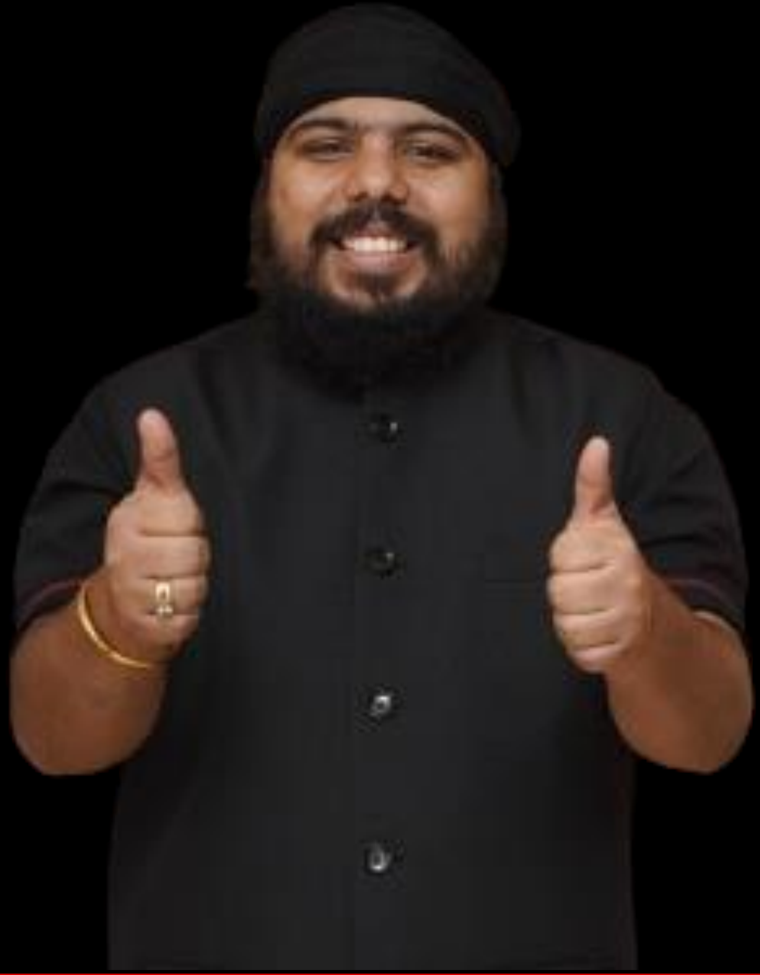
CA FOUNDATION

LET'S LEARN LAW

THE INDIAN PARTNERSHIP ACT, 1932- Unit 03

Learn Module Keywords



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PURPOSE

CHANKYA NITI SERIES – UNDERSTANDING CONCEPT

LET'S LEARN LAW SERIES – LEARNING KEYWORDS

NOTE :- WATCH THIS SERIES AFTER UNDERSTANDING ALL THE CONCEPTS. AS THE PURPOSE OF THIS SERIES IS TO HELP STUDENTS LEARN KEYWORDS

Topic : LEARNING OUTCOMES

After studying this unit, you would be able to understand-

- About mode of getting a firm registered with the authorities.
- The effect of registration of a firm upon the rights of partners' inter- se and the rights of the third parties.
- The effect of non-registration on rights of partners and the third parties.
- The various circumstances when a firm is dissolved.
- The consequences and the effects of the dissolution upon rights and liabilities of various parties.

Topic : UNIT OVERVIEW

- **Registration and dissolution of a firm**
  - Mode of effecting Registration
  - Consequences of Non-registration
  - Dissolution offirm
    - Dissolution without the interventionof court (Section 40 to 43)
      - Dissolution by Agreement (Section 40)
      - Dissolution by operation of Lawor compulsory dissolution (Section 41)
      - Dissolution on the happening of certain contingencies (Section42)
      - Dissolution by notice (Section43)
    - Dissolution by court (Section 44)

Topic : REGISTRATION OF FIRMS

APPLICATION FOR REGISTRATION (SECTION 58): (1) The registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form and accompanied by the prescribed fee, stating-

(a) The firm's name

(b) The place or principal place of business of the firm,

(c) The names of any other places where the firm carries on business,

(d) the date when each partner joined the firm,

(e) the names in full and permanent addresses of the partners, and

(f) the duration of the firm.

