

THE INDIAN PARTNERSHIP ACT, 1932

DEFINITIONS (Section 4)

'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.

- 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'.

ELEMENTS OF PARTNERSHIP

(1) Association of two or more persons

- 2 or more persons
- only persons recognized by law can enter into agreement of partnership.
- a firm is not recognized as a person in the eyes of law & cannot be a partner.
- maximum no. of partners - 50

(2) Agreement

- Partnership must be the result of an agreement between two or more persons.
- the nature of partnership is voluntary & contractual.

(3) Business

- the term 'business' includes every trade, occupation & profession.
- the existence of business is essential.
- the motive of the business is 'acquisition of gains'.
- there can be no partnership where there is no intention to carry on the business & to share the profit thereof.

(4) Agreement to share profits

- Sharing of profit is an essential feature of partnership.

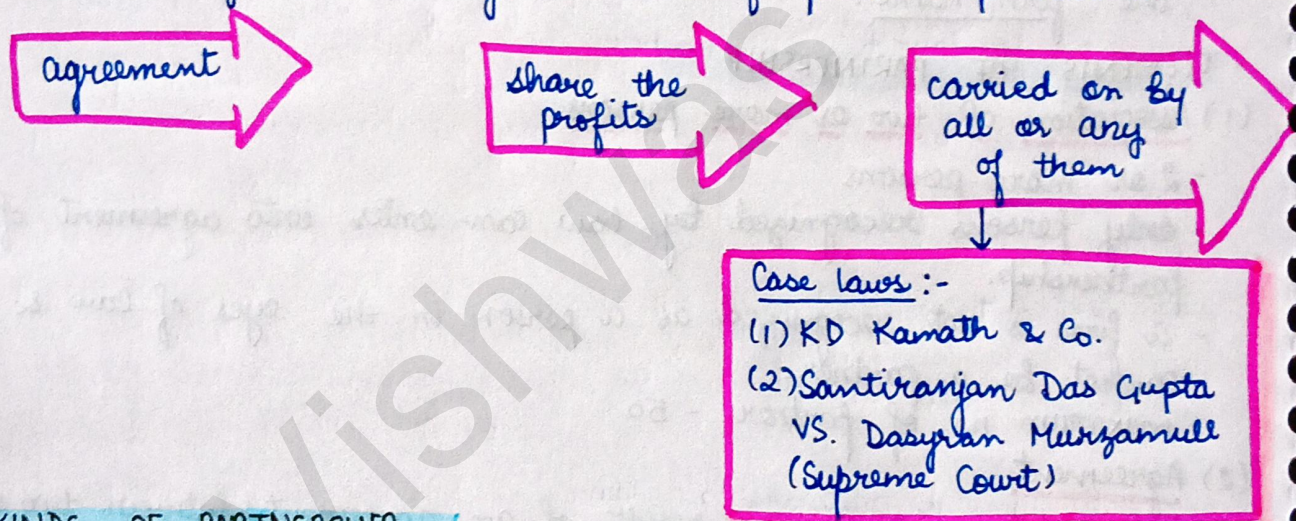
- But an agreement to share losses is not an essential element.

(5) Business carried on by all or any of them acting for all (Mutual Agency)

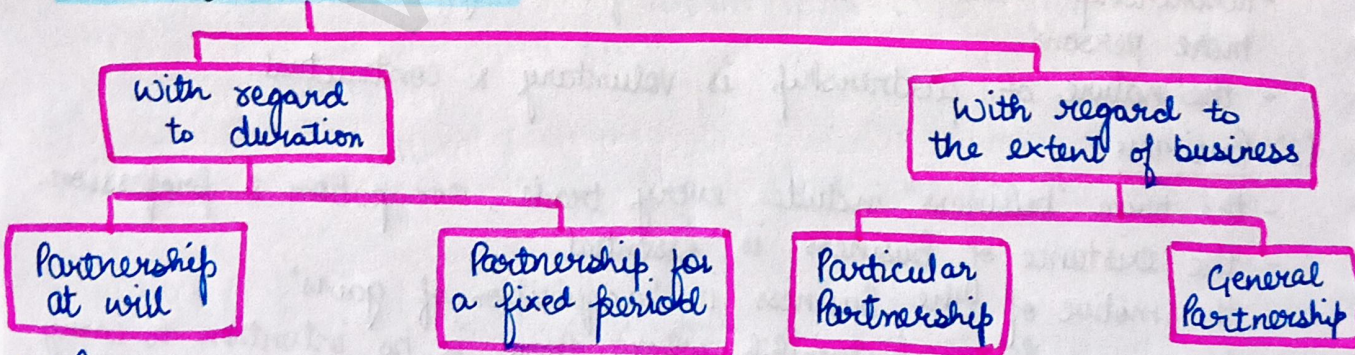
- cardinal principle of the partnership law.
- there should be a binding contract of mutual agency between the partners.
- Each partner carrying on the business is the principal as well as the agent for all the other partners.
- He is an agent in so far as he can bind the other partners by his acts and he is a principal to the extent that he is bound by the act of other partners.
- If the element of mutual agency is absent, then there will be no partnership.

