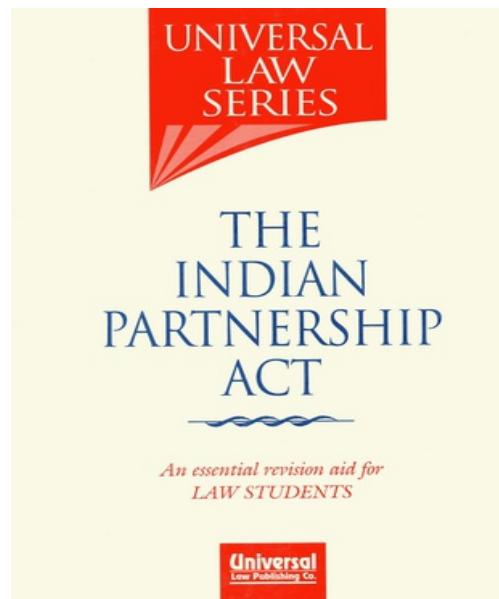
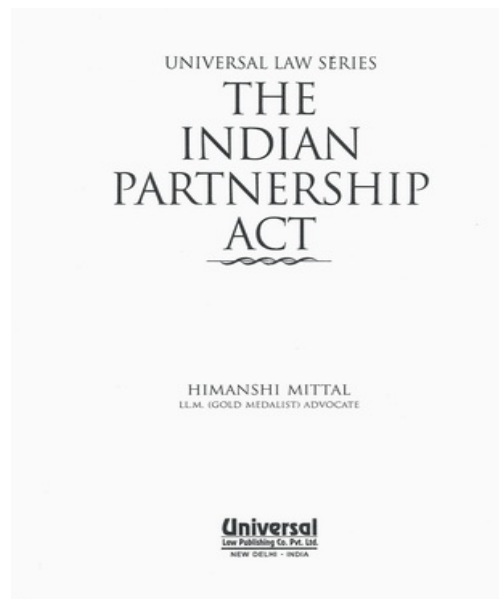


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Authors Details

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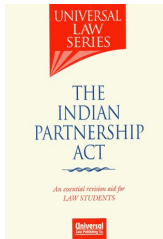
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INDIAN PARTNERSHIP ACT, 1932

An Act to define and amend the law relating to partnership.

Whereas it is expedient to define and amend the law relating to partnership;

it is hereby enacted as follows:-

CHAPTER I

NATURE AND DEFINITIONS

Historical Background

The task of consolidating the many common law rules largely formulated in the eighteenth and nineteenth centuries was performed by Sir Frederick Pollock who first drafted the Partnership Bill in 1879, and amended it several times which resulted in, the Partnership Act, 1890, and proved to be one of the most successful pieces of legislation in English Law.

In India the first attempt was made in 1872 to reduce the law relating to Partnership in writing. In this year the law relating to partnership was reduced into writing in XIth Chapter (sections 239-266) of Indian Contract Act. This Act was mainly based on the reports of Indian Law Commission, 1866 which was prepared on the basis of sections of English Law. But subsequently with a view to develop modern law of partnership separately these sections were repealed and a separate Act namely, the Indian Partnership Act, 1932 "(Act IX of 1932) was enacted. Sections 239-266 of the Indian Contract Act, 1872 (9 of 1872)" were repealed by section 73 of the Partnership Act, 1932.

As against only 28 sections relating to law of partnership in the Indian Contract Act, 1872, the present Act, namely Indian Partnership Act, 1932. contains as many as 74 sections. Thus, the law of partnership was further explained although in substance very little was altered.

The Indian Contract Act, 1872, is a Parent Act in-so-far as the general principles contained therein are applicable to all kinds of contracts unless an exception is provided in a particular Act. Section 3 of the Indian Partnership Act, 1932, therefore, provides the unrepealed provisions of the Indian Contract Act, 1872, save in-so-far as they are inconsistent with the express provisions of this Act, shall continue to apply to firms.

The present Act called the Indian Partnership Act, 1932 extends to the whole of India, except the Jammu and Kashmir. It came into force on the 1st day of October, 1932 except section 69 which came into force on the first day of October, 1933.

Definitions.-

In this Act, unless there is anything repugnant in the subject or context-

- (a) An "Act of a firm" means any act or omission by all the partners, or by any partner or agent of the firm, which gives rise to a right enforceable by or against the firm.
- (b) "Business" includes every trade, occupation and profession;
- (c) "Prescribed" means prescribed by rules made under this Act;
- (d) "Third Party" used in relation to a firm or to a partner therein means any person who is not a partner in the firm, and
- (e) expressions used but not defined in this Act and defined in the Indian Contract Act, 1872 (9 of 1872) shall have the meaning assigned to them in that Act.

Act Not exhaustive.-

The Partnership Act is not an exhaustive Code of the Law of Partnership. The Act itself admits this fact in its declaration in section 3.

Retrospective effect.-

A general rule of interpretation is that unless there is something in the Act itself to provide an effect, its provision can't be given a retrospective effect. It is nowhere mentioned in this Act expressly or impliedly that it should be given retrospective operation. While 74(9) expressly provides that the Act shall not be deemed to affect any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of the Act.

CHAPTER II

DEFINITION OF PARTNERSHIP

Section 4 of Indian Partnership Act, 1932 (IX of 1932) defines partnership in the following words:

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

Halsbury defines partnership as "the relation which subsists between persons carrying on a business in common with a view to profits."

In story on partnership, the term is defined as a voluntary contract between two or more competent persons, to place their money, effects, labour, skills or some or all of them in lawful commerce or business with the understanding that there shall be a communion of the profits thereof between them.

What is the meaning of the partnership according to section 4 of Partnership Act, 1932? State with Examples.

Partners, Firm, Firm Name - Section 4

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'.

Section 58.-

A firm name can't contain any of the following words, namely, crown, emperor, empress, empire, Imperial King, Queen Royal or words expressing or implying the sanction, approval or patronage of the Government.

Section 4 of the present Act corresponds to repealed section 239(c) of the Indian Contract Act which contained the following illustrations:

- (a) 'A' and 'B' buy bales of cotton which they agree to sell for their joint account. 'A' and 'B' are partners in respect of such cotton.
- (b) 'A' and 'B' buy 100 bales of cotton agreeing to share it between them. 'A' and 'B' are not partners.
- (c) 'A' agrees with a goldsmith to buy and furnish gold to 'B' to be worked up on by him and sold and that they shall share in the resulting profit or loss. 'A' and 'B' are partners.
- (d) 'A' and 'B' agree to work together as carpenters, but 'A' shall receive all profits and shall pay wages to 'B'. 'A' and 'B' are not partners.
- (e) 'A' and 'B' are joint owners of ship. This circumstance does not make them partners.

Essentials of Partnership

What are the essentials to constitute partnership firm? Explain with relevant examples and case-laws.

According to section 4 the following essentials are necessary to constitute a partnership-

- (i) There should be an agreement between the persons who want to be partners.
- (ii) The purpose of creating partnership should be carrying on of business.
- (iii) The motive for the creation of partnership should be earning and sharing profits.
- (iv) The business of the firm should be carried on by all of them or any of them acting for all i.e., is mutual agency.

(1) In *Raghunath Sahu v. Trinathdas*, MANU/OR/0002/1985 : AIR 1985 Ori 8 (10). A Division Bench of Orissa High Court pointed out the three essential elements of partnership:

- (a) an agreement between the persons concerned,
- (b) this agreement should be for sharing of profits,
- (c) the business should either be carried on by all or any of them on behalf of all.

(2) In *Pratibha Rani v. Saroj Kumar*, MANU/SC/0090/1985 : (1985) 2 SCC 370 (384), the Supreme Court pointed out the two essential elements of partnership-

- (a) Some real or external physical act by two persons to start a business.

(b) If all carry or any one of them carries the business, partners shall share profits on the basis of the shares allotted to them under the agreement.

(3) The Supreme Court observed in *Helper Girdharbhai v. Saiyad Mohamad Hirasahab Kadri*, MANU/SC/0381/1987 : AIR 1987 SC 1782, "whether there was a partnership or not in certain cases be mixed question of law or fact, in the sense that whether the ingredients of partnership as embodied in the Law of Partnership were there or not in particular case must be judged in the light of the principles applicable to partnership".

A. Agreement

The first essential ingredient of partnership is that there must be an agreement between the persons constituting partnership. The word 'agreement' is defined under clause (e) of section 2 of the Indian Contract Act, 1872 as follows:

(1) Every promise as set of promises forming the consideration for each other is an agreement. An agreement is an essential part of partnership and without it no partnership can come into existence. In order to establish the relation of partners an agreement either express as implied must be proved.

Section 4 makes it clear that partnership is a relation between persons who have agreed to share profits. There can be no partnership without an agreement. Section 5 further clarifies this by providing that the relation of partnership arises from contract not from status. (1) In *Deputy Commissioner of Sales Tax (Law) Board of Revenue (Taxes) v. K. Kelukutty*, MANU/SC/0313/1985 : AIR 1985 SC 1143 the Supreme Court has held that relation between partners is founded on an agreement between them. Hence, the basis of partnership and firm is partnership agreement.

(2) In the case of *Tajmul v. Ahmed Ali*, ILR 1938 13 Luck 219, it was observed that this contractual nature of partnership is also important an account of what has been said in section 5.

(3) In the case of *Haji Isa v. Sarnbai*, MANU/NA/0177/1937 : AIR 1938 Nag 324, it was observed that an agreement is sine qua non of every partnership which may be oral or in writing, may be expressed or implied.

The agreement is the corner-stone of the partnership. Agreement here means a contract. This element indicates voluntary contractual nature of partnership. The presence of agreement has to be there. If the basis of the relationship between certain persons is not an agreement, the association would not be a partnership. Some associations may be created without an agreement e.g., the associations between certain persons arise from status as in case of members of joint Hindu family or the joint heirs.

According to Kent-

"Partnership is an agreement of two or more competent persons to place their money, effects, labour and skill or some or all of them in lawful commerce or business and to share the profit and bear the loss in certain proportions.

In the words of Pathak, J-"The foundation of a partnership and therefore of a firm is a partnership agreement. A partnership agreement is the source of partnership. It also gives expression to other ingredients defining the partnership, specifying the business agreed to be carried on, the persons who will actually carry on the business, the share in which the profits will be divided and several other considerations which constitute such an organic relationship.

(1) In the case of *Abdul v. Century Wood Industries*, AIR 1954 Mys 33, it had been held that it is not necessary that there should be a very formal or written agreement. An agreement to create a partnership may well arise from the conduct of the parties concerned. The facts of the case are:

"Two brothers living together inherited certain properties on the death of their father. They did not divide the properties. Further they sold a garden of theirs for Rs. 5000 and invested the sum in a separate timber business. There was no formal partnership agreement, but it appeared that they intended to share profits. The business, however, failed before any profits could be made and the question of payment of liabilities arose.

It was held that they must bear the liabilities as partners. The court upheld, "if two or more persons put together certain amounts of money in certain share for the purpose of purchasing properties and selling them for profit for common benefit".

(2) In *Rakesh Kumar Dinesh Kumar v. UG Hotels and Resorts Ltd.*, MANU/HP/0102/2006 : AIR 2006 HP 135, it was held that the agreement of partnership need not be express. It can arise out of mutual understanding shown by consistent course of conduct.

(3) *Pratibha Rani v. Suraj Kumar*, MANU/SC/0090/1985 : 1985 (2) SCC 370, it was held that the entrustment by wife of her stridhan (personal property) to her husband does not amount to an agreement even if the husband

was making a business use of the property.

(4) Regional Director ESIC v. Ramanuja Match Industries, MANU/SC/0203/1984 : AIR 1985 SC 278: 1985 (1) LLN 249: 1985 (66) FJR 108, it was held by the Apex Court that while the partnership deed in writing is not necessary and even writing is not prescribed in the Act itself. But writing known as "Instrument of partnership" is necessary under the Income-tax Act, 1961, if the partners desire their firm to be assessed for Income-tax as such firm.

Persons Capable of becoming Partners

The agreement to form partnership has to be between two or more persons. Since the creation of partnership itself requires a contract between persons, such persons, therefore, must be competent to contract. A minor or person of unsound mind who is not competent to contract can't become partner. Section 30 of the Indian Partnership Act, 1932 makes it expressly clear that "a person who is minor according to the law to which he is subject may not be a partner in a firm, but with the consent of all the partners for the time being, he may be admitted to the benefits of partnership. Such a minor has a right to such share of property and profits as may be agreed upon. Moreover, such minor's share is liable for the acts of the firm but the minor is not personally liable for any such act.

H.U.F as a Partner

What in the status of H.U.F. under Partnership Act?

An HUF cannot become a partner of a partnership firm. Section 4 of the Partnership Act, 1932 explains of "persons" who enter into partnership with one another. It can only be individuals and not a body of persons, who can be a partner. A firm has been described as 'a compendious way of describing the individuals constituting the firm'.

1. The Apex Court in Rashiklal & Co. v. I.T. Commissioner, explained AIR 1998 SC 401: An HUF directly or indirectly can't become a partner of a firm because the firm is an association of individuals. A Karta who enters into a contract of partnership with a stranger may be accountable to the other members of the HUF for the profits received from the partnership business. But that is something between the Karta and the HUF. The partner may have to account for the monies received from the firm to another person or another firm or an association of persons or a HUF.

2. In Chandrakant Manilal Shah v. Commissioner of Income-Tax, MANU/SC/0745/1991 : AIR 1992 SC 66, it has been held by Supreme Court that the undivided members of HUF can enter into contract and form partnership with Karta.

Joint Venture Agreements

It connotes a legal entity in the nature of partnership engaged in the joint undertaking of a particular transaction for mutual profits or an association of persons or companies jointly undertaking some commercial enterprises wherein all contribute assets and share risk.

1. Gvprel-Mee (J.V.) v. Court of Andhra Pradesh, MANU/AP/0189/2006 : AIR 2006 AP 169, the joint venture can be time-bound, can be work specific and it would involve, partners contribution of finances, knowledge, technical know-how, mutual contract of management, expectation of profits, share of profit.

Company as Partner

The Partnership Acts permits partnership between any two or more persons. Such persons may be either natural or artificial. Thus a partnership could be formed between the number of companies.

In Ganga Metal Refining Company v. Commissioner of Income-

tax West Bengal, MANU/WB/0105/1967 : AIR 1967 Cal 429, the Calcutta High Court has expressed the view that there is a possibility of an incorporated company forming partnership with another incorporated company.

Section 5-Partnership not created by status

Whether a company can be formed by status?

The relation of partnership arises from contract not from status; and in particular, the members of Hindu Undivided Family carrying on a family business as such or a Burmese Buddhist husband and wife carrying business as such, are not partners in such business.

B. Business

What is the meaning of Business and what activities are included in the term 'Business'?

The word 'Business' does not necessarily mean some undertaking of an industrial or commercial nature. Business connotes organised course of activity or conduct with set purposes for earning profits or to exploit property purchased in order so that one should get the highest amount.

A very wide definition of word 'Business' has been given in section 2(b) of Indian Partnership Act. "Business" includes every trade, occupation and profession.

The fields of above words may overlap but each has a content of its own distinct from others. Article 19(1)(g) of the Constitution of India extends to practicing of any profession or to carry on any occupation, trade, business.

1. In *Sadan Singh v. New Delhi Municipal Committee*, AIR 1989 SC 1988, the Apex Court held that.

"Profession" means any occupation carried on by a person by virtue of his personal and specialised qualification, learning or skill.

'Occupation' has a wide meaning such as any regular work, profession, job, principal activity, employment, business as a calling in which an individual is engaged.

'Trade' includes any bargain or sale, any occupation or business carried on for subsistence of profit, it is an act of buying and selling of goods and services.

According to Lindley:

"A single commercial transaction may constitute a business, it is not necessary that the business should be of long standing and permanent nature. If the persons are not already partners, share profits or losses of a particular transaction, they may be partners for the said particular transaction.

1. In *Kottapally Jaggaiah v. Kokumanu Venkatasatyanarayana*, MANU/AP/0163/1984 : AIR 1984 AP 149:

The High Court of Andhra Pradesh observed that test is if there is any activity which can be called a business for that transaction. Hence a single contract with the government can be a subject-matter of partnership.

2. In *Coope v. Eyre*, 1788 1 HB 1 (37):

There was an argument between Eyre & Co. and three other persons that Eyre & Co. would purchase some oil and distribute the same between itself and the other three persons and others would then pay for the oil to Eyre & Company at the purchase price. The purchase was made only in the name of company without any notification to the plaintiffs that any other persons had any concern in it.

Heath, J. observed, that Eyre & Co. are the only purchaser known to plaintiffs, entire credit was to be given to them alone, that the act of one partner binds all the co-partners.

3. In *Birdichand v. Harakchand*, MANU/NA/0067/1939 : AIR 1940 Nag 211:

If number of persons agree to purchase cotton jointly on joint account and thereafter resell the same and then share the profits or losses as may arise from the same, this amounts to carrying on of business and partnership is created between such persons.

4. *Mahadeodas v. Gerulal Parakh*: MANU/WB/0180/1958 : AIR 1958 Cal 703:

The business which the partners agree to carry on must not be unlawful or opposed to public policy. A partnership where the partners agree to engage in forward contracts without an intention of actual delivery but only to deal in difference, the agreement is merely wagering.

5. *Smith v. Anderson*, (1880) 15 Ch 247:

James, LJ. only said the term 'business' must be taken in a practical sense that is, in a sense in which men of business would use that term where certain persons joined in the purchase of wheat and oil with the intention of dividing and paying for it equally, it was held that they being not interested in profit or loss, were not partners.

6. *Froment v. Coulpland*, (1824) 27 RR 575:

The business must be of lawful nature. A partnership can't be formed for an illegal purpose. An illegal purpose partnership becomes automatically dissolved under operation of law. No action lies between partners for dissolution as account.

7. Khan v. Mian, (2000) 1 WLR 2123:

Partnership is created by agreement between the partners without any action by the State. But it is not the agreement alone which creates a partnership. It is carrying on business in a particular way which creates a partnership, and a partnership comes into existence only when the partners begin to carry on business in accordance with their agreement. This may be contrasted with a registered company which comes into existence as soon as it is registered, regardless of whether it transacts any business.

8. Keith Spicer Ltd. v. Mansell, (1970) 1 All ER 462:

In this case two persons decided to form a limited company and to carry on business in its nature. Before the company was actually formed one of them ordered goods from the plaintiff. It was held that there was no joint business presently in existence. They were only preparing to carry on business as a company as soon as they could. An agreement to purchase property at an auction sale also does not amount to partnership.

9. T.M.A. Pai Foundation v. State of Karnataka, MANU/SC/0905/2002 : (2002) 8 SCC 481:

The Supreme Court held that occupation would be an activity of a person undertaken as a means of livelihood or a mission in life. Partnership firm can run educational institutions.

10. Indian Medical Association v. V.P. Santha, MANU/SC/0836/1995 : (1995) 6 SCC 651:

The Supreme Court held that occupations which are regarded as professions have four characteristics viz.:

- (a) the nature of the work which is skilled or specified and a substantial part is mental rather than manual;
- (b) commitment to moral principles which go beyond the general duty of honesty and a wider duty to community which may transcend the duty to a particular client or patient;
- (c) professional association which regulates admissions and seeks to uphold the standards of the profession through professional codes on matter of conduct ethics, and
- (d) high status in the community.

C. Sharing of Profits

Sharing of profit is an essential element of the partnership firm. Discuss it:

It is also an essential element of partnership that the agreement provides for sharing of profits between the partners. Section 4 of the Partnership Act does not provide that profit must be actually shared by the partners. The object of every partnership must be to carry on business for the sake of profits and to share the same. Although the term profit has not been defined in the Act, it means net gain i.e., the excess of return over outlay.

1. Abdul Badsha v. Century Wood Centuries, AIR 1954 Mys 33:

The fact whether partners actually share the profit or not does not affect the existence of partnership

2. Raghunandan v. Harmasjee, MANU/MH/0152/1926 : AIR 1927 Bom 187:

The partners may agree even on this point that anyone of them shall receive a fixed amount monthly or annually. There can even be such an agreement that whether there is profit in a business or not, one of them shall get a fixed amount annually or monthly as profit.

3. "The case Cox v. Hickman, (1860) 8 HLC 268:

125 RR 148": Brought about a revolutionary change in this respect. Delivering the judgment Lord Cranworth of the House of Lords said dual sharing of profits is a good evidence that the business in which profits have been incurred is being carried on behalf of the persons who are sharing profits. The net result of this historic decision is that no man is a partner unless he has the right to share the profit of the business.

4. Walker West Developments v. F.I. Emmett, (1978) 252 E4:

Sharing of profit is only a prima facie evidence of the existence of partnership. This provision for loss sharing is not essential.

D. Mutual Agency

Discuss the principle laid down in Cox v. Hickman.

Existence of mutual agency is also essential to constitute partnership. According to section 4 of the Partnership Act, 1932 the partnership business must be carried on by all or any of them acting for all. It enables any partner to carry on the business on behalf of others. Every partner, therefore, can bind other partners by his act alone on behalf of the firms. Every partner can be the agent of any other partner and the relationship is that of mutual agency.

'A' carries on in his name the business of loading and unloading wagons of a limited company. 'A' appoints 'B' to manage the business. It is agreed between them that 'B' shall get 75 paise share out of the net profit as remuneration and that 'A' shall get a 25 paise but shall not be liable for loss. Are 'A' and 'B' partner?

(a) In this illustration, there is agreement between 'A' & 'B', the agreement is to carry on business and the objective or motive of the agreement to divide profits but the fourth element i.e., mutual agency is absent. Therefore, 'A' and 'B' are not partners. The fact that 'A' is not liable for losses shows that there is no mutual agency.

It enables any partner to carry on the business on behalf of others. Every partner therefore, can bind other partners by his act done on behalf of the firm. Every partner can be the agent of any other partner and the relationship is that of mutual agency.

(b) A partnership consist of 'A' and 'B'. A may enter into a contract on behalf of the firm and thereby make 'B' bound by the agreement. In this transaction, 'A' is the agent and 'B' the principal.

If the person carrying on the business acts not only for himself but for others also so that they stand in the position of principals and agents, they are partners. This is the principle of Cox v. Hickman, (1860) 8 HLC 268.

"S and S were iron merchants in partnership. They became financially embarrassed and, therefore, made a compromise with their creditors. Under the compromise the property of the firm was assigned to a few creditors selected as trustees. They were empowered to carry on the business to divide the net income among the creditors in a rateable proportion and after the debts had been discharged, the business was to be returned to S and S. Cox was one among the trustee although he never acted. The other trustee continued the business. They purchased a quantity of coke from the plaintiff Hickman and gave him a bill of exchange for the price. The bill remaining unpaid. Hickman brought an action against the trustee, including Cox, for the price.

It was held that they were not partners and, therefore, Cox was not liable. The creditors instead of taking legal proceedings came to an agreement about the way in which their claims should be satisfied. That did not make them partners.

Lord Cranworth said, "The liability of one partner for the acts of his co-partner is in truth the liability of a principal for the acts of his agent Chandrakant Manilal Shah v. Commissioner of Income-Tax Bombay, MANU/SC/0745/1991 : AIR 1992 SC 66 That there can be a partnership between an undivided member of HUF and Karta. The relationship constituted between parties in respect of a particular matter does not expressly or by necessary implication involve rights of one party to pledge the other as agent, then there is no partnership.

M/s. Rashiklal & Co. v. Commissioner of Income-Tax, Orissa, AIR 1998 SC 401: The Supreme Court held that when section 4 of the Partnership Act spoke of 'Persons' who had entered into partnership with one another, it could be individual and not a body of persons. A body of persons like a firm could not enter into partnership with other individuals. Further section 13 relating to mutual rights and liabilities are only applicable to individual partners who are the members of the firm.

Number of Persons

Obviously there must be at least two or more principals before there can be a partnership. There can't be partnership with only one partner.

Hossen Kassam v. Commissioner of Income-

Tax, (1937) 2 Cal 160. A partner can't be a partner in his individual capacity as also in a representative capacity. A person can't be a partner with a wakf, as a wakf is not a persona.

The number of persons who may form an ordinary partnership is limited, both in England and in India, to 10 for banking or 20 for any other business.

Whether a Firm a Legal Entity

Partnership firm is not a distinct legal entity what are the reasons?

According to English Partnership Act, a firm is only a compendious (i.e., abridged) name or an alias, that is an assumed name for all partners, and is not a legal entity.

Although the Indian Partnership Act accepts the practical or commercial nature of the firm. In India also, a firm is not a separate legal entity.

(1) Comptroller & Auditor-General v. Kamlesh Vadilal Mehta, (2003) 2 SCC 249. Partnership firm is not a legal entity like a company, it is group of individual partners.

