

Indian Partnership Act, 1932

Unit - I General Nature of Partnership

Q. No.	Questions & Answers
1.	<p>Explain the following kinds of partnership under the Indian Partnership Act,1932:</p> <ol style="list-style-type: none"> 1) Partnership at will 2) Particular partnership <p style="text-align: right;">(Jan. 2021, RTP May 2020, Nov. 2020, RTP Nov. 2019, June 2022, MTP Dec 2022)</p>
Ans.	<ol style="list-style-type: none"> 1) Partnership at will: As per the provision of the Indian Partnership Act, 1932, partnership at will is a partnership when: <ol style="list-style-type: none"> i) <u>No fixed period</u> has been agreed upon for the <u>duration</u> of the partnership, and ii) There is <u>no provision</u> made as to the <u>determination</u> of the partnership. <p>A partnership at will may be <u>dissolved by any partner</u> by <u>giving notice</u> in writing to all the other partners of his <u>intention</u> to dissolve the same.</p> 2) Particular Partnership: A partnership may be formed for a <u>single business adventure</u> as well as for the <u>conduct of continuous business</u>. If a person becomes a partner with another person for any <u>particular</u> business adventure or undertaking, the partnership is called '<u>particular partnership</u>'. A particular partnership is <u>dissolved by the completion of the business adventure</u> for which it was formed.
2.	<p>"Whether a group of persons is or is not a firm, or whether a person is or not a partner in a firm". Explain the mode of determining the existence of partnership as per the Indian Partnership Act,1932?</p> <p style="text-align: right;">(Dec. 2021, May 2019, MTP June 2023, MTP Dec 2022)</p>
Ans.	<p>As per the provision of the Indian Partnership Act, 1932, in determining whether a group of persons is or is not a firm, or whether a person is or not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together. For determining the existence of a partnership, the following things must be present:</p> <ol style="list-style-type: none"> 1) Agreement: Partnership is created by agreement and not by status. The relation of partnership arises from the contract and not from status. 2) Sharing of Profit: Sharing of profit is an essential element to constitute a partnership. But, it is only prima facie evidence and not conclusive evidence in that regard. The sharing of profits would not by itself make such person partners. 3) Agency: The existence of Mutual Agency which is the cardinal principle of partnership law, is very much helpful in reaching a conclusion in this regard. 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 the firm binds all the partners.
3.	<p>Mr XU and Mr YU are partners in a partnership firm. Mr XU introduced MU (an employee) as his partner to ZU. MU remained silent. ZU, a trader is believing MU as a partner, supplied 50 laptops to the firm on credit. After the expiry of the credit period. ZU did not get the amount of laptops sold to the partnership firm. ZU filed a suit against XU and MU for the recovery of the price. Does MU is liable for such a purpose?</p> <p style="text-align: right;">(Nov 2018, ICAI SM, RTP Nov. 2019)</p>
Ans.	<p>As per the provision of the Indian Partnership Act, 1932, a <u>partner by holding out/partner by estoppel</u> means when a person is <u>represented as a partner by other partners of the firm</u>, he is then stopped from denying the character he has assumed and upon the faith of which creditors have presumed him to be a partner. Also, if a person himself, by his words or conduct, have <u>induced others to believe that he is a partner</u>, then also he shall be regarded as partner by holding out or partner by estoppel.</p> <p>Facts of the case:</p> <p>Mr XU and Mr YU are partners in a partnership firm. Mr XU introduced MU (an employee) as his partner to ZU. MU remained silent. ZU, a trader is believing MU as a partner, supplied 50 laptops to the firm on credit. After the expiry of the credit period. ZU did not get the amount of laptops sold to the partnership firm. ZU filed a suit against XU and MU for the recovery of the price.</p>

	<p>Conclusion: In the present case, MU (an employee) is also liable for the price because he becomes a partner by holding out.</p>
4.	<p>“Mutual Agency is the cardinal principle of the partnership law”. Discuss. (Jan. 2021, RTP May 2020)</p>
Ans.	<p>1) As per the Indian Partnership Act, 1932, the existence of <u>mutual agency</u> is the <u>cardinal principle</u> of partnership law. It is also known as the <u>true test of partnership</u>. 2) Each partner carrying on the business is the <u>principal</u> as well as an <u>agent</u> of other partners. So, the act of one partner done on behalf of the firm <u>bind all the partners</u>. 3) If the elements of a mutual agency relationship exist between the parties constituting a group formed with a view to earning profits by running a business, a partnership may be deemed to exist.</p>
5.	<p>What is the conclusive evidence of partnership? State the circumstances when the partnership is not considered between two or more parties. (Dec. 2021, May 2018)</p>
Ans.	<p>As per the provision of the Indian Partnership Act, 1932, the existence of <u>Mutual Agency</u>, which is the cardinal principle of partnership law, is very much helpful in reaching a conclusion with respect to the determination of the existence of the partnership. Each partner carrying on the business is the <u>principal</u> as well as an <u>agent</u> of other partners. So, the act of one partner done on behalf of the firm binds all the partners. Circumstances when a partnership is not considered between two or more parties according to various judicial pronouncements:</p> <ol style="list-style-type: none"> 1) Parties have <u>not retained any record of the terms and conditions</u> of the partnership. 2) Partnership business has <u>maintained no accounts</u> of its own, which would be open to inspection by both parties 3) <u>No account</u> of the partnership was opened with any <u>bank</u>. 4) <u>No written intimation</u> was conveyed to the <u>Deputy Director of Procurement</u> with respect to the newly created partnership.
6.	<p>Mohan, Sohan and Rohan are partners in the firm M/s Mosoro & Company. They admitted Bohan as nominal partner and on agreement between all the partners, Bohan is not entitled to share profit in the firm. After some time, a creditor Karan filed a suit to Bohan for recovery of his debt. Bohan denied for same as he is just a nominal partner and he is not liable for the debts of the firm and Karan should claim his dues from the other partners. Taking into account the provisions of the Indian Partnership Act, 1932:</p> <ol style="list-style-type: none"> a) Whether Bohan is liable for the dues of Karan against the firm. b) In case, Karan has filed the suit against firm, whether Bohan would be liable? <p>(Nov 2022 RTP)</p>
Ans.	<p>As per the provisions of the Indian Partnership Act, 1932, a person who <u>lends his name to the firm</u> without having any real interest in it is called a nominal partner. He is <u>not entitled to share the profits</u> of the firm. Neither he invests in the firm nor takes part in the conduct of the business. However, a nominal partner is <u>liable to third parties</u> for all acts of the firm.</p> <p>Facts of the case: Mohan, Sohan and Rohan are partners in the firm M/s Mosoro & Company. They admitted Bohan as nominal partner and on agreement between all the partners, Bohan is not entitled to share profit in the firm. After some time, a creditor Karan filed a suit to Bohan for recovery of his debt. Bohan denied for same as he is just a nominal partner and he is not liable for the debts of the firm and Karan should claim his dues from the other partners.</p>