TRUE TEST OF PARTNERSHIP

Mode of determining existence of partnership (Sec. 6)



KINDS OF PARTNERSHIP



(1) Partnership at will (Sec. 7) is a partnership when:-

- no fixed period has been agreed upon for the duration of the partnership, and
- there is no provision made as to the determination of the partnership.

(2) Partnership for a fixed period

- where a provision is made by a contract for the duration of the partnership.

(3) Particular Partnership

- where a person becomes a partner with another person in any particular 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 'general partnership'.
- it is different from a particular partnership.

• PARTNERSHIP DEED

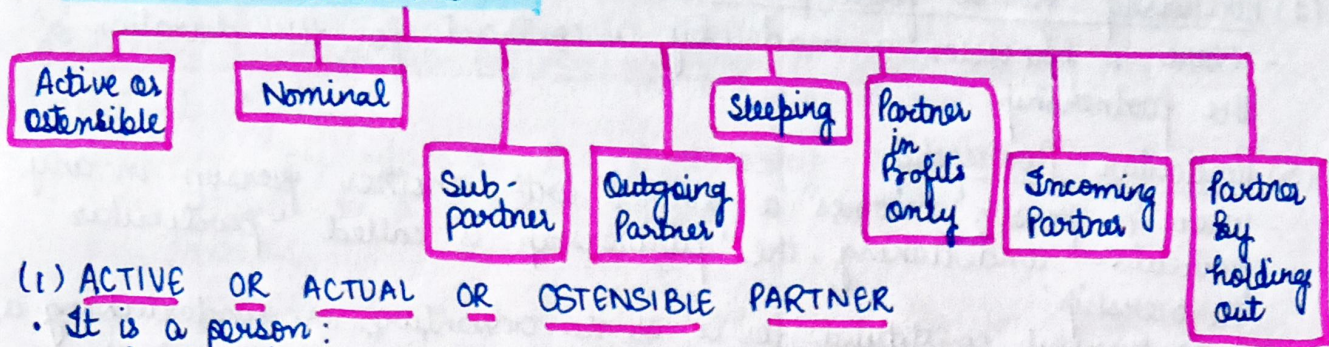
The document in writing containing the various terms and conditions as to the relationship of the partners to each other is called the 'Partnership deed'.

→ It should be drafted with care and be stamped according to the provisions of the Stamp Act, 1899.

CONTENTS OF PARTNERSHIP DEED :-

1. Name of the partnership firm.
2. Names of all the partners.
3. Nature and place of the business of the firm.
4. Date of commencement of partnership.
5. Duration of the partnership firm.
6. Capital contribution of each partner.
7. Profit sharing Ratio of the partners.
8. Admission and retirement of a partner.
9. Rates of interest on capital, drawings and loans.
10. Provisions for settlement of accounts in the case of dissolution of the firm.
11. Provisions for salaries or commissions, payable to the partners, if any.
12. Provisions for expulsion of a partner in case of gross breach of duty or fraud.

• TYPES OF PARTNERS



(1) ACTIVE OR ACTUAL OR OSTENSIBLE PARTNER

- It is a person:
 - who has become a partner by agreement, and
 - who actively participates in the conduct of the partnership
- In the event of his retirement, he must give a public notice in order to absolve himself of liabilities for acts of other partners done after his retirement.

(2) SLEEPING OR DORMANT PERSON

- It is a person:
 - who is a partner by agreement, and
 - who does not actively take part in the conduct of the partnership business
- He is not required to give public notice of their retirement from the firm.

