

CHAPTER - 03RD

The INDIAN PARTNERSHIP

Act, 1932 ...

"IPA"

unit - 01ST ⇒ General nature of a partnership.

unit - 02ND ⇒ Relations of partners.

unit - 03RD ⇒ Registration and dissolution of a firm.

WEIGHTAGE - 16 M.M.

Unit - 01ST:

General nature of a Partnership:

Date: _____

P. No: _____

• Why people enter into Partnership?

- 1) Expertise of other person - Skills and Experience.
- 2) Resources of other person.
- 3) Sharing of responsibilities.
- 4) Increase in risk taking appetite.

• Mutual Agency:-

Every partner is agent of other partners but only for the business of partnership firm.

• What is Partnership?

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

• Who are Partners?

Persons who have entered into partnership with one another are called individually 'Partners' and collectively 'a firm', and the name under which their business is carried on is called the 'Firm Name'.

• Maximum partner in Partnership firm Not given in Partnership Act.

But, the central Government has the power to tell the maximum number of partners.

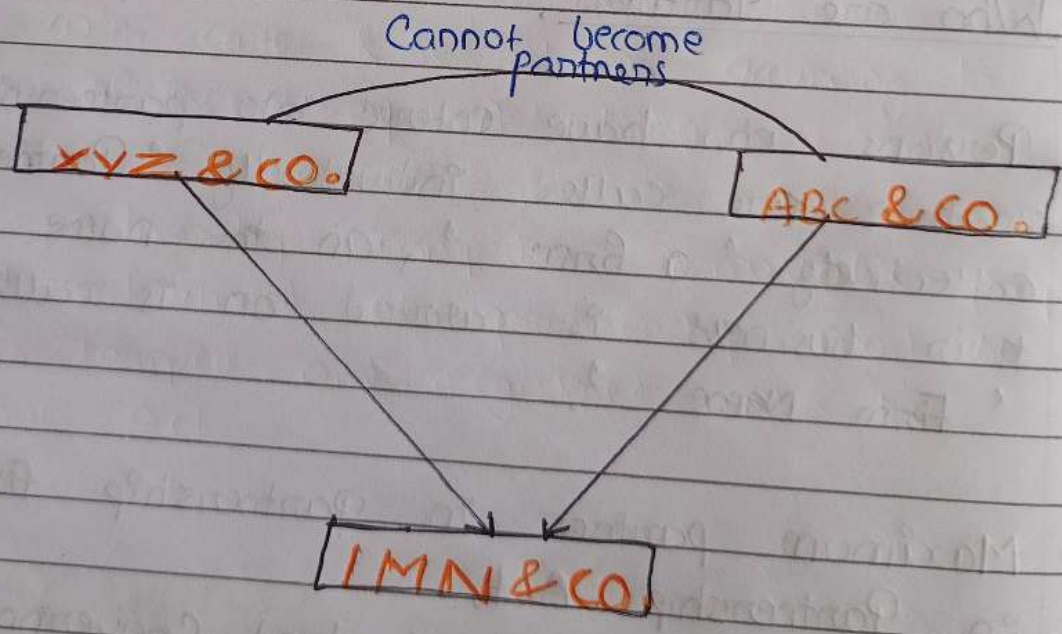
Who can become partner?

Natural person, Individual, Major + Sound mind + Not disqualified

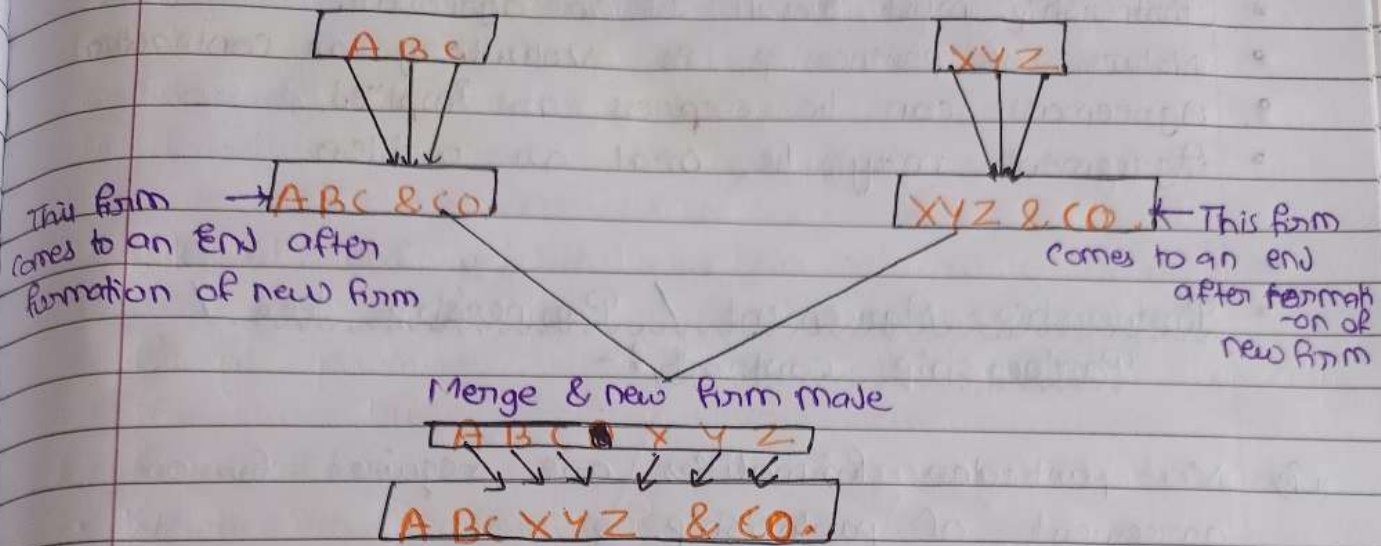
Artificial ^{legal} person \Rightarrow Company, LLP

Since a partnership firm is not a separate legal entity. Therefore it cannot become partner in other Partnership firm.

Ex:- 1



Ex - 02 :-



• Elements of Partnership

1) Association of Two or More Persons :-

- Association of 2 or more persons.
- Only persons recognized by law can become partners.
- Firm cannot become partner in another firm but company can become partner.
- Minor cannot become partner in the firm but can be admitted to the benefits of the firm with consent of all other persons.
- Minimum Partners - 2, Maximum partners - 50 [Sec. 464 of Companies Act, 2013]

2.) Agreement :-

- Partnership must result of an agreement.
- Nature of partnership is Voluntary or Contractual.
- Agreement can be express or implied.
- Agreement may be oral or written.

Partnership Agreement / Partnership deed / Partnership contract :-

- (i) No particular formalities are required for an agreement of partnership.
- (ii) It may be writing or formed verbally. But desirable to have in writing.
- (iii) Agreement can be express or implied.
- (iv) Drafted with care & be stamped according to provision of the Stamp Act 1899.
- (v) Where partnership comprises immovable property, then 1st instrument of partnership must be in writing, stamped and registered under the registration Act.

* Content of Partnership deed:-

- 1) Name of the partnership firm.
- 2) Name of all the partners.
- 3) Nature of business of firm.
- 4) Principal place & other place of business of firm.
- 5) Date of commencement of partnership.
- 6) Duration of partnership firm.
- 7) Capital contribution of each partner.
- 8) Profit sharing ratio.
- 9) Provision for admission, retirement expulsion.
- 10) Rate of interest on capital, drawings & loan etc.
- 11) Salaries or commission payable to partners, if any.

Note:- Partners can add more points or delete the above points while drafting.

3.) Business :-

- Section 2(b), business includes every trade, occupation and profession.
- Motive of business must be 'acquisition of gain'.
- There can be no partnership where there is no intention to carry on the business and to share the profit thereof.

4.) Agreement to share profit :-

- Sharing of profit is mandatory.
- Sharing of loss is not mandatory.
- Unless otherwise agreed, profit is shared equally among the partners.
- Unless otherwise agreed, loss is shared in profit sharing ratio only.

5.) Mutual agency :-

- BUSINESS CARRIED ON BY ALL OR ANY OF THEM ACTING FOR ALL.
- Cardinal Principle of Partnership law.
- Every partner is a principal as well as agent of other partners for the purpose of business.
- True Test of partnership is mutual agency.
- Conclusive evidence of partnership.

