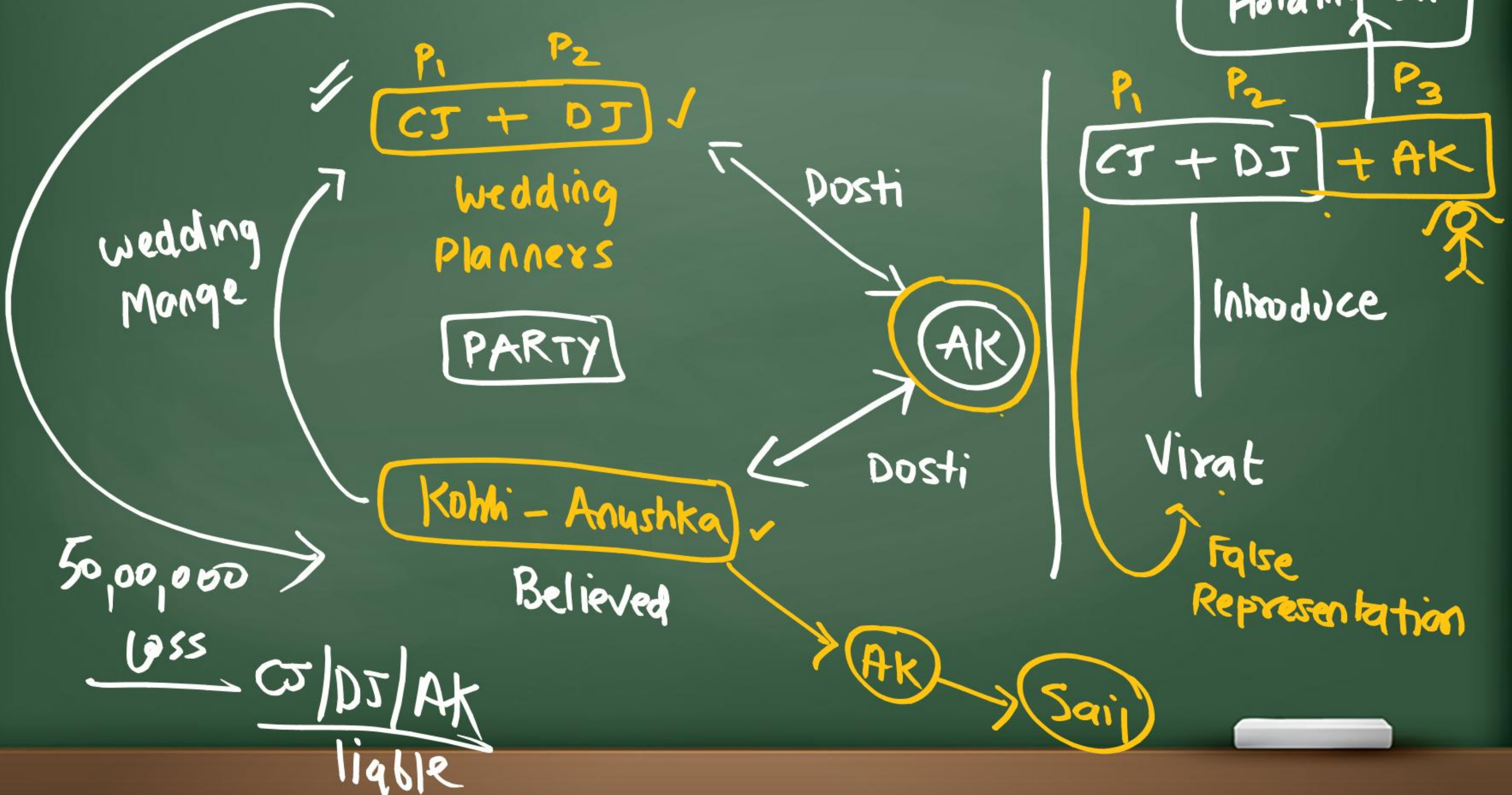
★ → Partner by holding out is liable

★ ONLY

★ to whom the false representation

was made \$

→ He is not liable to the whole world.



# CLIPS TYPES OF Partners

Aspect	Active/Actual/Ostensible Partner	Sleeping/Dormant Partner	Nominal Partner	Partner in Profits Only
<u>Conduct in Business</u> (C) ✓	✓	✗	✗	✗/✓
<u>Liable to Third Parties</u> (L) ✓	✓	✓	✓	ONLY for the Acts of PROFIT
<u>Invests Capital in Firm</u> (I) ✓	✓	✓	✗	✗/✓
<u>Public Notice on Retirement Required</u> (P) ✓	✓	✗	✓	✓
<u>Entitled to Share Profits</u> (S)	✓	✓	✗	✓



(I) / (O) / (H)