(3) NOMINAL PARTNER

- A person who lends his name to the firm, without having any real interest in it, is called a nominal partner.
- He is liable to third parties for all acts of the firm.

(4) PARTNER IN PROFITS ONLY

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

(5) INCOMING PARTNERS

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 partners.'

(6) OUTING PARTNERS

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

(7) SUB PARTNER

- Partner agrees to share his share of profits in a partnership firm with an outsider, such an outsider is called a sub partner.
- He neither has rights against the firm nor is he liable for the debts of the firm.

(8) PARTNER BY HOLDING OUT

- When a person represents himself or knowingly permits himself to be represented as a partner in a firm (when in fact he is not)
 - He is liable, like a partner in the firm.
- DIFFERENCE BETWEEN PARTNERSHIP AND JOINT STOCK COMPANY

Basis	Partnership	Joint stock Company
<u>Legal status</u>	A firm is not legal entity i.e it has no legal personality distinct from the personalities of its constituent members.	A company is a separate legal entity distinct from its members. (Salmon vs. Salomon)
<u>Agency</u>	Every partner is an agent of the other partners as well as of the firm.	A member is not an agent of the other members or of the company, his actions do not bind either.
<u>Distribution of Profits</u>	The profits of the firm must be distributed among the partners according to the terms of the partnership deed.	There is no such compulsion to distribute its profits among its members.
<u>Extent of liability</u>	In a partnership, the liability of partners is unlimited.	In a company limited by shares, liability of a shareholder is limited to the amount unpaid on his shares. In case of company limited by guarantee, the liability is limited to the amount for which he has agreed to be liable. There may be companies where liability of members is unlimited.

Property

The firm's property is that which the 'joint estate' of all the partners as distinguished from the 'seperate' estate of any of them and it does not belong to a body distinct in law from its members.

Transfer of shares

Share in partnership cannot be transferred without the consent of all the partners.

Its property is separate from that of its members who can receive it back only in the form of dividends or refund of capital.

Management

All the partners are entitled to participate in the management.

A shareholder may transfer his shares, subject to the provisions contained in its Articles.

Registration

Registration is not compulsory in the case of partnership.

Members of a company are not entitled to take part in the management unless they are appointed as directors.

Winding up

A partnership firm can be dissolved at any time if all the partners agree.

A company cannot come into existence unless it is registered under the Companies Act, 2013.

Duration of existence

Unless there is a contract to the contrary, death, retirement or insolvency of a partner results in the dissolution of a firm.

A company being a legal person is either wind up by the National Company Law Tribunal or its name is struck off by the Registrar of Companies.

A company enjoys perpetual succession.

Number of membership

Sec 464 of the Companies Act, 2013 → maximum no. of partners is 100.

The rule given in under the Companies (Miscellaneous) Rules, 2014 restrict the present limit to 50.

Private company - max. 200, minimum - 2

Public company - max - no limit and minimum seven.

Private company can also be formed by one person known as one person company.

• DIFFERENCE BETWEEN PARTNERSHIP AND CLUB

Basis	Partnership	Club
<u>Defination</u>	It is an association of persons formed for earning profits from a business carried on by all or any one of them acting for all.	A club is an association of persons formed with the object not of earning profit, but of promoting some beneficial purposes such as improvement of health or providing recreation for the members etc.
<u>Relationship</u>	Persons forming a partnership are called partners and a partner is an agent for other partners.	Persons forming club are called members. A member of a club is not the agent of other members.
<u>Interest in the property</u>	Partner has interest in the property of the firm.	A member of a club has no interest in the property of a club.
<u>Dissolution</u>	A change in the partners of the firm affects its existence.	A change in the membership of a club does not affect its existence.

• DIFFERENCE BETWEEN PARTNERSHIP AND CO-OWNERSHIP

Basis	Partnership	Co-ownership
<u>Formation</u>	Partnership always arises out of a contract, express or implied.	Co-ownership may arise either from agreement or by the operation of law, such as by inheritance.
<u>Implied agency</u>	A partner is a agent of the other partners.	A co-owner is not the agent of other co-owners.
<u>Nature of Interest</u>	There is 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.
<u>Transfer of Interest</u>	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.