(2) N. Khadervali Saheb v. N. Gudu Saheb, MANU/SC/0088/2003 : (2003) 3 SCC 229, firm name is only a compendious name given to the partnership and the partners are real owners of assets and partnership firm is not a legal entity.

A partnership firm is not a distinct legal entity and partnership property belongs to all the partners constituting the firm. Although a right to participation in profits is a strong test of partnership and there may be cases where upon a simple participation in profits, there is a presumption not of law, but of fact that there is a partnership. Yet, whether the relation of partnership does as exist must depend upon the whole contract between the parties and the circumstances as act conclusive.

Kinds of Partners

Discuss the various types of partners in the partnership firm.

There may be various types of partners in a partnership firm which are as follows:

1. Active or actual partners:

Partners who take an active part in the conduct of the partnership business are called 'actual' or 'ostensible' partners. They are full-fledged partners in the real sense of the term. Such a partner must give public notice of his retirement from the firm in order to free himself from liability for acts after retirement.

2. Sleeping or dormant partners:

Sometimes, however there are persons who merely put in their capital and do not take active part in the conduct of the partnership business. They are known as sleeping or dormant partners. They do share profits and losses, have a voice in management but their relationship with the firm is not disclosed to the general public.

3. Silent Partners:

Those who by agreement with other partners have no voice in the management of the partnership business are called silent partners. They share profits and losses, are fully liable for the debts of the firm and may take active part in the conduct of the business.

4. Partners in profits only:

A partner who has stipulated with other partners that he will be entitled to a certain share of profits without being liable for the losses.

5. Sub-partner:

Where a partner agrees to share his share of profits in a partnership firm with an outsider, such an outsider is called a sub-partner. Such a sub-partner has no rights against the firm nor is he liable for the debts of the firm.

Partnership and Company Distinguished

Discuss the features which distinguish partnership and company.

Both Company and Partnership are the means of carrying on business and in both the relation of members is based on a contract or an agreement. Even then a company is a distinct juristic personality, separate and distinct from its shareholders, a firm is nothing but an aggregation of its partners. The following are the main points of distinction between the two:-

1. Formation:

A company is formed under the Companies Act, 1956 and the partnership is created under the

Partnership Act, 1932.

2. Registration:

Company is formed by registration only under the provisions of Companies Act, 1956 while Partnership is created by agreement only. This agreement can be written or oral, express or implied. Registration of partnership is not necessary.

3. Legal entity:

Company is a legal person but partnership firm is not the legal person. Firm not being an artificial person cannot enter in partnership with other persons or any other firm and if it does so the partnership shall be deemed to have been entered with all the partners of the firm. But company being an artificial person can do so and in this partnership company shall be deemed to be the partner, not all shareholders. If two companies enter into a partnership between themselves, their mutual rights, duties and liabilities are controlled by the rules of partnership only .

4. Number of Persons:

No maximum limits of members of a company is prescribed but minimum number is prescribed. There should be at least seven members in a public company and two members in a private company. Section 11 of Companies Act prescribes that there should not be more than twenty members in a partnership firm and not more than 10 (ten) in banking firm.

5. Liability of members:

In company liability of its shareholder is limited but in partnership firm it is not limited. In company with limited liability the liability of its members is limited to the extent of the value of share taken by them. If value of share has been paid to the company, there is no liability of the shareholder. Creditors of the company can recover their debts from the company only, if company is a guarantee company, the liability of its members is limited to the extent of amount guaranteed by them. In partnership the liability of partners is unlimited. In partnership apart from their shares, the personal property of partners is also liable for the debts and liabilities of the firm.

6. Transferable Share:

Shares of company are transferable. Therefore they can be sold to any person at any time. But partner of a firm can't transfer his share or partnership in the firm nor can make him partner of that firm without the consent of other partner.

7. Dissolution/winding-up:

Company has perpetual succession. It never dies. Members may come and go but company remains. Insolvency or death of any member or shareholder does not affect the existence of company. Company is created by registration and it is dissolved by the order of the court. Partnership can be dissolved at any time with the consent of partners. In the absence of any agreement, on the death or insolvency of any partner, partnership ceases. (Section 42)

8. Formation and dissolution:

Formation, dissolution, determination of rights and duties of partners of a firm, in the absence of any contrary intention is done according to the provisions of Partnership Act. Whereas formation, dissolution, conduct of the business and determination of mutual rights and duties and liabilities of directors and shareholders of a company is done according to the provisions of the Companies Act, 1956.

In partnership, there can be at least two partners and at the most 10 partners in case of a firm carrying on a banking business and 20 partners in a firm carrying on other kind of business, but in the Companies Act, there is no restriction on the maximum number of shareholders.

9. Objects and powers:

Company can carry on only those trade, commerce, business or undertaking which are described in its Memorandum of Association. If it does any work other than these, it shall be void for it being in excess of jurisdiction. There is no such prohibition for partnership firm and all partners can at any time make changes in their business.

10. Death:

Death or Insolvency of any shareholder has no effect on the existence of company, because company is an artificial person. On the death or insolvency of any partner, in the absence of an agreement of contrary intention the partnership ceases.

11. If a decree is passed by the court against a firm, it can be executed against the partners, jointly or severally. A creditor of a company, on the other hand, can proceed only against the company, and not against its members.
12. A company being a distinct entity can sue and be sued on its own. Since a firm has no legal existence, it can't do so.
13. Each partner is prima facie the agent of the others and can bind them by his contract made in the course of the partnership business. Shareholders in a company are not the agents of one another.

Partnership and Co-owners Distinguished

Distinguish the partnership firm with co-owners.

In a partnership, all the partners are the co-owners of the joint assets and property but there may be co-owner of property who may not have entered into partnership and thus may not be partners. The following points of distinction between the two may be noted-

In *Hulton v. Lister*, (1890) 62 LT 200 (CA) it was held that whether co-owner are also partners is a question of evidence. The mode in which the property has been dealt with and divided and the way in which the proceeds and income thereof have been treated in the books are important, because persons who are only co-owners keep books on different footing from those who are also partners.

1. A partnership can arise only by agreement. A co-ownership may arise in any other way.
2. Business is necessary for the existence of partnership whereas co-ownership can exist without it.
3. In the partnership business, there is mutual agency between the partners and the act done by any partner binds the others. There may be no mutual agency between the co-owners, and the act of one co-owner does not bind the others.
4. A partner can't transfer or sell the whole of his share to an outsider so as to substitute an outsider in his place. A co-owner on the other hand has a right to transfer his part of the share to anybody he likes.
5. A partner has no right to partition in specie, nor a right to compel a sale of partnership property during the subsistence of the partnership and this notwithstanding that in the case of land, there will be either an express or statutory trust for sale affecting the legal estate but is entitled on a dissolution to have the partnership property whether land or not, sold and the proceeds divided.
6. A co-owner can sell his share without the consent of the others but a partner cannot.
7. One co-owner is not the real or implied agent of the others while partners are the agent of one another.
8. One co-owner has no lien on the thing owned in common for outlays or expenses nor for what may be due from the others as their share of a common debt, a partner has such a lien.
9. A co-owner is primarily entitled only to partition, though he can have the property sold and get a share of the proceeds. Partners are not entitled to partitions.

Partnership and Joint Family Distinguished

Define the features which distinguish partnership from joint family.

Section 5 of the Indian Partnership Act, 1932. "The relation of partnership arises from contract not from status, and in particular, the member of Hindu Undivided Family carrying on a family business or such, or as a Burmese Buddhist husband and wife carrying on business as such, are not partners in such, business."

The individual members of a joint HUF may become partners with the individual members of another joint Hindu family; *Ram Laxman Sugar Mills v. CIT*, Uttar Pradesh, (1967) MANU/SC/0176/1967 : 66 ITR 613 (SC).

A joint family carrying on business has some features common with partnership but section 5 expressly excludes them from the operation of the Act:

1. The basis of partnership is a contract between persons. No partnership can arise without a contract. The relation of member of joint Hindu family is based on the status of persons i.e., a person becomes its member by virtue of his being born in the particular family.
2. In partnership, rights and duties of partners are determined by the provisions of Partnership Act and partnership agreement. But in joint Hindu family firm rights and duties of members of family are controlled by such general principles of Hindu Law which contract the transaction of joint family *Chhedilal v. Commissioner of Income-Tax*, (1942) 17 Luck 246.

In the case of *Nandchand Gangaram v. M.M. Saddal*, MANU/SC/0047/1976 : AIR 1976 SC 835. Supreme Court said that sections 4 and 5 of Partnership Act keeps the Hindu joint family outside the scope of the Act.
3. There is mutual agency between the partners of a partnership firm and the act done by way of the partners binds the firm whereas there is no such mutual agency between the member of joint Hindu family.
4. The liability of partner is not only joint liability or limited to his share in the partnership business, the liability is several liability also. Such liability is unlimited and even a partner's personal property can be attached for the partnership debts.
5. In partnership, every partner can ask for the account of acts done by his co-partners. Any partner can ask for details of profit and loss also. In joint family any member can't ask for account of profit and loss in case of severing his relation with the business; *Samalbhai v. Someshwar*, (1880) 5 Bom 38.
6. A partnership is dissolved by the death of a partner but that is not so in the case of joint Hindu family.
7. A male minor can be a member of a joint Hindu family. A minor can't, however be a partner of a firm, though he can be admitted to the benefits of partnership.

Partnership and Service Distinguished

What is the difference between partnership and service?

Explanation 2 of section 6 expressly provides that the receipts of a share of the profits of a business or of a payment which is contingent upon the earning of profits or which varies with the profits earned by business by a servant or an agent as remuneration does not of itself, make such a servant or agent a partner with the other persons carrying on the business.

However, it is not always easy to draw a line between a partnership and a payment of a salary by way of share of profit. In one case X carried on, in his own name the business of loading and unloading wagons for the company. He appointed Y to manage the business and it was agreed between them that Y would be paid 75% of net profits as remuneration and that X would retain the balance 25%. It was also argued that X would not be liable for any loss, on these facts, the Calcutta High Court held that the relationship between X and Y was not that of partners, but one of principal and agent; *Munshi Abdul Latiff v. Gopeshwar Chottoraj*, 1932 56 Cal LJ 172.

It is also possible for 'Y' both to receive a share of the profits of X's business and also to bear a share of losses and yet under the agreement between the parties, to be in position of a servant as regards X, not a partner of X; *Walker v. Hirsch*, 1884 27 Ch DIV 460.

On the other hand two persons would be held to be partners, even if one of them is in receipt of a fixed salary in lieu of share of profits, if their intention to be partners is otherwise apparent from the facts and circumstances of the case.

Partnership and Trade Association Distinguished

A partnership is also to be distinguished from a trade association. Mutual agency which is an essential ingredient of a partnership, does not exist in a trade association.

1. *Bhawanilal Lachchi Ram v. Badrilal*, MANU/MP/0031/1964 : AIR 1964 MP 153, an association of cloth dealers getting quotas of cloth allotted to it, and then distributing the quotas to its member firms was held not to be a partnership. This was so despite the fact that the profits made by the association by re-selling the cloth were divided amongst the members. There was no mutual agency and no partnership in the circumstances.

Section 6: Mode of Determining Existence of Partnership

What are the modes which determine the existence of partnership explain with the help of case laws and examples?

Whether sharing of losses is included in the sharing of profits?

What is the status of person in the partnership firm who lends money to firm?

"In determining whether a group of persons is or is not a firm or whether a person is or is not a partner in a firm regard shall be had to the real relation between the parties as shown by all relevant facts taken together.

Explanation 1.-

The sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not itself make such persons partners.

Explanation 2.-

The receipt by a person of a share of the profits of a business or of a payment contingent upon the earning of profits or varying with the profits earned by a business, does not of itself make him a partner with the persons carrying on the business, and in particular, the receipts of such share or payment:

- (a) by a lender of money to persons engaged or about to engage in any business,
- (b) by a servant or agent as remuneration,
- (c) by a widow or child of a deceased partner, as annuity, or
- (d) by a previous owner or part-owners of the business as consideration for the sale of the goodwill or share thereof, does not itself make the receiver a partner with the persons carrying on the business."

This section describes in detail the principles laid down by the House of Lords in *Cox v. Hickman*, (1860) 8 HLC 268. According to this section to determine the existence of partnership between two or more than two persons the actual relation between the parties should be seen. Whether there is a relationship of partnership between them or not, it depends upon the agreement entered between them and their real intention which appears from all facts of the case and does not depend only on the intention expressed by them.

It is not easy task to determine whether a group of persons constitute a partnership or not. Often specific/instrument mention the word 'partner' vaguely without caring about its legal connotation. The use of word 'partner' in an instrument or by any description persons concerned don't become partners on the other hand if legal requirements are essential elements as mentioned above are fulfilled, no description will prevent them from becoming the partners.

1. In *Khan v. Miah*, (2000) 1 WLR 2123, certain persons obtained loan from Bank in joint names to purchase premises for restaurant. They also entered into contract for the purchase of equipment and laundry for the restaurant. But their relationship terminated before the opening of the restaurant. The trial Judge held that a business existed between and that there was a partnership. The court of appeal reversed this decision by a majority holding that they had not become partners in a restaurant business by the date when the relationship was terminated.

There is no rule that parties to a joint venture do not become partners until actually trading commences. The rule is that persons who agree to carry on a business activity as a joint venture don't become partners until they actually embark on the activity in question. It is necessary to identify the venture in order to decide whether the parties have actually embarked upon it, but it is not necessary to attach any particular name to it.

Any commercial activity which is capable of being carried on by an individual is capable of being carried on in partnership. Many businesses require a great deal of expenditure to be incurred before trading commences.

2. In *Mallow March and Co. v. Court of Wards*, (1872) LR 4 PC 419:

It was held that whether relation of partnership does or does not exist must depend upon the real intention and contract of the parties as appearing from the whole facts of the case, not merely on their express intention.

3. *Kilshaw v. Jukes*, (1873) LJ QB 217:

It was held that a person who advanced money and supplied goods out of the profits of building speculation, if such profits should be sufficient for the purpose, he was not liable to debts contracted by them for the purpose of the speculation.

4. *Danis v. Danes*, (1894) 1 Cal 393:

The main rule to be observed in determining the existence of partnership is that regard must be had to

true contract and intention of the parties as appearing from all the facts of the case.

1. Sharing of Profits:

Sharing of Profits or of gross returns arising from property by persons holding a joint or common interest. According to Explanation 1 of section 6 the sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not itself make such persons partners. For example-where joint owners collect rent out of properties received in gifts and no business is carried on by all or anyone of them on behalf of all, there is no partnership. Therefore in such a case suit for dissolution of partnership cannot be filed.

The joint owners of property who share the profits or gross return arising out of property don't become partners, joint ownership is not partnership.

1. Govind Nair v. Maga, (1948) 1 Mad 343:

"A and B jointly purchased a tea shop and incurred additional expenses for purchasing pottery and utensils for the job. Each of them contributed a half of total expenses. The shop was then leased out on rent which was shared equally by them.

The Madras High Court said: "Nothing more is done by the parties than utilising the common property and obtain a return for such use by leasing the property for rent. Their investment made them only co-owners and not partners. They never carried on any business.

2. Chettyar Firm v. Chettyar Firm, AIR 1933 Rang 120:

If co-owners start a business and share the income thereof they may become partners.

3. Mohanlal Daulatram v. Commissioner of Income-Tax, 1991 Supp (2) SCC 696:

MANU/SC/0127/1991 : AIR 1991 SC 479. In a father and son partnership, on the death of the father the widowed mother was admitted representing the joint estate, the firm was held to be valid and genuine, though the partners being mother and son were the joint owners of the whole estate left behind by the father.

4. Cox v. Coulson, (1916) 114 LT 599:

A father left for his two sons his business and three houses in equal shares. They let out one of the houses and employed the rent in the development of the business of the workshop which was attached to the two houses. It was held that they were partners in the business of workshop, but not in the houses.

5. Davis v. Davis, (1894) 70 LT 265:

Where joint owners collect rent out of properties received in gift and no business is carried on by all or anyone of them on behalf of all. There is no partnership. Therefore in such a case, suit for dissolution of partnership cannot be filed. In such a case, the proper suit will be the suit for partnership and account.

2. Lender of money receiving profits:

According to Halsbury-

if the agreement gives the supposed lender the right and privileges of a partner; no device or contrivance will enable him to escape the liabilities of a partner. If he is not a partner, he is merely a creditor whose rights are limited by statute. A lender may, however, stipulate for large powers, some of which might be consistent with the position either of a creditor or a sleeping partner and if such powers are reasonably necessary for the protection of his interest as a lender, they will not be held to make him a partner.

A person who has lent money to a person or firm engaged in business and has agreed to take in addition to or in place of his interest, a portion of the profits of the business, he does not by that reason become a partner in the business.

1. In *Re Meganand Ex-parte Delhasse*, it was held that if on the true construction of the agreement, the real partnership between the parties is not purely and bona fide that of debtor or creditor, the effect of an advance in consideration of a share of profits may easily be to place the intending lender in the position of a partner with all its consequences and liabilities.

2. *Badley v. Consolidated Bank*, (1888) 38 Ch D 238. "A lender advanced money to a contractor to enable him to carry out a contract with a railway company. The contractor assigned to the lender all his machinery and plants etc., to secure the repayment of the debt. The lender was to receive 10% interest and 10% profits, he had the power to enter upon work in case of contractor's insolvency and also to sell the property in default. The contractor was allowed \$ 1000 for his service."

It was held that these terms did not show any intention of constituting a partnership between them. The real intention was to secure the repayment of the loan.

3. *Mallow March & Co. v. Court of Wards*, (1872) LR 4 PC 419. "A Hindu Raja advanced a sum of money to two British merchants carrying on business at Calcutta. The merchants agreed to carry on the business subject to the control of Raja in several respects. He was to receive a commission of 20% on all the profits. Subsequently the property of the firm was mortgaged to him and he released his right to commission.

It was held that object of the agreement was to give Raja maximum security for the repayment of his loan. There was no intention to take him in as a partner. Partnership requires a community of interests and not a conflict of them.

It appears to be now established that although a right to participate in the profits of trade is a strong test of partnership and that this may be cases from such participation alone, it may, as a presumption, not of law, but of fact, be inferred: yet whether that relation does or does not exist depends on the real intention and the conduct of the parties.

3. Sharing of Profits or receipt thereof by a servant or agent as remuneration:

Sometimes a share in the profits may be given to a servant or agent in the business so that he can take more interest in the business. Such a person sharing the profits in the capacity does not thereby become a partner.

1. *Munshi Abdul Latif v. Gopeswar*, MANU/WB/0185/1932 : AIR 1933 Cal 204. 'A' who had undertaken to load and unload Railway wagons for a limited company, appointed 'B' to do that job, 'B' was to be paid 75% of the profits and was also liable for the losses, if any. It was held that the relationship between 'A' and 'B' was that of principal and agent and not partners.

The receipts of share or payment by a servant or agent as remuneration does not of itself make the receiver a partner, with the persons carrying on the business. Sometimes it may not be easy to distinguish between partnership and share of profits received as remuneration.

2. *Mclaren v. Versochayle*, (1901) 6 CWN 429. An assistant in a firm of brokers was paid a share in the profits over and above his salary. At times he signed some letters and document on behalf of the firm. It was held that such a servant only acted as an agent for the firm and the mere fact that he only acted as an agent for the firm and mere fact that he shared the profits did not make him a partner in the firm.

3. *Raghunath Khandelwal v. Official Assignee*, (1923) 28 CWN 34, where four persons contributed money to start a business and while the three of them were to receive all profits and the fourth to receive a fixed monthly pay and 10% commission on profit, it was held that the latter was also a partner in the firm.

4. *Stekel v. Elice*, (1973) 1 WLR 191. 'S' joined 'E' in a firm of Chartered Accountants as a salaried partner, property, profits & goodwill remaining that of 'E'. It was held that 'S' no doubt became a partner but he was not entitled to an order of dissolution as he had no interest in assets.

4. Share of profits to widow or child of deceased partner as annuity: Sometimes on the death of a partner the widow or child of the deceased partner may be given a share of profits in accordance with an agreement which may have been entered into between the partners. Such widow or child does not become the partner merely because she or he is sharing the profits in the business. Accordingly, her claim to the annuity was the claim of a creditor and was not postponed to those of the other creditors.

5. Seller of goodwill: The receipt of share or payment does not of itself make him a partner with the persons carrying on the business.

A person who sells the business along with the goodwill is sometimes given a share in the profits of the business he has sold, but such a person does not of itself become the partner in the business.

Helper Girdharilal v. Saiyed Mohamad Mirasaheb Kadri, MANU/SC/0381/1987 : AIR 1987 SC 1782. In this case, a partner brought in as assets his tenancy of premises in which partnership was carried on. Though he was to share profits, he was not allowed to operate bank accounts. There was hardly any indication that the partnership was not genuine. Delivering the judgment Sabyasachi Mukharji observed:

Whether there was a partnership or not may in certain cases be a mixed question of law or fact, in the sense that whether the ingredient of partnership as embodied in the law of partnership were there or not in a particular case must be judged in the light of the principle applicable to partnership.

Rawlison v. Clarke, (1846) 153 ER 860. 'A' sold to 'B' his interest in the profession and practice of a surgeon and druggist. It was agreed that 'A' would continue to attend his old profession and to the utmost of his power introduce 'B' to her patient and to do every reasonable act for promoting the interest of the concern. 'B' allowed 'A' share of the clear profits of the concern.

It was held that the parties were not thereby constituted partners in the trade. Tindal, CJ. said- it is very difficult to say how they can be called partners, where there is no joint interest in the matter of question.

Section 7: Partnership at Will

In which situations, a partnership is at Will. What are the essentials. Prove them with case law.

Where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership the partnership is partnership at Will.

Essentials:

Partnership at Will require the following as essentials-

- (i) No mention is made in the partnership deed regarding duration of partnership.
- (ii) Also no mention is made regarding determination of partnership.

1. Karumurthi Thiagarajan Chettiar v. E.M. Muthappa Chettiar, MANU/SC/0059/1961 : AIR 1961 SC 1225:

In the words of Wanchoo, J. of Supreme Court- "the essence of partnership at Will is that it is open to either partner to dissolve the partnership by giving notice. Section 7 contemplates two exceptions to a partnership at Will. The first exception is where there is a provision in the contract for the duration of the partnership and the second exception is where there is provision for the determination of the partnership, in either of these cases, the partnership is not at Will."

2. Iqbalnath v. Rameshwarnath, MANU/MH/0177/1976 : AIR 1976 Bom 405:

It has been held that a provision as regards the retirement of a partner can't be regarded as a provision for the termination of the partnership within the meaning of section 7 of this Act.

3. Gulab Singh v. Gattulal, 1970 MP LJ 389, if a partnership which was originally for a fixed term, is continued after the expiry of the term, it would be regarded as a partnership at Will.

4. Keshavlal Lallubhai Patel v. Patel Bhailal Narandas, MANU/GJ/0059/1968 : AIR 1968 Guj 157. The duration of partnership may be expressly provided for in the contract, but even where there is no express provision, the partnership will not be at Will if the duration can be implied. A term in the contract, that either partner may withdraw from the partnership by relinquishing his right of management by the other partner, would not make the partnership a partnership at Will, for the essence of a partnership at Will is that it is open to either partner to dissolve the partnership by giving notice.

Problem:

A.B.C. signed a partnership deed, under which the goodwill and the trade-mark were to remain vested in all of them. One of the clauses provided that if anyone of them was not willing to carry on the business, he could get out, and receive Rs. 10,000 as his share of the goodwill and trade-mark, in addition to the amounts to his credit in the business. The business would then be carried on by the remaining two partners, and the goodwill and trade mark would then vest in such two partners. One of the partners gave notice of dissolution, saying that this was a partnership at Will. How would you decide the case?

Ans:

This is not partnership at Will. According to Madras High Court, it can be said that the parties only intended a sensible business agreement. The court observed that there would be no sense left in several provisions of the agreement if any of the partners could put an end to the firm at his Will, so long as the other two were alive. The partnership specifically provided for survival of the trademark and goodwill and these provisions could not be implemented if the partners could dissolve the firm at Will.

5. Nissar Ahmed v. Nasima Bi, 1970 MLJ 512. Section 43(1) declares how a partnership at Will can be dissolved, and provides that where the partnership is at Will, the firm may be dissolved by any partners giving notice in writing to all

the other partners of his intention to dissolve the firm.

6. *Vora v. Sheth*, MANU/WB/0056/1973 : AIR 1973 Cal 279. The Calcutta High Court has held that a provision in a partnership deed for retirement of a partner is not inconsistent with a partnership at Will though the firm is constituted by only two partners.

Section 8 Particular Partnership

Define particular partnership

"A person may become a partner with another person in particular adventure or undertaking."

According to the Report of the Special Committee, section 8 is intended to meet the common practice of establishing particular partnership, a practice which finds favour with Indian firms with numerous branches.

In case of particular partnership, the agreement generally refers to a specific adventure or business, as for instance, when two persons enter into partnership to buy a plot of land and sell it for a profit.