* True test of Partnership :-

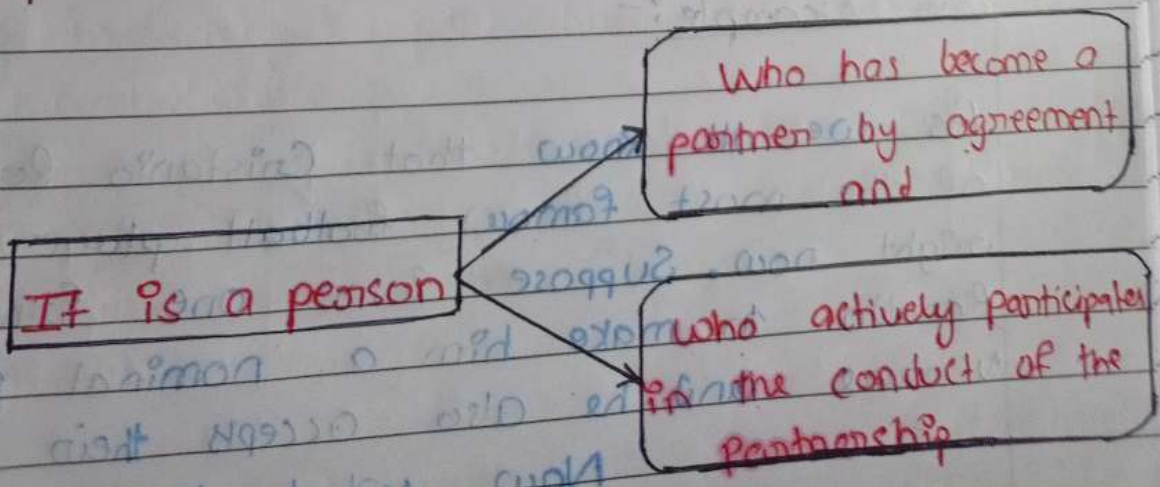
For determining the existence of partnership, it must be proved :-

- There was an **Agreement** between all the persons concerned;
- The agreement was to share the profits of a business;
- The business was carried on by all or any of them acting for all.

* TYPES OF PARTNERS :-

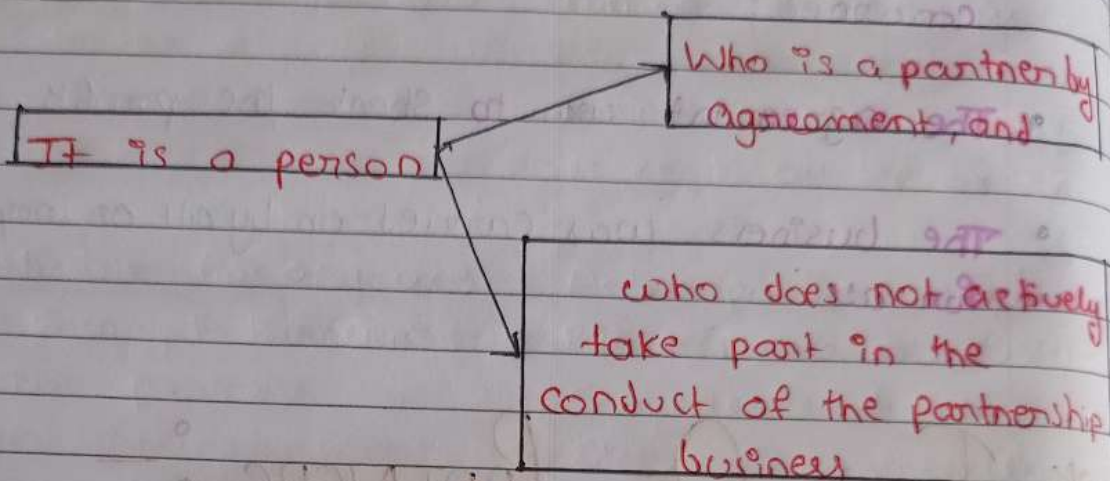
1) Active Actual Ostensible Partner :-

- (i) Become partner by **Agreement**.
- (ii) **Actively** participates in conduct of partnership.
- (iii) Must give **public notice** on Retirement.
- (iv) If **public notice** not given liable for OCB done by other partners even after retirement.



2.) Sleeping or Dormant partners :-

- (i) Partner by agreement.
- (ii) Does not take actively part in the business
- (iii) Not require to give public notice on retirement.



3.) Nominal Partner :-

- (i) Not a partner by agreement.
- (ii) lend his name to the firm.
- (iii) liable to third parties for all acts of the firm.
- (iv) Not entitled to share the profit of the firm.
(charges fees)

• For Example :-

As we all know that Cristiano Ronaldo is one of the most famous football players in the world right now. Suppose some one firm approach Ronaldo to make him a nominal partner in their venture and he also accepts their proposal.

Now what that firm will do is,

They will use the name of Ronaldo as their partner. As Ronaldo has a huge fan following, his fans will start to buy that firm's product or invest their money in it.

Now, what are you thinking? Is Ronaldo Managing this business? Is he raising funds for this business? Is he looking after the daily activities of that business?

The Answer is NO. he will ~~only~~ charge fees only for his name.

3.) 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.

4.) 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".

5.) Outgoing partner:-

A partner who leaves a firm in which the rest of the partners continue to carry on business is called the "Retiring or outgoing partner".

Incoming partner:

New person admitted into partnership.

Requires consent of all the partners Section 30

Not liable for any acts done prior to his admission by other partners.

Outgoing partner

Partner who leaves the firm is called retiring or outgoing partner.

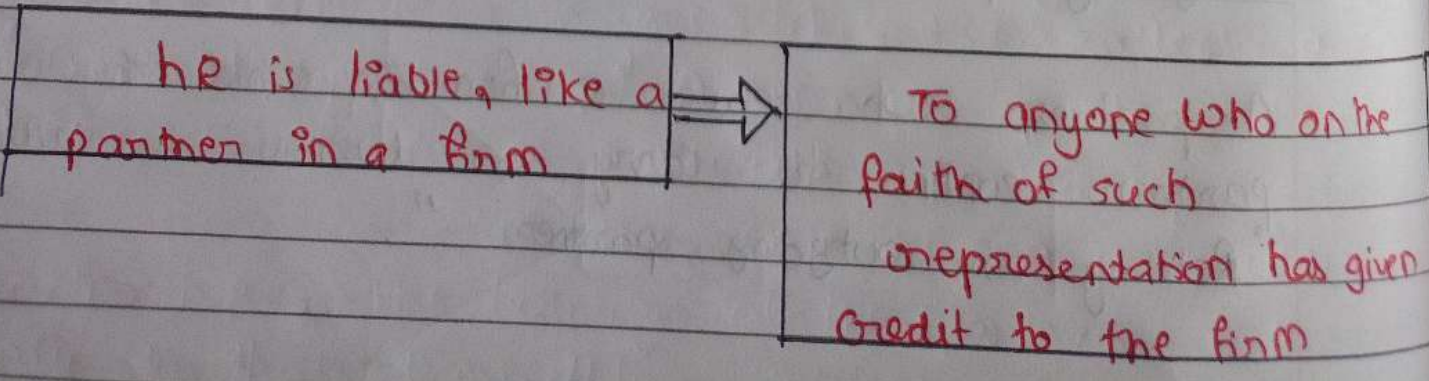
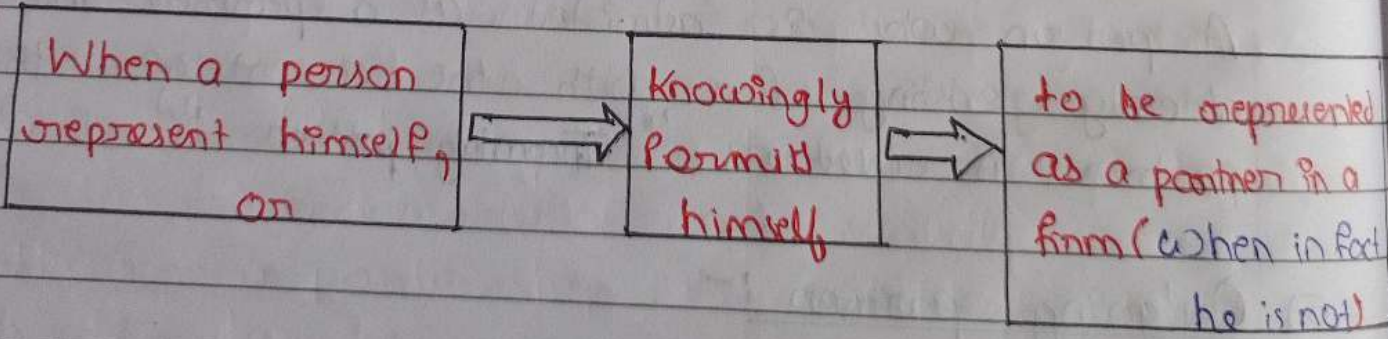
Partnership by duration - with the consent of all the partners

Partnership by will - Giving notice to all the partners.