Topic : REGISTRATION OF FIRMS

The statement shall be signed by all the partners, or by their agents specially authorised in this behalf.

(1) Each person signing the statement shall also verify it in the manner prescribed.

(2) A firm name shall not contain any of the following words, namely:-

Note: ‘Crown’, Emperor’, ‘Empress’, ‘Empire’, ‘Imperial’, ‘King’, ‘Queen’, ‘Royal’, or words expressing or implying the sanction, approval or patronage of Government except when the State Government signifies its consent to the use of such words as part of the firm-name by order in writing.

Topic : REGISTRATION OF FIRMS

REGISTRATION (SECTION 59): When the Registrar is satisfied that the provisions of Section 58 have been duly complied with, he shall record an entry of the statement in a Register called the Register of Firms and shall file the statement. Then he shall issue a certificate of Registration. However, registration is deemed to be completed as soon as an application in the prescribed form with the prescribed fee and necessary details concerning the particulars of partnership is delivered to the Registrar. The recording of an entry in the register of firms is a routine duty of Registrar.

Topic : REGISTRATION OF FIRMS

Registration may also be effected 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-1): If the statement in respect of any firm is not sent or delivered to the Registrar within the time specified in sub- section (1A) of section 58, then the firm may be registered on payment, to the Registrar, of a penalty of one hundred rupees per year of delay or a part thereof.

Topic : Consequences of non-registration (section. 69)

Under the English Law, the registration of firms is compulsory. Therefore, there is a penalty for non-registration of firms. But the Indian Partnership Act does not make the registration of firms compulsory nor does it impose any penalty for non-registration. However, under Section 69, non-registration of partnership gives rise to a number of disabilities which we shall presently discuss. Although registration of firms is not compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration. These disabilities briefly are as follows:

Topic : Consequences of non-registration (section. 69)

(i) 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, unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm. In other words, a registered firm can only file a suit against a third party and the persons suing have been in the register of firms as partners in the firm.

(ii) 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 Rs. 100 or pursue other proceedings to enforce the rights arising from any contract.

Topic : Consequences of non-registration (section. 69)

(iii) 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. But, such a person may sue for dissolution of the firm or for accounts and realization of his share in the firm's property where the firm is dissolved.

(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.

Topic : Consequences of non-registration (section. 69)

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

1. The right of third parties to sue the firm or any 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 an Official Assignees, Receiver of Court to release the property of the insolvent partner and to bring an action.
4. The right to sue or claim a set-off if the value of suit does not exceed Rs. 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 realise the property of the firm.

Topic : Consequences of non-registration (section. 69)

Example 1: A & Co. is registered as a partnership firm in 2017 with A, B and C partners. In 2018, A dies. In 2019, B and C sue X in the name and on behalf of A & Co. without fresh registration. Now the first question for our consideration is whether the suit is maintainable.

As regards the question whether in the case of a registered firm (whose business was carried on after its dissolution by death of one of the partners), a suit can be filed by the remaining partners in respect of any subsequent dealings or transactions without notifying to the Registrar of Firms, the changes in the constitution of the firm, it was decided that the remaining partners should sue in respect of such subsequent dealings or transactions even though the firm was not registered again after such dissolution and no notice of the partner was given to the Registrar.

Topic : Consequences of non-registration (section. 69)

The test applied in these cases was whether the plaintiff satisfied the only two requirements of Section 69 (2) of the Act namely,

(i) the suit must be instituted by or on behalf of the firm which had been registered;

(ii) the person suing had been shown as partner in the register of firms. In view of this position of law, the suit is in the case by B and C against X in the name and on behalf of A & Co. is maintainable.

Topic : Consequences of non-registration (section. 69)

Now, in the above example, what difference would it make, if in 2019 B and C had taken a new partner, D, and then filed a suit against X without fresh registration?

Where a new partner is introduced, the fact is to be notified to Registrar who shall make a record of the notice in the entry relating to the firm in the Register of firms. Therefore, the firm cannot sue as D's (new partner's) name has not been entered in the register of firms. It was pointed out that in the second requirement, the phrase "person suing" means persons in the sense of individuals whose names appear in the register as partners and who must be all partners in the firm at the date of the suit.