1. *Gherulal Parekh v. Mahadev Das Maiyy*, MANU/SC/0024/1959 : AIR 1959 SC 781. It was held that if two or more persons agree to enter into a partnership for carrying on forward contracts with a particular person, such a partnership will be particular partnership.

2. *Karmali Abdulla v. Vara Karimji Jiwani*, 17 BCR 103. Two merchants decided to do business in sugar to be shipped from Mauritius to Hong Kong. Purchases were to be made jointly at Mauritius. The Preamble to the agreement declared that the purpose was to do business in partnership. Unfortunately, the very first consignment of sugar proved to be a failure, and resulted in a heavy loss. The question before the court was whether one of them was liable on a bill drawn by the other partner who became insolvent. The court held that this was a particular partnership, a partnership of a limited character and therefore the solvent partner was liable.

3. *Manu v. D. Arey*, 1968 2 All ER 172. In this case, the defendants were doing business in a partnership of buying and selling potatoes. The acting partner entered into an agreement with the plaintiff for a joint venture of buying a shipload of potatoes and of sharing the profits of its re-sale. The venture resulted in a loss and the other partner disowned liability as regards the transaction. This was held to be a particular partnership, a partnership of a single venture.

4. *Kottapalli Jaggaiah v. Kokumanu Venkatasatyanarana*, MANU/AP/0163/1984 : AIR 1984 AP 149. The plaintiff and the two defendants joined together and obtained a contract for the maintenance of a road. There was held to be partnership in the road building activity. Such activity though arising out of a single contract was spread over a particular period and the firm had to employ certain workers, supervise the work, prepare the bills and finalise the work and get the approval from the court and finally receive the bills and all that meant carrying on of business.

5. *Rasdas v. Mukut Dhari*, AIR 1952 UP 1. Persons can be partners in the working out of a coal-mine on the production of a firm because although that may be a single adventure but the same requires a series of transactions and continuous relationship.

Similarly, if a number of bales of yarn are purchased at one time, but the sales are to go on, profits are to be realised and then distributed amongst a number of persons. There is carrying on of the business. (*Senaji Kapurchand v. Pannaji Devichand*, MANU/PR/0110/1930 : AIR 1930 PC 300; *Nathilal v. Srimal*, AIR 1940 All 230).

Duration of Partnership

Partners are free to decide as to how long partnership between them shall continue. It may be partnership for a fixed term say for 2 years or 5 years or it may be until the completion of certain adventures or undertakings, for instance until the production of a film. Sometimes the agreement may stipulate about the determination (end) of partnership on the happening of certain events e.g., if the business runs into loss for consecutively five years. When the partners have not decided about the duration of partnership such a partnership is known as partnership at Will.

Meaning & Nature of Firm

Section 4:

"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 'firm name'".

1. *Avula Construction (P) Ltd. v. Senior Divisional Electrical Engineer, Traction Distribution*,

MANU/AP/0302/1999 : AIR 1999 AP 318. Since the firm has no personality of its own and since it is not a juristic person, the constituents of the firm, its partners are its real representatives. The experience of the partners for the purposes of working a profit of technical nature can be treated as the experience of the firm.

2. Munshiram v. Municipal Committee, MANU/SC/0392/1979 : (1979) 3 SCC 83. A firm is a collection of the partners. It is not a legal person or a separate legal entity having any independent or distinct existence. It is nothing but partners bracketed together under one name. When a partner dies or becomes insolvent the firm is dissolved. The assets of the firm are joint property of the partners and partners are personally liable for all the business obligations of the firm. A firm is not recognised as a person for the purpose of subscribing to the memorandum of company or for making partnership with another person or firm.

3. Comptroller and Auditor-General v. Kamlesh Vadilal Mehta, MANU/SC/0037/2003 : AIR 2003 SC 1096. The Supreme Court emphasis on this feature is to be seen in this remark that a firm as partnership is not a legal entity separate and distinct from partners and is only a compendious description of individuals who comprise the firm.

4. Dy. C.S.T. v. K. Kelukutty, MANU/SC/0313/1985 : AIR 1985 SC 1143. A partnership firm is identifiable from partnership agreement. Same partners may constitute more than one distinct and separate firm but firms have no juristic personality.

Firm Name

The name in which the partners of a firm carry on their business is called the firm name. The selection of a name is a matter entirely for the partners but even so, certain matters have to be kept in mind in making the choice. One of the primary consideration in the selection of name is that it should not be misleading, which means that it should not be identical with or too closely resembling the name of another firm, or with the trade-mark of the goods produced by another firm. A new firm can be restrained from adopting a similar name or giving a similar name to its product which is already in the use of another firm.

Partner in a Representative Capacity

If a partner dies, the surviving partners may carry on the business by forming another partnership. In such a case, they will have to account for the share of the deceased partners to his legal representative. But, if a partner dies, his legal representative may be admitted to a new partnership by the surviving partners. There can be no legal bar to a personal representative of the deceased partner being admitted to the partnership by the surviving partners.

1. Commissioner of Income-

Tax v. Kandath Motors, MANU/SC/0258/1997 : (1997) 4 SCC 54: If the personal representative of the deceased is also one of the surviving partners, he can agree to join the new partnership as a nominee of the legal heirs of the deceased partner.

2. Commissioner of Income-

Tax v. A. Abdul Rahim, MANU/SC/0168/1964 : AIR 1965 SC 1703: The Supreme Court held that a partnership can't be held to be not genuine or be denied registration merely because a partner has joined in a representative capacity, or is a trustee or benamidar for an outsider or for another partner, or is otherwise not beneficially entitled to the whole or part of his share of profits.

Partnership Firm as a Tenderer

Quite often for procurement of goods in service by the State and its instrumentalities, the eligibility criteria requires a minimum experience of the tenderers. Similar criteria are required to be satisfied for obtaining privileges like licences, quotas, permits and the like.

1. New Harizons Ltd v. Union of India, MANU/SC/0564/1995 : (1995) 1 SCC 478:

The Supreme Court held that the requirement of experiences of the tenderer is to ensure of credentials of the tenderer from a commercial point of view which means that if the contract is given to the firm, one would look into the background of the firm and the persons who are in control of the same and their capacity to execute the work.

Status of Partnership Firm under the Tax Laws

Discuss the status of firm under the taxing statute.

1. The firm is an assessable unit separate and distinct from individual partners, who as individuals constitute assessable units separate and distinct from the firm. It is on that basis that the provisions of the tax law are structured into a scheme providing for the assessment of partnership income; Deputy Commissioner of Sales Tax (Law) Board of Revenue (Taxes) v. K. Kelukutty, MANU/SC/0313/1985 : (1985) 4 SCC 35.
2. State of Punjab v. Jullundur Vegetable Syndicate, MANU/SC/0296/1965 : AIR 1966 SC 1295: Although under partnership law, the syndicate is not a legal entity and only consists of the individual partners for the time being, it was a legal entity for the purpose of the Income-tax Law as well as Sales tax law.

Suits against Partnership Firm

Order 30 of Code of Civil Procedure, 1908 permits suits to be brought against firms. The summons may be issued against the firm or against persons who are alleged to be partners individually. The suit, however, proceeds only against the firm. Any person who is summoned can appear and prove that he is not a partner and never was but if he raises that defence, he can't defend the firm.

Persons who admit that they are partners may defend the firm, take as many pleas as they like but can't enter upon issues between themselves. When the decree is passed, it is against the firm. Such a decree is capable of being executed against the property of the partners and also against two classes of persons individually.

Illegal partnership

What are the grounds with which a partnership firm is presumed to be illegal?

Partnership is based upon the agreement. Section 23 of Indian Contract Act provides that every agreement of which the object or consideration is unlawful is void and it lays down that the consideration of an agreement is unlawful unless inter alia, it is opposed to public policy. Where a partnership is formed of persons more than permitted by section 11(2) of the Companies Act, such partnership is illegal. Badri Prasad v. Nagarmal, MANU/SC/0009/1958 : AIR 1959 SC 559. A partnership is presumed to be legal unless the object is proved to be illegal or the object necessarily involved something illegal.

Unless the persons dealing with the firm in Particeps Criminis, there can be no turpis causa to bring him within the operation of the rule "ex turpi causa non oritur actio" and he not being implicated in any illegal act himself, can't be prejudiced by the fact that the persons with whom he has been dealing are illegally associated in partnership.

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CHAPTER III

RELATION OF PARTNERS TO ONE ANOTHER

(SectionS 9-17 and Section 25)

The Partnership Act contains various provisions regulating the relationship between the partners. The partners are bound to carry on the business of the firm to the greatest common advantage, to be just and faithful to each other and to render true account and true information of all things affecting the firm to any partner or his legal representative. Definition of partnership as contained in section 4 of the Partnership Act, 1932 and section 5 of the same Act makes it clear that partnership is created by contract. Therefore, the fundamental principle relating to relation of partners with each other is that everything depends upon the consent of the partners.

Chapter 3 of the Act contains well established rules setting out the mutual rights, duties, liabilities of partners inter se. There are two fundamental principles that govern relations of partners to one another. The first principle gives the partners the freedom to settle their mutual rights and duties by their own voluntary agreement. The statement of duties and rights should be prefaced with the contents of section 11 which gives freedom to partners, subjects of course to the provisions of the Act, to determine their mutual rights and duties by their own agreement.

England v. Curling, (1844) 8 Beav 129: 133 RR 68 - Lord Langdale M.R. observed "with respect to a partnership agreement, it is to be observed that all parties being competent to act, as they please, they may put an end to or vary at any moment. A partnership agreement is therefore open to variation from day-to-day, and terms of such variation may not only be evidenced by writing but also by the conduct of the parties in relation to the agreement and to their mode of conducting their business when, therefore, there is a variation and alteration of the terms of a partnership, it does not follow that there was not a binding agreement at first.

"Duties of Partner"

1. General Duties of Partners - Section 9

Discuss in brief the duties of the partner.

What are the general duties of partners defined in section 9?

Partners are bound to carry on the business of the firm to the greatest common advantage, to be just and faithful to each other and to render true account and full information of all things affecting the firm to any partner or his legal representative.

This section deals with the general duties of the partners and lays down that partners should carry on-

- (i) Business of the firm to the greatest common advantage,
- (ii) to be just and faithful to each other.
- (iii) to render true accounts and full information of all things affecting the firm to any partner or his/her legal representative.

(i) Greatest common advantage:

It is admitted that the relations of partners are based on mutual trust and confidence and thus it becomes the duty of each and every partner to run the business to the greatest common advantage.

Venttey v. Creanen, (1853) 1 Wiven Reports 75. The task of purchasing sugar was entrusted to one partner. He sold his own sugar which he had purchased on cheap rates to the firm at a high rate and earned a profit. This was held that he must return the said benefit to the firm because the said work was done in disregard of the general duties of the partners.

(ii) Just and faithful:

For carrying on the business it is of utmost importance that each one must be just and faithful to the other. In the absence of it partnership can't exist.

(iii) Render true accounts:

It is the duty of every partner that he must give true account of the transactions of the firm. Partners are not bound only to give true account of the income and expenditure but of all such money that comes to them during the course of business.

1. Prem Bullabh v. Mathura Dutt, MANU/SC/0035/1966 : AIR 1967 SC 1342: A partner must observe utmost good faith in dealing with the other partners. But in the absence of special circumstances he cannot be regarded as a kind of trustee for the other partner or liable to render accounts to them in a fiduciary capacity.
2. Gattulal v. Gulabsingh, MANU/SC/0006/1985 : AIR 1985 SC 547: A court will not aid those who can be shown to have remained quiet in the hope of evading responsibility in case of loss, but to claim a share of gain in case of ultimate success.
3. Irimble v. Goldberg, (1906) AC 494 PC: In a transaction between partners for the sale and purchase of a share in the business, if one of them is better acquainted with the accounts than the other, it is his duty to disclose all material facts, but the party entitled to such disclosure may elect, at any stage to waive his right to further information even if he knows that there has been some concealment of facts which he has since discovered, and believes that others are still concealed.

2. Duty to Indemnify for loss caused by fraud - Section 10

"Every partner shall indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm."

This section lays down that every partner shall indemnify the firm for any loss caused to it by his fraud in the transaction of the firm. Following are the conditions for holding a partner liable for paying damages for loss caused by his deceitful conduct.

Barbarilal v. Seikh Shukrulla, MANU/BH/0095/1939 : AIR 1940 Pat 1.

- (a) Partner is guilty of deceitful conduct.
- (b) Partner has done such deceitful work in the conduct of the business of the firm.
- (c) By the fraud of the partner, firm or other partners have suffered loss.

The liability of partner to pay damages is based on the principle that if any partner knowingly does an illegal act, he should pay damages to other partners for the loss suffered by them; Campell v. Campell, (1840) 7 Ch S Fin 160; see also Nabinchandra v. Moolchandra, MANU/MH/0059/1966 : AIR 1966 Bom 111.

The word 'fraud' has the same meaning which is given in section 17 of the Indian Contract Act, 1872. In the case of Dairy v. Peek, (1899) 14 AC 337: Lord Hershell has held the following elements of fraud-

- (i) False promise which makers of promise know it to be false.
- (ii) Promise in reality is false and maker of promise does not believe on its truthfulness, or
- (iii) Promise is false in reality and maker of promise has said it without considering its truthfulness or otherwise. It is also necessary to prove that by the deceitful promise plaintiff has been actually deceived, suffered loss and plaintiff had no means to find out the truth. Promise was made with the intention that other party should act on believing it. Plaintiff acted on believing such promise and suffered loss.

It has been held that the partner who commits fraud in the conduct of the business of the firm should make good the loss sustained.

3. Determination of Rights and Duties of Partners by Contract between the Partners - Section 11

By whom, the mutual right and duties are determined?

- (1) "Subject to the provisions of this Act, the mutual rights and duties of the partners of a firm may be determined by contract between the partners, and such contract may be express or may be implied by a course of dealing."

Such a contract may be varied by consent of all the partners and such consent may be express or may be implied in the course of dealing.

- (2) Agreement in restraint of trade: Notwithstanding anything contained in section 27 of the Indian Contract Act, 1872, such contracts may provide that a partner should not carry on any business other than that of the firm while he is partner.

This section incorporates the general principle that the mutual rights and duties of the partners may be determined by a contract between themselves. They may themselves decide how much investment or labour is to be put by whom. Or whether a partner will be entitled to any remuneration, apart from sharing the profits or what will be the profit sharing ratio etc. Such contract may be expressed or may be implied by a course of dealing. The mutual rights and

duties which may have been agreed upon between the partners may be subsequently varied with the consent of all the partners. Such variance or change in the mutual rights and duties may also be made either expressly or by an implied consent through a course of dealing between the partners.

Explain the principle defined in Pabitra Construction Co. case.

Discuss critically agreement in restraint of trade what are the duties of partners while conducting the business of the firm.

1. Pabitra Construction Co. v. UCO Bank, AIR 2008 Cal 103. Three partners opened a joint account with the respondent-Bank with special instructions that any of the two partners would be entitled to operate the Bank account. In the course of business transactions disputes arose between them and one of them gave written instruction to the respondent-Bank, not to clear any cheque unless all the three partners jointly operate the account, in deviation from the earlier instruction. The Bank, in view of such instruction, refused to clear two cheques issued by two of the partners. The action taken by the Bank was held as quite justified by the Calcutta High Court.

The court explained that in a partnership business all the partners were equally interested in case of profit and loss arising out of business and if all the three partners jointly opened an account, one of them could subsequently decide not to continue with the said account and even give instruction to stop further transaction unless the dispute among them was resolved.

The court held that if one of the joint account holders decided to change the mode of operating the account, which was initially agreed to by the parties the Bank should not continue with the account based on the instruction initially given to it so long the dispute was not settled by the parties.

2. *Helmare v. Smith*, (1886) 35 Ch D 436: Bacon V.C. observed. "If fiduciary relationship means anything I can't conceive a stronger case of fiduciary relation than that which exists between partners. Their mutual confidence is the life-blood of the concern. It is because they trust one another that they are partners in the first place, it is because they continue to trust one another that the business goes on".

3. *Suresh Kumar v. Amrit Kumar*, AIR 1982 Del 131: The Delhi High Court, approved the observation of the Bacon V.C. In this case the plaintiff and defendants were carrying on the business of motors cars, jeeps and their spare parts under the name of Sanghi Motors. The plaintiff was the managing partners of the Business and his appointment had been made with the consent of all the partners and that he was acting in this capacity from the very beginning. Majority of partners removed him and appointed Ashok Kumar Sanghi as the Managing Partner. The Delhi High Court held that above majority decision can't be enforced.

The first sub-

section states, in a more direct and positive form the elementary principle already implied in sections 252 and 253 of the Contract Act. Partnership as a relation eminently depends on the consent of the parties, not only for its existence, but for the terms of the agreement in all things consistent with its essential nature and purpose and an agreement to become partner in the first instance, or to vary the terms at any time, need not be manifested in any particular form.

4. It is really needless to cite authorities but reference may be made to *Const v. Harris*, (1823-24) TSR 496: where Lord Eldon laid down that a majority of partners can regulate patterns of details but substantial terms of their agreement can be amended only by the consent of all. A judicial statement made 20 years later showed that the law was by that time well-settled and expresses it in a clear and positive manner too often wanting in Lord Eldon's judgment:

With respect to a partnership agreement, it is to be observed that all the parties being competent to act as they please, they may put an end to or vary it at any moment, a partnership agreement is therefore open to variation from day-to-day and the terms of such variation may not only be evidenced by writing but also by the conduct of the parties in relation to the agreement and to their mode of conducting their business. When, therefore, there is a variation and alteration of the terms of a partnership, it does not follow that there was not a binding agreement at first. Partners, if they please, may, in the course of the agreement daily come to a new arrangement for the purpose of having some addition or alteration in the terms on which they carry on business, provided those additions or alterations be made with an unanimous concurrence of all the partners.

A practice of the firm, though not part of the original agreement may become binding by usage and alterable only by consent e.g., made of valuing assets, adjustment of profit and loss account.

5. *Coventry v. Barclay*, (1863) 3 De GJ & S 320.

6. *Exp. Barber*, 1870.

7. Gurprasad Dayal v. L. Raghunath Prasad, MANU/UP/0032/1976 : AIR 1976 All 141. Where the power of general management as contemplated in the deed of partnership was with the manager who was also one of the partners but by a resolution passed by the partners the duty of purchasing certain machines was cast on another partner who failed to purchase the same in time despite reminders by the manager, it was held that the manager was not responsible for the default of that partner.

Sub-section (2) re-enacts with some verbal amendments the substance of exception 3 to section 27 of the Indian Contract Act which is one of the enactments repealed by the present Act. As to the treatment of agreements in restraint of trade by Contract Act, Pollock and Mulla can be referred.

"Agreements of the kind protected by this sub-section are in fact extremely common, and it would be an intolerable hindrance to business if they were not allowed."

4. Duty Relating to Conduct of Business - Section 12(b)

"Subject to contract between the partners, every partner is bound to attend diligently to his duties in the conduct of the business."

Section 12(c)-

Subject to contract between the partners, any differences arising as to ordinary business may be decided by the majority of the partners and every partner shall have the right to express his opinion before the matter is decided, but no change may be made in the nature of the business without the consent of all the partners.

Thus section 12(c) makes it clear that in ordinary matters decision shall be taken by the majority of the partners but before taking the decision, it is necessary to give every partner opportunity to express his views. Moreover, the majority should decide the matter in good faith. In respect of the conduct of the important matters, consent of all the partners is necessary.

According to Lindley:

"utmost good faith is due from every member of partnership towards every other member and if any dispute arises between partners touching any transaction by which one seeks to benefit himself at the expense of the firm, he will be required to show, not only that he had the law on his side, but that his conduct will bear the highest standard of honour. Thus if one partner knows more about the state of partnership account than another, and, concealing what he knows, enters into an agreement with that other, relating to some matter as to which a knowledge of the state of the account is material, such agreement will not be allowed to stand."

1. Suresh Kumar v. Amrit Kumar, AIR 1982 Del 131.

2. Economic Transport Service v. Economic Transport Carriers (North), AIR 2003 Del 201 (202): The decision of the majority of partners can't be binding on the other partners particularly when the suit is for passing off the name of a firm or infringement of the trade name as commercial activity of every kind is prosecuted through a partnership firm. In no circumstances, the majority of the partners can be allowed to permit a stranger to use their name or trade name as it would amount to offence of passing off. Every partner has a vital interest in the activities of partnership firm. Majority cannot trample or impede the interest of minority partners. Thus the suit against passing off name of firm can be continued or withdrawn by the plaintiff firm. It is not permissible for the majority of partners to withdraw such a suit.

3. Y. Venkanna Chowdhry (died) v. G. Lakshmidamma, MANU/TN/0023/1994 : AIR 1994 Mad 140. If the accounting partner has not maintained accounts properly and has mixed up his private affairs with those of the partnership and when accounts submitted by him do not reflect truly the income and expenditure of the partnership, the court must order to reopen and/or reject the accounts submitted by such accounting partner.

5. Duty to indemnify the firm for any loss caused to it by his wilful conduct - Section 13(f)

"Subject to the contract between partners, a partner shall indemnify the firm for any loss caused to it by his wilful neglect in the conduct of the business of the firm."

A partner's general duty to attend diligently to the firm's business is of course broken by wilful neglect in conducting it and there is authority, if it were needed to show that in taking accounts under the direction of the court, one partner may have compensation awarded to him for damages incurred through the neglect of another.

1. Krishnamachariar v. Shankar Sah, (1920) 22 Bom LR. Suppose the case of an act of fraud or culpable negligence or wilful neglect or default by a partner during the partnership to the damage of its property or interest, in breach of his duty to the partnership, whether in law compellable or not compellable, he is certainly

in equity compellable to competence or indemnify the partnership in this respect. The partner on whom the whole management of the business is thrown by another's wilful neglect of it is entitled to compensation.

2. Gurprasad Dayal v. L. Raghunath, MANU/UP/0032/1976 : AIR 1976 All 141. It is held that the section does not contemplate a suit by one partner for damages against another. The liability of partners is to the firm and not to one particular partner. But the liability of one partner to another for his acts is not as wide as that of an agent to a principal.

3. Mahadev v. Gannu, (1925) 27 BLR 500. Under section 212 of the Indian Contract Act, an agent is responsible to his principal for the direct consequences of his neglect, want of skill or misconduct. A partner is not liable to the same extent as an agent. Where a partner acts bona fide in order to benefit the firm and without culpable negligence and wilful neglect he will alone be not liable and loss if any, must be borne by all.

4. T.B. Mody v. Ghanshyam, MANU/KA/0070/1987 : AIR 1987 Kant 268. Loss should be actual and substantial and not only notional and on the balance-sheet only.

5. Sasthi Kenkar v. Man Gobinda, MANU/BH/0077/1919 : AIR 1919 Pat 386: In a suit for dissolution of a partnership and accounts, the defendants who were managing partners were charged with negligence and contribution was claimed for the losses. The alleged negligence was that they failed to sue certain firms for the price of coal supplied and consequently one of the claims became time-barred and another was lost due to the debtor's insolvency.

"They were held liable for the claim which had become time-barred. For the other claim the court held that the firm was an old consumer and the defendants themselves learnt it too late that it had become insolvent.

6. Gurprasad Dayal v. L. Raghunath, MANU/UP/0032/1976 : AIR 1976 All 141. The Allahabad High Court observed that section 13 does not contemplate a suit by one partner for damages against another partner. The liability of a partner is to the firm and not to one particular partner.

6. Duty in respect of personal profits earned by partners - Section 16(a)

What is the remedy given to partners if personal profit is earned by anyone of the partners? Discuss with the help of case-laws.

"If a partner derives any profits 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."

The principle underlying this section is that a partner is an agent of the firm and as such must not act on his own account, or make any secret gain for himself in conducting the business of the partnership. The principle under section 16 is based on good faith. No partner is allowed to benefit himself at the expense of the firm. According to Lindley, "Good faith requires that a partner shall not obtain a private advantage at the expense of the firm. He is bound in all transactions affecting partnership, to do his best for the common body and to share with his co-partners any benefit which he may have been able to obtain from other people and in which the firm is in honour and conscience entitled to participate: *Semper enim non id quod privatum interest unius ex socis servari solet, sed quod societate expedit* (the invariable practice being not to have regard to the private interest of one of the partners but to the advantage of the firm.)

Problem:

A, B and C carry on business of partnership as merchants, D to whom they make consignments for sale on commission, secretly allows C, a share in the commission, which he receives in consideration of C using his influence to send consignment to him. A and B come to know of secret share of 'C'. What are 'A's and 'B's rights against 'C' in respect of the secret share received by him?

This is the case falling under section 16(a) 'A'/'B' can compel 'C' to account to the firm for the money so received by him.