Active partner require Public Notice otherwise continue to liable.

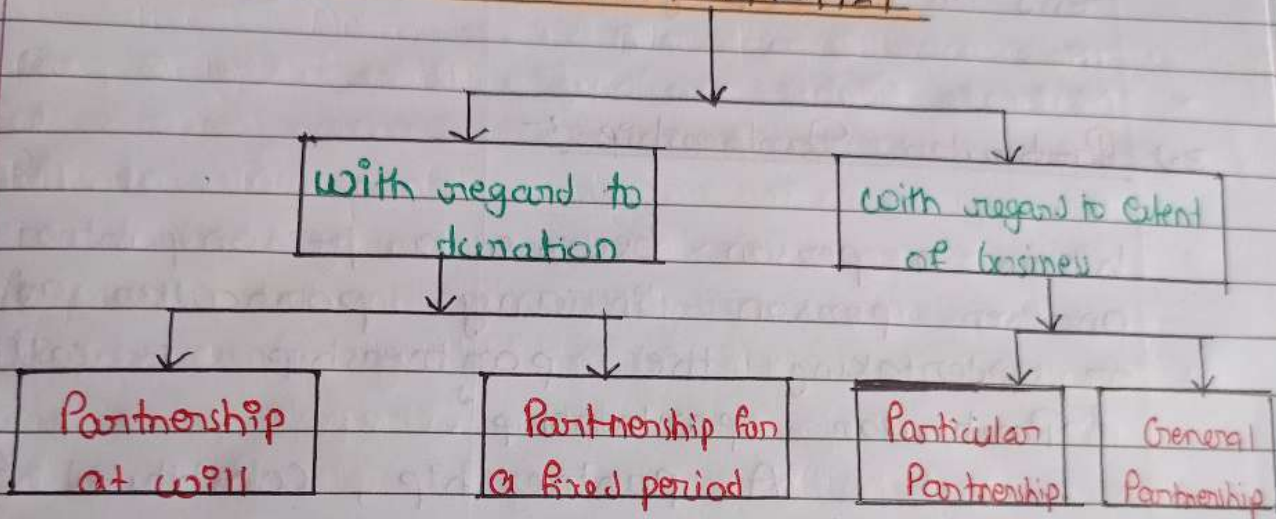
Sleeping partner does not require notice and hence not liable after retirement

60) Partners by holding out / Partners by Estoppel:-



⇒ It is only the person to whom the representative has been made and who has acted thereon that has right to enforce liability arising out of 'holding out'.

* TYPES OF PARTNERSHIP :-



1) Partnership at will :-

Partnership at will according to Section 07 of the Act, Partnership at will is a partnership when:-

- (i) No fixed period has been agreed upon for the duration of the partnership.
- (ii) There is no provision made as to the determination of the partnership.

Date: _____
P. No: _____

2.) Partnership for a fixed period :-

Where a provision is made by a contract for the duration of the partnership, the partnership is called 'Partnership for a fixed period'. It is a partnership created for a particular period of time. Such a partnership comes to an end on the expiry of the fixed period.

3.) Particular Partnership :-

Where a person becomes a partner with another person in any particular adventure or undertaking, the partnership is called 'Particular partnership'.

A partnership, constituted for a single adventure or undertaking is, subject to any agreement, dissolved by the completion of the adventure or undertaking.

4.) General Partnership :-

Where a partnership is constituted with respect to the business in general, it is called a 'General partnership'. A general partnership is different from a particular partnership.

In the case of a particular partnership, the liability of the partners extends only to that particular adventure or undertaking, but it is not so in the case of General partnership.

Unit - 02nd :-

Relations of Partners :-

Date: _____
P. No: _____

* Relation of partners to one another :-

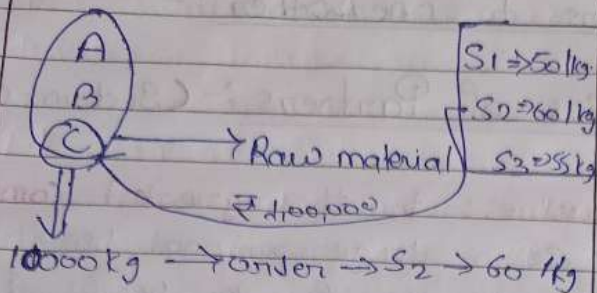
• 4 General Duties of Partners :- (Section-9)

- 1.) Bound to carry business to the greatest common advantage. (Jo decision lenge personal benefit ke liye nahi, partnership firm ke benefit ke liye lenge)
Just
- 2.) Just and faithful to each other.
- 3.) To render true accounts to other partners or their legal representative (अगर कोई Partner books of account Magta है तो देना पड़ेगा)
- 4.) To render full information of all things affecting firm to other partners or their legal representative. (अगर किसी Partner को business matter से related koi knowledge है तो उसे सारी information other partners ko bhee dena pavega)

(loss ka compensation)

• Duty to Indemnify for loss Caused by fraud (Section-10)

FRAUD



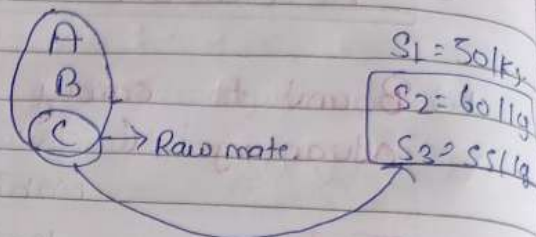
There were 3 partners A, B, C. C were ordered to buy raw material. There were 3 suppliers in the market. S₁ = ₹50/kg, S₂ = ₹60/kg, S₃ = ₹55/kg. Technically C should go with S₁ to purchase raw material.

But, C gone with S₂ to purchase and said to S₂ to give him commission of ₹1,00,000. In this case C had done the fraud with other partners.

Conclusion → C had done fraud with other partners so, he should give compensation to other partners, i.e. ₹1,00,000

(गलती से)
Negligence

subject to contract



There were 3 partners A, B, C were ordered to buy raw material. A, B had clearly told to ask price from the sellers and to buy raw material at cheapest price.

But, C had asked price negligently with S₂ & S₃ only the price and bought raw material from S₃.

Conclusion → C had negligently asked price with only S₂ & S₃. So, customer can asked for compensation. or forgive him.

• How to determine rights and duties of each partner:-

- (Section-47)
- ⇒ Partners rights & duties in Partnership Act & Agreement between partners
 - ⇒ Subject to the provisions of the Act.
 - ⇒ Rights and duties determined by the contract between the partners.
 - ⇒ Contract can be express or implied.
 - ⇒ Contract can be only changed with the consent of all the partners.

• The conduct of the business :- (Section-12)

Subject to contract

- ⇒ Every partner has a right to take part in the conduct of the business.
- ⇒ Every partner is bound to attend diligently (ध्यान से) to his duties in the conduct of the business.
- ⇒ Every partner has right to express his opinion on business matters.
- ⇒ Ordinary matters are decided by majority of partners.
- ⇒ Change in nature of firm business require consent of all partners.
- ⇒ Every partner & his duly authorized agent has right to have access to / inspect / take / copy of books of firm.

In event of death a partner's legal representative has right to have access to inspect & take copy of book of firm

Meaning of Subject to Contract :-

It's means that, Partnership Agreement is subject to the rules apply here.

Mutual Rights and Liabilities :- (Section-13)

Subject to Contract

i) Partner is not entitled to remuneration :-

No partner is entitled to receive remuneration. But, Agar firm Starting se partner ko remuneration de raha hai to use new partner ko bhi dena plega. No matter, contract me isse related likha hai ya Nahai.

No partner is entitled to receive remuneration.

But, this rule can always be waived by an express agreement, or by a course of dealings, in which event the partner will be entitled to remuneration.

Thus, a partner can claim remuneration even in the absence of a contract, when such remuneration is payable under the continued usage of the firm.

ii) Right to Share Profit: -

(Section 13(b))

Partners are entitled to share equally in the profits earned and so contribute equally to the losses sustained by the firm.