Topic : Dissolution of firm (sections 39 - 47)

According to Section 39 of the Indian Partnership Act, 1932, the dissolution of partnership between all partners of a firm is called the 'dissolution of the firm'. Thus, the dissolution of firm means the discontinuation of the legal relation existing between all the partners of the firm. But when only one or more partners retires or becomes incapacitated from acting as a partner due to death, insolvency or insanity, the partnership, i.e. the relationship between such a partner and other is dissolved, but the rest may decide to continue. In such cases, there is in practice, no dissolution of the firm. The particular partner goes out, but the remaining partners carry on the business of the firm, it is called dissolution of partnership. In the case of dissolution of the firm, on the other hand, the whole firm is dissolved. The partnership terminates as between each and every partner of the firm.

Topic : Dissolution of firm (sections 39 - 47)

Dissolution of Firm Vs. Dissolution of Partnership

S. No.	Basis of Difference	Dissolution of Firm	Dissolution of Partnership
1.	Continuation ofbusiness	It involves discontinuation ofbusiness in partnership.	It does not affect continuation of business. It involves only reconstitution of the firm.
2.	Winding up	It involves winding up of the firm and requires realization of assets and settlement of liabilities.	It involves only reconstitution and requires only revaluation of assets and liabilities of the firm.
3.	Order of court	A firm may be dissolved by theorder of the court.	Dissolution of partnership isnot ordered by the court.
4.	Scope	It necessarily involvesdissolution of partnership.	It may or may not involvedissolution of firm.
5.	Final closure ofbooks	It involves final closure ofbooks of the firm.	It does not involve final closure of the books of the firm.

Topic : Dissolution of firm (sections 39 - 47)

Modes of Dissolution of a firm (Sections 40-44)

1. **Dissolution without the order of the court or voluntary dissolution:**

   It consists of following four types:

   (i) Dissolution by Agreement (Section 40):

   Section 40 gives right to the partners to dissolve the partnership by agreement with the consent of all the partners or in accordance with a contract between the partners.

   'Contract between the partners' means a contract already made.

Topic : Dissolution of firm (sections 39 - 47)

(ii) Compulsory dissolution (Section 41):

A firm is compulsorily dissolved

- by the adjudication of all the partners or of all the partners but one as insolvent; or
- by the happening of any 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.

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.

Topic : Dissolution of firm (sections 39 - 47)

Example 2: A firm is carrying on the business of trading a particular chemical and a law is passed which bans on the trading of such a particular chemical. The business of the firm becomes unlawful and so the firm will have to be compulsorily dissolved.

Topic : Dissolution of firm (sections 39 - 47)

(iii) 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 the firm is constituted for a fixed term,on the expiry of that term
- Where the firm is constituted to carry out one ormore adventures or undertaking, then by completion thereof
- by the death of a partner, and
- by the adjudication of a partner as an insolvent.

Topic : Dissolution of firm (sections 39 - 47)

(iv) Dissolution by notice of partnership at will (Section 43):

(1) 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.

(2) In case date is mentioned in the Notice: The firm is dissolved as from the date mentioned in the notice as the date of dissolution, or in case no date is so mentioned, as from the date of the communication of the notice.

Topic : Dissolution of firm (sections 39 - 47)

1. **DISSOLUTION BY THE COURT (SECTION 44):**

Court may, at the suit of the partner, dissolve a firm on any of the following ground:

(a) 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 partners or by the next friend of the insane partner. Temporary sickness is no ground for dissolution of firm.

Example 3: A, B and C are partners in a firm. A has severe infection and got typhoid. Due to this, he was not able to conduct business for few weeks. This kind of illness cannot be treated as the ground for dissolution.

Topic : Dissolution of firm (sections 39 - 47)

(b) 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 incapacity may result from physical disability or illness etc.

(c) Misconduct: Where a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of business, the court may order for dissolution of the firm, by giving regard to the nature of business. It is not necessary that misconduct must relate to the conduct of the business. The important point is the adverse effect of misconduct on the business. In each case nature of business will decide whether an act is misconduct or not.

Topic : Dissolution of firm (sections 39 - 47)

(d) Persistent breach of agreement: Where a partner other than the partner suing, wilfully or persistently commits breach of agreements 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. Following comes in to category of breach of contract:

- Embezzlement,
- Keeping erroneous accounts
- Holding more cash than allowed
- Refusal to show accounts despite repeated request etc.

Topic : Dissolution of firm (sections 39 - 47)

Example 4: If one of the partners keeps erroneous accounts and omits to enter receipts or if there is continued quarrels between the partners or there is such a state of things that destroys the mutual confidence of partners, the court may order for dissolution of the firm.