• DIFFERENCE BETWEEN PARTNERSHIP AND ASSOCIATION

Basis	Partnership	Association
<u>Meaning</u>	Partnership means and involves setting up relation of agency between two or more persons who have entered into a business for gains, with the intention to share the profits of such a business.	Association evolves out of social cause and there is no necessarily motive to earn and share profits. The intention is not to enter in a business for gains.
<u>Examples</u>	Partnership to run a business and earn profit thereon.	Members of charitable society or religious association or an improvement scheme or building corporation or a mutual insurance society or a trade protection association.

• DIFFERENCE BETWEEN PARTNERSHIP AND HINDU UNDIVIDED FAMILY

Basis	Partnership	Joint Hindu Family
<u>Mode of creation</u>	Partnership is created necessarily by an agreement.	The right in the joint family is created by status means its creation by birth in the family.
<u>Death of a member</u>	Death of a partner ordinarily leads to the dissolution of partnership.	Death of a member in the Hindu undivided family does not give rise to dissolution of the family business.
<u>Management</u>	All the partners are equally entitled to take part in the partnership business.	The right of management of joint family business generally vests in the 'Karta', the governing male or female member of the family.
<u>Authority to bind</u>	Every partner can, by his act, bind the firm.	The Karta or the manager has the authority to contract for the family business and the other members in the family.

Liability

The liability of a partner is unlimited.

Only the liability of the Karta is unlimited and the other members are liable only to the extent of their shares in the profit of the family business.

Calling for accounts on closure

A partner can bring a suit against the firm for accounts, provided he also seeks the dissolution of the firm.

On the separation of the joint family, a member is not entitled to ask for account of the family business.

Governing law

- governed by the Indian Partnership Act, 1932.

- governed by the Hindu law.

Minor's capacity

A minor cannot become a partner though he can be admitted to the benefits of partnership, only with the consent of all the partners.

In Hindu undivided family business, a minor becomes a member of the ancestral business by the incidence of birth.

Continuity

A firm subject to a contract between the partners gets dissolved by death or insolvency of a partner.

A joint Hindu family has the continuity till it is divided. The status of Joint Hindu Family is not thereby affected by the death of a member.

Number of Members

Here, the no should not exceed 50.

Members of HUF who carry on a business may be unlimited in number.

Share in the business

Each partner has a defined share by virtue of an agreement between the partners.

No coparceners has a definite share. His interest is a fluctuating one. It is capable of being enlarged by deaths in the family, diminished by births in the family.

Unit - 3 REGISTRATION AND DISSOLUTION OF A FIRM

REGISTRATION OF FIRMS

Application for Registration (Section 58) :- The registration of a firm may be effected at any time by sending by post or delivering to the Registrar, a statement in the prescribed form and accompanied by the prescribed fee, stating -

- The firm's name
- The place or principal place of business of the firm.
- The names of any other places where the firm carries on business.
- The date when each partner joined the firm.
- The names in full and permanent addresses of the partners, and
- the duration of the firm.

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

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.

Then he shall issue a certificate of Registration.

CONSEQUENCES OF NON-REGISTRATION (Section 69)

Under section 69, non registration of partnership gives rise to a number of disabilities which we shall presently discuss.

- 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. A registered firm can only file a suit against a third party and the persons suing have been in the registers of firms as partners in the firm.

- No relief to partners for set off of claim :-

Neither the firm nor the partner can claim any set off, if the suit be valued for more than ₹100.

- Aggrieved partner cannot bring legal action against other partner or the firm :-

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.

Excp Exceptions :-

- (1) 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.
- (2) The power of an Official Assignee, Receiver of Court to release the property of the insolvent partner and to bring an action.
- (3) 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.

• DISSOLUTION OF FIRM (Section 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.'

Modes of dissolution of a firm

(1) Dissolution without the order of the Court or voluntary dissolution :-

Dissolution by agreement

Compulsory dissolution

Dissolution on the happening of certain contingencies

Dissolution by notice of partnership at will

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.

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.

iii) Dissolution on the happening of certain contingencies (Section 42)

Case 1:- where the firm is constituted for a fixed term, on the expiry of that term

Case 2:- where the firm is constituted to carry out one or more adventures or undertakings, then by completion thereof.

Case 3:- by the death of a partner, and

Case 4:- by the adjudication of a partner as an insolvent

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) Firm is dissolved as from the date mentioned in the notice, in case no date is so mentioned, as from the date of the communication of the notice.