The amount of a partner's share must be ascertained by enquiring whether there is any agreement in that behalf between the partners.

[Normally profit sharing ratio of equal matra but agar agreement me koi own ratio likha hai to usi ratio hi distribute hoga.]

iii) Interest on capital of partners: - (Section 13(c))

An express agreement to that effect, or practice of the particular partnership, or

trade

any custom to that effect; or

a statutory provision which entitles him to such interest.

[Interest on capital share out of profits hi diya jayega.]

iv) Interest on advances on loan: - (Section 13(d))

Interest on advances on loan will be given @ 6% per annum.

Note:- While interest on capital account ceases to run on dissolution, the interest on advances keep running even after dissolution and up to the date of payment.

[Interest on capital of a firm ke dissolution pe band ho jayega but, interest on loan ke payment job tak nahi hoti]

Right to Indemnified:- (Section-13(e))

If any partner had made expenses on the behalf of the firm, then the firm should return that amount to the partner who had made expenses.

If any partner had done the work which is beyond to his power to protect the firm from loss then, he can recover that amount from the firm.

PARTNERSHIP PROPERTY

- What is Partnership Property? (Section-14)
- ⇒ All partners are joint owners of Partnership Property.
- ⇒ All property, rights and interests which partners contribute to common business
- ⇒ All the property, rights, interest acquired or purchased by or for the firm
- ⇒ Goodwill of the business

- What is property of Partner? (Section-15)

Where the property is exclusively belonging to a person, it does not become a property of the partnership merely because it is used for the business of the partnership. Such property will become property of the partnership if there is an agreement.

- Application of the property of the firm:- (Section-15)

Subject to contract between the partners, The partners, The property of the firm shall be held and used by the partners Exclusively for the purposes of the business.

Partnership - Property	Partner's Property
<p>All partners are joint owners or co-owners of Partnership property</p>	<p>Property which personally belongs to partner</p>
<p>but, it is subject to contract. meant, if any other thing is not written in contract than the property will use only for partnership firm.</p>	

Goodwill of business

Partnership property
↓
Normally firm kee jiahegi

Partner's property
↓
but, agar likha hai kee Goodwill is particular partner kee hai to use kee manee Jayegi

• Personal Profits earned by Partners:- (Section-16)

* According to Section-16, Subject to contract between the partners

- If a partner derives any profit for himself from any transaction of the firm, or from the use of the profits property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm. [अगर कोई Partner ^{firm} Business के नाम पे या business firm के property से transaction करता है तो वो उसे return करना पड़ेगा]
- 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 profit made by him in that business. [अगर कोई Partner same type ko business karta है या competing business karta है तो उसे उस business से जो भी profit मिलेगा वो उसे return करना पड़ेगा]

* Change in the Constitution of the firm:- (Section-17)

- Where a new partner or partners come in.
- Where some partner or partners go out, i.e., by death or retirement.
- Where the partnership concerned carries on business other than the business for which it was originally formed.
- Where the partnership business is carried on after the expiry the term fixed for the purpose.

• Rights and duties :-

a.) After a change in the firm ⇒ Where a change occurs in the constitution of a firm, the mutual rights and duties of the partners in the reconstituted firm remain the same as they were immediately before the change, as far as they may be;

b.) After the expiry of the term of the firm ⇒ Where a firm constituted for a fixed term continues to carry on business after the expiry of that term, the mutual rights & duties of the partners remain the same as they were before the expiry. [Agan firm ke firm period end hone ke baad band nah

Moti Hai to us firm ke mutual rights and duties partners ke same change jaise p expiry date ke pahle the.]

c.) Where additional undertakings are carried out ⇒ Where a firm constituted to carry out one or more adventures or undertakings carries out other adventures or undertakings are the same as those in respect of the original adventures or undertakings. [Agan firm ne ek business ke saath dusra business bhee start kar diya to partners ke mutual rights and duties same रहेगे.]

* Minor as Beneficiary [Section 30]

Minor cannot become a partner, Minor can become beneficiary with the consent of all partners.

• Right of minor as Beneficiary :-

- (i) A minor partner has a right to his agreed share of the profits and of the firm.
- (ii) He can have access to, inspect and copy the accounts of the firm.
- (iii) 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. [minor Partner other Partners can Profit
No minor Partner case file kar sakta but, us time pad uska relation firm ke sath hai hona chahiye otherwise case file nahe kar sakta.]

[After attaining majority a minor partner should within 6 months decide to become partner or to not become partner. If he decided to become partner, then he will be entitled to the share to which he was entitled as a minor, but, if he decided to not become a partner then he will not be liable to any acts done by the firm after giving the public notice.]

• Liabilities of Minor :-

Before attaining Majority :-

- (i) The liability of the minor is confined only to the extent of his share in the profits and property of the firm. [Liability pay karne ke liye minor utna hse liable hoga jiska uska Profit sharing ratio Hoga.]
- (ii) Minor has no personal liability for the debts of the firm incurred during his minority.
- (iii) Minor cannot be declared insolvent but, if the firm is declared insolvent his share in the firm vests in the official Receiver / Assignee. [Firm agar insolvent declare ho jayegi to minor insolvent declare nahi hoga uska profit sharing ratio official receiver ke pass chala jayega.]

After Attaining Majority :-

• When he becomes partner :-

- (i) He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefit of partnership.
- (ii) His share in the property and the profits of the firm remains the same to which he was entitled as a minor.

When he elects not to become a partner :-

- (i) His rights and liabilities continue to be those of a minor up to the date of giving public notice.
- (ii) His share shall not be liable for any acts of the firm done after the date of notice.
- (iii) He shall be entitled to sue the partners for his share of the property and profits. It may be noted that such minor shall give notice to the Registrar that he has or has not become a partner.

* Rights of transferee of a Partner's Interest :- (Section 29)

Yes, A partner can transfer his interest to third person, but, can not become the partner in the firm.

Rights of Transferee :-

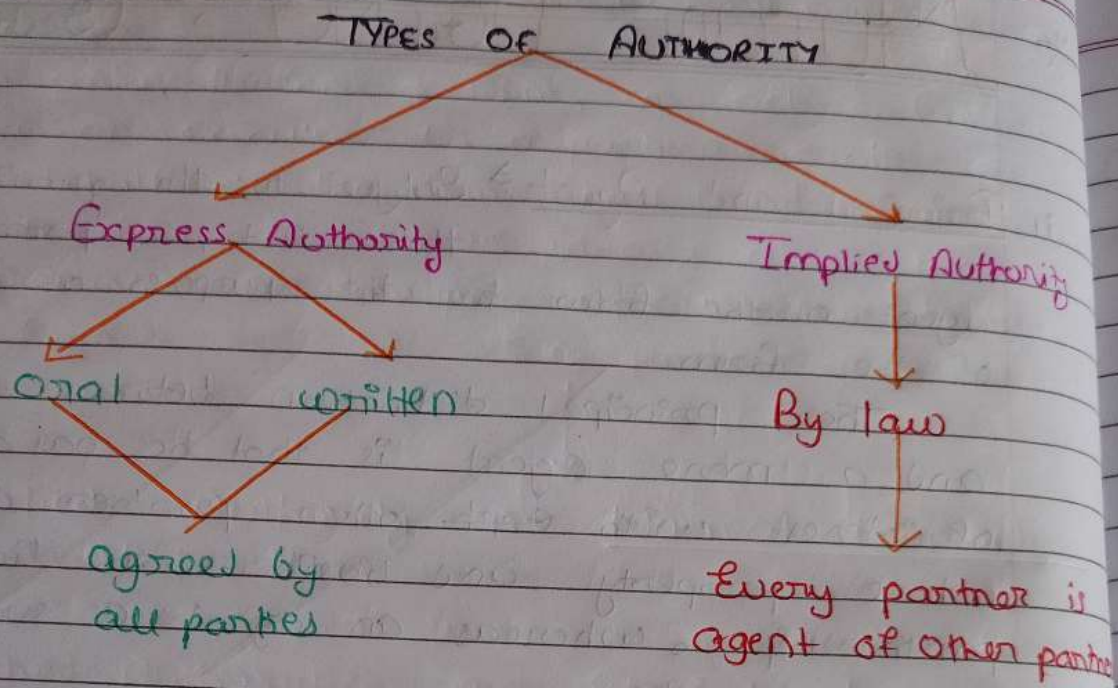
<p>He will get the share of transferring partner.</p>	<p>If firm is dissolving or transferring Partner is retiring</p>
<p>↓</p> <p>Transferee can not interfere in firm's business</p>	<p>↓</p> <p>Then, transferee will get share in profit of transferring Partner.</p>
<p>↓</p> <p>Transferee can not check books of Account</p>	<p>↓</p>
<p>↓</p> <p>Transferee can not inspect and challenge books of Account.</p>	<p>↓</p> <p>And he can check books of Account to calculate the Amount.</p>

- During the continuance of partnership, such transferee, is NOT entitled:-

- (i) To interfere with the conduct of the business,
- (ii) To require Accounts, or
- (iii) To inspect books of the firm.
- (iv) He is only entitled to receive the share of the profits of the transferring partner. and is bound to accept the profits as agreed to by the partners.