	<p>Conclusion:</p> <p>a) In the present case, Bohan is a nominal partner. Even if he is not entitled to share the profits of the firm, he is liable for all acts of the firm as if he were a real partner. Therefore, he is liable to Karan like other partners.</p> <p>b) In case, Karan has filed the suit against firm, the answer would remain same.</p>		
7.	What is the difference between partnership and co-ownership as per The Indian Partnership Act, 1932? (Dec 2022)		
Ans.	Basis	Partnership	Co-ownership
	Formation	Partnership always arises out of a contract, express or implied.	Co-ownership may arise either from the agreement or by the operation of law, such as by inheritance.
	Implied agency	A partner is the agent of the other partners.	A co-owner is not the agent of other co-owners.
	Nature of interest	There is a community of interest which means that profits and losses must have to be shared.	Co-ownership does not necessarily involve sharing of profits and losses.
	Transfer of interest	A share in the partnership is transferred only by the consent of other partners.	A co-owner may transfer his interest or rights in the property without the consent of other co-owners.
8.	<p>Mr. Ram and Mr. Raheem are working as teacher in Ishwarchand Vidhyasagar Higher Secondary School and also are very good friends. They jointly purchased a flat which was given on rent to Mr. John. It was decided between landlords and tenant that the rent would be ₹10,000 per month inclusive of electricity bill. It means electricity bill will be paid by landlords. The landlords, by mistake, did not pay the electricity bill for the month of March 2021. Due to this, the electricity department cut the connection. Mr. John has to pay the electricity bill of ₹2800 and ₹200 as penalty to resume the electricity connection. Mr. John claimed ₹3000 from Mr. Ram but Mr. Ram replied that he is liable only for ₹1500. Mr. John said that Mr. Ram and Mr. Raheem are partners therefore he can claim the full amount from any of the partner. Explain, whether under the provision of Indian Partnership Act, 1932, Mr. Ram is liable to pay whole amount of ₹3000 to Mr. John? (RTP May 2023)</p>		
Ans.	<p>According to Section 4 of the Indian Partnership Act, 1932, "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Therefore, for determining the existence of partnership, it must be proved.</p> <ol style="list-style-type: none"> 1) There must be an agreement between all the persons concerned; 2) The agreement must be to carry on some business; 3) The agreement must be to share the profits of a business and 4) The business was carried on by all or any of them acting for all. <p>On the basis of above provisions and facts provided in the question, Mr. Ram and Mr. Raheem cannot be said under partnership as they are teachers in a school and just purchased a flat jointly. By merely giving the flat on rent, they are not doing business. They are just earning the income from the property under their co-ownership. Hence, there is no partnership between them. Therefore, Mr. Ram is liable to pay his share only i.e. ₹ 1500. Mr. John has to claim rest ₹1500 from Mr. Raheem.</p>		
9.	<p>State whether the following are partnerships under the Indian Partnership Act, 1932:</p> <ol style="list-style-type: none"> i) Two firms each having 12 partners combined by an agreement into one firm. ii) A and B, co-owners, agree to conduct the business in common for profit. 		

	<p>iii) Some individuals form an association to which each individual contributes ₹500 annually. The objective of the association is to produce clothes and distribute the clothes free to the war widows.</p> <p>iv) A and B, co-owners share between themselves the rent derived from a piece of land.</p> <p>v) A and B buy commodity X and agree to sell the commodity with sharing the profits equally.</p> <p style="text-align: right;">(RTP Dec 2023)</p>
Ans.	<p>i) Yes, this is a case of partnership because there is an agreement between two firms to combine into one firm.</p> <p>ii) Yes, this is a case of partnership because A & B, co-owners, have agreed to conduct a business in common for profit.</p> <p>iii) No, this is not a case of partnership as no charitable association can be floated in partnership.</p> <p>iv) No, this is not a case of partnership as they are co-owners and not the partners. Further, there exist no business.</p> <p>v) Yes, this is a case of partnership as there exist the element of doing business and sharing of profits equally.</p>
10.	<p>Explain different types of partners. (Jan. 2021)</p>
Ans.	<p>Types of partners:</p> <ol style="list-style-type: none"> 1) Active or Actual or Ostensible Partner: A person who has become a partner <u>by agreement</u> and <u>actively participates</u> in the conduct of the partnership business is known as an actual or active or ostensible partner. In the event of <u>retirement</u>, he had to give <u>public notice</u> in order to <u>relieve himself</u> of all liabilities for acts of other partners done after the retirement. 2) Sleeping or Dormant Partner: A person who is a partner by agreement and who does <u>not actively take part in the conduct of the partnership business</u>. A sleeping partner <u>share profits</u> and is also <u>liable to the third parties</u> for all acts of the firm. Public notice is not required in the event of retirement. 3) Nominal Partner: A person who <u>lends his name to the firm</u> without having any real interest in it is called a nominal partner. He is <u>not entitled to share the profits</u> of the firm. Neither he invests in the firm nor takes part in the conduct of the business. However, a nominal partner is <u>liable to third parties</u> for all acts of the firm. 4) Partner in profits only: A partner who is entitled to <u>share profits only</u> without being liable for the losses is known as the partner for profits only and is also <u>liable to the third parties</u> for all the acts of the firm. 5) Incoming Partner: A person who is <u>admitted as a partner</u> into an already <u>existing firm</u> with the <u>consent of all the existing partners</u> is called an incoming partner. Such a partner is <u>not liable for any act</u> of the firm done <u>before his admission as a partner</u>. 6) Outgoing Partner: A partner who <u>leaves the firm</u> in which the rest of the partners continue to carry on business is called a retiring or outgoing partner. Such a partner <u>remains liable to third parties for all acts</u> of the firm until <u>public notice</u> is given of his retirement. 7) Partner by Estoppel: When a person, who is <u>not a partner</u> in the firm, <u>represents himself as a partner</u> in a firm, he is liable to anyone who, on the <u>faith of such representation</u>, has given credit to the firm.

Unit - II Relation of Partners

Q. No.	Questions & Answers
1.	<p>Mr A (transferor) transfer his share in a partnership to Mr B (transferee). Mr B is not entitled to few rights and privileges as Mr A is entitled, therefore. Discuss in brief the points for which Mr B is not entitled during the continuance of the partnership?</p> <p style="text-align: right;">(ICAI SM, RTP May 2021, Nov 2021 RTP, MTP June 2023 (M), MTP Dec 2022, RTP May 2023(M))</p>
Ans.	<p>As per the provision of the Indian Partnership Act, 1932, a partner can transfer interest in the firm, either absolute or by mortgage, or by the creation by him of a change on such interest, When a partner transfers his interest in the firm to a transferee, then such transferee shall not be entitled, during the continuance of the firm:</p> <ul style="list-style-type: none"> ✓ to interfere in the conduct of business, or ✓ to require an account, or ✓ to inspect the books of the firm. <p>But, the transferee is entitled:</p> <ul style="list-style-type: none"> ✓ to receive the share of the assets of the transferring partner at the time of the dissolution of the firm, and ✓ to require the accounts of the firm for ascertaining his share from the date of the dissolution. <p>Facts of the case: Mr A (transferor) transfer his share in a partnership to Mr B (transferee). Mr B is not entitled to few rights and privileges as Mr A is entitled, therefore.</p> <p>Conclusion: In the given case, during the continuance of partnership, such transferee Mr B is not entitled:</p> <ul style="list-style-type: none"> ✓ To interfere with the conduct of the business. ✓ To require accounts. ✓ To inspect books of the firm <p>However, Mr B is only entitled to receive the share of the profits of the transferring partner, and he is bound to accept the profit as agreed to by partners, .i.e, he cannot challenge the accounts.</p>
2.	<p>"Though a minor cannot be a partner in a firm, he can nonetheless be admitted to the benefits of the partnership."</p> <p>1) Referring to the provisions of the Indian Partnership Act, 1932, state the rights which can be enjoyed by a minor partner.</p> <p>2) State the liabilities of a minor partner both:</p> <ol style="list-style-type: none"> i) Before attaining majority and ii) After attaining majority. <p style="text-align: right;">(ICAI SM, Nov. 2018, Nov 2021 RTP, June 2022, MTP June 2023, RTP Dec 2023)</p>
Ans.	<p>1) As per the provision of the Indian Partnership Act, 1932, rights which can be enjoyed by a minor partner are:</p> <ol style="list-style-type: none"> a) A minor partner has a right to his agreed <u>share of the profits</u> and of the firm. b) He can have access to, <u>inspect and copy the accounts</u> of the firm. c) He can <u>sue the partners</u> for <u>accounts or for payment of his share</u> but only when severing his connection with the firm and not otherwise. d) On <u>attaining majority</u>, he may <u>within 6 month</u> select to become a partner or not to become a partner. If he elects to <u>become a partner</u>, then he is entitled to the <u>share</u> to which he was entitled as a minor. If he <u>does not</u>, then he is <u>not liable</u> for any acts of the firm <u>after the date of the serving of such public notice</u>. <p>2) Liabilities of a minor partner before attaining majority:</p>