1. Gardner v. Mccutcheon, 1842 Beav 534, a ship belonged to two partners, one of whom was also the captain of ship. While the ship was operating under charter parties the captain made considerable profits by making certain contracts. The court held that he was liable to account for such profits.

2. Aas v. Beham, (1891). It is clear law that every partner must account to the firm for every benefit derived by him without the consent of his co-partners from any transaction concerning the partnership or from any use by him of the partnership property name or business connection.

3. Bentley v. Craven, (1853) 18 Beav 75: 104 RR 373: One of the partners in a firm of sugar refiners who was considered expert in the job was entrusted with the duty of purchasing sugar for the firm for

being refined. He himself was a whole-sale dealer in sugar. He supplied his own sugar, which he had purchased at a lower price, to the firm at the prevailing market rates and thereby made considerable profits. He did not let his co-partners know that he was selling his own sugar to the firm and thereby making profit out of this transaction of the firm. It was held that he was bound to account to the firm for the profit thus made by him.

According to section 215 of Indian Contract Act, a partner is the agent of the firm for the purpose of the business of the firm. According to the rule of agency, no agent can deal on his account in the business of agency without the consent of his principal.

Section 216-

"if an agent without the consent of his principal, deals in the business of agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.

In one case, a partner without consent and notice of other partners is entitled either to prevent such sale or to challenge the sale price and compel the partner to purchase it on proper and fair price.

7. Duty not to compete with the business of the firm - Section 16(b) of Partnership Act provides

"Subject to the contract between the partners, if a partner carries on any business of the same nature and competing with that of the firm he shall account for and pay to the firm all profits made by him in that business".

One or more persons may with knowledge and consent of all parties be members of two distinct firms carrying on a similar if not a directly competing business, as where the two undertakings are a morning and evening newspaper.

1. *Dean v. McDowell*, (1878) 8 Ch D 345: There may be express agreement not to engage in any business whatever other than the firm's irrespective of competition. Breach of such an agreement, however does not make the partner breaking it, liable for an account of profits.

Therefore section 16(b) lays down that a partner can't derive any exclusive advantage by engaging in transactions in competition with the firm. In one case, a partnership was entered into for the business of importing salt into India and for re-selling the same in Chittagong. One of the partners in the course of the operations, bought some quantity of salt for himself and re-sold the same on his own account. The Calcutta High Court held that the partner was liable to account for his profit to his co-partners as the opportunity to make such a profit came his way while he was on the business of the firm.

2. *Pulin v. Mahendra*, (1921) 34 Cal LJ 405: This duty is however subject to any variation made by the partnership deed. Thus, the agreement between the partners may allow them to carry on any business whatsoever, whether competing or not. Conversely, the agreement may restrain the partners from carrying on any other business whatsoever (i.e., whether competing or not). Section 11 of the Act clearly provides that the agreement between the partners may provide that a partner shall not carry on any business other than that of the firm, whilst he is a partner. The section further provides that this will not amount to restraint of trade under section 27 of the Indian Contract Act.

3. *Gordon v. Holland*, (1913) 108 LT Rep 385: A partner sold the land belonging to the firm to a bona fide purchaser and then re-purchased that land himself. It was held that all the benefits made by this partner on re-purchase of the land had to be given to the firm.

8. Duty in respect of Application of the Property of the Firm according to Section 15

"Subject to the contract between partners, the property of the firm shall be held and used by the partners exclusively for the purpose of the business." If a partner uses firm's property for private benefits, he shall account for and pay such profits to the firm."

Illustration. X and Y are partners in a trading firm. X borrows Rs. 9000 from P and executes a promissory note in the name of the firm. X spends the money in purchasing a plot of land in his own name for his personal purpose. P can hold Y liable and realize the said money because a partner is an agent of all other partners and can bind them by his acts. But X shall have to account for and pay Rs. 9000 to the firm because according to section 15, the property of the firm shall be held and used by the partners exclusively for the purposes of the business. Besides this, under section 16(a), if a partner derives any profit for himself from any transaction of the firm or from the use of the property or business or business connection of the firm or firm name, he shall account for that profit and pay it to the firm.

Velji Raghavji v. State of Maharashtra, MANU/SC/0091/1964 : AIR 1965 SC 1433: The appellant was the working partner of a firm. It was agreed among the partners that he should carry on the work of realising the dues of the partnership. On the allegation that he misappropriated certain sums and also failed to deposit in the bank some collections, he was

convicted for the offence of criminal breach of trust under section 409, IPC. The Supreme Court acquitted him. Even if there was a mandate to the appellant with respect to some dues to the collection and deposit them in bank, failure to do so would not constitute the offence, as the appellant was also authorised by the other partners to spend the money for the business of the partnership. The appellant would not also be guilty of dishonest misappropriation of property under section 403 of the Code, because he had undefined ownership along with the other partners over all the assets of the partnership and as such owner, in whatever way and with whatever intention he used the property, he would not be liable for misappropriation.

9. Duty to contribute equally to the losses - Section 13(b)

Provides that the partners shall contribute equally to the losses sustained by the firm.

Normally, of course, the partnership deed provides the ratios in which profits and losses are to be shared. It is even open to the partners to agree that one or more of them shall not be liable at all for the losses suffered by the firm.

10. Duty to properly use of firm's property - Sections 14, 15

Discuss the obligation of a partner if he uses firm's property for personal use.

Section 14 of the Partnership Act, 1932 expressly declares that property exclusively belonging to a person, on his entering into partnership with others, does not become a property of the partnership merely because it is used for the business of the partnership, in the absence of an agreement to the contrary.

Arjun Kanji Thankar v. S.K. Thankar, (1969) 3 SCC 555: Thus such property will become property of the partnership only if there is an agreement express or implied, that the property was under the partnership agreement, to be treated as the property of the partnership.

Mere use by firm does not make property, the property of the firm. Where there was partnership entered into for constructing and running of cinema theatre, one partner had contributed and other had put up construction. There was no clause in deed showing intention to treat land structure equipment as firm's property.

Section 15. Application of the property of the firm-

"subject to contract between the partners, the property of the firm shall be held and used by the partners exclusively for the purposes of the business."

This section makes it a duty of the partners that the property of the firm shall be held and used by them exclusively for the purposes of the business of the firm. Even, if the section had not so provided, a joint property, being the nature of a trust has always to be used for the purposes of the trust. No partner should, therefore, use the assets of the firm for any of his personal purposes.

Addanki Narayanappa v. Bhaskara Krishnappa, MANU/SC/0281/1966 : AIR 1966 SC 1300: The Supreme Court explained the nature of the right of the partners in the following words:

"Whatever may be character of a property which is brought in by the partners when the partnership is formed or which may be acquired in the course of the business of the partnership, it becomes the property of the firm and what a partner is entitled to is his share of profits, if any, accruing to the partnership from the realisation of his property and upon dissolution of the partnership to a share in the money representing the value of the property. No doubt, since a firm has no legal existence the partnership property will vest in all the partners and in that sense every partner has an interest in the property of the partnership."

The property of the firm has got to be used exclusively for the purpose of the business of the firm. If any partner derives any profit or personal advantage by the use of the property of the firm, he has to account for that profit and pay the same to the firm. This rule is subject to contract between the partners.

Rights of Partners

Discuss in brief the rights of the partners in the firm.

It has been noted above that various rights and duties of partners contained in sections 12-17 are subject to contrary agreement between the partners. Therefore, unless it has been agreed otherwise, the following rights as contained in the above mentioned provision are-

1. Right to take part in business - Section 12(a)

"Every partner has a right to take part in the conduct of the business of the firm." 'A partnership being the business of all the partners, the powers of management of the partners are co-extensive. A partner, is as such, as of right

entitled to take part and be consulted in the management of the partnership business. If, however, a partner is wrongly prevented from taking part in the firm's business, he can obtain an injunction from the court against the erring partners. However, this right is subject to a contract between the partners. Thus, it is quite usual to provide in the partnership deed for an exclusion of this right as regards some of the partners.

1. Suresh Kumar v. Amrit Kumar, AIR 1982 Del 131: The privilege of participation in business must be used for promoting the interest of the firm and not for damaging it. The Delhi High Court issued an injunction against a partner who, in order only to undermine the position of the managing director, wrote to the principals of the firm not to supply motor vehicles and to the bankers not to honour the firm's cheques. Partnership agreements usually provides for the exclusion of this right in the case of some partners.

The partners are free to provide in their agreement that only some of them will take part in the conduct of the business and certain other partners will not. If such a right is wrongfully denied to a partner, he can seek the enforcement of the right through a court of law. If the right to manage the business has been conferred on only some of the partners, they alone will be entitled to this right.

2. Majority Rights - Section 12(c)

When there is a need to take the majority decisions?

What is the principle laid down in case Const v. Haris?

"Any differences arising as to ordinary matters connected with the business may be decided by a majority of the partners and every partner shall have the right to express his opinion before the matter is decided but no change may be made in the nature of the business without the consent of all the partners."

When the difference of opinion pertains to an ordinary or routine matter connected with the business, the same may be resolved by a decision of the majority of the partners. But before the matter is decided every partner must be provided with an opportunity to express his opinion. In this connection Lord Eldon observed-

"I call that the act of all, which is act of the majority, provided all are consulted and the majority are acting bona fide. Meeting not for the purpose of negating, what, when they met together they may after due consideration, think proper to be a negative."

1. Const v. Harris, (1824) 525: As in all other cases of the exercise of power by a majority acting in a quasi-judicial capacity, the decision must be made in good faith with a view to the common advantage of the whole body, and when so made is conclusive. A majority cannot bind a minority without notice to them and without giving them the opportunity to express their opinion. If this were not so, it would practically put the entire management in the hands of a high handed majority, and would set the rule at naught that every partner has a right to take part in the conduct of the business.

The decision of the majority of the partners cannot be binding on the other partners particularly when the suit is for passing off the name of a firm or infringement of the trade name as commercial activity of every kind is proceeded through a partnership firm. Every partner has a vital interest in the activities of a partnership firm. Majority cannot trample or impede the interest of minority partners; Economic Transport Carrier v. Economic Transport Carrier (North), AIR 2003 Del 201.

What are ordinary matters connected with the partnership business would appear to be a question of fact upon which evidence would be required as to requirements and usual practices of the particular business.

3. Right to have access to books of the firm - Section 12(d)

"Every partner has a right to have access to and to inspect and copy any of the books of the firm."

This right is available to both active and dormant partners. This right is not only in respect of books of accounts but in respect of any books of the firm. A partner could exercise this right either personally or by engaging an agent for the purpose. The partner himself, no less than his agent might be restrained if necessary from using copies or extracts made in the exercise of his right for purpose hostile or injurious to the interest of the firm. If books of account are not maintained or are deliberately vague or withheld wrongfully as destroyed, a presumption may be drawn by the court against those to whose negligence or misconduct the non-production of proper account is due.

In one English case, a sleeping partner wished to sell her interest to other partners. He therefore authorised a valuer to inspect the accounts and to ascertain the value of his interest. The other partners objected and the court held that they could not have any objection-unless of course, there was reasonable ground for objecting, as for instance the protection of trade secrets; Bevan v. Webbs., 1903 All ER.

4. Right to profits - Section 13(b)

Explain the maxim actus curiae neminem gravabit

"Subject to contract between the partners, "the partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm."

K. Pitchiah Chettiar v. G. Subramaniam Chettiar, ILR 58 Mad 25. The scope of section 253(2) of the Indian Contract Act, 1872 has been explained which has received the approval of the Supreme Court in the context of section 13(b) as well. Section 253(2) of the Indian Contract Act lays down that all partners are entitled to share equally in the profits of the partnership business and must contribute equally towards the losses sustained by the partnership.

This rule is, however, a rule of presumption which, in practice is constantly superseded by express agreement or even a continued usage of the firm. Thus, several partnership deeds provide that, as between the partners anyone or more of them will not be liable to bear the losses of the firm. Since every partner is entitled to share the profits, no other remuneration as a general rule is to be paid to a partner for the management of the firm's business. The rule contained in this regard in section 13(a) is that a partner is not entitled to receive remuneration for taking part in the conduct of the business unless otherwise agreed. Thus, it is only if the partners so agree a partner may be entitled to additional salary commission, etc., for the efforts made by him in running the business of the firm.

1. Mansha Ram v. Tej Bhan, AIR 1958 Punj 5: Whether partners have contributed money equally or unequally, whether they are or are not on a parity as regards skill etc., whether they have or have not laboured equally for the benefit of the firm, their share will be considered as equal, unless some agreement to the contrary can be shown to have been entered into.

2. Robinson v. Anderson, (1855) 20 Beau: Two solicitors were jointly retained to defend certain actions and there was no satisfactory evidence to show in what proportion they were to divide their remuneration. It was held that they were entitled to share it equally although they had been paid separately and had done unequal amount of work.

Applicability of the Doctrine of actus curiae neminem gravabit

In T.O. Alias v. T.O. Abraham & Co., MANU/KE/0157/2004 : AIR 2004 Ker 344:

While partners were litigating different matters before different courts in one of the suits, the Civil Court ordered the funds of the firm could be utilised only after getting majority decisions of partners. But without making other partners as partners two partners filed writ petition for releasing amount from bank. Thus, amount was got released by order of High Court and was utilised without obtaining approval of majority of partners.

South Eastern Coal Fields Ltd. v. State of Madhya Pradesh, MANU/SC/0807/2003 : AIR 2003 SC 4482; Karnataka Rare Earth v. Senior Geologist Department of Mines and Geology, AIR 2004 SC 2915:

The Supreme Court observed that the doctrine of actus curiae nominem grovabit is not confined in its application only to such acts of the court which are erroneous. The doctrine is applicable to all such acts had it been correctly appraised of the facts and the law. It is the principle of restitution which is attracted.

5. Right to receive interest on the capital subscribed

Section 13(c):

"Subject to the contract between the partners where a partner is entitled to interest on the capital subscribed by him such interest shall be payable only out of profits."

Section 13(d):

"A partner making for the purpose of the business any payment or advance beyond the amount of capital he has agreed to subscribe is entitled to interest thereon at the rate of six per cent. per annum.

If the partner has advanced for the purposes of the business of the firm a sum of money over and above the capital which he has agreed to subscribe, he is entitled to interest on such amount (at the rate of six per cent. per annum).

1. Somasundaram v. S. Chettiar, MANU/PR/0055/1938 : AIR 1938 PC 277: So far as interest on capital contribution is concerned, it ceases to be given from the date of dissolution.

2. Keshavji Raviji & Co. v. Commissioner of Income-Tax, (1990) 2 SCC 231: Even where a partner is given the right to receive interest on his subscribed capital, such interest shall be payable only out of profits.

Capital of a partnership can be withdrawn or added to by all the partners. The fact of withdrawal of amount of several partners does not mean that there was no obligation to contribute; Commissioner of Income-Tax v. Badrilal Bholaram, MANU/MP/0004/1969 : AIR 1969 MP 9.

6. Right to indemnity in respect of payment made and liabilities incurred - Section 13(e)

Whether a partner shall be indemnified in respect of payment made or liabilities incurred by him.

What are the facts of the case Thomas v. Atherton.

"Subject to contract between the partners. The firm shall indemnify a partner in respect of payments made and liabilities incurred by him:

(i) in the ordinary and proper conduct of the business, and

(ii) in doing such acts, in an emergency, for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence in his own case under similar circumstances."

Paragraph (e) consist of two branches which are founded on distinct principles and must not be confused on any account. By clause (i) the general rule of an agent's right to indemnity in respect of lawful acts done by him in the exercise of his authority, as can be seen in Contract Act section 222, is applied to the case of partner acting in the firm's business, if the partner refused to disclose the nature of expenditure incurred he will not be entitled to be indemnified by the firm. A partner is entitled to be reimbursed for expenditure properly incurred even if the things in respect of which it is incurred ultimately turns out to be worthless.

Sub-clause (ii) declares a partner's right to indemnity for expenses in or about anything necessarily done for the preservation of the business or property of the firm.

Thomas v. Atherton, (1877) 10 Ch D 185. 'T' a managing partner of a colliery received notice from L, an adjoining owner that the working was being carried on beyond the boundry. 'T' insisted that he was entitled to the disputed ground and carried on her working. The matter, having been referred to arbitration, he was held liable to pay Â£ 6000 as damages for the trespass. His claim for contribution from his co-partners failed as the loss was not suffered in the ordinary and proper conduct of the business.

He worked beyond the limits of the partnership colliery without proper inquiry as to limits and had acted with gross negligence and recklessness in continuing his working after notice and without consulting his partner, when it was evident that his right to work in the disputed area was extremely doubtful.

Sadhu Narayan Aiyangar v. Ramaswami, ILR 32 Mad 203:

The right to indemnity is not lost by the dissolution of the firm and also it does not matter that there is or has been no settlement of accounts.

7. Right to receive remuneration

Discuss the right of a partner to receive remuneration.

The general rule is that a partner is not entitled to receive remuneration for taking part in the conduct of the business. But this rule is subject to contract between the partners..... Section 13(a).

It may be presumed that the work done by him for the firm is gratuitous in nature. It is of course possible to have a clause in the Partnership Deed, providing for remuneration to the working partners. However, in the absence of such a provision, no partner is entitled to any salary or other remuneration.

The courts have sometimes carved out exceptions to this rule. Thus, for instance when one partner is guilty of wilful neglect and so the entire burden of the work is shouldered by the other partner, the latter may make a valid claim to be compensated for the extra work done by him.

1. Airey v. Barham, (1861) 54 ER 768. There was a quarrel between two partners, only one of them attended to the business of the firm and the Court held that he was entitled to an extra allowance for having managed the business without any assistance from the other partner.

2. C.V. Mulk v. Commissioner of Agriculture Income-Tax, 1980 Ker LT 933. The partnership agreement, however, provides for the payment of remuneration to working partners. A contract of service stipulates two different persons whereas a firm and its partners are one and the same thing. The so-called remuneration paid to the partners is in reality a distribution of profits.

8. Majority Rights - Section 12(c)

"Subject to the contract between the partners-any difference arising as to ordinary matters connected with the business may be decided by a majority of the partners and every partner shall have the right to express his opinion

before the matter is decided, but no change may be made in the nature of the business without the consent of all partners."

When the difference of opinion pertains to an ordinary or routine matter connected with the business, the same may be resolved by a decision of the majority of the partners. But before the matter is decided every partner must be provided with an opportunity to express his/her opinion. Lord Eldon observed. "I call that the act of all which is the act of the majority: provided all are consulted and the majority are acting bona fide, meeting not for the purpose of negating. What any one have to offer, but for the purpose of negating. What, when they met together, they may, after due consideration, think proper to negative.

Effect of change in the firm or its business - Section 17

Where a partnership is created for a fixed period or for a particular business, it should naturally come to an end on the expiry of such period or on the completion of such business. Section 17 is enacted to meet such cases. Its essence is that the firm shall continue as far as applicable, on the same terms and condition as if no change has come in them.

Section 17 - Subject to Contract between the Partners

Discuss in brief the changes in the firm and effects thereof.

(a) Rights and duties of partners 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 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 and duties of the partners remain the same as they were before the expiry, so far as they may be consistent with the incidents of partnership at Will.

(c) And 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, the mutual rights and duties of the partners in respect of the other adventures or undertakings are the same as those in respect of the original adventure or undertaking."

Section 17 gives general rule for the determination of the rights and duties of the partners after the happening of the events which would otherwise leave those rights and duties undermined.

Problems

What are the rights and duties of partners after change in the constitution of firm.

(1) X and Y are partners for seven years, X taking no active part in the business. After the expiry of seven years, Y continues the business in the same name and with the property of the firm, without giving any account to X. Is X entitled to a share in the profits of the business?

Ans. In the above circumstances, the partnership is not dissolved and X is entitled to participate in the profits on the same terms as those of the original agreement; *Parson v. Hayword*, (1862) 4 DFJ 474.

(2) An agreement of partnership between P & R for one year contains an arbitration clause. The partnership is continued beyond one year. Is the arbitration clause binding on the partners after one year has expired?

Ans. An arbitration clause is not inconsistent with a partnership at Will and, therefore, the arbitration clause continues to bind the partners even after the expiry of one year *Gillett v. Thoronton*, 1875 LR 19.

1. Change in Constitution 17(a): Where a change occurs in the Constitution of the firm mutual rights and duties remain the same as they were immediately before the change. For example A and B were partners in a firm and their share in profits of the firm was 10 annas and 6 annas respectively. After the death of A, his son became the partner and without any express agreement the business continued. It was held that 'A's son is entitled to receive share of 10 annas; *Dawood Sahib v. Sheikh Mahideen*, MANU/TN/0218/1937 : AIR 1938 Mad 5.

2. After expiry of term 17(b): Clause (b) contains the substance of section 27 of the English Act and section 256 of Indian Contract Act. This provides that after the expiry of the term of the firm, mutual rights and duties of the partners remain the same. But after the expiry of the term, partnership becomes partnership at Will. It is, therefore, necessary that the said rights and duties of partners must be consistent with the incidents of partnership at Will.

3. Where additional undertakings are carried out Section 17(c): Where a firm is constituted for a fixed term, but continues to carry one or more adventures or undertakings, the mutual rights and duties will remain the same. The same rule applies where the business is continued after the death of a partner. The main reason behind this rule is that in the absence of express agreement, either the original contract is deemed to have continued or its novation having taken place.

Neilson v. Massend Iron Co., 1886:

Lord Watson further said that this rule applies to other contracts. The legal effect of this is that all the formalities, terms and conditions of the original contract continues to the extent they are not inconsistent with the implied terms of the new contract.

Where Business Continued by Surviving Partners

In what circumstances a business can be continued by surviving partners.

The same rule has been substantially acted upon in the case of a business being continued by the surviving partners after the death of a member of the original firm, the court inferred as a fact from their conduct that the business was continued on the old terms, but probably, if there were nothing more than a want of evidence to the contrary, a continuance on the old terms would be presumed.

Daw v. Herring, (1892) 1 Ch 284: It was held that a clause giving one partner an option of buying the other's share within three months after the expiration of determination of the partnership by effluxion of time applies to the partnership as continued after the expiration of the original term.

Partnership Property

Define partnership property with the help of relevant case laws.

The expression 'property of the firm' refers to partnership property, partnership assets, joint stock, common stock or joint estate denoting all property rights and interest to which the firm i.e., all the partners, may be said to be entitled and in this context the assets of a firm may include benefit of a contract, benefit of lease or renewal of a lease. Benefit of licence or quota, buildings, land etc. The assets of a firm have a tangible and different meaning than that of the goodwill of the firm and unless a contrary intention appears even if the goodwill is included in the term as property of the firm, the exclusion of goodwill specifically in the term of contract would not necessarily take within its fold the other properties or the assets of the firm.

A partnership not being a legal person, is not capable of owning any property and the so-called property of the firm is nothing but the joint estate of all the partners yet, for all practical purposes, the joint estate is regarded as so much separate from the partners that none of them can claim any personal ownership over any item of it.

1. Narayanappa v. Bhaskara Krishnappa, MANU/SC/0281/1966 : AIR 1966 SC 1300: The Supreme Court Judge Mudholkar observed that the whole concept of partnership is to embark upon a joint venture and for that purpose to bring in as capital money or even property including immovable property. Once that is done whatever is brought it would cease to be the exclusive property of the person who brought it in. It would be the trading asset of the partnership in which all the partners would have interest in proportion to their share. The person who brought it in world, therefore, not be able to claim or exercise any exclusive right over any property which he has brought in, much less over any other partnership property.

2. Syndicate Bank v. R.S.R. Engg. Works, MANU/SC/0404/2003 : (2003) 6 SCC 265: It is recognised principle that partnership is not the species of joint tenancy and that, in absence of some contrary agreement there is no survivorship as between partners at least so far as it concerns their beneficial interest in the partnership assets.

Section 14 - Property of the Firm

Define the three types of partnership property as per section 14.

Discuss the facts of the case law Broadway Centre v. Gopaldas Bagri.

"Subject to contract between the partners, the property of the firm includes all property and rights and interest in property originally brought into the stock of the firm, or acquired, by purchase or otherwise by or for the firm or for the purposes and in the course of business of the firm, and includes also the goodwill of the business.

Unless the contrary intention appears, property and rights and interests in property acquired with money belonging to the firm are deemed to have been acquired for the firm".

3. *Boda Narayan Murthy & Sons v. Valluri Venkata Saguna*: (1977) 2 Andh WR 480: It was held that in the absence of an agreement to the contrary, the property belonging to a person does not become the property of the partnership merely because it is used for the business of the partnership. It would become property of the partnership only if there is an agreement, express or implied that the property under the agreement of partnership to be treated as the property of the partnership.

According to the provisions of section 14 for a property to become the property of a firm, it must have been brought into the common stock of the firm by the partners originally when the firm was formed or subsequently acquired by purchase or otherwise in the course of the business of the firm. In the instant case, there is no evidence adduced to show what are the properties that were brought into the stock of the firm when it was originally formed or what are the properties that were subsequently purchased or acquired by the firm in the course of its business.