- On dissolution of firm:-

- (i) To receive the share of the assets of the firm to which the transferring partner was entitled,
- (ii) For the purpose of ascertaining the share



● Agent VS. Partner:-

The principal distinction between Partner and a mere agent is that he has a community of interest with other partners in the whole property and business and liabilities of partnership, whereas, an agent as such has no interest in either.

The Acts Not Covered Under Implied Authority:

The Authority of a partner to bind the firm conferred by this section is called his "Implied Authority".

अगर custom से ये points हैं तो कर सकते हैं otherwise नहीं

⇒ In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to:-

- a) Submit a dispute relating to the business of the firm to arbitration;
- b) Open a banking account on behalf of the firm in his own name;
- c) Compromise or relinquish any claim or portion of a claim by the firm;
- d) Withdraw a suit or proceedings filed on behalf of the firm.
- e) Admit any liability in a suit or proceedings against the firm;
- f) Acquire immovable property on behalf of the firm;
- g) Transfer immovable property belonging to the firm;
- h) Enter into partnership on behalf of the firm.

Date: _____

P. No: _____

Mode of the Doing Act to Bind Firm:- (Section 2)

Document

In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing an intention to bind the firm.

↑ Implied Authority me Normal transaction cover hoti hai.

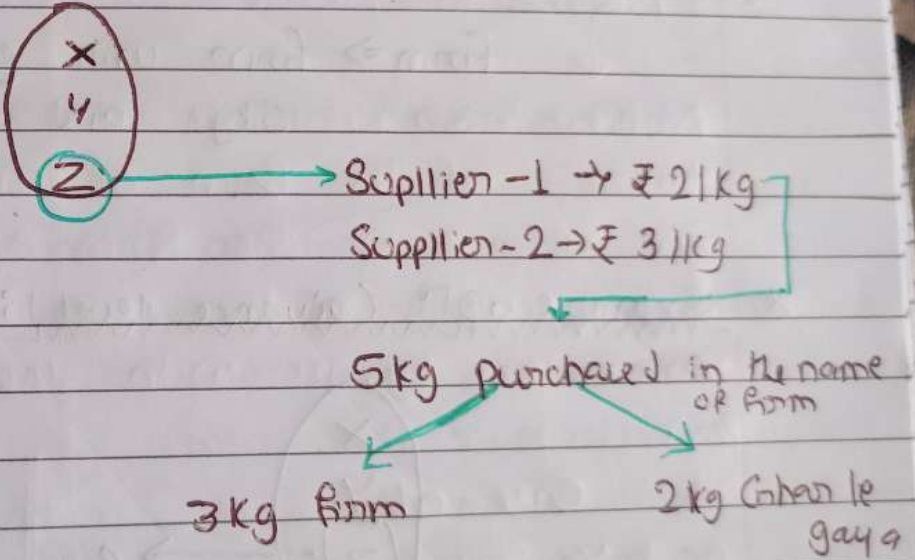
↑ Implied Authority me Special transaction cover nahi hoti hai.

• Extension and Restriction of Partner's Implied Authority:-
(Section-20)

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.

* Example-01:-



Firm ⇒ will give money for 5kg to seller and
Recover money for 2kg from Z

* Example-02:-

Case 2 of Exempt-01

Z → Supplier

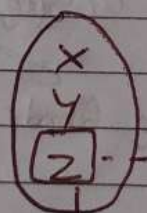
5kg purchased in the name of Firm



All carried to his home

Firm ⇒ Firm will give money to Seller for 5kg and will recover money from Z

* Example-03rd (Advance level):-



Restricted for Implied Authority
i.e., he cannot purchase material on the behalf of Firm

Supplier



5kg purchased



All carried to his home.

Date: _____

P. No: _____

All carries to his home

Case-01

दरत sellen को 7 के
Authority restrict hai
ye pata है ↓

Firm ⇒ If yes, then firm will
not pay any amount
to sellen.

Case-02

Sellen को 7 के Restriction
के बारे में पता है ↓

Firm ⇒ If yes, then firm
will pay amount
for 5 kg and will
recover from 2

• Partner's Authority in case of an Emergency (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. [Agar emergency ke situation

आती है तो Partner wo kare

work kar sakta hai jo firm ko loss se bachaye,

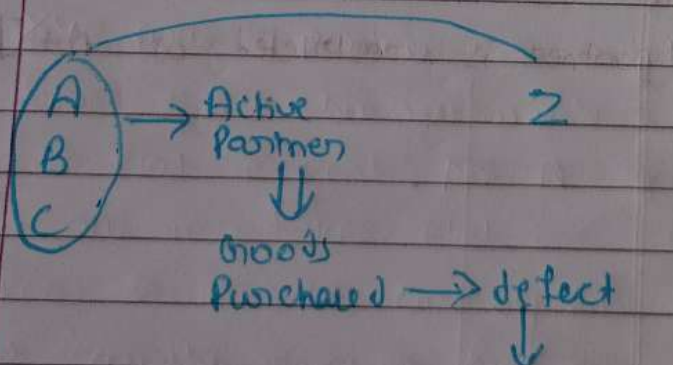
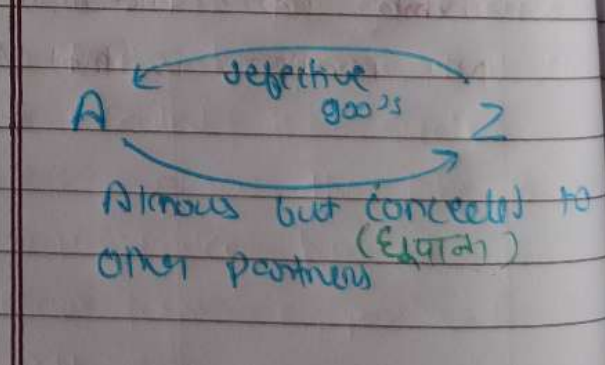
No matter is that partner is restricted or not]

Effect of Admissions By a partner (Section-23)

An admission or representation made by a partner concerning the affairs of the firm is evidence against the firm, if it is made in the ordinary course of business. [अगर कोई Partner को बात customer ko bolta hai to calau ye hainga ki usne firm ke behalf me bola hai because of Mutual Agency]

Notice to Active Partner (Section-24)

Notice to a partner who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

Case-01 No fraud	Case-02 Fraud
 <p>A knows about defect B & C also knows defect them, the case will file on all partners.</p>	 <p>B & C को नहीं पता था तो case A पर होगा।</p>

- Liability of a partner for Acts of the firm (Section-25):-

Every partner is liable, jointly with all other partners and also severally, for all acts of the firm done while he is a partner.

- Liability of the firm for wrongful Acts of a Partner (Section-26)

Where, by 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, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefor to the same extent as the partner.

[अगर कोई Partner normal course of business में कोई गलत काम करता है और उसकी वजह से उस party को loss होता है तो law firm को responsible मानेगा.

- Liability of firm for misapplication by partners (Section-27):-

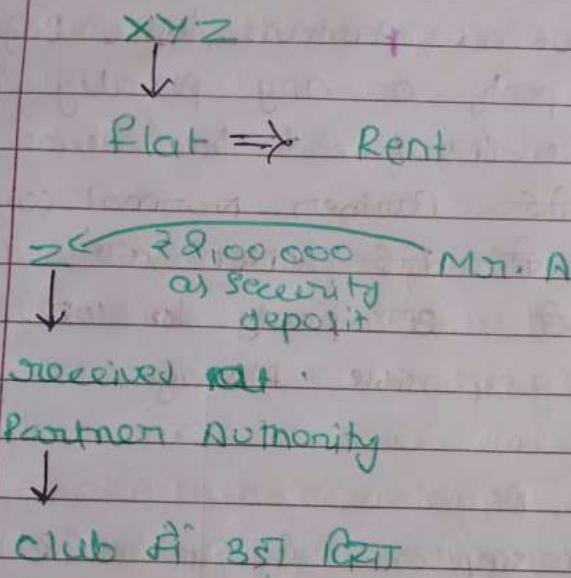
Where,

- A partner acting within his apparent authority receives money or property from a third party and misapplies it, or
- A firm is in the course of its business or receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss.