	<p>a) The liability of the minor is confined only to the <u>extent of his share</u> in the <u>profits and the property of the firm</u>.</p> <p>b) Minor has <u>no personal liability</u> for the debts of the firm incurred during his minority.</p> <p>c) Minor <u>cannot be declared insolvent</u>, but if the firm is declared insolvent, his share in the firm vests in the Official Receiver/ Assignee.</p> <p>3) Liabilities of a minor partner after attaining majority:</p> <p>a) <u>Within 6 months</u> of his <u>attaining majority</u> or on his <u>obtaining knowledge</u> that he had been admitted to the <u>benefits of partnership</u>, whichever date is later, the minor partner has to decide whether he shall remain a partner or leave the firm.</p> <p>b) Where he has elected not to become a partner, he may give <u>public notice</u> that he has elected not to become a partner, and such notice shall <u>determine</u> his position in the firm. If he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.</p>
3.	<p>M/s XYZ & Associates, a partnership firm with X, Y, Z as senior partners, were engaged in the business of carpet manufacturing and exporting to foreign countries. On 25th August 2019, they inducted Mr G, an expert in the field of carpet manufacturing, as their partner. On 10th January 2020, Mr G was blamed for unauthorized activities and thus expelled from the partnership by the united approval of the rest of the partners.</p> <p>i) Examine whether action by the partners was justified or not?</p> <p>ii) What should have the factors to be kept in mind prior to expelling a partner from the firm by other partners according to the provisions of the Indian Partnership Act, 1932?</p> <p style="text-align: center;">(ICAI SM, May 2018, May 2019, Nov 2020, Dec 2022, MTP June 2023)</p>
Ans.	<p>As per the provision of the Indian Partnership Act, 1932, a partner may not be expelled from a firm by a majority of partners except in exercise, in good faith, of powers conferred by contract between the partners.</p> <p>The test of good faith includes three things:</p> <ol style="list-style-type: none"> 1) The expulsion must be in the interest of the partnership. 2) The partner to be expelled is served with a notice. 3) He is given an opportunity of being heard. <p>If a partner is otherwise expelled, the expulsion is null and void.</p> <p>Fact of the case:</p> <p>M/s XYZ & Associates, a partnership firm with X, Y, Z as senior partners, were engaged in the business of carpet manufacturing and exporting to foreign countries. On 25th August 2019, they inducted Mr G, an expert in the field of carpet manufacturing, as their partner. On 10th January 2020, Mr G was blamed for unauthorized activities and thus expelled from the partnership by the united approval of the rest of the partners.</p> <p>Conclusion:</p> <p>i) Action by the partners of M/s XYZ & Associates, a partnership firm, to expel Mr G from the partnership was justified as he was expelled by united approval of the partners exercised in good faith to protect the interest of the partnership against the unauthorized activities charged against Mr G. A proper notice and opportunity of being heard has to be given to Mr G.</p> <p>ii) The following are the factors to be kept in mind prior to expelling a partner from the firm by other partners:</p> <ol style="list-style-type: none"> a) the power of expulsion must have existed in a contract between the partners; b) the power has been exercised by a majority of the partners; and c) it has been exercised in good faith.
4.	<p>M, N and P were partners in a firm. The firm ordered JR Limited to supply the furniture. P dies, and M and N continue the business in the firm's name. The firm did not give any notice about</p>

	<p>P's death to the public or the persons dealing with the firm. The furniture was delivered to the firm after P's death; the fact about his death was known to them at the time of delivery. Afterwards, the firm becomes insolvent and failed to pay the price of furniture to JR Limited. Explain with reasons:</p> <ol style="list-style-type: none"> 1) Whether P's private estate is liable for the price of furniture purchased by the firm? 2) Whether does it make any difference if JR Limited supplied the furniture to the firm, believing that all the three partners are alive? <p style="text-align: right;">(Nov 2018, RTP May 2021, Jan. 2021, May 2022 RTP, Nov 2022 RTP)</p>
Ans.	<p>As per the provision of the Indian Partnership Act, 1932, the estate of a deceased partner is <u>not liable for any act of the firm done after his death</u>. It is not necessary to give any notice either to the public or the person having dealt with the firm regarding the death of the partner.</p> <p>Facts of the case:</p> <p>M, N and P were partners in a firm. The firm ordered JR Limited to supply the furniture. P dies, and M and N continue the business in the firm's name. The firm did not give any notice about P's death to the public or the persons dealing with the firm. The furniture was delivered to the firm after P's death; the fact about his death was known to them at the time of delivery. Afterwards, the firm becomes insolvent and failed to pay the price of furniture to JR Limited.</p> <p>Conclusion:</p> <ol style="list-style-type: none"> 1) The delivery of the furniture was made after P's death; his estate would not be liable for the debt of the firm. A suit for goods sold and delivered would not lie against the representative of the deceased partner. This is because there was <u>no debt due with respect of the goods in P's lifetime</u>. 2) It <u>would not make any difference</u> even if JR Limited supplied furniture to <u>the firm believing that all the three partners are alive</u>, as it is not necessary to give any notice either to the public or the persons having dealings with the firm, so <u>the estate of the deceased partner may be absolved from liability for the future obligations of the firm</u>.
5.	<p>X was minor introduced to the benefits of the Partnership of ABC & Co. with the consent of all partners. After attaining majority, more than six months elapsed, and he failed to give public notice as to whether he elected to become or not to become a partner in the firm. Later on, L, a supplier of material to ABC & Co., filed a suit against ABC & Co. for the recovery of the debt due. Explain:</p> <ol style="list-style-type: none"> 1) To what extent X will be liable? 2) Can L recover his debt from X? <p style="text-align: right;">(Nov. 2019, ICAI SM, RTP Nov. 2020)</p>
Ans.	<p>As per the provision of the Indian Partnership Act, 1932, a minor <u>cannot be admitted to a partnership firm</u>, but, with the <u>consent of all the partners</u>, he may be <u>admitted to the benefits of the partnership</u>.</p> <p>But, if the minor:</p> <ul style="list-style-type: none"> ✓ <u>has attained majority</u>, or ✓ <u>obtains the knowledge</u> that he had been admitted to the benefits of the partnership firm, <u>whichever is later</u>, <p>then such person shall, within 6 months from the date of attaining the majority or obtaining the knowledge of being admitted to the benefits of the partnership, give a public notice that he has or has not elected to become a partner in the firm.</p> <p>Provided that, if he <u>fails to give such notice</u>, he shall become a partner in the firm on the <u>expiry of said six months</u>.</p> <p>Fact of the case:</p> <p>X was introduced to the benefits of the Partnership of ABC & Co. with the consent of all partners. After attaining majority, more than six months elapsed, and he failed to give public notice as to whether he elected to become or not to become a partner in the firm. Later on, L, a supplier of material to ABC & Co., filed a suit against ABC & Co. for the recovery of the debt due.</p> <p>Conclusion:</p> <ol style="list-style-type: none"> 1) Since X <u>failed to give the public notice</u> after attaining the majority, he should <u>become a partner</u> in the firm on the <u>expiry of six months</u> after attaining the majority. After becoming