(2) Dissolution by the Court (Section 44):-

Insanity/
unsound
mind

Permanent
incapacity

Misconduct

Persistent breach
of
agreement

Transfer
of interest

Continuous/
Perpetual losses

Just and
equitable
grounds

i) Insanity / unsound mind:-

where a partner (not a sleeping partner) has become of unsound mind, the court may dissolve the firm.

Temporary sickness is no ground for dissolution of firm.

ii) Permanent incapacity:-

When a partner has become permanently incapable of performing his duties as partner, then the court may dissolve the firm.

iii) Misconduct:- where a partner is guilty of misconduct, the court may order for dissolution of the firm. It is not necessary that misconduct must relate to the conduct of the business.

iv) Persistent breach of contract:-

where a partner willfully or persistently commits breach of agreement that 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.

v) Transfer of interest:-

where a partner has transferred the whole of his interest in the firm or has allowed his share to be charged or sold by the court, the court may dissolve the firm at the instance of any other partner.

vi) 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.

vii) Just and equitable grounds:-

The following are the cases for the just and equitable grounds:-

- Roadblock in the management
- where the partners are not in talking terms between them.
- loss of substratum.
- Gambling by a partner on a stock exchange.

DIFFERENCE BETWEEN DISSOLUTION OF FIRM & DISSOLUTION OF PARTNERSHIP

Basis	Dissolution of firm	Dissolution of Partnership
<u>Continuation of business</u>	It involves discontinuation of business in partnership.	It does not affect continuation of business. It involves only reconstitution of the firm.
<u>Winding up</u>	It involves winding up and requires realization of assets and settlement of liabilities.	It involves only reconstitution & requires only revaluation of assets and liabilities of the firm.
<u>Order of Court</u>	A firm may be dissolved by the order of the Court.	Dissolution of Partnership is not ordered by the Court.
<u>Scope</u>	It necessarily involves dissolution of partnership	It may or may not involve dissolution of firm.
<u>Final closure of books</u>	It involves final closure of books of the firm.	It does not involve final closure of the books of the firm.

THE INDIAN PARTNERSHIP ACT, 1932

Unit - 2 : Relations of Partners

RELATION OF PARTNERS TO ONE ANOTHER

(1) General Duties of Partners (Section 9)

- The partners should carry business of the firm to the greatest common advantages.
- They should render to any partner full information of all things affecting the firm.
- A partner must observe the utmost good faith in his dealings with the other partners.
- All the partners are bound to render accounts to each other.

(2) Duty to indemnify for loss caused by fraud (Section 10)

The partner committing fraud in the conduct of the business of the firm, must make good the loss sustained by the firm by his misconduct and the amount so brought in the partnership should be divided between the partners.

(3) Determination of rights and duties of partners by contract between the partners (Section 11)

- The mutual rights and duties of the partners of a firm may be determined by contract between the partners.
Such contract may be varied by consent of all the partners.
- Such contracts may provide that a partner shall not carry on any business other than that of the firm while he is a partner.

(4) The conduct of the business (Section 12)

- every partner has a right to take part in the conduct of the business.
- every partner is bound to attend diligently to his duties.
- Ordinary matters connected with the business may be decided by majority of the partners, but no change may be made in the nature of the business without the consent of all partners.
- every partner has a right to have access to and to inspect and copy any of the books of the firm.

→ In the event of the death of a partner, his heirs or legal representatives or their duly authorised agents shall have a right of access to and to inspect the copy of any of the books of the firm.

(i) Right to take part in the conduct of the business (Sec 12(a))

→ Every partner has the right to take part in the business of the firm. This is because partnership business is a business of the partners and their management powers are generally co-existence.

(ii) Right to be consulted (Section 12(c))

→ Every partner shall have the right to express his opinion before the matter is decided. But no change in the nature of the business of the firm can be made without the consent of all the partners.

(iii) Right of access to books (Section 12(d))

→ Every partner whether active or sleeping is entitled to have access to any of the books of the firm and to inspect and take out of copy thereof. The right must be exercised bona fide.

(iv) Right of legal heirs / representatives / their duly authorised agents (Section 12(e))

→ In the event of the death of a partner, his heirs or legal representatives or their duly authorised agents shall have a right of access to and to inspect and copy any of the books of the firm.