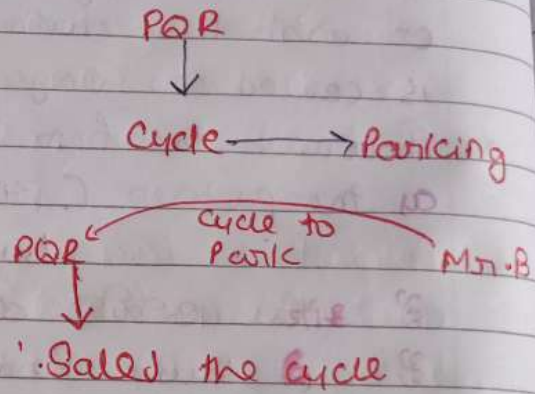
Agar third party ke property firm ke custody me hai. Aur agar koi partner us property or money ka misuse krta hai us aur isse third party ko loss hota hai to us loss ke liable firm hoga i.e. all partner honge]

Example:-

Case - 01



Case - 02



PQR were a partner in a firm. They use to give parking for cycle. Mr. B gave cycle to PQR to park. but Mr. R Sailed the cycle.

Now, the Mr. B will take his compensation from firm, i.e., from all partners.

XYZ was a partner in a firm there business was to give flat in Rent. Mr. A a customer taken flat in Rent from XYZ and deposited a security premium for, if he make any loss to Rent it will be cut from Security. but Mr. Z wanted that money in club. Now Mr. A will receive money from a firm because firm is liable

Legal consequences of Partner coming in and partner going out

Partner coming in	Partner going out
Admission of a partner or Introduction of partner	(1) Retirement \Rightarrow outgoing partner (2) Death \Rightarrow deceased partner (3) Expulsion \Rightarrow expelled partner (4) Insolvent \Rightarrow Insolvent partner To give public notice before goin out

1.) Retirement of Partner (Section-32) :-

A partner may retire:-

- (a) If the partnership is at will then the retiring partner should give a written notice and there should be mention the intention of partner.
- (b) If the procedure of retirement of a partner is mentioned in the express agreement then the retiring partner should follow the those procedure to get retirement.

(c) And, if nothing mentioned in agreement then the retiring partner should give the confirmation.

• Liability of retiring partner:-

(i) until the retiring partner gives public notice to the ~~continuing~~ till that he will be liable for all contracts. No, matter if he had informed to the continuing partners or not.

(ii) if the third party had not get informed about the retirement of a partner then he can sue on that partner also.

(iii) A retiring partner may not be liable for the contracts which had been made before his retirement i.e., before giving public notice. If he make a new agreement in which all continuing partners, retiring partner, and third party's signature has been done.

(iv) Public Notice can be given by anyone either continuing partner or retiring partner.

2) Expulsion of a partner (Section-33) :-

3 conditions for Expulsion of a partner

- a) Power of Expulsion \Rightarrow Should be mentioned in contract.
- b) Consent of all or majority of partners
- c) Expulsion should be in Good faith

↓

Firstly give notice to partner who is going to be Expelled.

Should give opportunity of being heard

for the the Interest of partner not for personal problem. [Partners ke interest nahi hona chahiye aur uske personal dusmani kee wajah se]

Note:- If the above conditions are not satisfied then Expulsion is null and void.

• Liability of Expelled partner:-

The provisions of sub-section [2], [3] and [4] of section 32 shall apply to an expelled partner as if he were a retired partner.

It may be noted that under the Act, the expulsion of partner does not necessarily result in dissolution of the firm.

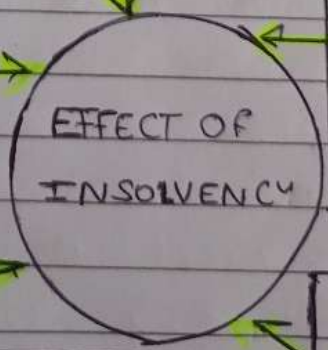
The invalid expulsion of a partner does not put an end to the partnership even if the partnership is at will and it will be deemed to continue as before.

3.) Insolvency of a partner (Section-34) :-

The estate of the Insolvent Partner is not liable for the acts of the firm done after the date of order of adjudication

He will be ceased to be a partner from the very date on which the order of adjudication is made

The firm is also not liable for any act of the insolvent partner after the date of the order of adjudication



The insolvent partner cannot be continued as a partner

ordinarily but not invariably the insolvency of a partner result in the dissolution of a firm; but the partners are competent to agree among themselves that the business

of a partner or an insolvent will not give rise to dissolution of the firm

4.) Deceased Partner (Section-35) :-

Where under a contract between the partners, the firm is not dissolved by the death of a partner, the estate of a deceased partner is ^{legal representative} not liable for any act of the firm done after his death.

Competing Business by Outgoing partner (Section-36)

An outgoing partner may carry on business competing with that of the firm and he may advertise such business, but subject to contrary he may not:-

- (i) Could not use firm name,
- (ii) Represent himself as carrying on the business of the firm, [wo apne aap ko aise represent nahae kare saketa jaise kee wo firm kea hae business kar raha on usse kea branch hai]

(अनुसंधान)

Soloit the custom of persons who were dealing with the firm before he ceased to be a partner. [wo old firm ke customer, employee, vendor kea bulae nahae saketa]

• Agreement in restraint of trade → A partner may make an agreement with his partners that on ceasing to be a partner he will not carry any business similar to that of the firm within a specified period or within specified local limits and, Notwithstanding anything contained in section 27 of the Indian Contract Act, 1872. Such agreement shall be valid if the restrictions imposed are reasonable. [Agar weting, partner

Jak - Jak other partners ke saath ye contract kar leta hai ke wo similar business for specified period and specified local limits tak Naher open karega to wo ^{similar} business naher kar sakta. No, matter section 27 of the Indian contract Act, 1872 me kya mention hai. Agar Restriction reasonable hai to wo valid hoga.

Right of outgoing partner in certain cases to Share Subsequent profit (Section-37)

• Explanation of Section-37 in own words:-

If the partner had retired, declared insolvent, death or Expulsion. Then his share of profit on property will be given to him or his legal representative as the case may be.

But, If the continuing partners carry on the business without any final settlement then the retired or Expulsed partner or the legal representative will charge interest @ 6% p.a. on his property or will ask to give a share in the profit till the final settlement was done.

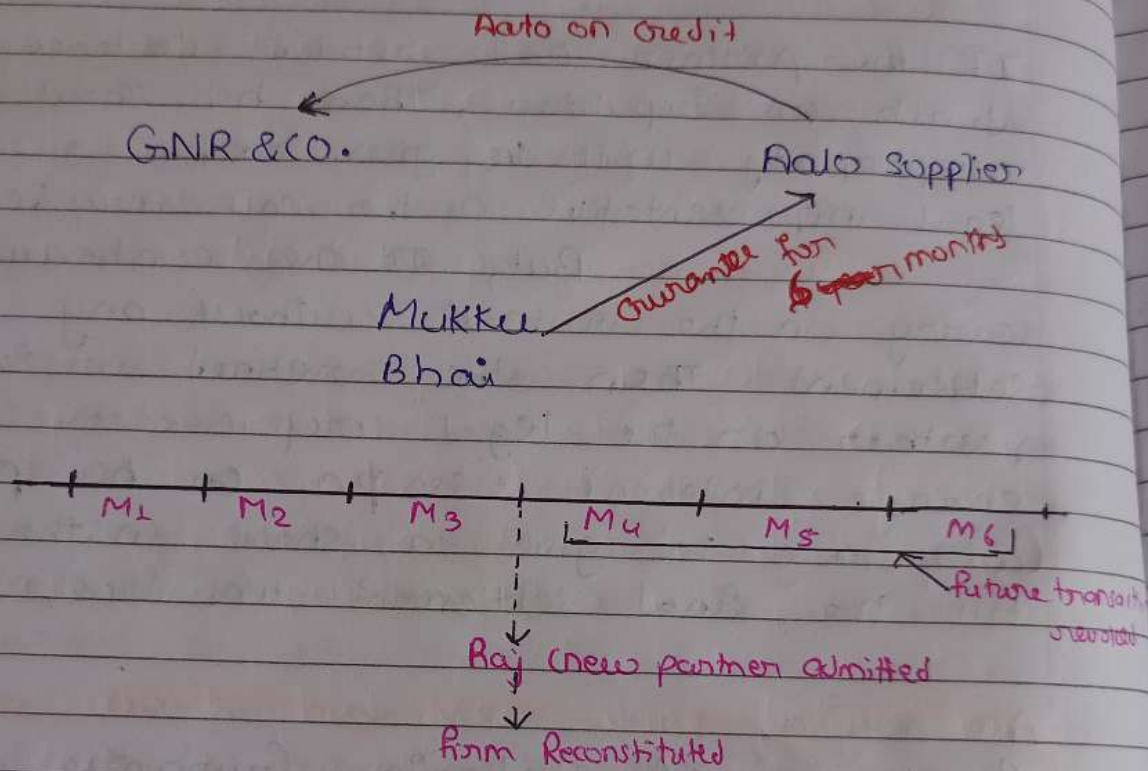
Revocation of continuing Guarantee by change In Firm (Section-38)