	<p>the partner of the firm, his <u>rights and liabilities</u> as a major partner will be applicable, but he also becomes <u>personally liable to third parties</u> for all acts of the firm done since he was admitted to the benefits of the partnership.</p> <p>2) Yes, L can <u>recover</u> his debt from X because now X has attained majority and is <u>liable to third parties</u> for all acts of the firm.</p>
6.	<p>Amar, Aman and Amaan are partners in a firm. As per the terms of the partnership deed, Amaan is entitled to 20% of the partnership property and profits. Amaan retires from the firm and dies after 10 days. Amar and Aman continue the business of the firm without settling the accounts. Explain the rights of Amaan's legal representatives against the firm under the Indian Partnership Act, 1932.</p> <p style="text-align: right;">(ICAI SM, RTP May 2020)</p>
Ans.	<p>As per the provision of the Indian Partnership Act, 1932, where any partner of a firm has died or is ceased to be a partner, and the surviving partners continue the business without settling the accounts of such deceased or outgoing partner, the legal representatives of the deceased partner or the outgoing partner are entitled to: -</p> <ul style="list-style-type: none"> ✓ Interest at 6% p.a. on amount of his share in the property, or ✓ Profit earned after the death or retirement of the partner in the capital ratio of partners, whichever is higher. <p>This provision is subject to the contract to the contrary.</p> <p>Fact of the case:</p> <p>Amar, Aman and Amaan are partners in a firm. As per the terms of the partnership deed, Amaan is entitled to 20% of the partnership property and profits. Amaan retires from the firm and dies after 10 days. Amar and Aman continue the business of the firm without settling the accounts.</p> <p>Conclusion:</p> <p>In the present case, Amaan's legal representatives shall be entitled at their option to:</p> <ul style="list-style-type: none"> ✓ 20% profits; or ✓ Interest at the rate of 6% p.a. on the amount of Amaan's share in the property. <p>Amar and Aman cannot continue the business without settling the accounts with Amaan's legal representatives.</p>
7.	<p>M/s ABC Associates has been a partnership firm since 1990. Mr. A, Mr. B and Mr. C were partners in the firm since beginning. Mr. A, being a very senior partner of aged 78 years transfers his share in the firm to his son Mr. Vikas, a Chartered Accountant. Mr. B and Mr. C were not interested that Mr. Vikas joining them as partner in M/s ABC Associates. After some time, Mr. Vikas felt that the books of accounts were displaying only a small amount as profit despite a huge turnover. He wanted to inspect the book of accounts of the firm arguing that it is his entitlement as a transferee. However, the other partners believed that he cannot challenge the books of accounts. Can Mr. Vikas be introduced as a partner if his father wants to retire? As an advisor, help them resolve the issues applying the necessary provisions from the Indian Partnership Act, 1932.</p> <p style="text-align: right;">(RTP Dec 2023, June 2022)</p>
Ans.	<p>i) Introduction of a Partner (Section 31 of the Indian Partnership Act, 1932): Subject to contract between the partners and to the provisions of Section 30, no person shall be introduced as a partner into a firm without the consent of all the existing partners.</p> <p>In the instant case, Mr. Vikas can be introduced as a partner with the consent of Mr. B and Mr. C, the existing partners.</p> <p>ii) Rights of Transferee of a Partner's interest (Section 29): A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of business, or to require accounts, or to inspect the books of the</p>

	<p>firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners. Hence, here Mr. Vikas, the transferee in M/S ABC Associates, cannot inspect the books of the firm and the contention of the other partners is right that Mr. Vikas cannot challenge the books of accounts.</p>
8.	<p>Explain in detail the circumstances which lead to liability of firm for misapplication by partners as per provisions of the Indian Partnership Act, 1932.</p> <p style="text-align: right;">(Nov. 2020, RTP May 2021)</p>
Ans.	<p>As per the provisions of the Indian Partnership Act, 1932, a partnership firm <u>shall be liable for the misapplication by partners</u> in the following cases:</p> <p>a) A partner, acting within his authority, <u>receives money or property from a third party</u> and misapplies it (it is not necessary that such property or money had come into the custody of the firm); or</p> <p>b) A firm in the course of its business receives money or property from a third party, and such money or property is misapplied by any of the partners <u>while it is in the custody of the firm</u>.</p> <p>In both the case, the partnership firm shall be liable for the loss caused by such misapplication.</p>
9.	<p>What is the provision related to the effect of notice to an acting partner of the firm as per the Indian Partnership Act, 1932?</p> <p style="text-align: right;">(May 2019, May 2018)</p>
Ans.	<p>1) As per the provision of the Indian Partnership Act, 1932, notice to a partner, who habitually acts in the business of the firm, of any matter relating to the business of the firm is deemed as notice to the firm, except in the case of a fraud committed by or with the consent of such partner.</p> <p>2) Thus, notice to one partner is equivalent to the notice to the rest of the partners of the firm. This is just like a notice to an agent is a notice to his principal. This notice must be actual and not constructive. It must further relate to the firm's business, only then it would constitute notice to the firm.</p>
10.	<p>Discuss the liability of a partner for the act of the firm and liability of the firm for the act of a partner to third parties as per the Indian Partnership Act, 1932.</p> <p style="text-align: right;">(Jan. 2021, May 2019)</p>
Ans.	<p>1) <u>Liability of a partner for acts of the firm</u>: As per the provisions of the Indian Partnership Act, 1932, every partner is liable, jointly and severally, with all other partners for all acts of the firm done while he is a partner.</p> <p>2) <u>Liability of the firm for wrongful acts of a partner</u>: As per the provisions of the Indian Partnership Act, 1932, where the wrongful act or omission of a partner, in the ordinary course of the business of a firm or with the authority of his partners, any loss or injury is caused to any third party or any penalty is incurred, the firm is liable for such loss or injury or penalty to the same extent as the partner.</p>
11.	<p>A, B and C are partners of a partnership firm carrying on the business of construction of apartments. B who himself was a wholesale dealer of iron bars was entrusted with the work of selection of iron bars after examining its quality. As a wholesaler, B is well aware of the market conditions. Current market price of iron bar for construction is ₹350 per Kilogram. B already had 1000 Kg of iron bars in stock which he had purchased before price hike in the market for ₹200 per Kg. He supplied iron bars to the firm without the firm realising the purchase cost. Is B liable to pay the firm the extra money he made, or he doesn't have to inform the firm as it is his own business and he has not taken any amount more than the current prevailing market price of ₹350? Assume there is no contract between the partners regarding the above.</p> <p style="text-align: right;">(May 2019, Nov 2021 RTP)</p>

Ans.	<p>As per the provisions of the Indian Partnership Act, 1932, subject to the contract between the partners, if any partner has <u>derived any personal profits</u>:</p> <ul style="list-style-type: none"> ✓ from any <u>transaction</u> of the firm or from the use of <u>firm's name</u> or <u>firm's property</u>; or ✓ from the business carried on by the partner, which is <u>competing and of the same nature</u> as that of the firm, then the partner shall account for such profits and pay it to the firm. <p>Facts of the case:</p> <p>A, B and C are partners of a partnership firm carrying on the business of construction of apartments. B who himself was a wholesale dealer of iron bars was entrusted with the work of selection of iron bars after examining its quality. As a wholesaler, B is well aware of the market conditions. Current market price of iron bar for construction is ₹350 per Kilogram. B already had 1000 Kg of iron bars in stock which he had purchased before price hike in the market for ₹200 per Kg. He supplied iron bars to the firm without the firm realising the purchase cost.</p> <p>Conclusion:</p> <p>In the given scenario, Mr. B had made an extra profit of ₹150 per Kg. This is arising purely out of the transaction of the firm. Hence, Mr. B is accountable to the firm for the extra profit earned by him.</p>
12.	<p>Ram, Laxman and Bharat are partners of a partnership firm RLB Furniture's & Co. The firm is a dealer in office furniture. Ram was in charge of purchase and sale, Laxman was in charge of maintenance of accounts of the firm, and Bharat was in charge of handling all legal matters. Recently through an agreement among them, it was decided that Ram will be in charge of maintenance of accounts and Laxman will be in charge of purchase and sale. Being ignorant about such an agreement, Shyam, a supplier, supplied some furniture to Ram, who ultimately sold them to a third party at a profit. Referring to the provisions of the Partnership Act, 1932, advise whether Ram's actions were correct or not? (Jan. 2021, July 2021)</p>
Ans.	<p>As per the provision of the Indian Partnership Act, 1932, it is the duty of the partner to <u>act within the scope of his actual authority</u>. If he <u>exceeds his authority</u>, he shall <u>compensate the other partners for loss</u> unless they ratify his act. Also, a partner must not make any <u>secret profits</u>.</p> <p>Facts of the case:</p> <p>Ram, Laxman and Bharat are partners of a partnership firm RLB Furniture's & Co. The firm is a dealer in office furniture. Ram was in charge of purchase and sale, Laxman was in charge of maintenance of accounts of the firm, and Bharat was in charge of handling all legal matters. Recently through an agreement among them, it was decided that Ram will be in charge of maintenance of accounts and Laxman will be in charge of purchase and sale. Being ignorant about such an agreement, Shyam, a supplier, supplied some furniture to Ram, who ultimately sold them to a third party at a profit.</p> <p>Conclusion:</p> <p>Here, Ram has to compensate the other partners and the firm as Ram had <u>acted outside his actual authority</u> and made an agreement with Shyam for the purchase of furniture, which was <u>not within the scope of his duties</u>. Ram's duty was the maintenance of accounts of the firm, not sale and purchase of the furniture. Also, the <u>profit</u> which Ram has made from selling the furniture shall be <u>claimed by the firm</u>.</p>
13.	<p>State the legal consequence of the following as per the provisions of the Indian Partnership Act, 1932:</p> <ol style="list-style-type: none"> 1) Retirement of a partner 2) Insolvency of a partner <p style="text-align: right;">(RTP Nov. 2019, RTP Dec 2023)</p>
Ans.	<p>1) Retirement of a partner</p> <ol style="list-style-type: none"> a) A partner may retire: <ul style="list-style-type: none"> ✓ with the consent of all the other partners; or ✓ in accordance with an express agreement by the partners; or