(5) Mutual Rights and Liabilities (Section 13)

(i) Right to remuneration (Section 13(a))

→ No partner is entitled to receive any remuneration.

But this rule can always be varied by an express agreement, or by a course of dealings.

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 profits (Section 13(b))

→ The amount of a partner's share must be ascertained by enquiring whether there is any agreement in that behalf between the partners. If there is no agreement then you should make a presumption of equality.

(iii) Interest on capital (Section 13(c))

→ Before a partner can be entitled to interest on moneys brought by him in the partnership business :- (1) an express agreement, (2) any

trade custom to that effect, (3) a statutory provision which entitles him to such interest.

(iv) Interest on advances (Section 13(d))

→ Suppose a partner makes an advance to the firm in addition to the amount of capital to be contributed by him. The partner is entitled to claim interest thereon @ 6% per annum. 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.

(v) Right to be indemnified (Section 13(e))

→ Every partner has the right to be indemnified by the firm in respect of payments made and liabilities incurred by him in the ordinary and proper conduct of the business of the firm as well as in the performance of an act in an emergency for protecting the firm from any loss.

(vi) Right to indemnify the firm (Section 13(f))

→ A partner must indemnify the firm for any loss caused to it by wilful neglect in the conduct of the business of the firm.

PARTNERSHIP PROPERTY (Section 14)

The property of the firm

'property of the firm' also referred to as 'partnership property', 'partnership assets', 'joint stock', 'common stock' or 'joint estate' denotes all property, rights and interests to which the firm, that is, all partners collectively, may be entitled.

- all property which partners may have brought
- all the property purchased by or for the firm, or
- goodwill of the business

Goodwill

Goodwill is a concept which is very easy to understand but difficult to define. Goodwill may be defined as the value of the reputation of a business house in respect of profits expected in future over and above the normal level of profits earned by undertaking belonging to the same class of business.

Property of a Partner

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)

The property of the firm shall be held and used exclusively for the purpose of the firm.

PERSONAL PROFITS EARNED BY PARTNERS (Section 16)

According to Sec. 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 property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm.
- If a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

RELATION OF PARTNERS TO THIRD PARTIES

A partner is the agent of the firm for the purpose of the business of the firm. The partner indeed virtually embraces the character or both a principal and an agent.

Implied Authority of Partner as Agent of the firm (Section 19)

The act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. The authority of a partner to bind the firm conferred by this section is called his "implied authority".

The implied authority of a partner does not empower him to -

- submit a dispute relating to the business of the firm to arbitration
- open a banking account on behalf of the firm in his own name
- compromise or relinquish any claim or portion of a claim by the firm
- withdraw a suit or proceedings filed on behalf of the firm.
- admit any liability in a suit or proceedings against the firm.
- acquire immovable property on behalf of the firm.
- transfer immovable property belonging to the firm, and
- enter into partnership on behalf of the firm.

Mode of doing act to bind firm (Section 22)

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

or implying an intention to bind the firm.

→ Implied authority is however subject to following restrictions :-

- (1) The act done must relate to the usual business of the firm
- (2) The usual way of carrying on the business will depend on the nature and circumstances of each particular case.
- (3) The act to be done in the name of the firm or in any other manner expressing or implying to bind the firm.

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

- (1) The third party knows about the restrictions, and
 - (2) The third party does not know that he is dealing with a partner in a firm.
- restrictions imposed shall be effective only if,

Partner's Authority in 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.

EFFECTIVE OF ADMISSIONS BY A PARTNER (Sec. 23)

Partners, as agents of each other can make binding admissions but only in relation to partnership transaction and in the ordinary course of business. An admission or representation by a partner will not however, bind the firm if his authority on the point is limited and the other party knows of the restriction.

EFFECT OF NOTICE TO ACTING PARTNER (Section 24)

The notice to a partner operates as a notice to the firm except in the case of a fraud on the firm committed by with the consent of that partner.

It must be received by a working partner and not by a sleeping partner.

LIABILITY TO THIRD PARTIES (Section 25 to 27)

Liability of a partner for acts of the firm (Section 25)

The partners are jointly and severally responsible to third parties for all acts which come under the scope of their express or implied authority.

Liability of the firm for wrongful acts of a partner (Section 26)

The firm is liable to the same extent as the partner for any loss or injury caused to a third party by the wrongful acts of a partner, if they are done by the partner while acting.