A continuing guarantee given to a firm or to third party in respect of the transaction of a firm is, in the absence of an agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm. [Firm ne agar kise person ko

continuing guarantee Deh thi or firm ko kisse ne continuing guarantee Deh thi but agar kisse partner ka admission, retirement hota hai to wo guarantee future transactions ke liye cancel ho jayegi. but agar contract me kuch

आज IPKha hai to use follow karna padega]

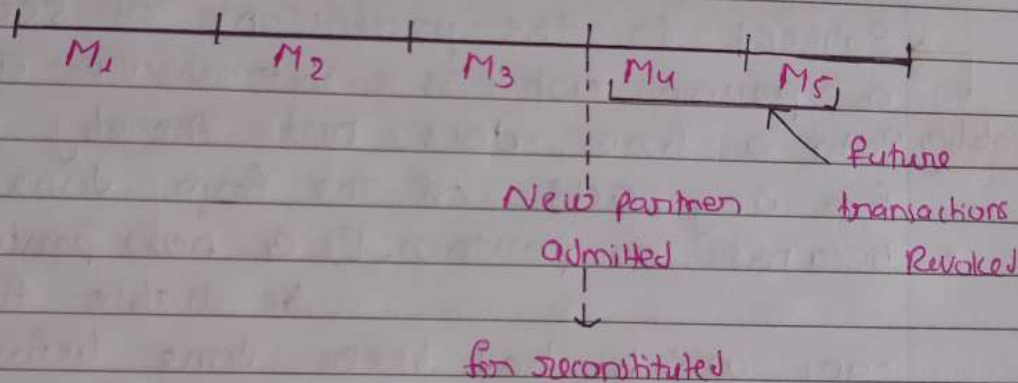
Example:-



Fact:-

Mukku Bhai said to Aalo Supplier to give auto on credit for ~~6~~³ months to GNR & CO. and Mukku Bhai had taken guarantee of GNR & CO.

After a 3 months a new partner was admitted due to which firm reconstituted. Now, the Mukku Bhai will not be liable for future transactions he will only liable for 3 months.

Example - 02:-Facts:-

Have sin said to GNR & CO. to Give Samosa on credit for 5 months to Raj and taken Guarantee of Raj.

But, after 3 months a new partner is admitted in firm and the firm reconstituted. Now, the ^{have sin} firm will not liable for future transactions, he will only liable for past transactions.

5. Admission of a partner (Section-31):-

(b) 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 existing partners.

[Consent of all the partners is necessary either majority of partners or all partners. For the admission of new partner by if the procedure is mentioned then follow

→ Subject to the provisions of section 30, a person who is introduced as a partner into a firm does not thereby become liable for any acts of the firm done before he became a partner. [A new partner will not be liable for the transactions which had been done before his admission by but it can be liable for past transactions also if he do **NOVATION** with one partner and with third party.]

The act of replacing a existing contract with new contract with the consent of all partners and confirmation of third party is also Necessary.

Unit-03rd:-

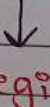
Registration and dissolution of a firm:

Date: _____
Page: _____

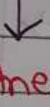
• Is Registration of firm is mandatory under the Indian partnership Act, 1932?



⇒ In India Registration of firm is optional. Under English law, Registration of firm is compulsory.

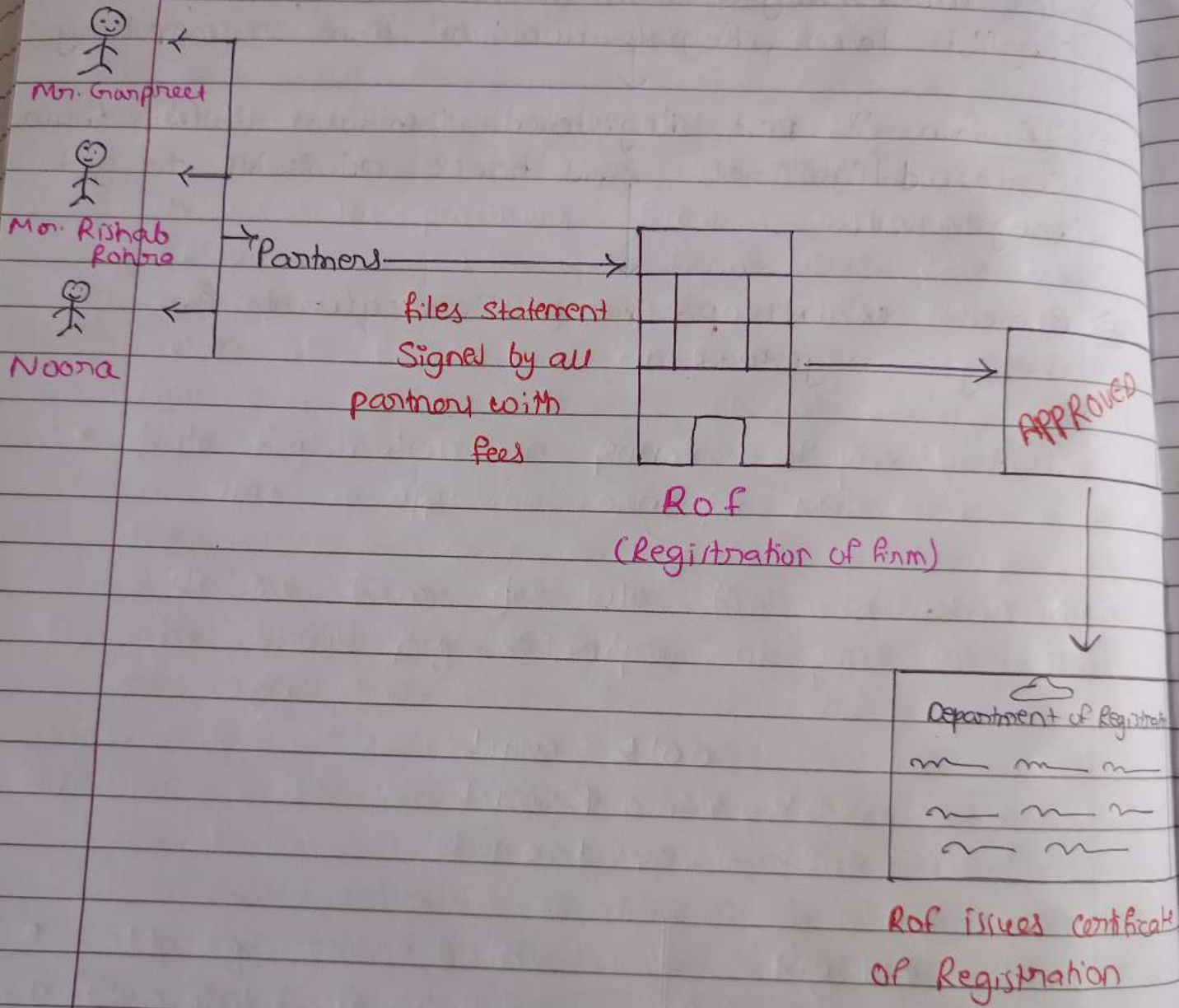


⇒ If firm is not registered then firm suffers from certain disabilities and hence advisable to get registered.



⇒ Consent of all partners is required for registration.