	<p>✓ if the partnership is at will, then by giving notice in writing to all the other partners of his intention to retire.</p> <p>b) A retiring partner may be <u>discharged from any liability to any third party for acts of the firm done before his retirement</u> by an agreement made by him with such third party and the partners of the reconstituted firm.</p> <p>c) Notwithstanding the retirement of a partner from a firm, the retired partner shall continue to be <u>liable as a partner to third parties for any act done before the date of his retirement</u>.</p> <p>d) Notice of retirement may be given by <u>the retired partner or by any partner of the reconstituted firm</u>.</p> <p>2) Insolvency of a partner</p> <p>a) The insolvent partner <u>cannot be continued as a partner</u>.</p> <p>b) He will not be a partner from the date on which the <u>order of adjudication</u> is made.</p> <p>c) The estate of the insolvent partner is <u>not liable</u> for the acts of the firm done <u>after the date of order of adjudication</u>.</p> <p>d) The firm is also <u>not liable</u> for any act of the insolvent partner <u>after the date of the order of adjudication</u>.</p> <p>e) The insolvency of a partner <u>results in the dissolution of a firm</u>, but the partners are competent to agree among themselves that the adjudication of a partner as an insolvent will not give rise to dissolution of the firm.</p>
<p>14.</p>	<p>P, Q, R and S are the partners in M/S PQRS & Co., a partnership firm which deals in the trading of washing Machines of various brands. Due to the conflict of views between partners, P & Q decided to leave the partnership firm and started competitive business on 31st July 2019, in the name of M/S PQ & Co. Meanwhile, R & S Have continued using the property in the name of M/S PQRS & Co., in which P & Q also has a share.</p> <p>Based on the above facts, explain in detail the rights of outgoing partners as per the Indian Partnership Act, 1932 and comment on the following:</p> <p>1) Rights of P & Q to start a competitive business.</p> <p>2) Rights of P & Q regarding their share in the property of M/S PQRS & Co. (Nov. 2020)</p>
<p>Ans.</p>	<p>As per the provision of the Indian Partnership Act, 1932, an outgoing partner may carry the business that is <u>competing</u> with that of the firm, but <u>he may not</u>:</p> <p>a) use the firm's name;</p> <p>b) represent himself as carrying on the business of the firm; or</p> <p>c) solicit the customers who were dealing with the firm before such outgoing partner was ceased to be a partner.</p> <p>However, the partner may agree with the outgoing partner that he will not carry on a business similar to that of the firm <u>within a specified period</u> or <u>within specified local limits</u>. Such an agreement will not be in restraint of trade if the restraints are reasonable.</p> <p>As per the provision of the Indian Partnership Act, 1932, where any partner of a firm has died or is ceased to be a partner, and the surviving partners continue the business without settling the accounts of such deceased or outgoing partner, the legal representatives of the deceased partner or the outgoing partner are entitled to: -</p> <p>✓ Interest at 6% p.a, on amount of his share in the property, or</p> <p>✓ Profit earned after the death or retirement of the partner in the capital ratio of partners, whichever is higher.</p> <p>This provision is subject to the contract to the contrary.</p> <p>Facts of the case:</p> <p>P, Q, R and S are the partners in M/S PQRS & Co., a partnership firm which deals in the trading of washing Machines of various brands. Due to the conflict of views between partners, P & Q</p>

	<p>decided to leave the partnership firm and started competitive business on 31st July 2019, in the name of M/S PQ & Co. Meanwhile, R & S Have continued using the property in the name of M/S PQRS & Co., in which P & Q also has a share.</p> <p>Conclusion:</p> <ol style="list-style-type: none"> 1) P & Q can start a competitive business in the name of M/S PQ & Co. after following the above conditions in the absence of any agreement. 2) In the present case, P & Q shall be entitled at their option to: <ul style="list-style-type: none"> ✓ profits of the firm made from the date on which P & Q left the firm; or ✓ interest at the rate of 6% p.a. on the amount of P & Q's share in the property. <p>R and S cannot continue the business without settling the accounts with p and Q.</p>
15.	<p>Define 'Goodwill' as per the Indian Partnership Act, 1932. Also, explain the rights of the buyer and seller of goodwill as per the Indian Partnership Act, 1932.</p> <p style="text-align: right;">(Nov. 2019)</p>
Ans.	<p><u>Goodwill has not been specifically defined</u> in the Indian Partnership Act, 1932. But, as per the Indian Partnership Act, 1932, goodwill has been regarded as a partnership property.</p> <p><u>Meaning of Goodwill:</u> 'Goodwill' means the benefits arising from a firm's business' connections or reputation. Goodwill is an intangible asset but, it has value. Upon the dissolution of the firm, the goodwill of the firm, subject to the contract, is sold and its proceeds are distributed as capital.</p> <p><u>Rights of buyer and seller of goodwill:</u></p> <ol style="list-style-type: none"> 1) Buyer's rights: On the sale of goodwill, the <u>buyer</u> may, subject to the terms of the contract of sale: <ol style="list-style-type: none"> a) <u>represent himself</u> in continuing the business, b) <u>maintain his exclusive rights</u> to the use of the firm name, and c) <u>solicit former customers</u> of the business and <u>restrain the seller</u> of the goodwill from doing so. 2) Seller's rights: The <u>seller</u> may enter into <u>competition with the purchaser of the goodwill</u> unless the seller is prevented by a valid <u>restraint clause</u> in the contract of sale.
16.	<p>Moni and Tony were partners in the firm M/s MOTO & Company. They admitted Sony as partner in the firm and he is actively engaged in day-to-day activities of the firm. There is a tradition in the firm that all active partners will get a monthly remuneration of ₹20,000 but no express agreement was there. After admission of Sony in the firm, Moni and Tony were continuing getting salary from the firm but no salary was given to Sony from the firm. Sony claimed his remuneration but denied by existing partners by saying that there was no express agreement for that. Whether under the Indian Partnership Act, 1932, Sony can claim remuneration from the firm?</p> <p style="text-align: right;">(May 2022 RTP)</p>
Ans.	<p>As per the provisions of the Indian Partnership Act, 1932 a partner is <u>not entitled to receive remuneration</u> for taking part in the conduct of the business. But this rule can be <u>varied by an express agreement</u>, or by a <u>course of dealings</u>, in which the partner will be entitled to remuneration. Thus, a partner can claim remuneration where, in a firm, it is <u>customary to pay remuneration</u> to a partner for conducting the business of the firm. He can claim it even in the absence of a contract for the payment of remuneration.</p> <p>Facts of the case:</p> <p>Moni and Tony were partners in the firm M/s MOTO & Company. They admitted Sony as partner in the firm and he is actively engaged in day-to-day activities of the firm. There is a tradition in the firm that all active partners will get a monthly remuneration of ₹20,000 but no express agreement was there. After admission of Sony in the firm, Moni and Tony were continuing getting salary from the firm but no salary was given to Sony from the firm. Sony claimed his remuneration but denied by existing partners by saying that there was no express agreement for that.</p>