4. *Arm Group Enterprises Ltd. v. Waldrof Restaurant*, 2003 (1) RCR (Rent) 594 (SC): Property exclusively belonging to a person 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.

5. *Noor Mohd Mir v. Qadir Mir*, AIR 1983 (NOC) 181: Property of a partner does not become partnership property merely on his permitting it to be used in partnership business.

6. *Ganpat Rai v. Abnash Chander*, AIR 1973 J&K 74: According to section 14 all the property and assets of the firm belong to the firm and include all the property brought into the firm assets by any partner or acquired with the partnership funds and the goodwill of the firm is included in the property of the firm. All these assets are to be valued and then distributed at the time of final decree.

7. *S.V. Chandra Pandian v. S.V. Sivalinga Nadar*, MANU/SC/0450/1993 : (1993) 1 SCC 589: The Apex Court indicated that entire property whether brought in by the partners on constitution of the partnership or acquired in the course of business of the firm, would constitute property of the firm. The Court further said that during the subsistence of the partnership, partners are entitled to an undefined share in such property but after dissolution and settlement of accounts, partners are entitled to proportionate share in residue of the property.

8. *Kallepally Krishna Raju v. Commr & Inspector-General of Registration and Stamp*, AIR 2007 (NOC) 2254 (AP): The Andhra Pradesh High Court held that any property could be thrown into the partnership stock without any formal document. Such property would, thus become the property of the firm; when the very partnership firm formally came into existence under the document and there were no words whatever of dispositive character, which expressly or by implication amounted to a transfer of interest as between the partner who threw his property in the partnership and the rest of the partners, it could not be presumed the court said, that the partner sold his property to the firm. Even if the document was executed and the same was registered as a partnership deed, it could not be construed either as a sale deed or as a gift deed for the purpose of collecting the deficit stamp duty.

9. *Jai Narayan Mishra v. Hashmathunnissa Begum*, MANU/AP/0403/2002 : AIR 2002 AP 389. It was held that the property belonging to a person in the absence of an agreement to the contrary did not become the property of the partnership merely because it was used for the business of the partnership. It would become property of the partnership only if there is an agreement, express or implied that the property under the agreement of partnership to be treated as the property of the partnership. According to section 14 partnership property may be of following three types:

(1) Property originally brought into the stock of the firm: The property originally brought into the stock of the firm undoubtedly constitutes partnership property. But this is subject to contract between the partners. Thus property originally brought into the stock of the firm at the commencement of the business is partnership property.

10. *Commissioner of Income-Tax v. Janab N. Hyath Batcha Sahib*, (1969) MANU/TN/0261/1968 : 72 ITR 528. The Madras High Court held that when a partner brings his property in the partnership firm as his contribution to its capital, it is not regarded as sale.

11. *Commissioner of Income-Tax v. C.M. Kunammed*, (1974) MANU/KE/0096/1972 : 94 ITR 179 (Ker).

12. *Commissioner of Income-Tax v. Abdul Khader Motor & Lorry Service*, (1978) MANU/TN/0434/1976 : 112 ITR 360 (Mad).

13. *Commissioner of Income-Tax v. Hind Construction Ltd.*, (1972) MANU/SC/0327/1971 : 83 ITR 211.

The Court observed and have given the same view in all the above cases that a property was claimed to be the property of the firm on the basis of registered partnership deed. The defendant pleaded that the document was a sham because it originally was tempered with by interpolations and that at no point of time the partnership was acted upon.

14. Jag Mohan Chawla v. Dera Radha Swami Satsang, MANU/SC/0565/1996 : AIR 1996 SC 2222: The Supreme Court said that so long as the partnership deed remains unchallenged and it is not cancelled, the document must be held to be valid and lawful and that this will be so despite the interpolation.

15. Prem Raj v. Bhani Ram, ILR (1946) 1 Cal 191.

16. Ram Sahai Mal v. Biseshwar Nath Pal, MANU/BH/0066/1963 : AIR 1963 Pat 221: The court referred that no written or registered document is necessary to enable an individual to contribute to the firm by way of his capital any land or immovable property. The absence of mutation would also hardly matter.

17. Sunil Siddharthbhai v. CIT, Ahmedabad, Gujarat, MANU/SC/0164/1985 : (1985) 4 SCC 519: The Supreme Court has observed that there is no difficulty in accepting to the extent to which the exclusive interest is reduced to a shared interest it would seem that there is a transfer of interest. Therefore; when a partner brings in his personal asset into the capital of the partnership firm as his contribution to its capital he reduces his exclusive interest in the asset to shared rights in it with the other partners of the firm.

18. Addanki Narayanappa v. Bhakara Krishtappa, (1966) 3 SCR 400: MANU/SC/0281/1966 : AIR 1966 SC 1300: In this, Supreme Court had observed that the property brought in by the partners irrespective of its nature or property earned during the course of business becomes the property of the firm and every partner is entitled to receive his share of property and on dissolution he gets his share in the property. But during the existence of the partnership no partner can use the firm's property as his own property nor can he sell any specific goods in lieu of his interest in the property.

All the partners have interest in trading asset or properties of partnership in the same proportion in which they carry on the partnership business of the joint undertaking.

19. Shashi Kapila v. R.P. Ashwin, MANU/SC/0722/2001 : AIR 2002 SC 101: The Supreme Court observed that a partnership firm is an association of persons. But inspite of that unity between themselves, every partner can have his own separate existence from the firm. Any right which a partner has over any property would remain as his individual asset.

20. Sujan Suresh Sawant v. Dr. Kamlakant Shantaram Desa, MANU/MH/0472/2004 : AIR 2004 Bom 446: Bombay High Court observed that when a partner brings in his personal asset into partnership firm as his contribution to the capital an asset which originally was subject to the entire ownership of the partner, becomes now subject to the rights of other partners in it. In other words, the partner who bring in the asset reduces the exclusive right in the asset to the shared rights in it with other partners in the firm.

21. Sunil Siddhart v. Commissioner of Income-Tax, Ahmedabad, Gujarat, MANU/SC/0164/1985 : AIR 1986 SC 368: The Supreme Court observed that in its general sense, the expression 'Transfer of Property' connotes the passing of rights in the property from one person to another. In one case, there may be passing of the entire bundle of rights from the transferor to the transferee. In another case the transfer may consist of one of the estates only out of all the estates comprising the totality of rights in the property.

22. Arjun Kanaji Tankar v. Shantaram, (1969) 3 SCC 555: There may be a reduction of the exclusive interest in the totality of rights of the original owner into a joint or shared interest than a share in that property. Therefore, when a partner brings in his personal assets into the capital of the partnership firm as his contribution to its capital he reduces his exclusive rights in the assets to shared rights in it with the other partners of the firm.

(2) Property Acquired by purchase or otherwise by or for the firm: According to the provisions of section 14 for a property to become the property of a firm it must have been brought into the common stock of the firm by the partners originally when the firm was formed or subsequently acquired by purchase or otherwise in the course of business of the firm. In the instant case, there is no evidence adduced to show what are the properties that were brought into the stock of the firm when it was originally formed or what are the properties that were subsequently purchased or acquired by the firm in the course of its business.

Gumanmal v. Papurbai, (1914) 30 IC 24: It was held that it cannot be laid down as a universal rule that when lands are bought by partners in trade and are paid for out of the partnership assets, they of necessity, become part of the joint estates of the partners there are different purposes for which the lands may have been bought and if they are not used for the purpose of the partnership business, the question is an open one and it is to be decided on the general evidence.

Re Adarji Mancherji Deshi, AIR 1931 Bom 428: It was held that to constitute partnership property it is not necessary that the property should be purchased for the purpose of the partnership business. It may be noted that a partner is a trustee of the partnership property standing in his name and no partner can be said to have any beneficial interest in any particular estate or property, until the

partnership is dissolved.

Debi Prasad v. Jairam, AIR 1952 Punj 284: Where one partner purchases share in his own name, but with the money of the firm, the shares were held to be partnership property.

- Where the partners effected assurance of their lives for which premiums were paid out of the money of the firm, the policies were held to be the property of the firm.

- Where a partner renews a lease of the firm in his own name, the renewed lease is the property of the firm.

Mohanlal Bahri (deceased) by LRs. v. K.L. Bahri, MANU/UP/0499/1997 : AIR 1998 All 247 (250-51): Where a partner purchases a property without taking the consent of other partners which is required under the deed of partnership, out of the amount withdrawn from account of the firm and the partner in question looks after the business and also supervises in filing of Income-Tax returns and maintenance of account book and does not include the property in question in assessment register of firm, it cannot per se be inferred that the property was not purchased for interest and benefit of firm but it was purchased for benefit of the partner in question.

Broadway Centre v. Gopaldas Bagri, MANU/WB/0099/2002 : AIR 2002 Cal 78 (84), Where one partner purchased a certain property in court auction as he had an interest by virtue of courts sale and thus became the owner of the property and subsequently he brought the property in partnership in terms of registered partnership deed. The said partner and other partners supplying necessary amount for purchasing the said property at the time of the court sale by way of their share capital, such a property would be the property of the firm.

When something of valuable nature is acquired by the partner in breach of his duty of good faith, is taken to be acquired for the benefit of all the partners and has to be accounted for to the firm.

Khushal Khemgar Shah v. Khurshed Banu Dadipa Boatwala, MANU/SC/0014/1970 : AIR 1970 SC 1147. The goodwill of the business of the firm is included in the property of the firm and exclusion of goodwill necessarily does not include the assets which also form the property of the firm.

Shri Chemical Corporation, Ahmedabad v. Miraben Profulbhai Contractor, MANU/GJ/0139/2000 : AIR 2001 Guj 171: Where the goodwill is expressly excluded by a clause in the deed to a retiring partner, it cannot mean the exclusion of all rights in the asset as part of the property of the firm other than the goodwill. Thus, it is discernible as a principle of law that by way of agreement between the parties, such exclusion would not automatically include the exclusion of assets.

(3) Partner's property in firm's use: Where the personal property of a partner is being used in the business of the firm, it is a question of fact to be determined by reference to the parties' intention whether it has become the property of the firm. The Supreme Court observed whether property belonging to a person on entering into partnership with others, can become the property of the firm, depends upon the terms of the partnership agreement.

Arm Group Enterprises Ltd. v. Waldorf Restaurant, MANU/SC/0267/2003 : (2003) 6 SCC 423: The conduct of the partners in respect of the property may give rise to an implied agreement. Retiring partner had sold his share to others. The date of valuation should be date of retirement.

Robinson v. Ashton, (1875) 20 E.g. 25: A licence issued to a partner in his individual capacity has been held by the Supreme Court not to become partnership property; Ved Gupta v. Apsara Theatres, MANU/SC/0043/1983 : (1983) 4 SCC 323.

The personal licence of a partner to run a cinema hall does not become the property of the firm even if the cinema hall is being operated in partnership. At the most the other partners can acquire share in the exploits of the licence.

Miles v. Clarke, (1953) 1 WLR 537: 1983 All ER 779: A person who carried on the business of photography and the premises of business was on lease, included another person as a partner in his business. The agreement expressly provided that the profit would be divided equally. The Court held that lease, furniture goods of the studio etc., did not become partnership property.

Arjun Kanaji Thanker v. Santa Ram Kanaji Thankar, 1969 UJ SC 405: The Supreme Court has also held that when a person commences partnership with other person then subject to a contrary contract, the personal property of that partner does not become firm's property simply because it is used in the business of the firm.

Boda Narayan Murthy and Sons v. Valluri Venkata Suguna: MANU/AP/0105/1978 : AIR 1978 AP 257. A

property can become firm's property when it was brought originally into the stock of the firm by the partners when the partnership was constituted or it has been acquired by purchase or otherwise in the course of business. For example A, B and C are partners of a firm. A's scooter is purchased in the name of A and the money is paid from firm's account and A becomes indebted to the partnership firm for the said money. The property in scooter shall be deemed to be the separate property of 'A'.

Test for determining whether a particular property is separate property of the partner

What is the test to determine separate property.

Define the facts of Burnell v. Hunt.

The main test to determine whether a property is separate property of a partner or partnership property is the agreement between the partners and if no agreement has been made between the partners, property such as could be purchased for the purposes of firm, the prima facie presumption is, if the money has proceeded from the partnership firm, then the property is the joint property of the firm. But if these conditions do not exist the property is separate property.

Burnell v. Hunt, (1841) 5 Jur 650: In this case in pursuance of an agreement between A and B, 'A' took the premises in his own name and purchased silk material on his account to carry on the business of a silk lace maker and provided all the machinery and implements of trade and 'B' was employed to superintend and manufacture of goods. The agreement also stipulated that all the silk and materials, all the manufactured goods, and all the machinery and implements should be the sole property of 'A' and that 'B' should receive for his remuneration half the profits as soon as any accrued. It was held that the agreement did not make the property employed in the business the property of the firm. It is evident that the premises, the utensils of trade, or of the office furniture may be the separate property of one partner, unless he throws them into the partnership stock as his share of the partnership capital.

Test to Distinguish Separate Property from Partnership Property

The main test for determining whether the property belongs to partnership is to ascertain as to what agreement was arrived at between the partners regarding it, Arjun Kanaji Thankar v. Santaram Kanaji Thankar, AIR 1969 NOC 77. Thus, intention of the parties as gathered from the partnership agreement is the main test to determine whether the property is partnership property; Lachmandas v. Gulab Devi, MANU/UP/0227/1935 : AIR 1936 All 270.

Ganpat Rai v. Abnash Chander, AIR 1973 J&K 74: The tenancy right will be treated to be a part of the goodwill and belonged to the firm. The same will have to be valued along with the goodwill and taken into account at the final settlement of the accounts while passing a final decree.

Section 25 Liability of a Partner for Acts of the Firm

What liability is defined under section 25.

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

Sahu Rajeshwar Nath v. I.T.O., Meerut, MANU/SC/0233/1968 : AIR 1969 SC 667: As the liability of the partners is joint and several, it is open to a creditor of the firm to recover the debt from any one or more of the partners.

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CHAPTER IV

RELATIONS OF PARTNERS TO THIRD PARTIES

(Sections 18-30)

The law of partnership has often been stated to be a branch of the general law of principal and agent. The law which regulates the liability of partners for the acts of their co-partners in a branch of the law of agency and in the absence of any specific rule upon the subject under the head of partnership, we must look into the law of agency for the solution of our present question. Each partner is the agent of his co-partners for the purpose of conducting debts and obligation in the usual course of partnership business.

Section 18: Partner to be Agent of the Firm

Whether a partner is agent of the firm or not.

"Subject to the provision of this Act, a partner is the agent of the firm for the purpose of the business of the firm."

1. Cox v. Hickman, (1860) 8 HLC 268 (P) 312: Lord Wensleydale said: So if two or more agree that they should carry on a trade and share the profits of it, each is principal and each is an agent for the other, and each is bound by the other's contract in carrying on the trade, as much as a single principal would be by the act of an agent who was to give the whole of the profits to his employer."

The settled position of law is that the act of the partner of the firm can well be constructed as an act on behalf of all the partners if the circumstances warrant such a conclusion.

2. Structee Mech India v. Bharat Kumar Pahlajrai, MANU/TN/0227/1982 : AIR 1982 Mad 51: Letter written by a partner stating that the firm had suspended the payments treated as act of insolvency by all the partners.

3. N.V. Kamat v. Alfredo Antonio Doe Martins, MANU/SC/0203/1985 : (1985) 2 SCC 574: Where the vehicle belonging to the firm is being driven by the partner it can be said that it is done with the permission of the owner namely, the firm or with its implied authority. The vehicle can be said to be driven by the insured itself or with his permission.

4. Agricultural Insurance Co. In Re, (1870) LR 5 Ch: James, LJ., stated that as between the partners and the outside world (whatever may be their private relation between themselves) every partner is the unlimited agent of every other in everything connected with the partnership business.

According to Mr. Justice Story-

"Every partner is an agent of the partnership and his rights, powers, duties and obligations are in many respects governed by the same rules and principles as those of an agent: a partner virtually embraces the character of both a principal and agent".

5. Hawken v. Bourn, (1841) 8 M&W 703: Parke B said: "A partner in an undertaking is, by virtue of the relation constituted a general agent for his co-partners in all matters relating to the partnership and he has all the authorities necessary for carrying on the undertaking and such as are usually exercised by the partnership".

6. Structure Meel of India v. Bharat Kumar Pahlajrai, MANU/TN/0227/1982 : AIR 1982 Mad 51: It has been held that under sections 2(a) and 18 of the Partnership Act, the act of one partner of the firm can well be constructed as an act on behalf of all the partners if the circumstances warrant such a conclusion.

A partner is an agent of the firm. This agency is only for the purposes of the business of the firm. He can enter into contracts, purchase and sell goods, borrow money and do similar acts insofar as they are necessary for the carrying on of the business of the firm and firm will be bound by every such act. If he, on the other hand, does an act unconnected with the business of the firm e.g., purchases materials for the construction of his own building or borrows money for his daughter's marriage, the firm will not be bound by that as he is not firm's agent for that purpose.

Thus in India, the liability of the partner is joint and several. In England, the position of law is different. In England; for contracts entered into for carrying on the business of the firm the liability is joint but for torts and other wrongs the liability is joint and several. Every partner is declared by section 25 to be liable, with all his co-partners and also severally, for all the acts of the firm done while he is a partner.

Section 25: Liability of a Partner for Acts of the Firm

Define the joint and several liability of partners.

Section 25 provides that every partner is liable jointly with all the other partners and also severally for all acts of the firm done while he is a partner. A firm is not a legal entity. It is only a collective or compendious name for all the partners. In other words, a firm does not have any existence away from its partners. A decree in favour of or against a firm in the name of the firm has the same effect as a decree in favour of or against the partners.

1. Dena Bank v. Bhikhabhai Prabhudas Parekh & Co., MANU/SC/0317/2000 : (2000) 5 SCC 694: While the firm is incurring a liability it can be assumed that all the partners were incurring that liability and so the partners remain liable jointly and severally for all the acts of the firm.
2. ITO (III) v. Arunagiri Chettiar, MANU/SC/0543/1996 : (1996) 9 SCC 33: Section 25 does not make a distinction between a continuing partner and an erstwhile partner and make liable every partner for all acts of the firm done while he is a partner.
3. Ashutosh v. State of Rajasthan, MANU/SC/0520/2005 : (2005) 7 SCC 308 (Para 13): Each partner shall be liable as if the debt of the firm has been incurred on his personal liability. An endorsee of a promissory note executed by a managing director of the firm has a right to hold all the partners liable as the makers of the promissory note.

According to section 25

The liability of partners is joint and several where an advances of Rs. 50 lakhs was taken from the plaintiff by a person who was not a partner under the partnership of the firm and the cheque was made in the name of the firm and promissory notes were executed by the partners of the firm. An application for attachment was filed by the plaintiff. The Supreme Court had to decide as to prima facie whether order against partners lies. It was held by the Supreme Court that prima facie the liability of the appellants could not have been ignored.

4. R.S. Rajendran v. Shankar Sundaram, MANU/SC/7026/2008 : AIR 2008 SC 1170: This has been held by Supreme Court that this liability is for such acts of the firm which are done while he is a partner. Therefore if a partner ceases to be a partner of the firm on account of death as otherwise he will not be liable for the acts of the firm. Section 28(2) provides: "Where after a partner's death the business is continued in the old firm name, the continued use of that name, or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the firm done after his death.
5. Goldberg v. Jenkins, (1889) 15 VLR 36: Hodge, J. pointed out that the power of a partner to bind his co-partners depends upon the question of agency. The law of partnership starts with this principle that each partner is the agent of all the partners for transacting all the ordinary partnership businesses.
6. K.A. Louiz v. A.A. Augustin, MANU/KE/0194/2004 : AIR 2005 Ker 1: "Where the petitioner, a partner in partnership firm paid the entire amount in realisation of decree against the firm and filed suit to recover half of amount against the defendant, the other partner and defendant made no specific denial regarding payment made by petitioner in his written statement and did not get himself examined to controvert the oral evidence adduced by him, it was held that the plaintiff would be entitled to amount to a decree against defendant in realisation of amount falling on his share.

Problem: 1. 'X', a creditor of a firm consisting of 'A' and 'B' sued A and obtained a decree against him. Having failed to recover anything on his decree against 'A'. X files a suit against B. Advise 'B'.

Ans. Every partner is jointly and severally liable for all acts of the firm done while he is a partner. Therefore 'X' is entitled to file a suit against 'B'. X's failure to implead B in his suit against 'A' is no defence.

2. 'X' sues A, B, C alleging that they were partners. At the hearing A admitted 'X's claim and judgment was thereupon passed in favour of X for the amount claimed. 'X' wants to proceed with the suit against B and 'C'. Advise B and C.

Ans. 'X' can proceed with the suit against 'B' and 'C' under section 25.

Section 19: Implied Authority of Partner as Agent of the Firm

Define the implied authority of partner of the firm.

Define the case-law in relevancy with the section 26.

"1. Subject to the provisions of section 22, the act of 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 "Implied authority."

2. In the absense 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 proceeding filed on behalf of the firm.
- (e) admit any liability in a suit or proceeding against the firm.
- (f) acquire immovable property on behalf of the firm,
- (g) transfer immovable property belonging to the firm, or
- (h) enter into partnership on behalf of the firm."

Section 19(1) provides that this implied authority of a partner is often referred to as his ordinary or apparent or ostensible authority. The learned English author (Lindley) prefers the term implied authority.

1. Bank of Australia v. Breillat, (1847) GMPC 193: The Privy Council adopted the passage from "Story on agency" in which the general power of a partner as agent of the firm has been well summed up in the following words:

Every partner is, in contemplation of law, the general and accredited agent of the partnership, as it is sometime expressed, each partner is *praepatus negotiis societatis* and may consequently bind all the other partners by his acts in all matters which are within the scope and object of the partnership.

In the words of Pollock:

"The act of a partner done in the name of a firm will not bind the firm merely because they are convenient or prudent or even necessary for the particular occasion. The question is what is necessary for the usual conduct of the partnership business; that it is the limit of each partner's general authority, he is the general agent of the firm, but he is no more.

2. Commissioner of Income-Tax, Patiala v. Hardit Singh, Pal Chand & Co., (1979) 120 ITR 189: The two persons who had secured licence in their names took eight other partners for carrying on the liquor business. The firm, applied for registration which was refused by the I.T.O. but granted by the tribunal on a reference.

Held:

That by virtue of the conditions in the licence to the effect that the licence is granted subject to the provisions of the rules, there was a clear finding by the tribunal that names of the eight persons who were stranger to the licensee, were not endorsed on the licence in terms of the rules.

In order to bind the firm, for an act of a partner done within the scope of the implied authority, three conditions must exist-

- (i) The act must be done in the conduct of the business of the kind carried on by the firm,
- (ii) The act must be done in the way which is usual in such business,
- (iii) Finally, the act must be done in the firm name, or in any other manner expressing or implying an intention to bind the firm.

Example (a) A partner can buy on the credit of the firm, any goods of a kind used in its business. This power extends to both, a trading and a non-trading partnership.

(b) Similarly, a partner may hire on the credit of the firm any goods of a kind used in its business.

Case:

A partner of a firm, whose business it was to trap wild elephants, hired an elephant to be used for trapping wild elephants and one of the terms of hire was that the hirer should pay Rs. 5000 if the elephant died during the period of hire. It was held that the other partners also were bound by this term. (Mathura Nath v. Shreejukta Bageshwari, (1927) 4 Cal LJ 362).

(c) A partner may engage servants or agents and he may also discharge such persons, although he can't discharge them against the will of the co-partners.

(d) A partner can constitute and defend suits in the name of the firm. It has been held in England that a partner, who attends to the affairs of the firm, has an implied authority to employ a solicitor to defend a suit filed against the firm.

Problem:

A and B carry on business in partnership as bankers. A sum of money is received by A on behalf of the firm. B does not know of the receipt. A appropriates the money to his own use. The partnership is liable to make good the money. This is an act done by a partner in the usual course of business. Therefore, the firm is liable.

It must be clearly observed that the implied authority does not come into existence unless the act is done in the usual way, and in the conduct of the business of the kind carried on by the firm. Thus while a partner in a mercantile firm has an implied authority to draw, accept and endorse bill of exchange on behalf of the firm, a partner in a firm of solicitors has no such implied authority, for it is not part of the ordinary business of a solicitor to draw, accept or endorse bill of exchange; *Krishnji v. Abdul*, (1941) 43 Bom LR 888.

A partner in a trading firm has an implied authority to borrow money on the credit of the firm. A partner, having power to borrow on the credit of the firm, may give a valid, equitable security, by deposits or otherwise over any estate of the partnership. Therefore, the firm is liable to the bank.