- (a) in the ordinary course of the business of the firm
- (b) with the authority of the partners

Liability of firm for misapplication by Partners (Section 27)

Clause (a) - where a partner acts within his authority and due to his authority as partners, he receives money or property belonging to a third party and misapplies that money or property. For this provision to be attracted, it is not necessary that the money should have actually come into the custody of the firm.

Clause (b) - Attracted when such money or property has come into the custody of the firm and it is misapplied by any of the partners.

RIGHTS OF TRANSFEREE OF A PARTNER'S INTEREST (Section 29)

(I) During the continuance of partnership, such transferee is not entitled:

- (a) to interfere with the conduct of the business,
- (b) to require accounts, or
- (c) to inspect books of the firm

He is only entitled to receive the share of the profits.

(II) On the dissolution of the firm or the retirement of the transferring partner, the transferee will be entitled, against the remaining partners:

- (a) to receive the share of the assets of the firm to which the transferring partner was entitled, and
- (b) for the purpose of ascertaining the share.

He is entitled to an account as from the date of the dissolution.

MINORS ADMITTED TO THE BENEFITS OF PARTNERSHIP (Section 30)

A minor cannot become a partner in a firm because partnership is founded on a contract. Though a minor cannot be a partner in a firm, he can nonetheless be admitted to the benefits of partnership under section 30 of the Act.

Rights

- (i) Right to his agreed share of the profits and of the firm.
- (ii) Can have access to, inspect and copy the accounts of the firm.
- (iii) can sue the partners for accounts or for payment of his share but only when severing his connection with the firm and not otherwise.
- (iv) On attaining majority, he may within 6 months elect to become a partner or not to become a partner.

Liabilities

(a) Before attaining majority:

- i) Only to the extent of his share in the profits and the property of the firm.
- ii) no personal liability for the debts of the firm.
- iii) Minor cannot be declared insolvent

(b) After attaining majority:

Within 6 months of his attaining majority or on his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, the minor partner has to decide whether he shall remain a partner or leave the firm

→ When he becomes partner:-

If the minor becomes a partner on his own willingness or by his failure to give the public notice within specified time, his rights and liabilities are as follows:-

- (i) becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits 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 the notice.
- (iii) He shall be entitled to sue the partners for his share of the property and profits. Such minor shall give notice to the Registrar that he has or has not become a partner.

• LEGAL CONSEQUENCES OF PARTNER COMING IN AND GOING OUT (Sec 31-35)

(i) Introduction of a Partner (Section 31)

Subject to a contract between partners, no new partners can be introduced into a firm without the consent of all the existing partners

Rights and liabilities of new partner:-

The liabilities of the new partner ordinarily commence from the date when he is admitted as a partner, unless he agrees to be liable for obligations incurred by the firm prior to the date.

Novation is the technical term in a contract for substituted liability. of course, not confined only to case of partnership.

(ii) Retirement of a Partner (Section 32)

1. A partner may retire -

- with the consent of all the other partners
- in accordance with an express agreement by the partners, or
- where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.

2. Partners continue to be liable as partners to third parties until public notice is given of the retirement.

Provided that a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner.

3. Notices may be given by the retired partner or by any partner of the reconstituted firm.

(iii) Expulsion of a Partner (Section 33)

- the power of expulsion must have existed in a contract between the partners,
- the power has been exercised by a majority of the partners
- it has been exercised in good faith.

(iv) Liability of estate of deceased partner (Section 35)

In order that the estate of the deceased partner may be absolved from the liability for the future obligations of the firm, it is not necessary to give any notice either to the public or the persons having dealing with the firm.

RIGHTS OF OUTGOING PARTNER TO CARRY ON COMPETING BUSINESS

(Section 36)

The outgoing partner may carry on business competing with that of the firm and he may advertise such business, but he may not -

- use the firm name,
- represent himself as carrying on the business of the firm or
- solicit the custom of persons who were dealing with the firm before he ceased to be a partner.

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 on 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.

RIGHT OF OUTGOING PARTNER IN CERTAIN CASES TO SHARE SUBSEQUENT PROFITS (Section 37)

Where any member of a firm has died or otherwise ceased to be a partner and the continuing partners carry on the business of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits or to interest at the rate of six per cent per annum on the amount of his share in the property of the firm.

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.