	<p>Conclusion: In the given problem, existing partners are getting regularly a monthly remuneration from firm customarily being working partners of the firm. As Sony also admitted as working partner of the firm, he is entitled to get remuneration like other partners.</p>
17.	<p>P, Q and Rare partners in a partnership firm. R retires from the firm without giving public notice. P approached S, an electronic appliances trader, for purchase of 25 fans for his firm. P introduced E, an employee of the firm, as his partner to S. S believing E and R as partners supplied 25 fans to the firm on credit. S did not receive the payment for the fans even after the expiry of the credit period. Advise S, from whom he can recover the payment as per the provisions of the Indian Partnership Act, 1932. (June 2023)</p>
Ans.	<p>Provision: As per the provision of the Indian Partnership Act, 1932, partnership by holding out or <u>estoppel</u> mean when a man holds himself out as a partner or <u>allows others to do</u> 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. A person may himself, by his words or conduct, have 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 cases is identical. A <u>retiring partner continues to be liable</u> to third party for the acts of the firm until <u>public notice is given for his retirement</u>, either by himself or by firm.</p> <p>Facts of the case: P, Q, R, S were partners in a firm R retired from the partnership but failed to give public notice of his retirement. After his retirement, P approached S, an electronic appliances trader for purchase of fans for firm. P introduced E, an employee of the firm as partner of the firm. S believing E and R as partners, supplied fans but did not receive payment after expiry of credit period.</p> <p>Conclusion: In the present case R, a retiring partner, fails to give public notice, so he <u>will be liable</u> to Mr S. Also <u>E will be treated as partner by estoppel</u> and thus would remain <u>liable</u> to S for fans supplied. <u>So Mr. S can claim amount from P, Q, R, S and E.</u></p>
18.	<p>What are the rights of partners with respect to conduct of the business of a firm as prescribed under the Indian Partnership Act, 1932? (June 2023)</p>
Ans.	<p>According to provisions of The Indian Partnership Act 1932, following are the rights available to partner regarding conduct of business.</p> <ol style="list-style-type: none"> 1) Right to Take Part in the Conduct of the Business: Each partner in a business partnership have the right to take part in the business proceeding. But this right is subject to a contract to the contrary. However, this right may be waived by a partner himself. 2) Right to be Consulted: In case of matters affecting the business, each partner can has the right to be consulted. Sometimes, difference of opinion arises among the partners. If it is over an ordinary matter, the same may be settled by a majority of the partners, whereas if it is over a fundamental matter, it can be settled only with the consent of all the partners. 3) Right to have Access to Books: Every partner in a business partnership can access and inspect any of the books of the firm as per law. 4) Right to Share Profits: Every partner is entitled to have equal share in the profits of the firm unless otherwise agreed upon as per the partnership agreement. 5) Right to Interest on Advance: A partner who contributes additional advance to the firm apart from the amount of his capital for the purpose of business is entitled to get there on an interest at the rate of 6% per annum.

	<p>6) Right to be Indemnified: The partner of a firm is entitled to be indemnified by the firm in the following circumstances:</p> <ul style="list-style-type: none"> ✓ Expenses incurred in the ordinary course of business, and ✓ Expenses incurred in an emergency.
19.	<p>Shyam, Mohan and Keshav were partners in M/s Nandlal Gokul wale and Company. They mutually decided that Shyam will take the responsibility to sell the goods, Mohan will do the purchase of goods for firm and Keshav will look after the accounts and banking department. No one will interfere in other's department. Once, when Shyam and Keshav were out of town, Mohan got the information that the price of their good is going down sharply due to some government policy which would result in heavy loss to firm if goods not sold immediately. He tried to contact Shyam who has authority to sell the goods. When Mohan couldn't contact to Shyam, he sold all goods at some reduced price to save the firm from heavy loss. Thereafter, Shyam and Keshav denied accepting the loss due to sale of goods at reduced price as it's only Shyam who has express authority to sell the goods. Discuss the consequences under the provisions of the Indian Partnership Act, 1932. (RTP May 2023)</p>
Ans.	<p>According to Section 20 of Indian Partnership Act, 1932, the partners in a firm may, by contract between the partners, extend or restrict the implied authority of any partner. 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.</p> <p>Further, according to Section 21, a partner has authority, in an emergency to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, acting under similar circumstances, and such acts bind the firm.</p> <p>On the basis of provisions and facts provided in the question, though Shyam was expressly authorised to sell the goods, Mohan sold the goods at some loss. It was very much clear that Mohan has done what a person of ordinary prudence does in an emergency to protect the firm from heavy loss. Hence, this sale will bind the firm.</p>
20.	<p>Explain the various effects of insolvency of a partner as per the Indian Partnership Act, 1932. (Nov. 2019)</p>
Ans.	<p>As per the Indian Partnership Act, 1932, where a partner in a firm is <u>adjudicated insolvent</u>, he <u>ceases to be a partner</u> on the date on which the order of adjudication is made, whether or not the firm is dissolved.</p> <p>Effects of insolvency of a partner:</p> <ol style="list-style-type: none"> 1) The insolvent partner <u>cannot be continued</u> as a partner. 2) He will be <u>ceased to be a partner</u> from the very date on which the order of adjudication is made. 3) The <u>estate</u> of the insolvent partner is <u>not liable for the acts of the firm</u> done after the date of order of adjudication. 4) The <u>firm is also not liable</u> for any act of the insolvent partner after the date of the order of the adjudication. <p>The insolvency of a partner results in the <u>dissolution of the firm</u>, but the partners are competent to agree among themselves that the <u>adjudication</u> of a partner as an insolvent will <u>not give rise to dissolution of the firm</u>.</p>

Unit - III Registration & Dissolution of Firm

Q. No.	Questions & Answers
1.	<p>Is the registration of a partnership firm compulsory? Explain. Discuss the various disadvantages that a non-registered partnership firm can face in brief? (ICAI SM, Nov. 2020, May 2019, RTP May 2021, May 2018, Dec 2022)</p>
Ans.	<p>As per the Indian Partnership Act, 1932, the registration of a partnership firm is <u>not mandatory</u>. An Indian partnership firm need not be registered from the beginning but can be <u>registered during continuation</u> also.</p> <p>But, if a partnership firm is not registered, it has to face some consequences:</p> <ol style="list-style-type: none"> 1) <u>No suit in a civil court by the firm or other co-partners against the third party</u>: The firm or any of its partners cannot bring an action against the third party for breach of contract entered into by the firm unless the firm is registered. 2) <u>No relief to partners for set-off of claim</u>: If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off for more than ₹100 or pursue other proceedings to enforce the rights arising from any contract. 3) <u>An aggrieved partner cannot bring legal action against other partners or the firm</u>: A partner of an unregistered firm (or any other person on his behalf) cannot bring legal action against the firm or any partner of the firm. But, such a person may sue for dissolution of the firm or for accounts and realization of his share in the firm's property if the firm is dissolved. 4) <u>Third-party can sue the firm</u>: In the case of an unregistered firm, an action can be brought against the firm by a third party.
2.	<p>State any four grounds on which Court may dissolve a partnership firm in case any partner files a suit for the same. (Nov. 2018, RTP May 2020, June 2022)</p>
Ans.	<p>As per the provision of the Indian Partnership Act, 1932, the Court may, at the suit of the partner, dissolve a firm on any of the following ground:</p> <ol style="list-style-type: none"> 1) Insanity/unsound mind: Where a partner (not a sleeping partner) has become of <u>unsound mind</u>, the Court may <u>dissolve the firm</u> on a suit of the other partners or by the next friend of the insane partner. 2) Permanent incapacity: When a partner, other than the partner suing, has become in any way <u>permanently incapable</u> of performing his duties as a partner, then the Court may <u>dissolve the firm</u>. Such <u>permanent incapacity</u> may result from physical disability or illness etc. 3) Misconduct: Where a partner, other than the partner suing, is <u>guilty of conduct which is likely to affect the business</u>, the Court may order for <u>dissolution of the firm</u> by giving regard to the nature of business. 4) Persistent breach of agreement: Where a partner other than the partner suing, <u>willfully or persistently commits a breach of agreements</u> relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conduct himself in matters relating to the business that it is not reasonably practicable for other partners to carry on the business in partnership with him, then the Court may dissolve the firm at the instance of any of the partners. The following comes into the category of breach of contract: <ol style="list-style-type: none"> i) Embezzlement, ii) Keeping erroneous accounts iii) Holding more cash than allowed iv) Refusal to show accounts despite repeated requests etc. 5) Transfer of interest: Where a partner other than the partner suing has <u>transferred the whole of his interest in the firm to a third party</u> or has allowed his share to be charged or sold by the Court, in the recovery of arrears of land revenue, the Court may <u>dissolve the firm</u> at the instance of any other partner.