A partner in a mercantile or other firm has no implied authority to execute deed on behalf of the firm, nor does the implied authority of a partner extends to acts not usually incidental to scope of the partnership business, for example, giving of guarantees by a member of the mercantile firm. A guarantee signed by one partner in the firm does not bind the other partners unless it is in the regular line business of the firm, or unless he has their explicit authority to give the guarantee and a continuing guarantee or cautionary obligation given either to a firm, or to the third person in respect of the transaction of the firm is, in absence of agreement to the contrary, revoked as to future transaction by any change in the constitution of the firm to which, or of which, the guarantee or obligation was given.

Sanganer Dal and Flour Mill v. F.C.I., AIR 1982 SC 481:

One of the partners (Satya Narain) of the partnership firm, who had implied authority to enter the contract with the corporation to purchase the goods, entered into contract with the respondent-corporation to supply of Dal 1000 quintals at the contracted rate which was the usual course of the business of the appellant. The partner had power to do business on behalf of the firm and in exercise thereof he entered into the contract with the corporation during the usual contract of business to supply the Dal.

The agreement with the corporation included an arbitration clause and in terms thereof the dispute was to be referred to the arbitration. Therefore, the dispute having arisen, it was referred to arbitration by the Addl. District Judge under section 20 of the Arbitration Act. An appeal was filed in the High Court against the said order of the Addl. District Judge. The instant appeal is by special leave under Article 136 of the Constitution against the said order of the High Court.

Dismissing the appeal, the Supreme Court observed that section 18 of the Partnership Act postulates that "Subject to the provisions of the Act, a partner is the agent of the firm for the purpose of the business of the firm." Section 19(1) adumbrates that. "Subject to the provisions of section 22, the act of the partners which is done to carry on in the usual way the business of the kind carried on by the firm."

Devi Prasad Rai v. Kanahiyalal Mukharya, MANU/SC/0379/1986 : (1986) 4 SCC 5:

K who was the owner of certain vacant site entered into partnership with D and others. He agreed to allow his vacant land to be used by the firm for raising cinema exhibition hall with an undertaking that he will not alienate the property during the subsistence of the firm. The Supreme Court agreed with the finding of the High Court that, (i) K as the owner of the property had the right to sell his property, but, (ii) during the subsistence of the firm, the sale deed was not binding on the other partners who can continue to remain in possession.

Chainraj Ramchand v. V.S. Narayaswami, MANU/TN/0245/1982 : AIR 1982 Mad 326:

It was held that "A partner has got no implied authority to compromise or relinquish any claim or part of the claim by the firm. Express power from other partners is needed to entitle a partner to compromise a claim whether in a legal proceeding or otherwise.

Rajnikant Hashmukhlal Galwala v. Natraj Theatre, MANU/GJ/0150/1999 : AIR 2000 Guj 80:

It cannot be said that subsequent ratification is needed when the ratification was there at the inception

itself. Therefore, the question of subsequent ratification does not arise.

B.V. Narasimhulu Chetty v. Ratakonda Krishna Murthy, MANU/AP/0100/1986 : AIR 1986 AP 177:

A partner has authority to lend the money of the firm upon mortgage when such a transaction is part of the ordinary business of the firm, but a partner has, as a rule, no authority to take as security any property to which liability is attached.

In trading firms, every partner has implied power to bind the firm if there is no agreement to the contrary, but a non-trading firm is not bound centers the issue of negotiable instrument by one partner is shown to be necessary or usual in the particular business. For this purpose, brokers and commission agents are not traders, nor are cinematographic theatre owners. Firms of solicitors, quarry workers, auctioneers and engineering contractors are instance of non-trading partnership.

When a negotiable instrument is regularly drawn by a partner in a trading firm in a transaction incidental to the firm's business, another partner is not less liable because his name does not appear on the face of the instrument. Where the partnership agreement contemplated raising of loan by the firm, the managing partner would have every right to borrow monies for the purpose of the firm. A firm will be bound under a negotiable instrument only if the partner acts in the name of the firm. It is necessary that the negotiable instrument must, have been executed in the name of the firm in order to bind the firm.

Every partner in a leading firm has implied authority to borrow money for the purpose of the business or credit of the firm. The sudden exigencies of commerce render it absolutely necessary that such power should exist in the partners of the trading firm. Every other implied power of a partner it only exists where the business is of such a kind that it cannot be carried on in the usual way without such a power.

Where the act of a partner is within the scope of his implied authority but it has been done by him, to the knowledge of the third party, not for the firm, but for his own purpose, the firm is not liable According to Cockburn, CJ. "If a creditor of one of two partners choose to take from his debtor what he knows to be partnership securities as partnership funds without ascertaining whether the debtor has the authority of his partners as to this application of the partnership funds, he does so at his own peril.

Section 22: Mode of doing act to bind firm

What are the modes which bind the partnership firm.

Section 22 of the Partnership Act provides-

"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."

(1) Punjab Bank v. Mauhammad, 15 Lah 625: 'A' one of the two partners in the Punjab Alliance Auction Rooms, executed a pronote in favour of the plaintiff. The note was signed by A describing himself as Proprietor, Punjab Alliance Auction Rooms. It was held that A's description as a proprietor of the firm was not sufficient to justify the firm being held liable on the note.

(2) Devji v. Magan Lal, MANU/SC/0020/1964 : AIR 1965 SC 139: A partner had taken a sub-lease in his own name instead of taking it in the firm's name. Besides this, there did not seem to be any intention to bind the partnership firm. The Supreme Court held that the firm was not bound by the lease as the parties did not intend to bind the firm by this transaction.

Similarly, in another case, two members of the joint Hindu family, which carried on partnership, executed a promissory note. There seemed to be no intention that the money was taken as loan for the partnership. The Court, therefore, held that other members were not bound by the promissory note.

Similarly, in another case a member of the partnership carrying on the business of petrol executed an instrument and after signature wrote "Agent of the Company". The Court held that the "Agent of the Company" was only a description of the person signing and that it did not express his intention to bind the firm. Therefore, the firm was not bound by the instrument executed by the partner.

(3) Ghisulal v. Haji Mohd, MANU/RH/0014/1981 : AIR 1981 Raj 58: Where a partnership signed a pronote describing himself as proprietor of the firm, liability of the firm does not arise. Thus, the partner acting for the firm must expressly or impliedly let the other party know that he acts for the firm. The other party must know his representative character as an agent of the firm. Where the partner fails to do this

he will incur personal liability on the contract and the firm may not be liable.

(4) Sitaram v. Chimandas, 1928 ILR 52 Bom.

(5) Pariambala Chettair v. M. Ghosh, (1945) 1 MLJ 279: It has been held that the test for making the firm liable for the acts of the partner is whether it was done as agent and not as principal. If the answer is in affirmative then the firm would be bound by the act of the agent.

In order to bind the firm from the act of a partner, that act must be done in the name of the firm. That is, the act done by a partner will bind the firm only when the act done by him is in the capacity of a partner of the firm and not on his own behalf. The partner has done the act in the course of agency and not in his personal capacity. This principle is similar to rule of agency and that on which the liability of an undisclosed principal is based.

Section 20: Extension and Restriction of Partner's Implied Authority

To what extent there is a restriction on partner's implied authority.

"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."

This section deals as to how the implied authority of the partner may be extended or restricted. It lays down that this can be done by contract between the partners.

This section deals with restriction on the implied authority of partner. It has been provided under first paragraph that partners in a firm may by contract between themselves extend or restrict the implied authority but such extension or restriction of partner's authority. It is to be noted that it does not affect the third parties dealing with the firm who have no knowledge of such extension or restriction.

Example:

Thus A and B are partners in a grocery business. The partnership deed provides that A shall not buy anything on behalf of the firm. But A nevertheless enters into contracts to buy groceries. What is the liability.

The implied authority may be restricted by an agreement between the partners. When a restriction has been imposed on the implied authority of a partner, such a restriction is not binding on the third party unless the third party has the knowledge of the restriction. There is a difference between the statutory restrictions which have been imposed by the section 19(2) on the implied authority of a partner and the restriction on the implied authority which may be imposed under section 20 by a contract between the partners.

Section 21: Partner's Authority in an Emergency

"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".

The partner may agree to extend the implied authority of a partner, i.e., authorise him to do something for which he does not have implied authority. The firm will be bound by such an act of a partner.

The object of this section is to enable the partner of a firm to exercise his powers in emergency for the protection of the firm from any loss and the firm is bound by that act. This English Partnership Act does not authorise a partner to do any unusual act in business transaction. It authorises a partner to do any usual act in emergency for the protection of the firm from loss.

Section 24(2) of the English Partnership Act provided that any partner should be indemnified by his co-partners for the act done by him in emergency for the preservation of the business or the property of the firm. If a partner makes some payments or incurs liability in doing an act, in an emergency, for the purpose of protecting the firm from loss and he has acted as a prudent man in like circumstances would have acted in his own case, the firm shall indemnify the partner for the same.

Hawthorne v. Bourne, 1841 7 M/W 595: A question sometimes arises as to whether a power to do what is casual includes a power to do what is unusual, however, urgent it may be. Answering the question in the negative, it has been held that an agent who has no authority to borrow money cannot do so even in an emergency to enable the business to be carried on.

When an agent does an act on behalf of a principal but without the principal's prior authority the principal may grant subsequent approval to such an act i.e., ratify the same. If the principal ratifies the act, the same effect follows as if the act had been performed with his prior authority.

For instance: A partner 'A' without any authority borrows Rs. 10,000 from 'B'. A's act is ratified by the other partners. Thereafter they become bound to pay that sum to 'B'.

Section 23: Admission made by a Partner

What is the effect if an admission is made by partner?

"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."

An admission is a statement by which a person acknowledges the existence of a fact of his own interest. If a partner makes a statement in the ordinary course of business of the firm by which he admits a fact or liability, that is, an admission against the firm. Since in partnership business every partner is an agent of his co-partners for the same object so that if a partner admits any fact or liability in respect of the ordinary course of business of the firm the fact or representation will be binding on all the partners of the firm.

This section deals with the effects of admissions made by a partner, and provides that an admission or representation made by a partner is evidence against the firm if it is done in the ordinary course of business.

For the purpose of the application of this section, it is necessary that the admission or representation made by a partner must have been made concerning the affairs of the firm. Secondly, it must be made in the ordinary course of business. If any of the ingredients is absent in an admission or representation, the firm will not be bound by the admission or representation. To come within the scope of this section, the partner must have made the admission not beyond the scope of his authority, if the partner made an admission or representation beyond the scope of his authority the firm as co-partners would not be bound by that admission or representation. The firm will also be not bound by that admission or representation which is made before he joined the partnership. Similarly, admission made after the business stopped is also not an evidence against the firm.

If a partner admits the debt of a firm it is an admission to be taken on evidence against the firm because a partner has an implied authority to admit a debt.

Bengal National Bank Ltd. v. Jatindra Nath Mazumdar, (1929) 56 Cal 556: Admission by one partner regarding making of a contract, execution of a document, payment of money, supply of goods as financial condition of the firm will be evidence against all the other partners. It is, of course, necessary that such admission or representation must have been made in the ordinary course of business. Similarly, representation made by a partner also has the same effect.

Section 24: Effect of Notice to Acting Partner

What are the requirements for notice to a partner.

"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."

Section 24 is based on the principle that as a partner stands as an agent in relation to the firm, a notice to the agent is tantamount to the notice to the principal and vice versa. As a general rule, notice to a principal is notice to all his agents, and notice to an agent of matters connected with his agency is notice to his principal.

Essentials:

The requirement of this section are as follows-

- (a) the word 'notice' means actual notice and not constructive notice,
- (b) the notice must be given to a partner who habitually acts in business and means to an acting partner and not to a dormant or sleeping partner,
- (c) the notice must concern with the affairs of the firm,
- (d) the partner, receiving the notice should not have committed fraud either himself or with the consent of other partners.

The above rule is based on the principle of agency that notice to an agent is equivalent to a notice to the principal.

Since partnership is a form of agency, this rule applies to a partnership firm also.

A question arose in an English case as to whether notice given to a partner before he became a partner would operate as a notice to the firm. The court held that such knowledge of a partner would not operate as notice of the firm.

An exception is made by section 24 in cases of fraud. This is based on commonsense and when a partner is committing a fraud on his other partners, notice to him will not be notice to the firm. In *Bignold v. Waterhouse*, (1813) 105 ER 95, a partner of a firm of a carrier, acting in fraud against his co-partners agreed to transport valuable parcels free of charge. The partners (others) were held not liable for the loss of the parcels. The fact that some clerks in the firm were aware of the fraud was held not to affect the innocent partners.

Likewise, if a partner who is also a trustee of a trust, employs trust funds in the partnership business, his guilty knowledge can't be imputed to the firm.

Section 25: Liability of a Partner for acts of the Firm

Define in brief section 25.

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

Section 25 provides that every partner is liable, jointly with all the other partners and also severally for all acts of the firm done while he is partner. A firm is not a legal entity. It is only a collective or compendious name for all the partners. In other words, a firm does not have any existence away from its partners. A decree in favour of or against a firm in the name of the firm has the same effect as a decree in favour of or against the partners. While the firm is incurring a liability it can be assumed that all the partners were incurring that liability and so the partners remain liable jointly and severally for all the acts of the firm done while he is a partner.

Sahu Rajeshwar Nath v. I.T.O., Meerut, MANU/SC/0233/1968 : AIR 1969 SC 667: Section 25 does not make a distinction between the continuing partner and an erstwhile partner and makes liable every partner for all acts of the firm done while he is partner.

Ashutosh v. State of Rajasthan, MANU/SC/0520/2005 : (2005) 7 SCC 308: It is open to a creditor of the firm to recover the debt from anyone or more of the partners. Each partner shall be liable as if the debt of the firm has been incurred on his personal liability.

Gurram Subbarayudu v. Motapothula Narasimham, MANU/AP/0065/1974 : AIR 1974 AP 307: An endorsee of a promissory note executed by a managing partner of the firm has a right to hold all the partners liable as the makers of the promissory note.

Bhagwanji Devraj v. Union of India, 16 Guj LR 357: Where a subscriber had two telephonic connections, one in his own name and the other in the name of his partnership firm, and the firm defaulted in paying the dues of the telephone department, the action of the department in disconnecting both the telephone lines was upheld on the ground that liability of the partner was joint and several.

Section 2(a) of the Indian Partnership Act defines the term "acts of the firm". This section provides that act of firm means act done by all the partners of the firm, anyone or some of the partners of the firm and act done by an agent of the firm. A partner is jointly and severally liable with his other co-partners for the acts of the firm. A partner may be held liable for the act done by any other partner of the firm, which is not binding on the firm but later on that act has been ratified by all the partners of that firm.

Where a partner as an agent for his personal profit, has done any act fraudulently or wrongfully, the firm will not be liable for that fraudulent and wrongful act.

When a firm is deemed to be a person and thus a legal entity for a particular purpose, such an assessment for tax liability, the principle enunciated in section 25 regarding personal liability of partners for acts of the firm, would not be applicable. Unless there is a statutory provision which specifically provides that the partners would be personally liable for lapses of the firm.

Sahu Rajeshwar Nath v. I.T.O., Meerut, MANU/SC/0233/1968 : AIR 1969 SC 667: As the liability of the partners is joint and several, it is open to a creditor of the firm to recover the debt from anyone or more of the partners.

Section 26: Liability of the Firm for Wrongful acts of a Partner

Whether a firm is liable for wrongful acts of partner done in the ordinary course of business.

"Where by the wrongful act or omission of partner acting in the ordinary course of the business of a firm or with the authority of his partners, loss or injury is caused the firm is liable therefor to the same extent as the partner."

The principle of this section is a branch of the universal rule that everyone must answer for the acts and default of his servants or agents in the course of their employment. All the members of a firm of solicitors will be liable for the negligent advice given by one of them to the client of the firm or for negligent conduct of their clients' claim. The firm being a legal entity, it is being managed by its partners. The firm itself cannot transact its business. Contravention of any law by anyone of the partner of the firm would be a contravention by the firm itself. If one partner in ordinary course of business of the firm commits breach of revenue laws, all the partners will become liable for the consequent penalties.

A firm may also be liable for money which has come into its funds by the irregular or fraudulent act of either a partner or an agent who is not a partner and this whether the act was in the ordinary course of business, at all events if the partners knew or might have known of the payment and its source.

Where, by the wrongful act or omission of a partner acting 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 incurred, the firm is liable therefore to the same extent as the partner.

TORTS OF A PARTNER

Whether a firm is vicariously liable for the acts of partner.

The word 'injury' in section 26 implies a tort. The liability of a firm for the torts of a partner rests on precisely the same principles as the liability of a master for the torts of his servant, inasmuch as both are merely branches of the law of principal and agent.

Venkat v. Natesa, (1939) I MLJ 905:

In this case, N and K entered into partnership to supply goods to jails. K provided finances for the partnership business and N did the work. K paid bribes to officials and entered the amounts in the account books of the partnership as items of expenditure. N, in his term, also spent partnership funds in paying bribes. In a suit filed by N against K for the dissolution of partnership and taking of accounts, K objected to the amount spent in bribery by N being taken in account. N objected to the amounts spent in bribery by K. The Court held that neither N nor K was entitled to debit the partnership with money spent for an illegal purpose.

Problem:

A customer of a banking firm deposits with the firm, a box containing securities. He afterwards authorises one of the partners to take out some of these and replace them by certain others. The partner not only makes the changes he is authorised to make in the contents of the box, but makes other changes without authority, and converts the customer's securities to his own use. Discuss the liability of the firm for the loss.

Ans:

Here, it is evident that the firm is not liable to make good the loss. As the separate authority given to one partner by the customer shows that he elected to deal with that partner personally and not as agent of the firm.

Section 27 of the Act proceeds to deal with the liability of the firm for misapplication by a partner of money or property of a third person received for or lying in the custody of the firm. This section lays down that where-

- (a) a partner acting within his apparent authority, receives money or property from a third party and misapplies it, or
- (b) the firm in the course of its business receives money or the 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.

Problems:

X, Y, Z were partners in a firm of bankers of whom Z was not an active partner 'C', a customer of the firm deposited his ornaments with the bank for safe custody. X and Y sold the ornaments without authority from 'C' what are the rights of 'C' against the Bank. What is the liability of Z?

Ans.:

In this case, it will be seen that the ornaments of 'C' were received by the firm of bankers in the course of its business for safe custody. X and Y active partners of the firm, had sold ornaments without any authority from C, the owner. Hence, the firm is liable to make good the loss. C can recover the amount from the firm under section 27. Though Z is a dormant partner, he is also liable along with X and Y to make good the loss: section

25. But Z is entitled to be indemnified by X and Y.

Section 27: Liability of Firm for Misapplication by Partners

What is the liability of firm for misapplication of property by partners?

Where-

(a) a partner acting within his apparent authority receives money or property from a third party and misapplies it, or

(b) a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by one of the partners while it is in the custody of the firm, the firm is liable to make good the loss.

Clause (a) of section 27 varies from clause (b), under clause (a) to hold the firm liable it is necessary to prove that a partner while acting in an apparent authority has received money or property from the third party. The property so received shall be deemed as property received by the firm. It is immaterial whether the co-partners have any knowledge of receiving that property. Because a partner receives that money or property as an agent of the firm.

However, the firm will not be liable for the property misapplied by a partner when-

(a) the partner or agent has received that property not in the course of business,

(b) such property received by him not under the authority of an agent but for his personal use.

Clause (b) of section 27 lays down that where a firm receives money or property from the third party in the ordinary course of business, and any partner of that firm, misapplied that property while the property is in the custody of the firm, the firm is liable to make the good the loss. Under this section to hold the firm liable, the following conditions must be satisfied-

(a) the firm has received that property in the ordinary course of business, and

(b) at the time of misapplication such property must be in the custody of the firm.

Essentials.-

To make the firm liable under this section the following requirement must be fulfilled-

(a) that the partner has acted in his apparent authority,

(b) that the partner received money or property from a third party

(c) that the partner has misapplied such property;

The firm will be liable when-

(a) it receives money or property in the ordinary course of business; and

(b) such property was applied by its partners while in its custody.

Rhodes v. Moules, (1895) 1 Ch 236 one of the partners of a firm of solicitor was requested by a client to obtain loan for the client on the mortgage of some property. The said partner told the client that the mortgagees wanted some additional security and thus obtained from the client some share warrants payable to bearer. He subsequently misappropriated the share warrants and absconded. The other partners had no knowledge of the deposits of the warrants and subsequent appropriation thereof. It was found that on some earlier occasion such share warrants had been received through the same partner from the same client by this firm. It was, therefore, held that it was within the apparent authority of the partners to receive the share warrants, the partners were liable for the misappropriation of the warrants made in the case.

To make the firm liable for the acts of a partner, it is necessary that such a partner while receiving money or property from a third party acted within his apparent authority. If the act done is outside such authority, the firm cannot be made liable for the same.

Cleather v. Twisden, 28 Ch D 340: One of the partners of a firm of solicitors received some bonds payable to the bearer and misappropriated the same. It was found that the receipt of such securities for safe custody was not a part of the business of the solicitors and therefore it was held that the other partners could not be held liable for the same. The position would have been different if receipts of such bonds had been within the implied authority of the partner concerned.

Where a party trusts or deals with a partner and not within the firm, the firm may not be liable. A customer of a banking firm deposited with the firm a box containing securities. Afterwards, he authorised one of the partners only to take out some of the securities and to replace them by some others. The firm was held not liable when that partner misappropriated some of the securities.

Section 28: Holding out

Define Holding out with the help of examples and case-laws.

(1) "Anyone who by words spoken or written, or by conduct represents himself or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to anyone who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

(2) Where after a partner's death the business is continued in the old firm name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any acts of the firm done after his death."

Liability for holding out

Explain the essentials elements of holding out.

Define the case law Beaven v. National Bank Ltd.

A liability of a third person may accrue in a case where he is not a partner of a firm. He may be held liable, though he is not a partner of the firm, by holding himself out as a partner in the firm.

Section 28 of the Indian Partnership Act enunciates the principle of holding out. According to this section where a person either orally or in writing or by his conduct represents himself as a partner in a firm or voluntarily induces some other person to be a partner in a firm, he will be liable as a partner of a firm, when on his inducement any person delivers a credit to the firm.

The principle of holding out is a branch of doctrine of estoppel. Section 115 also lays down the doctrine of estoppel. The doctrine has been laid down by the Privy Council.

Illustration-

"A is in the habit of representing himself to be a partner of a particular firm. B on the strength of such representation, and, without giving any notice to A, supplies goods on credit to the firm. A would be liable as a partner to B for the price of the goods. It will thus be seen that liability by holding out is merely a special application of the principle of estoppel enunciated by section 114.

This is the rule of liability commonly called 'Holding Out'. Representation of this kind can only conclude the defendants with respect to those who have altered this condition on the faith of its being true.

Porter v. Incell, it was observed that no evidence of intention or knowledge of the consequences of his acts and conduct is necessary to make the apparent parties liable.

There can, of course, be no holding out to a person who already knows the real facts, as for example by inspection of the register in the case of a firm registered under Chapter VII of the present Act.

A minor does not incur liability by holding himself out as a partner. If a minor admitted to the benefits of partnership holds himself out as a partner on his attaining majority, he will incur liability under this provision. His option to elect to become or not to become a partner by giving a public notice as provided in section 30(5) will not affect any liability which he may incur by projecting himself to be a partner within the period of six months of his attaining majority. A person who merely holds himself out as willing to become a partner does not incur any liability under this provision. The partners, in a suit for recovery were found to be holding out when they did not enter the witness box to explain letters and account books showing them as partners thereby prompting the Court to return a finding of existence of a partnership firm.

Fox v. Clifton, (1830): The holding one's self out to the world as a partner as contradistinguished from the relation of partnership, imparts at least voluntary act of the party so holding himself out. It implies the lending of his name to the partnership, and is altogether incompatible with the want of knowledge that his name has been so used.

1. Representation:

The person sought to be charged with liability for holding out must have represented himself to be a partner in the firm. Representation may be made either by words, written or spoken or by conduct. An express

representation takes place when a person allows his name to be used in the affairs of the firm. For example in the name, title or signboard of the firm.

Beaven v. National Bank Ltd., (1906) 2 TLR 65: One MW was the manager of one B's business. The business was carried on under the name MW & Co.

It was held that by permitting his name to be used in the title of the firm, he had made a representation that he was a partner and therefore, he was liable to those who gave credit to the firm on the faith of that representation.

The representation may not only be oral or written but it may also be implied from the conduct of the parties. Under section 28(1) a person may make representation through his conduct that he is a partner. The same will apply if he knowingly permits himself to be represented.

Tower Cabinet Co. Ltd. v. Ingram, (1949) 1 All ER 1033: A and B commenced business in partnership as household furnishers under the name of 'C'. This partnership was dissolved by agreement in 1947. A notice of dissolution was given by 'A' to the firm's banker and he arranged with 'C' to notify those dealing with the firm and he had ceased connection with the firm. The Court held that 'A' had not knowingly suffered himself to be represented as a partner and that was 'A' was not known to the plaintiff as having been a partner was not liable.