Procedure of Registration of firm (Section-5B)



• Content of Statement Filed with ROF :-

- (i) The firm's Name
- (ii) The place or principle place of business of the firm.
- (iii) The names of any other places where the firm carries on business.
- (iv) The date when each partner joined the firm.
- (v) The Names in full and permanent address of the partners.
- (vi) The duration of the firm.

• Restriction on Name of the firm :-

Crown X

Emperor X

Empire X

Imperial X

King X

Queen X

Royal X

Govt. linked X

State Govt. can give approval to use firm name linked with Govt. by order in writing

• Registration (Section-59):-

The firm when registered shall use the bracket and word (Registered) immediately after its name.

Any change in partnership after registration need to be communicated to ROF.

Registration may also be affected even after a suit has been filed by the firm but in that case it is necessary to withdraw the suit first and get the firm registered and then file a fresh suit [

• Late Registration on payment of penalty (Section-59A)
This is applicable only for "Maharashtra" in India

If the firm get late for registration then he should pay ₹ 100/year on part as a penalty.

Ex:-

1 year = ₹ 100

1 year 7 months = ₹ 200

2 year 1 month = ₹ 200

• Unregistered - firm
(i) Can not sue on third party.

Registered - firm
Can sue on third party.

(ii) But, Third party can sue on the firm.

Third party can also sue on firm

Consequences of Non-Registration (Section-69)

(i) No suit in a civil court by firm on other co-partners against third party ⇒ A non-

registered firm can not sue on third party but, the registered firm can sue on third party.

But, A ^{non} registered firm can ~~sue~~ be sued by third party.

(ii) No relief to partners for set off claim ⇒ Partners of non-

registered firm can not set-off claim more than ₹ 100.

(iii) Agrieved party cannot bring legal action against other partners on the firm ⇒

Partners cannot file suit against unregistered firm or other partners.

Except, for dissolution or for accounts and realisation of his share on dissolution.

(iv) Third party can sue the firm ⇒ In case of an unregistered firm, an

action can be brought against the firm by a third party.

• Exceptions:- Non-registration of a firm does not, however effect the following:-

- 1.) The right of third parties to sue the firm on any other partner.
- 2.) The right of partners to sue for the dissolution of the firm or for the settlement of the accounts of a dissolved firm, or for realization of the property of a dissolved firm.
- 3.) The power of a official Assignees, Receiver of court to release the property of the insolvent partner and to bring an action. [official partner will take the property of insolvent partner and if partner will not give then he can sue and can take the property]
- 4.) The right to claim a set-off if the value of suit does not exceed ₹100 in value.
- 5.) The right to suit and proceeding instituted by legal representatives or heirs of the deceased partner of a firm for accounts of the firm or to realize the property of the firm. [If the legal representative of deceased firm partner of unregistered firm can file case in the case of not receiving the property of deceased partner.

Date: _____

P. No: _____

: Dissolution of Firm:

V/S.

: Dissolution of partnership:

Basis	Dissolution of Firm	Dissolution of Partnership
Continuation of business	It involves discontinuation of business in partnership	It does not affect continuation of business, it involves only reconstitution of the firm.
winding-up	^{It involves} A firm may winding up of the firm & requires realization of assets & settlement of liabilities	It involves only reconstitution & requires only revaluation of assets & liabilities of the firm.
Order of court	A firm may be dissolved by the order of the court	Dissolution of partnership is not ordered by the court.
Scope	It necessarily involves dissolution of partnership	It may or may not involve dissolution of firm.
Final closure of books	It involves final closure of books of the firm.	It does not involve final closure of the books of the firm.

Date: _____
P. No: _____

Modes of dissolution of Partnership firm

Without Court Intervention

1.) Dissolution by Agreement \Rightarrow A firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners.

2.) Dissolution by Notice of partnership at will (Section 40)

Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.

The firm is dissolved as from the date mentioned in the notice as the date of dissolution, or in case no date is mentioned, as from the date of the communication of the notice.

3.) Compulsory dissolution (Section-41) :-

By the Adjudication of all the partners or of all the partners but one as insolvent.

By the happening of an event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership. [if government had banned]

However, when more than one separate adventure or undertaking is carried on by the firm, the illegality of one or more shall not of itself cause the dissolution of the firm in respect of its lawful adventures and undertakings.

4.) Dissolution on the happening of certain Contingencies
(Section-42)

Subject to contract between the partners, a firm can be dissolved on the happening of any of the following contingencies:-

Where a firm is constituted for a fixed term, on the expiry of that term.

Where the firm is constituted to carry out one or more adventures or undertakings, then by completion thereof.

By the death of a partner.

By the adjudication of partner as an insolvent.

• By THE Court :-

(i) T insanity / Unsound mind ⇒ Where a partner (not a sleeping partner) has become of unsound mind, the court may dissolve the firm on a suit of the other partner or by the next friend of the insane partner. Temporary sickness is no ground for dissolution of firm.

(ii) Permanent incapacity ⇒ When a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner, then the court may dissolve the firm. Such permanent incapability may result from physical disability or illness, etc.

(iii) Misconduct ⇒ Where a partner other than suing is guilty of conduct which is likely to affect prejudicially the carrying on of business. The court may order for dissolution of firm.

It is not necessary that misconduct must relate to the conduct of the business.

(iv) Persistent breach of agreement ⇒ If a partner, other than a partner suing, continuously breach the agreement relating to the management of the affairs of the firm, then the court may dissolve the firm.

following comes in to category of breach of contract:-

- > Embezzlement.
- > Keeping Erroneous accounts.
- > Holding more cash than allowed.
- > Refusal to show accounts despite repeated requests, etc.

(v) Transfer of interest ⇒ where a partner other than a swing, has transferred the whole of his interest in the firm to a third party or has allowed his share to be charged or sold by the court, in the recovery of arrears of land revenue due by the partner, the court may dissolve the firm at the instance of any other partner.

(vi) Continuous or perpetual loss ⇒ where the business of the firm cannot be carried on except at a loss in future also, the court may order for its dissolution.

(vii) Just and Equitable grounds ⇒ where the court considers any other ground to be just and equitable for the dissolution of the firm, it may dissolve a firm.

(a) Deadlock in the management.

(b) where the partners are not in talking terms between them.

(c) Gambling by a partner on a stock exchange.

(d) Loss of substratum. (Jis cheez ka business karne tha

wabe khatam ho gaya k'ide to calamity or any other reason)

Consequences of dissolution

a) Liability for acts of partners done after dissolution (Section-45):-

- Notwithstanding the dissolution of a firm, the partners continue to be liable as such to third parties for any act done 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.

- However, there are exceptions to the rule stated: even where notice of dissolution has not been given, there will be no liability for subsequent acts in the case of:-

- a) The estate of a deceased partner,
- b) An insolvent partner,
- c) A dormant partner, i.e., a partner who was not known as a partner to the person dealing with the firm.

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

On the dissolution of a firm every partner or his representative is entitled, as against all the other partners or their representative, to have the property of the firm applied in payment of the debts and liabilities of the firm, and to have the surplus distributed among the partners or their representative according to their right.

c) Continuing Authority of partners for purposes of winding up (Section-47):-

- After the dissolution of a firm the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners, continue. Notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise :-

for two cases the partners will liable even after the dissolution. (i) winding up.

(ii) Uncomplete transaction

3) Payment of firm debts and of separate debts (Section-49) :-

(i) The property of the firm shall be applied in the first instance in payment of the debts of the firm, and if there is any surplus, then the share of each partner shall be applied to the payment of his separate debts or paid to him; [Firm ke

time firm ke property firstly firm ke liabilities ko pay karne ke liye de gayegi then, if surplus remain then it will be given to the partners in their ratio]

(ii) The separate property of any partner shall be applied first in the payment of his separate debts and surplus, if any, in the payment of debts of the firm. [Agar kisi Partner apne

separate property ko use firstly apne debts ko chatam karne ke liye karega then if surplus remain it will be given to firm to pay firm's debts and liabilities]



Date: _____

P. No: _____

4. Mode of Settlement of Partnership Accounts

(Section-48):-

• In case of Profit:-

1.) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, must be applied in following manner & order:

(i) In paying the debt of the firm to third parties;
In paying to each partner rateably what is due to him from advances / loan.

(ii) In paying to each partner rateably what is due to him on account of capital;

(iii) The residue, if any, shall be divided among the partners in proportions in which they were entitled to share profit.

• In case of loss:-

2. 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 profit.

The End of Indian Partnership Act 1932