	<p>6) Continuous/Perpetual losses: Where the business of the firm <u>cannot be carried on</u> except at a <u>loss</u> in future also, the Court may order for its <u>dissolution</u>.</p> <p>7) Just and equitable grounds: Where the Court considers any other ground to be <u>just and equitable</u> for the <u>dissolution of the firm</u>, it may dissolve a firm. The following are the cases for just and equitable grounds:</p> <p>i) <u>Dead lock</u> in the management.</p> <p>ii) Where the <u>partners are not on talking terms</u>.</p> <p>iii) Loss of <u>substratum</u>.</p> <p>iv) <u>Gambling by a partner</u> on a stock exchange.</p>																		
3.	<p>When does the dissolution of a partnership firm take place? (ICAI SM, RTP Nov. 2019, MTP June 2023)</p>																		
Ans.	<p>As per the provision of the Indian Partnership Act, 1932, the dissolution of a partnership firm takes place in the following cases:</p> <p>a) Dissolution without the order of the Court or voluntary dissolution.</p> <p>b) Dissolution by order of the Court.</p> <p>a) Dissolution without the order of the Court or voluntary dissolution:</p> <p>i) Dissolution <u>by agreement between the partners</u>.</p> <p>ii) By <u>adjudication</u> of all or any <u>partner as insolvent</u>.</p> <p>iii) On the happening of certain <u>contingencies</u> between partners like expiry of the time period of partnership.</p> <p>iv) Business of the firm becoming <u>unlawful</u>.</p> <p>v) By giving <u>notice of dissolution</u> by all the partners.</p> <p>b) Dissolution by order of the Court:</p> <p>i) Partner becoming of <u>unsound mind</u>.</p> <p>ii) <u>Permanent incapacity</u> of the partner to perform his duties.</p> <p>iii) <u>Misconduct</u> of partner affecting the business.</p> <p>iv) <u>Willful breaches</u> by a partner.</p> <p>v) <u>Transfer or sale of the whole interest</u> of a partner.</p> <p>vi) <u>Continuous losses</u> incurred by the firm.</p> <p>vii) The Court is satisfied on <u>just and equitable grounds</u> for the dissolution of the firm.</p>																		
4.	<p>Distinguish between 'Dissolution of Firm' and 'Dissolution of Partnership'. (Any 4 points) (Nov. 2019, May 2018)</p>																		
Ans.	<p>(Any 4 points)</p> <table border="1"> <thead> <tr> <th>Basis</th> <th>Dissolution of Firm</th> <th>Dissolution of Partnership</th> </tr> </thead> <tbody> <tr> <td>Continuation of Business</td> <td>It involves <u>discontinuation of business</u> in partnership.</td> <td>It does not affect the continuation of the business. It involves only the <u>reconstitution</u> of the firm.</td> </tr> <tr> <td>Winding-up</td> <td>It involves the winding up of the firm and requires the <u>realization of assets</u> and <u>settlement of liabilities</u>.</td> <td>It involves only reconstitution and requires the only <u>revaluation of the assets</u> and <u>liabilities of the firm</u>.</td> </tr> <tr> <td>Order of Court</td> <td>A firm may be dissolved by <u>order of the Court</u>.</td> <td>Dissolution of Partnership is <u>not ordered by the Court</u>.</td> </tr> <tr> <td>Scope</td> <td>It necessarily involves the <u>dissolution of the partnership</u>.</td> <td>It may or <u>may not involve the dissolution of the firm</u>.</td> </tr> <tr> <td>Final closure of books</td> <td>It involves the <u>final closure of the books</u> of the firm.</td> <td>It does <u>not involve the final closure of books of the firm</u>.</td> </tr> </tbody> </table>	Basis	Dissolution of Firm	Dissolution of Partnership	Continuation of Business	It involves <u>discontinuation of business</u> in partnership.	It does not affect the continuation of the business. It involves only the <u>reconstitution</u> of the firm.	Winding-up	It involves the winding up of the firm and requires the <u>realization of assets</u> and <u>settlement of liabilities</u> .	It involves only reconstitution and requires the only <u>revaluation of the assets</u> and <u>liabilities of the firm</u> .	Order of Court	A firm may be dissolved by <u>order of the Court</u> .	Dissolution of Partnership is <u>not ordered by the Court</u> .	Scope	It necessarily involves the <u>dissolution of the partnership</u> .	It may or <u>may not involve the dissolution of the firm</u> .	Final closure of books	It involves the <u>final closure of the books</u> of the firm.	It does <u>not involve the final closure of books of the firm</u> .
Basis	Dissolution of Firm	Dissolution of Partnership																	
Continuation of Business	It involves <u>discontinuation of business</u> in partnership.	It does not affect the continuation of the business. It involves only the <u>reconstitution</u> of the firm.																	
Winding-up	It involves the winding up of the firm and requires the <u>realization of assets</u> and <u>settlement of liabilities</u> .	It involves only reconstitution and requires the only <u>revaluation of the assets</u> and <u>liabilities of the firm</u> .																	
Order of Court	A firm may be dissolved by <u>order of the Court</u> .	Dissolution of Partnership is <u>not ordered by the Court</u> .																	
Scope	It necessarily involves the <u>dissolution of the partnership</u> .	It may or <u>may not involve the dissolution of the firm</u> .																	
Final closure of books	It involves the <u>final closure of the books</u> of the firm.	It does <u>not involve the final closure of books of the firm</u> .																	
5.	<p>Subject to agreement by partners, state the rules that should be observed by the partners in settling the accounts of the firm after dissolution under the provisions of the Indian Partnership Act, 1932. (MTP Dec 2022, MTP June 2023)</p>																		

Ans.	<p>Mode of Settlement of partnership accounts: As per Section 48 of the Indian Partnership Act, 1932, in settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed:-</p> <p>i) 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;</p> <p>ii) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, must be applied in the following manner and order:</p> <p>a) in paying the debts of the firm to third parties;</p> <p>b) in paying to each partner rate ably what is due to him from capital;</p> <p>c) in paying to each partner rate ably what is due to him on account of capital; and</p> <p>d) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.</p>
6.	<p>Ms Lucy, while drafting the partnership deed to take care of few important points. What are those points? She wants to know the list of information which must be part of the partnership deed drafted by her. Also, give a list of information to be included in the partnership deed?</p> <p style="text-align: right;">(ICAI SM, MTP Dec 2022)</p>
Ans.	<p>As per the provision of the Indian Partnership Act, 1932, a document which contains various <u>terms and conditions</u> related to the <u>relationship of partners</u> to each other is called a partnership deed.</p> <p>The information contained in a partnership deed is as follows:</p> <ol style="list-style-type: none"> 1) Name of the <u>partnership firm</u>. 2) Name of all the <u>partners</u>. 3) Nature and place of the <u>business of the firm</u>. 4) Date of <u>commencement of partnership</u>. 5) <u>Duration</u> of the partnership firm. 6) <u>Capital contribution</u> of each partner. 7) <u>The profit-sharing ratio</u> of the partners. 8) <u>Admission and retirement</u> of a partner. 9) <u>Rates of Interest</u> on Capital, Drawings and Loans. 10) Provisions for <u>settlement of accounts</u> in the case of <u>dissolution of the firm</u>. 11) Provisions for <u>salaries or commissions payable</u> to the partners, If any. 12) Provisions for the <u>expulsion of a partner</u> in case of <u>breach of duty</u> or <u>fraud</u> <p>Ms Lucy, while drafting the partnership deed to take care of few important points:</p> <ol style="list-style-type: none"> i) The partnership agreement must be in writing. An oral partnership agreement is not a partnership deed. ii) The partnership deed contains various terms & conditions as to the relationship of the partners to each other. iii) The partnership comprises of immovable property, then the partnership deed must be in writing, stamped & registered under Registration Act iv) If the partnership comprises of no immovable property, then the partnership deed must be in writing and stamped according to the provisions of the Stamp Act, 1899.