Martyer v. Gray, (1863) 14 CB: Where 'A' introduced 'B' to 'C' as his partner, when in fact he was not so and 'B' silently stood by, he was held liable by holding out.

Bare knowledge that his name is being used may not make a person liable by holding out. But is he under no duty to ratify the world that he is not a partner? Knowledge may in time become evidence of consent by acquiescence. Prudent men will rather use a little abundant caution in due reason that run the risk of much more trouble at a latter time.

2. Knowledge of representation:

The person seeking to hold another liable by holding out or estoppel must show that the he had knowledge of the representation and acted on it. It must be proved:

"That the defendant had held himself out to be a partner not 'to the world'.... for that is a loose expression, but to the plaintiff himself or under such circumstances or publicity as satisfy a jury that the plaintiff knew of it and believed him to be a partner. He would then be liable to the plaintiff in all transactions in which he engaged and gave credit to the defendant or the firm upon the faith of his being such partner.

If the plaintiff has acted on the faith of the representation liability is incurred to him and it is immaterial that the defendant did not know that his representation had reached the plaintiff. But if the plaintiff has not heard of the representation or having heard, did not believe it or know the real truth or would have been given credit to the firm in any case, no liability by holding out arises, because he has not been misled by the representation. While on the one hand, it is necessary to prove that the person giving credit or supplying goods to the firm had knowledge of the representation, on the other hand it is not necessary to prove that the person who represented himself as a partner had the knowledge that his representation reached the person giving credit or goods to the firm. According to section 28(1), liability for holding out depends on two essential elements-

(i) the representation by a person that he is a partner in the firm and, (ii) any other person on the faith of this representation gives credit or supplies goods to the firm. If these two elements are present, it is immaterial whether the person representing himself to be a partner in the firm knows or does not know that the representation has reached the person giving credit or supplying goods to the firm.

Principle of Holding out and the Retired Partner

Discuss the principles of Scarf v. Jardine.

When a partner retires from the firm or leaves the firm, ordinarily his liability also ends for the acts of the firm after the death or his retirement. But this is not practical because the fact of his retirement must be known to the third parties. Therefore, section 32(3) provides "notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of those which would have been an act of the firm if done before the retirement 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.

Scarf v. Jardine, (1882) 7 App Cas 345:

Scarf and Rodgers were the two partners in a firm, R and Co. Scarf retired but he did not give public notice regarding his retirement. Rodgers continued the business with the name of the old firm. A man named Jardine used to supply goods on credit to the firm before the retirement of Scarf. He had no notice of retirement of Scarf from the firm. On the order of the firm for the goods he sent the goods on credit as in the past. The price of the goods having not been paid he made an enquiry and found that Scarf retired from the firm. Therefore, he sued the new firm (without Scarf) for the recovery of price for goods but he failed to recover the price because the firm had become bankrupt. Thereafter he sued Scarf who had retired from the firm. The House of Lords held that Scarf was not liable. If Jardine had not sued the new firm Scarf would have been liable on the basis of the principle of holding out. He had the right to elect whether he would sue the new or the old firm. He elected to sue the new firm. Thus, he accepted the change in the constitution of the firm. Having accepted it once, he lost the right to hold Scarf liable on the basis of principle of holding out.

Thus when a partner retires from the firm he should give a public notice in this respect otherwise he may be held liable on the basis of the principle of holding out but this principle does not apply in respect of a sleeping partner.

Exception to the principle of holding out

Explain the exception to the principle of holding out.

The principle of holding out on retirement without giving public notice does not apply to the following cases:

- (1) Deceased Partner: The estate of a deceased partner is not liable for any act of the firm done after his death even if the business is continued by the surviving partners in the same style and place and even if his name appears in the name and affairs of the firm. Death is notice by itself.
- (2) Insolvent Partner: Insolvency of partner also terminates his liability forthwith. A person ceases to be a partner from the date of his insolvency and his estate is no more liable for any act of the firm done after his insolvency whether notice has been given or not.
- (3) Dormant Partner: A dormant or sleeping partner means a partner whose existence as partner is not reflected by the name of the firm or otherwise. He has never taken part in the conduct of business as, partner and, therefore, he is not known to the customers of the firm. As long as he remains a partner his liability for the acts of the firm is the same as that of any acting, apparent or ostensible partner. But when retires, public notice is not requisite to terminate his liability. His presence in the firm was not known to the public and his exit need not be publically announced.

Jwaladutt R. Pillani v. Bansilal Motilal, AIR 1929 PC 132; Juggilal Kamlatpat v. Sew Chand Bagree, MANU/WB/0124/1960 : AIR 1960 Cal 463.

Where his presence in the firm was known to some customers notice of his retirement must be given at least to them.

Transferee of Partner's Interest (Section 29)

Section 29: Rights of Transferee of a Partner's Interest

Briefly lay down the principle explained in section 29.

"(1) A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm to interfere in the conduct of the business or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.

(2) If the firm is dissolved or if the transferring partner ceases to be a partner, the transferee is entitled against the remaining partners to receive the share of the asset of the firm to which the transferring partner is entitled and, for the purpose of ascertaining that share, to an account as from the date of the dissolution."

Principle:

Section 29 of Indian Partnership Act dealt with the rights of transferee of a partner's interest in a firm. Generally a third person or party could not become a partner in a firm without the consent of acting partners. It is clear that a partner could not transfer his interest in a firm to a third person to become a partner without the consent of his co-partners. However, in Indian Partnership Act, a partner can transfer his interest in the firm to a third person. This transfer may be absolute or by mortgage. This transfer of interest does not put the transferee in the same position as the transferor. In such transfer of interest a partner does not cease to be a partner nor a transferee becomes a partner. Such transferee may be termed as sub-partner.

Thus if a partner transfers his interest in the firm to a third party, under section 29(1) the transferee can get the share of profits of that partner. But so long as the firm exists and carries on business, he cannot interfere in the business of the firm nor can he inspect the accounts of the firm. It may be noted here that section 29(2) applies only after the partner has transferred his interest in the firm to a third party. Partition is not a transfer.

V.P.R. Prabhu v. S.P.S. Prabhu, AIR 1985 Ker 285:

In the words of Padmanabhan, J. that what is required under section 29(1) that the partition is not transfer. It is only renouncement of existing rights in common properties in consideration of getting exclusive rights and possession over the specific plots. Partition is only a process of mutual renunciation by which common unspecified rights in larger extents are located into exclusive rights over specific plots. Under section 29(1), the transferee can claim the share of the profits of the transferor partner so long as the firm continues. But he cannot challenge the accounts prepared by the existing partners. He has to accept the accounts prepared by the existing partners and cannot also inspect the accounts.

Commissioner of Income-Tax v. Sunil J. Kinariwala, MANU/SC/1120/2002 : AIR 2003 SC 668:

The Supreme Court observed that there is a clear distinction between a case where a partner of a firm assigns his share in favour of a third person and a case where a partner constitutes a sub-partnership with his share in the main partnership.

Where a partner permitted to himself a salary thereby reducing profits, the mortgagee of a partner's share was not allowed to object. This section is subject to the rights in favour of transferee which-

- His first right is that during the continuance of the firm he is entitled to receive the share of profits of the transferring partner. But he has to accept the accounts of profits as given by the partners. He cannot inspect the account.
- His second right is that on the dissolution of the firm or when the transferring partner's share in the assets of the firm and for the purpose of ascertaining that share he is entitled to an account as from the date of the dissolution.

Mangilal v. Bhanwarlal, MANU/RH/0051/1963 : AIR 1963 Raj 153; Watts v. Driscall, (1901) 1 Ch 294.

Where the transferring partner sold his interest to the other partner at lesser value than the mortgage amount, the transferee was held to be bound by the sale.

Section 30: Minors Admitted to the Benefits of Partnership

Whether minor can be admitted to the benefits of partnership.

(1) "A person who is a minor according to the law to which he is subject may not be a partner in a firm, but with the consent of all the partners for the time being he may be admitted to the benefits of partnership.

(2) Such minor has a right to such share of the property and of the profits of the firm as may be agreed upon, and he may have access to and inspect and copy any of the accounts of the firm.

(3) Such minor's share is liable for the acts of the firm, but the minor is not personally liable for any such act.

(4) Such minor may not sue the partners for an account or payment of his share of the property or profits of the firm, save when severing his connection with the firm, and in such case the amount of his share shall be determined by a valuation made as far as possible in accordance with the rules contained in section 48:

Provided that all the partners acting together or any partner entitled to dissolve the firm upon notice to other partners may elect in such suit to dissolve the firm, and thereupon the Court shall proceed with the suit as one for dissolution and for settling accounts between the partners, and the amount of the share of the minor shall be determined along with the shares of the partners.

(5) At any time within six months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, such person may give public notice that he has elected to become or that he has elected not to become a partner in the firm, and such notice shall determine his position as regards the firm:

Provided that, if he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.

(6) Where any person has been admitted as a minor to the benefits of partnership in a firm, the burden of proving the fact that such person had no knowledge of such admission until a particular date after the expiry of six months of his attaining majority shall lie on the persons asserting that fact.

(7) Where such person becomes a partner-

(a) his rights and liabilities as a minor continue up to the date on which he becomes a partner, but he also becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership, and

(b) his share in the property and profits of the firm shall be the share to which he was entitled as a minor.

(8) Where such person elects not to become a partner-

(a) his rights and liabilities continue to be those of a minor under this section up to the date on which he gives public notice,

(b) his share shall not be liable for any acts of the firm done after the date of the notice, and

(c) he shall be entitled to sue the partners for his share of the property and profits in accordance with sub-section 4.

(9) Nothing in sub-sections (7) and (8) shall affect the provisions of section 28."

Section 30: Of the Act Deals with the Rights, Liabilities and Disabilities of a Minor in the Partnership

Explain with case-laws the rights, liabilities and disabilities of a minor.

At the very outset section 30 lays down that a minor cannot be a partner in a firm but with the consent of all the partners, he may be admitted to the benefits of partnership.

In India, minor is not competent to contract at all (section 11 of Indian Contract Act) and therefore cannot be a partner of a firm.

Sanyasi Charan Mandal v. Krishnadhan Banerji, 1922 LR 49:

Needless to say, there cannot be partnership wholly of minors.

Shivaram v. Gaurishankar, MANU/MH/0035/1961 : AIR 1961 Bom 136: The Punjab High Court has held down that if a minor is made a full-fledged partner, the entire partnership deed is invalid, not only vis-à-vis the minor, but also with respect to the other partners who are not minors.

Lachmi Narayan v. Beniram, (1931) 53 All 479:

The Allahabad High Court has held that if a partnership consists of two partners and one of them dies, and the other admits a minor to the benefits of the business, the minor cannot enforce his rights under section 30. That section does not apply in such a case, because there was no subsisting partnership to the benefit of which the minor could be said to be admitted.

Section 30 lays down that where any person has been admitted as a minor to the benefits of partnership in a firm, the burden of proving the fact that such person had no knowledge of such admission until a particular date after the expiry of six months of his attaining majority lies on the person asserting that fact.

Sections 4 and 5 of the Indian Partnership Act, 1932, partnership arises out of contract since a minor is incompetent to contract, he cannot be a partner. A minor can, however, be admitted to the benefits of partnership. Section 30(1) of the Partnership Act provides. "A person who is minor according to the law to which he is subject may not be a partner in a firm, but with the consent of all the partners for the time being, he may be admitted to the benefits of partnership".

Venkatarama Iyer v. Balayya, MANU/TN/0360/1936 : AIR 1936 Mad 595. Madras High Court held that where members of a family carry on the business and some of the members are minors, there must be some positive act on the part of the regular members so that the Court may infer that the minors have been admitted to the benefits of partnership.

Addl. Commr. of Income-

Tax v. Uttam Kumar Pramod Kumar, MANU/UP/0361/1973 : 97 ITR 730: (1975) Tax LR 339 (All): The Court clarified the legal position and held that section 30(2) makes it clear that even to admit the minor to the benefits of partnership, it is necessary to have an agreement between the minor which can be used for the uses of the firm. It is necessary that there must be an agreement between the existing partners and someone on behalf of the minor.

Minor's Admission to the Benefits of Partnership

The agreement by a minor is void but he is capable of accepting benefits. In consonance with this position of law, section 30(1) provides that a minor may not be a partner in a firm but with the consent of all the partners for the time being he may be admitted to the benefits of partnership. The introduction of a minor to the benefits of partnership presupposes existence of valid partnership between persons competent to contract. There can be no partnership of all minors, but a partnership between persons competent to contract must exist before a minor can be admitted to its benefits.

1. Commissioner of Income-Tax, Bombay v. Dwarkadas Khetan & Co., AIR 1961 SC 680.
2. Dharam Vir v. Jagan Nath, AIR 1968 Punj 84.
3. Shriram v. Gaurishankar, MANU/MH/0035/1961 : AIR 1961 Bom 136.
4. Lachhmi Narain v. Beniram, MANU/UP/0342/1930 : AIR 1931 All 327.
5. Haji Hedayatullah v. Mahomed Kaneil, AIR 1924 PC 93.

Two persons entered into partnership in 1900 under the style Beni Ram Hatilal. Hatilal died in 1920 and thereafter Beni Ram continued the business under the old name and style with the partnership funds. Hatilal's minor son alleged that after his father's death he was admitted to the benefits of partnership.

Held that the plaintiff (minor) could not be admitted to the benefits of partnership as no partnership existed after the death of Hatilal. Moreover, the plaintiff being a minor could not enter into a contract with Beni Ram to form Partnership.

It is possible that the major members decide to constitute partnership and admit the minor to the benefits of the said partnership. A guardian is capable of accepting benefit on behalf of minor.

The Commissioner of Income-

Tax, Mysore v. Shah Mohandas, MANU/SC/0168/1965 : AIR 1966 SC 15: Admission of a minor to the benefits of partnership can be done only with the consent of all the partners.

Minor's Position During Minority

The minors thus admitted has a right to such share of the property and of the profits of the firm as may be agreed upon. He however, cannot go to the Court of law to enforce his rights in respect of such share so long as he continues to be admitted to the benefits of partnership. This disability is removed when he is severing his connection with the firm. He can also have access to any of the accounts of the firm and can inspect them and copy them.

Right of election to become or not to become a partner by a minor after he becomes a major

According to section 30(5), "At any time within the six months of his attaining majority or of his obtaining knowledge that he has been admitted to the benefits of partnership, whichever the date is later, such person may give public notice that he has elected to become, or that he has elected not to become, a partner in the firm, and such notice shall determine his position as regards the firm:

Provided that, if he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.

Where any person has been admitted as a minor to the benefits of partnership in a firm the burden of proving the fact, that such person had no knowledge of such admission, until a particular date after the expiry of six months of his attaining majority shall lie on the person asserting that fact.

Illustration-

'C' a minor, was admitted to the benefits of a partnership. There were two firms of the name of "M.B. Sadalge" and "C.N. Sadalge" who were carrying on the business of commission agent and manufacturing and selling. The partnership had become indebted and was dissolved. 'C', became major subsequently. He, however did not exercise the option to which he was entitled. The creditors demanded their dues but the partners were not able to pay. Thereupon, the creditors started insolvency proceedings against the partners in the Court. They impleaded 'C' also in the insolvency proceedings.

A minor admitted to the benefits of partnership cannot be impleaded in insolvency proceeding against the firm on the ground that he had become a major after the dissolution of the firm but had not exercised his option to become or not to become a partner. A minor cannot be held liable on the mere ground that he had not exercised his rights of election under section 30(5).

Shivganda Ravji Patil v. Chandrakant Neelkanth Sadalge, MANU/SC/0010/1964 : AIR 1965 SC 212.

Sharing of Losses

Where the facts were that under the partnership deed in question the minors were to share losses as well in Addl. C.I.T. v. Uttam Kumar Pramod Kumar, MANU/UP/0092/1978 : AIR 1978 All 397; it has been held that under general law of partnership a minor cannot be a full partner liable to share in the losses. He can only be admitted to the benefits of the partnership.

Agreement with Minor

In Addl. Commr. of Income-Tax v. Uttam Kumar Pramod Kumar, it has been held that when no one acting as the minor's guardian signed the document, no agreement with the minors came into existence. The deed purporting to be a partnership with the minors was wholly invalid and can't be registered.

Every partner is jointly and severally liable for all acts of the firm. Moreover, his liability is unlimited and can extend to his personal property. A minor, on the other hand, is not personally liable for any such act. It is only his share which is liable for the acts of the firm. Sometimes without the knowledge of a minor, his guardian may have accepted his admission to the benefits of a partnership and the minor may have remained ignorant of his admission to the benefits of partnership even after he has attained majority.

According to section 30(9), if after attaining majority, he represents or knowingly permits himself to be represented as a partner in the firm, his liability on the ground of holding out can still be there.

CHAPTER V

INCOMING AND OUTGOING PARTNERS

(Sections 31-38)

Chapter V of the Act as the special committee pointed out is novel in form. It collects in one body, the rules as to the coming in of new partners and going out of existing ones, insofar as the change does not put an end to the firm but leaves the relation between the continuing partners untouched. Men of business will welcome this re-arrangement as convenient.

There is no dissolution of the firm by the mere incoming or outgoing of partners. A partner can retire with the consent of the other partners and a person can be introduced in the partnership by the consent of the other partners. The reconstituted firm can carry on its business in the same firm's name till dissolution.

The mutual relations of partners are based on the principal that they have to be just and faithful to each other and are bound to carry on the business of the firm to the greatest common advantage (section 9). Therefore, a new partner can be included in a firm only when the existing partners have faith and trust in him.

Satyanarayan Murthi v. Gopalan, (1939) 2 MLJ 279; MANU/TN/0082/1939 : AIR 1939 Mad 891:

where a person so nominated is not acceptable to the other partners, the court cannot force them to enter into partnership with him because the foundation of partnership is mutual confidence, which the court cannot supply where it does not exist.

Byrne v. Reid, (1902) 2 Ch 735:

The articles of a partnership between two persons contained a clause that one would have right to bring his son into the partnership on his attaining 21 years of age. The other partner refused to accept the son. But it was held that he could not do so, the partnership articles being a contract.

Section 31: Introduction of a Partner

Explain the procedure how a partner is introduced as a partner in the firm.

1. Subject to contract between the partners and to the provisions of section 30, no person shall be introduced as partner into a firm without the consent of all existing partners.
2. 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 act of the firm done before he became a partner.

Modes of Introduction of a Partner

Explain the modes to introduce a partner in a firm.

A partner who is new can be introduced into a firm in the following ways-

- (i) with the consent of all the existing partners,
- (ii) in accordance with a contract between the partners,
- (iii) in accordance with the provisions of section 30.

1 Introduction of Partners by Agreement

Express power for a senior or principal member of a firm, to introduce one or more new partners named or not under agreed conditions, is in fact constantly given by partnership articles.

Byrne v. Reid, (1902) 2 Ch 735 (CA):

A person duly nominated under such a power acquires rights in the partnership property which the court will enforce by way of appropriate specific relief though it cannot enforce an agreement to enter into partnership because the foundation of partnership is mutual confidence, which the court cannot supply where it does not exist.

Bachubai v. Shamji, (1885) 9 Bom 536 (554):

The consent of all existing partners is required to the introduction of a new partner so that the firm may work harmoniously.

2. Introduction in accordance with a contract between the parties

Explain the facts of Byrne v. Reid.

If a contract between the partners permits the introduction of a new partner even without the consent of all the existing partners, that can possibly be done. For example, the contract provides the majority of the partners shall be competent to admit a new partner or anyone of them may nominate a partner or appoint his successor, a new partner could be introduced accordingly.

Lovergrove v. Nelson, (1834) 3 Ny & K 120:

40 RR 1.2: To make a person a partner with two others, their consent must clearly be had, but there is no particular mode or time required for giving that consent, and if three persons enter into partnership by a contract which provides that on one retiring, one of the remaining two, even a fourth person, who is no partner at all, shall name the successor to take the share of one retiring, it is clear that this would be a valid contract which the court must recognise and the new partner would come in as entirely by the consent of the other two, as if they had adopted him by name.

Byrne v. Reid, (1902) 2 Ch 735:

A, B, C, and D were four partners and they, in their partnership deed authorised A to admit his son S into partnership when S had attained the age of twenty-one years. After S attained the age of twenty-one years, A nominated him as a partner in accordance with the partnership deed and he accepted the nomination, but the other partners refused to recognise him as a partner. It was held that the son on accepting the nomination had become a partner.

Mulchand v. Manekchand, (1906) 8 Bom LR 8:

It may be noted that a person does not become a partner merely by his nomination. He has an option to become a partner or not. He becomes a partner when after nomination he expressly or impliedly agrees to the same.

British Home Insurance Corpn. v. Paterson, (1902) 2 Ch 404:

"The plaintiff corporation appointed B their solicitor and instructed him to act for them in a mortgage transaction, while the business was pending, B took the defendant P into partnership and gave the plaintiffs notice in writing. The plaintiff paid no attention to the notice, continued to correspond with B in his own name and finally sent money to advance on the mortgage by cheque made payable to his order and accepted his receipt in his own name. B paid the money into his own account and misappropriated it. The plaintiff sued the new partner.

It was held that the plaintiffs had by their conduct declined to accept the liability of the new partner. They had elected to deal with the old partner alone and could not afterwards hold the new partner liable.

Farewell said "where A knowing B and C to be a partners, refused to contract with them jointly and insists on contracting with B alone, he cannot afterwards treat C as liable Central Bank of India v. Tarseema Compressed Wood Mfg Co., MANU/MH/0039/1997 : AIR 1997 Bom 225 after a 4th partner was admitted to a partnership firm, which earlier consisted of only three partners, all of them gave the following undertaking to the bank:

"We are jointly and severally liable to the bank for the liabilities of the firm with the bank. The bank may recover its claims and dues from any or all of the partners of the firm and the assets of any deceased partner."

Section 32: Retirement of a Partner

What are the modes of retirement of a partner from the firm?

"1. A partner may retire-

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

2. A retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and partners of the reconstituted firm, and such agreement may be implied by a course of dealing between such third party and the reconstituted firm after he had

knowledge of the retirement.

3. Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement 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.

4. Notices under sub-section (3) may be given by the retired partner or by any partner of the reconstituted firm."

An outgoing partner or retirement of a partner

A partner of a firm makes himself separate from the firm by any of the following modes-

- (a) by retirement,
- (b) by expulsion
- (c) by insolvency
- (d) by death.

Retirement of partner

Define Retirement.

A partner may retire from the firm with the consent of the other partners in accordance with an express agreement by the partners or where the partnership is at Will, he may retire by giving notice in writing to all the other partners of his intention to do so.

A retiring partner may get exemption from any liability to third party for the act of the firm done before his retirement by an agreement made by him with such third party -

such agreement may be either express or implied.

After the retirement of a partner from a firm he is not discharged from his liability unless he has delivered a public notice in that connection showing his intention, he and other existing partners or any of them would be liable for the acts of the firm to the same extent as that work would have been before his retirement from the firm. However, such retired partner is not liable to any third party who deals with the firm without knowing that he was a partner.

It is necessary for a retiring partner to give public notice about his retirement to such class of persons who might be concerned in firm's business transaction.

"Retire"-

The expression 'Retire' used under section 32 makes it clear that it applies to the situation when a partner retires from the firm without the dissolution of the firm and the business of the firm is being continued by other existing partners. Therefore, where a partner is retiring from the firm after dissolution, that would be dissolution of the firm and does not amount to retirement.

According to Lindley's partnership rule, the right of a retiring partner is subject to some restriction. Lindley has laid down three rules which widens the rights of a retiring partner but in fact it restricted the right to some extent.

How can a partner retire

According to section 32(1), a partner may retire-

- (a) with the consent of all the other partners, or
- (b) in accordance with an express agreement by the partners, or
- (c) where the partnership is at Will, by giving public notice or writing to all the other partners of his intention to retire.

Section 7 Partnership at Will

"Where no provision is made by contract between the partners for the duration of their partnership the partnership is partnership at Will".

Notice should be in writing, signed by the partners and should be served upon all the partners. As between the partners, the retirement becomes effective from the date mentioned in the notice, or if no date is mentioned, from the date of service.

Section 33: By Expulsion

"1 A partner may not be expelled from a firm by any majority of the partners, save in the exercise in good faith of powers conferred by contract between the partners.

2 The provisions of sub-sections (2), (3), (4) of section 32 shall apply to an expelled partner as if he were a retired partner."

Where the terms of partnership confer power to expel a partner, its exercise will not be in good faith unless it is done with an honest view in the interest of the firm and with notice to the partner affected and an opportunity of being heard.

Shivraj Reddy & Bros. v. S. Raghu Rao Reddy, AIR 2002 NOC 120 (AP):

A partner cannot be expelled from a firm by any majority of partners. But section 33 provides that a partner may be expelled in the exercise in good faith of the powers of expulsion, if any, given to the partners by their mutual agreement. Thus expulsion, is justifiable only when it is authorised by an agreement between the partners.