Topic : Dissolution of firm (sections 39 - 47)

(e) Transfer of interest: Where a partner other than the partner suing, 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.

(f) Continuous/Perpetual losses: Where the business of the firm cannot be carried on except at a loss in future also, the court may order for its dissolution.

Topic : Dissolution of firm (sections 39 - 47)

(g) 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. The following are the cases for the just and equitable grounds-

(i) Deadlock in the management.
(ii) Where the partners are not in talking terms between them.
(iii) Loss of substratum.
(iv) Gambling by a partner on a stock exchange.

Topic : Dissolution of firm (sections 39 - 47)

Dissolution of Firm

- Without the order of the Court [Section 40 to 43]
  - By mutual agreement
  - Compulsory dissolution (Section 41)
  - On happening of certain event (Section 42)
  - By notice (Section 43)
- By order of the Court (Section 44)
  - Insanity
  - Misconduct
  - Permanent incapacity
  - Persistent breach of agreement
  - Transfer of interest
  - Continuous loss
  - Just and equitable ground

Topic : Consequences Of Dissolution (Sections 45 - 55)

Consequent to the dissolution of a partnership firm, the partners have certain rights and liabilities, as are discussed:

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

Section 45 has two fold objectives-

1. It seeks to protect third parties dealing with the firm who had no notice of prior dissolution and
2. It also seeks to protect partners of a dissolved firm from liability towards third parties.

Topic : Consequences Of Dissolution (Sections 45 - 55)

Example 5: X and Y who carried on business in partnership for several years, executed on December 1, a deed dissolving the partnership from the date, but failed to give a public notice of the dissolution. On December 20, X borrowed in the firm's name a certain sum of money from R, who was ignorant of the dissolution. In such a case, Y also would be liable for the amount because no public notice was given.

Topic : Consequences Of Dissolution (Sections 45 - 55)

However, there are exceptions to the rule stated in above example i.e. 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, or

(c) a dormant partner, i.e., a partner who was not known as a partner to the person dealing with the firm.

Topic : Consequences Of Dissolution (Sections 45 - 55)

(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 representatives according to their rights.

Topic : Consequences Of Dissolution (Sections 45 - 55)

(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:

Provided that the firm is in no case bound by the acts of a partner who has been adjudicated insolvent; but this proviso does not affect the liability of any person who has after the adjudication represented himself or knowingly permitted himself to be represented as a partner of the insolvent.

Topic : Consequences Of Dissolution (Sections 45 - 55)

(d) Mode of Settlement of partnership accounts (Section 48): In settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed:-

(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;

Topic : Consequences Of Dissolution (Sections 45 - 55)

(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:

(a) in paying the debts of the firm to third parties;

(b) in paying to each partner rateably what is due to him from firm for advances;

(c) in paying to each partner rateably what is due to him on account of capital; and

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

Topic : Consequences Of Dissolution (Sections 45 - 55)

Example 6: X and Y were partners sharing profits and losses equally and X died. On taking partnership accounts, it transpired that he contributed Rs. 6,60,000 to the capital of the firm and Y only Rs.40,000. The assets amounted to Rs. 2,00,000. In such situation, the deficiency (Rs. 6,60,000 + Rs. 40,000 – Rs. 2,00,000 i.e. Rs. 5,00,000) would have to be shared equally by Y and X's estate.

Topic : Consequences Of Dissolution (Sections 45 - 55)

If in the above example, the agreement provided that on dissolution the surplus assets would be divided between the partners according to their respective interests in the capital and on the dissolution of the firm a deficiency of capital was found, then the assets would be divided between the partners in proportion to their capital with the result that X's estate would be the main loser.

Topic : Consequences Of Dissolution (Sections 45 - 55)

(e) Payment of firm debts and of separate debts (Section 49): Where there are joint debts due from the firm and also separate debts due from any partner:

(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;

(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.

LAWS KE GOD

CORPORATE AND OTHER LAWS

- CA Inter : Ranked 23rd in India (1st in Maharashtra)
- CA Final : Ranked 25th in India
- Specialization: Expert in teaching law with basics and with variety of examples
- Professional Background: Former Grade A Officer at Indian Oil Corporation Limited, a prestigious Fortune 500 company.
- Teaching Impact: Empowering over 50,000 CA students with practical knowledge and success strategies

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Thank you