7.	When can the continuing guarantee be revoked under the Indian Partnership Act, 1932? (Nov. 2019, RTP Dec 2023)
Ans.	1) As per the provision of the Indian Partnership Act, 1932, a <u>continuing guarantee</u> given to a firm or to the third party, in respect of the transaction of a firm, is revoked as to future transactions from the date of any change in the constitution of the firm. 2) Such change may occur by the <u>death</u> or <u>retirement</u> of a partner or by the <u>introduction of a new partner</u> .
8.	MN partnership firm has two different lines of manufacturing business. One line of business is the manufacturing of Ajinomoto, a popular seasoning & taste enhancer for food. Another line of business is the manufacture of paper plates & cups. One fine day, a law is passed by the Government banning Ajinomoto' use in food and to stop its manufacturing making it an unlawful business because it is injurious to health. Should the firm compulsorily dissolve under the Indian Partnership Act, 1932? How will its other line of business (paper plates & cups) be affected? (Nov 2021 RTP, Nov 2022 RTP)
Ans.	According to Section 41 of the Indian Partnership Act, 1932, a firm is <u>compulsorily dissolved</u> : a) by the <u>adjudication of a partner or all partners as insolvent</u> , or b) by the happening of an event that makes the business of the firm <u>unlawful</u> . However, where more than one businesses are carried on by the firm, the illegality of one or more businesses shall not itself cause the dissolution of the firm in respect of its lawful businesses. Facts of the case: MN partnership firm has two different lines of manufacturing business. One line of business is the manufacturing of Ajinomoto, a popular seasoning & taste enhancer for food. Another line of business is the manufacture of paper plates & cups. One fine day, a law is passed by the Government banning Ajinomoto' use in food and to stop its manufacturing making it an unlawful business because it is injurious to health. Conclusion: Here, MN has to compulsorily dissolve due to happening of law which bans the usage of ajinomoto. Else the business of the firm shall be treated as unlawful. However, the illegality of ajinomoto business will in no way affect the legality or dissolution of the other line of business (paper plates & cups). MN can continue with paper plates and cup manufacture.
9.	What is the procedure of registration of a partnership firm under the Indian Partnership Act, 1932? (ICAI SM, June 2023)
Ans.	As per the provision of the Indian Partnership Act, 1932, the following is the procedure for the registration of a partnership firm: 1) The registration of a partnership firm is <u>optional</u> . Also, if a firm is required to be registered, then it <u>need not be registered from the beginning</u> ; it can be registered during continuation also. 2) For the registration, an <u>application to the registrar</u> shall be submitted, with the prescribed form and the prescribed fee, stating. ✓ The <u>firm's name</u> . ✓ The <u>place or principal place of the business</u> of the firm. ✓ The <u>names of any other places</u> where the firm carries on business. ✓ The <u>date when each partner joined the firm</u> . ✓ The <u>name in full</u> and <u>permanent addresses</u> of the partners. ✓ The <u>duration</u> of the firm. 3) Such an application statement shall be <u>signed by all the partners or by their authorized agents</u> . Each person signing the application shall also verify it in the manner prescribed.

	<p>4) A partnership firm <u>shall not contain</u> any of the words in its name like <u>Crown, Emperor, Empress, Empire, Imperial, King, Queen, Royal</u>, etc.</p> <p>5) The registration of a partnership is <u>effective from the date when all documents with prescribed form and prescribed fees are delivered to the registrar</u>. The date on which the Registrar makes an entry in the register of the firms is immaterial.</p>
10.	<p>What are the rights which won't be affected by the Non-Registration of Partnership firm? (Nov. 2020, Dec 2022)</p>
Ans.	<p>As per the provision of the Indian Partnership Act, 1932, non-registration of a firm does not affect the following rights:</p> <ol style="list-style-type: none"> 1) Right of third parties to sue the firm or any other party. 2) Right of partners to sue: <ul style="list-style-type: none"> ✓ for the dissolution of the firm, or ✓ for the settlement of accounts of the dissolved firm, or ✓ for the realization of the property of the dissolved firm. 3) Power of an Official Assignee of Court to release the property of the insolvent partner and to bring an action. 4) Right to use or claim a set-off if the value of suit does not exceed ₹100 in value.
11.	<p>M/s XYZ & Company is a partnership firm. The firm is an unregistered firm. The firm has purchased some iron rods from another partnership firm M/s LMN & Company which is also an unregistered firm. M/s XYZ & Company could not pay the price within the time as decided. M/s LMN & Company has filed the suit against M/s XYZ & Company for recovery of price. State under the provisions of the Indian Partnership Act, 1932;</p> <ol style="list-style-type: none"> a) Whether M/s LMN & Company can file the suit against M/s XYZ & Company? b) What would be your answer, in case M/s XYZ & Company is a registered firm while M/s LMN & Company is an unregistered firm? c) What would be your answer, in case M/s XYZ & Company is an unregistered firm while M/s LMN & Company is a registered firm? (May 2022 RTP)
Ans.	<p>According to provisions of Section 69 of the Indian Partnership Act, 1932, a firm or any of its partners <u>cannot bring an action against the third party</u> for breach of contract entered into by the firm unless the firm is registered. But, an action can be brought <u>against the unregistered firm</u> by a third party.</p> <p>Facts of the case: M/s XYZ & Company is a partnership firm. The firm is an unregistered firm. The firm has purchased some iron rods from another partnership firm M/s LMN & Company which is also an unregistered firm. M/s XYZ & Company could not pay the price within the time as decided. M/s LMN & Company has filed the suit against M/s XYZ & Company for recovery of price.</p> <p>Conclusion:</p> <ol style="list-style-type: none"> a) On the basis of above, M/s LMN & Company cannot file the suit against M/s XYZ & Company as M/s LMN & Company is an unregistered firm. b) In case M/s XYZ & Company is a registered firm while M/s LMN & Company is an unregistered firm, the answer would remain same as in point a) above. c) In case M/s LMN & Company is a registered firm, it can file the suit against M/s XYZ & Company.
12.	<p>X and Y were partners in a firm. The firm was dissolved on 12th June, 2022 but no public notice was given. Thereafter, X purchased some goods in the firm's name from Z. Z was ignorant of the fact of dissolution of firm. X became insolvent and Z filed a suit against Y for recovery of his amount. State with reasons whether Y would be liable under the provisions of the Indian Partnership Act, 1932? (RTP May 2023)</p>
Ans.	<p>By virtue of provisions of Section 45 of the Indian Partnership Act, 1932, notwithstanding the dissolution of a firm, the partners continue to be liable as such to third parties for any act done</p>

	<p>by any of them which would have been an act of the firm, if done before the dissolution, until public notice is given of the dissolution.</p> <p>In the instant case, X and Y were partners in a firm which was dissolved but no public notice was given. After dissolution, X purchased some goods in the firm's name from Z who was ignorant of the fact of dissolution of firm. X became insolvent and Z filed a suit against Y for recovery of his amount.</p>
13.	<p>P & Co. is registered as a partnership firm in 2018 with A, B and P as partners dealing in sale and purchase of motor vehicles. In April 2019, A dies. Now only B and P continue the firm and same business with same firm name P & Co.</p> <p>In the month of December 2019, firm felt the need of expansion of business and sharing the burden of expenditure and investment. They thought of hiring a new partner with a mutual consent with each other. Hence in December 2019, the firm took a new partner S in the firm P & Co.</p> <p>The firm has supplied large amount of material to one of the clients Mr. X for business purposes. In spite of regular reminders, X failed to pay the debts due to the firm.</p> <p>In January 2020, firm filed a case against X in the name and behalf of P & Co. without fresh registration. With reference to Indian Partnership Act, 1932, discuss if the suit filed by the firm is maintainable? (MTP Dec 2022)</p>
Ans.	<p>Consequences of Non-registration of partnership firm (Section 69 of the Indian Partnership Act, 1932):</p> <p>Non-registration of partnership gives rise to a number of disabilities. Though registration of firm is not compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration. Following are the consequences:</p> <p>a) No suit in a civil court by firm or other co-partners against third party: The firm or any other person on its behalf cannot bring an action against the third party for breach of contract entered into by the firm.</p> <p>b) No relief to partners for set-off of claim: If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off, if the suit be valued for more than ₹100 or pursue other proceedings to enforce the rights arising from any contract.</p> <p>c) Aggrieved partner cannot bring legal action against other partner or the firm: A partner of an unregistered firm (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm.</p> <p>d) Third-party can sue the firm: In case of an unregistered firm, an action can be brought against the firm by a third party.</p> <p>In the instant case, since the fresh registration has not been taken after introduction of new partner S, the firm P & Co. will be considered as unregistered firm. Hence the firm which is not registered cannot file a case against the third party. Hence the firm P & Co. cannot sue X.</p>