Blisset v. Daniel, (1853):

Where in exercise of their power conferred in most unfettered terms, majority of the partners expelled a partner on the ground that he had opposed the appointment of one of the partner's son as manager, the court held the expulsion to be unwarranted and an abuse of power.

Green v. Howell, (1910) 102 LT 347 (CA):

1910 1 Ch 495: Where a clause in a partnership deed empowered the partners to expel a partner who was guilty of flagrant breach of his duties, the court refused to interfere when it found on evidence that kind of breach of his duties was established. The expelled partner's contention that he was not given show cause notice before expulsion did not help him because the partners who expel do not act as a tribunal.

Ganesh Chandra v. Gopal Chandra, MANU/WB/0088/1976 : AIR 1976 Cal 459:

The power of expulsion can be exercised by a majority and not by a single partner. Where, of the three partners, two were guilty of misconduct and the third proceeded to expel them, the court held that if this expulsion is allowed it would reverse the meaning of the section which contemplated expulsion by the majority of a minority and not vice versa.

Wood v. Wood, LR 9 Ex 190: (1874) 43 LJ Ex 153:

Where a plaintiff partner was expelled from the firm and kept out of its business and was also denied his share of profits etc., it was held that the case of action for questioning the validity of the ousting and for reinstatement as partner or for seeking dissolution arose at the time of expulsion and, therefore, the proceedings instituted four years thereafter were barred by time.

Section 34: Insolvency of a Partner

Insolvency is one of the grounds to cease a person as partner in a firm. Explain.

1. Where a partner in a firm is adjudicated an insolvent he ceases to be a partner on the date on which the order of adjudication is made, whether or not the firm is thereby dissolved.
2. Where under a contract between the partners the firm is not dissolved by the adjudication of a partner as an insolvent, the estate of a partner so adjudicated is not liable for any act of the firm and the firm is not liable for any acts of the insolvent, done after the date on which the order of adjudication is made.

Insolvency of a partner

Section 34 of the Indian Partnership Act deals with the circumstances and effect of insolvency of a partner from a firm. This section provides that where a partner in a firm has been adjudicated as an insolvent he ceases to be a partner on the date on which the order of adjudication is made.

Sub-section (2) of section 34 lays down the circumstances where under a contract between the partners, the firm is not dissolved by such adjudication of a partner as an insolvent. In such case, the estate of a partner declared

insolvent would not be liable for any act of the firm and the firm is also not liable for the act of such insolvent partner from the date of adjudication made as an insolvent.

Dissolution on Insolvency

How a firm to be dissolved on insolvency and what are the effects?

Generally, a firm is dissolved after the order of adjudication is made on account of insolvency of a partner. However, it is not necessary to dissolve a firm after such adjudication. The other existing partners are competent to continue to do the business of the firm by mutual contract. The other partners may by agreement agree not to dissolve the firm after adjudication of insolvency of a partner and can carry on the business of the firm. An effect of insolvency of a partner of a firm may be conveniently read along with the sections 34, 41(a), 42(d) and 47 of this Act.

Effect of Insolvency of a Partner

Where a partner has been declared as an insolvent he ceases to be a partner from the date on which the order of adjudication is made as an insolvent. In the absence of an express agreement the firm will be dissolved from the date of such adjudication. The other existing partners can continue the firm only by contract or agreement after such adjudication.

The insolvency of a partner does not invariably result in dissolution of the firm, for it is open to the partners to agree that the adjudication of a partner as an insolvent will not dissolve the firm as regards the continuing partners.

Section 35: Liability of Estate of Deceased Partner

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 not liable for any act of the firm done after his death."

"When a partner dies, he; of course, ceases to be a partner. The firm may or may not thereby be dissolved. The estate of the deceased deserve to be protected from any partner's further liability in respect of any act of the firm done after the time of his death. This section is designed only to provide that protection. No public notice is necessary to terminate the liability of the deceased partner. Death is also a notice by itself.

Sections 45(1) and 35 jointly lays down a general rule that the estate of a deceased partner is not liable for any act of the firm done after the death of that partner, whether or not the firm is dissolved. Since death is a public incident, it does not require to give a public notice to absolve the estate of a deceased partners from liability for the future obligation of the firm.

Section 36: Rights of outgoing partner to carry on competing business

What are the restrictions on the outgoing partner to carry on the competing business?

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

- (a) use the firm's name,
- (b) represent himself as carrying on the business of the firm, or,
- (c) solicit the customer or persons who were dealing with the firm before he ceased to be a partner.

Agreement in restraint of trade

2. A partner may make an agreement with his partner that on ceasing to be a partner he will not carry on any business similar to that of the firm within specified period or within specified local limits and notwithstanding anything contained in section 27 of Indian Contract Act, 1872 (IX of 1872), such agreement shall be valid if the restrictions imposed are reasonable."

Rights of outgoing partners to carry on competing business

Under Indian Partnership Act, the outgoing partners have certain rights which are enunciated under sections 36, 37 of the Act. Section 36 deals with the rights of an outgoing partner to carry on a competing business.

Essentials

Explain the facts of Espley v. Williams.

Section 36 of the Partnership Act, authorises an outgoing partner to carry on a business competing with that of the

firm and he may advertise his business but subject to contract to the contrary, he may not,-

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

Sub-section (2) of the section allows a partner to enter into an agreement with his co-partner 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. Such agreement is valid and shall not be considered as violative of the restraint of trade, provided, the restrictions imposed are reasonable.

Section 36(2) permits an agreement being made that the outgoing partner be restrained from carrying on business similar to that of the firm. Such an agreement has been declared to be valid and constitutes an exception to the rule contained in section 27 of Indian Contract Act which declares an agreement in restraint of trade as void. It is, however, necessary that:

- (i) the agreement restraining the outgoing partner from carrying on a similar business should stipulate that such a business will not be carried on for a specified period or within specified local limits, and
- (ii) the restriction imposed should be reasonable.

When a partner ceases to be a partner by retirement, expulsion, insolvency or death, his share in the property of the firm may not be immediately paid to him and the firm may continue the business without any final settlement of accounts between the outgoing partner or his estate and the other. Section 37 gives an option to the outgoing partner or the representative of the deceased partner, who has not been paid his share of the property, either:

- (i) to claim such share of the profits made since he ceased to be a partner as may be attributed to the use of his share of the property of the firm, or
- (ii) to claim an interest at the rate of 6% per annum on the account of his share in the property of the firm.

Where a partner has retired from the firm after selling his share in the partnership firm and the firm is reconstituted with new partners, the share of the retired partner is to be valued as on the date of his retirement.

Espley v. Williams, (1997) QBEG 137 CA:

Two persons entered into an agreement to run an estate agency in partnership. There was a covenant restraining one of them from practising as an estate agent on his own account, or with any other person or company within two miles of the partnership premises and also within two years of the termination of the partnership. He left the partnership and commenced practice as an estate agent with another agent within the time period and within the given area.

The court enforced the covenant. The court said that the goodwill of the partnership was a legitimate interest which the other partner was entitled to have protected. The restrictive covenant could not be described as a covenant against competition. The covenant was no more than was adequate to protect the goodwill of the partnership.

Section 37: Right of outgoing partner in certain cases to share subsequent profits

Whether a outgoing partner is entitled to share subsequent profits.

Explain the facts of *Barclays Bank Trust Co. Ltd. v. Bluff*.

Where any member of a firm has died or otherwise ceased to be a partner and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, then, in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representative to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six per cent. per annum on the amount of his share in the property of the firm:

Provided that where by contract between the partners an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits, but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section".

Section 37 deals with rights of outgoing partners. It lays down a substantial law relating to a liability of the surviving or continuing partner, who without a settlement of accounts with legal representatives of the deceased partner

utilises the assets of partnership for continuing the business.

Although the principle applicable to such cases is clear but at times some complicated questions arise when disputes are raised between the outgoing partner or his estate on the one hand and the continuing or surviving partners on the other in respect of subsequent business. Such disputes are to be resolved keeping in view the facts of each case having due regard to section 37.

Pamuru Vishnu Vinodh Reddy v. Chellakuru Chandrashekhar Reddy, MANU/SC/0123/2003 : (2003) 3 SCC 445:

A and B are partners. A dies. B instead of winding up the affairs of the partnership, retain all the assets in the business. B must account to A's legal representative for the profits arising from A's share of the capital.

The principle of this section is applicable even when only part of the retiring partner's assets is utilised by the surviving partners. The section lays down the substantive law relating to the liability of a surviving partner who without a settlement of accounts with the legal representative of the deceased partner utilises the assets of the partnership for continuing the business on his own.

Barclays Bank Trust Co. Ltd. v. Bluff, (1982) Ch 172:

The partnership between a father and son as farmers was dissolved by the death of the father. There was, however, a substantial delay in winding up of the affairs of the firm. During their period of delay, the son carried on the farming business and the value of the firm appreciated considerably. It was held that the executer was entitled, at his option, to interest at the rate of five per cent. as prescribed in the corresponding provision of the English Act contained in section 42(1), on the father's share of the partnership asset or to a share of the profits occurring in the ordinary course of carrying on the business since the date of death, i.e., profits arising from the use of the farm land and building not including any capital profits which might be realised on a sale of the land and buildings. It was held that the estate's entitlement would not be affected by an election to take interest.

Illustration

(i) A, B, C are partners in a manufacture of machinery. A is entitled to three-eighth of the partnership property and profits. A becomes bankrupt, whereas B and C continue the business without paying out A's share of the partnership assets or settling accounts with his estate. A's estate is entitled to three-eighth of the profits made in the business, from the date of his bankruptcy until the final liquidation of the partnership affairs.

(ii) A, B, C are partners. C after selling his share in the partnership firm, A and B fail to pay the value of the share to C as agreed to the value of the share of C on the date of his retirement from the firm would be pure debt-from the date on which he ceased to be a partner as per the agreement entered between the parties. C is entitled to recover the same interest.

Tilokram Ghosh v. Gita Rani, MANU/WB/0045/1989 : AIR 1989 Cal 254 (258):

The right and/or the option contained by the provision of section 37 on the estate of the deceased partner cannot be properly exercised until the account of the subsequent business are made available and as much the estate of a deceased partner is not bound to make the election until the profit earned in respect of the share of the deceased partner is ascertained on dissolution of the firm, they will be entitled to exercise their option enforced by section 37 when the accounts of the dissolved firm would be taken in accordance with the provisions of section 48 of the Partnership Act.

M.C. Sharma v. B.C. Sharma, MANU/UP/0183/1986 : AIR 1986 All 69:

Section 37 does not contemplate the dissolution of firm by a notice under section 43. A suit by an individual partner for continuing of business, when other partners are seeking dissolution is not hit by section 37.

Section 38: Revocation of continuing guarantee by change in firm

"A continuing guarantee given to a firm, or to a third party in respect of the transaction of a firm is, in the absence of agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm."

Section 38 of the Indian Partnership Act deals with the cases of revocation of the continuing guarantee to a firm. The section, lays down that a continuing guarantee given to a firm or to a third party in respect of the transaction of the firm is in the absence of agreement to the contrary, revoked as to future transaction from the date of any change in the constitution of the firm.

N.C. Mukherjee v. Biro Das, ILR 1901 Cal 397:

In this case 'A' was a surety to the firm "N.C. Mukherjee" for the conduct of 'B', a cashier in the firm of N.C.

Mukherjee. Later on a change took place in the constitution of the firm and its name was altered to "N.C. Mukherjee & Sons". It was held that the surety was not liable for B's defamations subsequent to the change in the constitution of the firm.

Effect of change

What is continuing guarantee and how can it be revoked by firm?

Section 38 deals with the effect of the change in the constitution of a firm on continuing guarantee and provides that any change in the constitution of a firm will have the effect of revoking a continuing guarantee given to that firm or to a third party in respect of transaction of a firm, from the date of change in the constitution of the firm, unless there is an agreement to the contrary.

Continuing Guarantee

The expression 'continuing guarantee' has been defined in section 129 of the Indian Contract Act as follows-

"A guarantee which extends to a series of transactions is called continuing guarantee."

This continuing guarantee may be revoked. Section 130 of the Indian Contract Act deals with the revocation of continuing guarantee and provides that:

"A continuing guarantee may at any time be revoked by the surety as to future transactions, by notice to the creditor."

Neel Comul Mookerjee v. Bipro Das Mookerjee, (1901) 28 Cal 597:

It was held that on this change the guarantee was revoked and the surety was not liable for the conduct of the cashier subsequent to such change.

CHAPTER VI

DISSOLUTION OF A FIRM

(Sections 39-55)

Section 39: Dissolution of a Firm

Define "Dissolution of firm".

"The dissolution of partnership between all the partners of a firm is called the dissolution of the firm."

"A firm is not said to be dissolved merely by the fact of one or more members ceasing to be partners in it while others remain, unless and until all and everyone of the members of the firm cease to carry on its business in partnership. But where there are only two partners in a firm and one retires or relinquishes his share in favour of the other, the firm dissolves. However, where there are more than two partners, the relinquishment of his right by one of the partners in favour of another does not dissolve the firm.

1. Karumurthi Thiagarajan Chettiar v. EM Muthappa Chettiar, MANU/SC/0059/1961 : AIR 1961 SC 1225.
2. C.I.T. West Bengal v. AW Figgis & Co. MANU/SC/0042/1953 : AIR 1953 SC 455.

A law with respect to retiring partners as enacted in the Partnership Act is, to a certain extent, a compromise between the strict doctrine of English Common Law which refuses to see anything in the firm name but a collective name for individuals carrying on business in partnership and mercantile usage which recognise the firm as a distinct person or quasi-corporation.

Dissolution and Reconstitution

What principle is laid down in case of Commissioner of Income-tax v. Pigat Champan.

Re-constitution means a continuation under altered circumstances. There can be dissolution followed by the constitution of a new firm by some of the erstwhile partners.

1. Sharad Vasant Katak v. Ramniklal Mohanlal Chowda, MANU/SC/0910/1998 : (1998) 2 SCC 171:

Reconstruction implies that the firm never became extinct. It is only a structural alteration of the membership.

2. Commr. of Income-tax v. Pigat Champan & Co., MANU/SC/0137/1982 : (1982) 2 SCC 330:

The principle is well-settled that it is on the examination of relevant document and relevant facts and circumstances that the court has to be satisfied in each case as to whether there has been a succession or a mere change in the constitution of partnership.

3. Chandrasekharan v. Kumaresan, (2000) 3 Mad LJ 475:

If a new firm is formed by agreement between some of the former partners, it will nonetheless be new, however closely that agreement may follow on the dissolution of the old firm.

Nature of binding

Santdas Moolchand Jhangiani v. Shivdayal Gurudasmal Massand, MANU/MH/0042/1971 : AIR 1971 Bom 237:

It has been held that winding up of a partnership has been treated in the Act as a part and parcel of dissolution of partnership and has not been treated as a distinct, separate or independent matter or transaction.

Sometimes there may have been a contract between the partners indicating as to when and how a firm may be dissolved, a firm can be dissolved, in accordance with such a contract. For instance if a contract between the partners provides that on a six months notice by a partner the firm may be dissolved, then in accordance with this contract, a partner could give six months' notice and get the firm dissolved.

Section 40: Dissolution by agreement

"A firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners."

Section 40 gives right to the partners to dissolve the partnership by agreement with the consent of all the partners or

in accordance with the contract between the partners.

Mohd. Uduman v. Mohd. Aslym, MANU/SC/0238/1991 : (1991) 1 SCC 412:

Although this is new in terms, however, it is a quite familiar law. Contract between the partners obviously means a contract already made, the most likely case is that of a clause in the partnership articles providing for dissolution in certain events.

This section deals with the dissolution of the firm by agreement i.e., with consent of all the partners as well as by contract. Where there is properly drawn up deed of dissolution very little difficulty is realised in gathering the intention of the partners. Where a written contract is of a doubtful nature, conduct of the parties might be looked into so as to help the court to obtain an explanation of the intent and design of the contract.

Dissolution by Agreement

Define the dissolution by Agreement.

Partnership can be dissolved with the agreement between parties. This agreement may be either express or implied. Express agreement would be one which is either written or spoken through words. Implied agreement is expressed through conduct of the partners. Where no term is fixed regarding duration of partnership or where no term is fixed by the nature of business this will amount to partnership at Will and any partner may dissolve it any time without consent of his co-partners. But where the partnership is for a fixed term, no partner has a right by his own act, to dissolve the firm prior to the expiration of such term.

K.R. Mallesha v. Ramnath, MANU/AP/0061/1974 : AIR 1974 AP 53:

It has been held by the Andhra Pradesh High Court that if partnership exists between two partners and one of them after receiving his share becomes separate then this agreement shall be treated as dissolution deed for partnership.

Sathappa v. Subramaniam, MANU/PR/0004/1927 : AIR 1927 PC 70:

The Privy Council did not lay down any such principle unless all the debts of the firm are realised, firm cannot be dissolved. It, therefore, means that firm can be dissolved even when all the debts have not been realised.

Jopari v. Laxmana Swami, AIR 1971 SC 1953:

Partnership is dissolved on account of the implied agreement between parties. In this case annual account of partnership transaction was being given to one of the partners from 1868-1891. In April 1891, his account in capital and profit of the said business was cleaned and rest of the partners were running the business without interference of the plaintiff. In the year 1902, plaintiff instituted a suit against rest of the partners for his share in profits. On the basis of aforesaid facts it was held that the implied agreement for dissolution of the firm had already taken place in the year 1891.

Dissolution of old firm

Question may arise whether the old firm is dissolved and whether a new firm has come into being. This will be inferred with the help of relevant materials.

Bajinath v. Chottelal, (1928) 26 MLJ 243:

It was held that after the dissolution of firm the legal status of the firm is completely abolished but staying or stopping the work for sometime is not a decisive proof of the dissolution of the firm.

Though the dissolution of the firm leads to the dissolution of partnership as between partners but the partnership itself subsists though only for the purpose of winding up its business and adjusting the rights of the partners inter se; Chaturbhuj Dharamdas Factory v. Damodar Jamunadas Zawar, MANU/MH/0067/1960 : AIR 1960 Bom 424.

Cessation of business

Cessation of business of a firm coupled with other surrounding circumstances may legitimately lead to the inference that firm was dissolved. Such was the case where the business of a firm was stopped, all its assets were disposed of, servants of the firm were dismissed and most of the accounts of the firm finally closed.

Stopping of main business

Court has a duty to consider all the circumstances of the case and arrive at a conclusion without attaching undue weight to any particular fact. Thus where the main business of the firm was stopped and some of the partners refused to advance further sum on the capital account but there was some evidence that the business of the firm was carried

on in some of its departments, the court declined to treat the stoppage of business or refusal by partners to supply capital as dissolution of the firm.

Harmohan v. Sudharsan, (1921) 25 Cal WN 847; N.B. Singh v. C.I. Stamp, MANU/UP/0001/1972 : AIR 1972 All 1:

It has been held that mere dissolution of the firm is the starting of the process by which legal existence of the firm comes to an end. The firm continues to exist until its affairs are finally wound-up.

Erach F.D. Mehta v. Minoo F.D. Mehta, MANU/SC/0002/1970 : AIR 1971 SC 1653:

When a partnership consists of two partners an agreement to the effect that one of the partners will retire amounts to dissolution of partnership.

Section 41: Compulsory Dissolution

"A firm is dissolved-

- (a) by the adjudication of all the partners or of all the partners but one as insolvent, or
- (b) 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:

Provided that, where 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".

Illustration

- (1) A and B charter a ship to go to a foreign port and receive a cargo on this joint ventures. War breaks out between England and the country where the port is situated before the ship arrives at the port and continues until after the time appointed for loading. The partnership between A and B is dissolved.
- (2) A is a partner with ten other persons in a certain business. An act is passed which makes it unlawful for more than ten persons to carry on that business in partnership. The partnership is dissolved.
- (3) A an Englishman and domiciled in England is a partner with B, a domiciled foreigner. War breaks out between English and the country of B's domicile. The partnership between A and B is dissolved. The true test is not domicile but voluntary residence.

Conditions for dissolution

What are the conditions and methods for compulsory dissolution.

This section lays down following conditions for compulsory dissolution-

- (a) where there is an adjudication of insolvency of all the partners, or of all the partners but one,
- (b) when the further proceedings in prosecutions of the firm become illegal.
- (c) when it becomes illegal for the partners to carry on its partnership.
- (d) when one of the partners becomes so situated that his carrying on the partnership business becomes illegal.
- (e) when it becomes impossible to run the business further.

Effect of Insolvency

Laxmichand v. Amirchand, AIR 1932 Sind 164:

It is to be noted that in India dissolution of a partnership does not take place at its own on the insolvency of a partner. An insolvent partner is competent for and on behalf of the firm, to make a valid transfer of a decree obtained by a firm, specially when it is necessary to the winding up of the partnership.

Chettiar Firm v. Dayabhoy, AIR 1935 Rang 59:

If there are two or more partners, dissolution automatically follows on the adjudication of all the partners or all but one as insolvent. It follows that where all the partners or all but one are adjudicated as insolvent, firm can no longer remain in existence for the reason that there must be two partners competent to carry on the trade.

Section 42: Dissolution on the happening of certain contingencies

What are the contingencies which happen to dissolution of firm.

Subject to contract between the partners, a firm is dissolved-

- (a) if constituted for a fixed term, by the expiry of that term,
- (b) if constituted to carry out one or more adventures or undertakings by the completion thereof,
- (c) by the death of a partner, and
- (d) by the adjudication of a partner as an insolvent.

(1) Fixed term

A firm constituted for a term is of course not exempt from dissolution by any of the other possible causes before the expiration of the term. The contract may expressly provide that the partnership will determine in certain circumstances but even if there is no such express term, an implied term as to when the partnership will determine may be gathered from the contract and nature of the business.

Keshavlal Lallubhai Patel v. Patil Bhailal Narendar, MANU/GJ/0059/1968 : AIR 1968 Guj 157:

The provision of this section makes it clear that unless some contract between the partners to the contrary is proved the firm, if constituted for a fixed term, would be dissolved by the expiry of that term. It cannot be disputed that after such dissolution by the expiry of that term, if a partner dies or is adjudicated as an insolvent, then in the absence of contrary contract between partners, the firm is dissolved. The term of the partnership being fixed is clearly not a contrary provision under section 42. It may also be noted here that even after the expiry of a fixed term, by mutual consent partners may continue the partnership. But if there is no such mutual consent, the partnership is dissolved on the expiry of the fixed term.

(2) On completion of adventures or undertakings

Subject to contract between the partners a firm is dissolved if constituted to carry out one or more adventures or undertakings, by the completion thereof. Section 42(b) applies in such cases where the partnership firm has been constituted for one or more adventures or undertaking although no period has been fixed. In such cases, the nature of the undertakings and the conduct of the partners are considered.

Gherulal Parekh v. Mahadev Das Maiya, MANU/SC/0024/1959 : AIR 1959 SC 781:

the partnership was constituted for the speculative transactions relating to sale and purchase of wheat under it. Speculative transaction were to be catered for the sale and purchase of wheat in future. After the supply of a part of goods, the contract was terminated before time. The Supreme Court held that the firm was not immediately dissolved. It would be dissolved only after the realisation of the assets.

Karumuthi Thiagarajan Chettiar v. EM Muthappa Chettiar, MANU/SC/0059/1961 : AIR 1961 SC 1225:

Where partnership was for sole business of carrying on the managing agency, it was held that by necessary implication, the partnership would determine under section 42(b) on determination of the managing agency.

Basantlal Jalan v. Chiranjilal Sarawgi, MANU/BH/0033/1968 : AIR 1968 Pat 96:

Where a firm was constituted for a specific undertaking to supply certain quantity of grain and the contract was prematurely terminated after supply of a part of the goods, it was held that the partnership did not come to an end and was dissolved only on the final realisation of the assets.

Dayalal Trikamal v. Harjivandas Madhavji Mali; Banshilal v. Jamuna Prasad, MANU/UP/0207/1981 : AIR 1981 All 324:

A contract to carry out murrum work on a road was undertaken in partnership which was constituted for that venture. It was held that the work could not be said to be completed till the final bill is prepared. It was observed that even if the roadwork was completed, the contract was not completed till reciprocal promises were fulfilled.

(3) By death of a partner

A partnership may be dissolved as regards all the partners by the death of any partner. A partner gives a valid notice of a dissolution but dies before the receipt or the expiration of the notice, the partnership is dissolved by the death not by the notice.

Where partner dies his estate is not liable for partnership debts contracted after the date of the death and no contract is necessary in order to determine the liability where goods are ordered before, but delivered after the death of a partner, the debt accrues on the delivery of the goods and the vendor, therefore, although he had notice of the death cannot make the deceased partner's estate liable for the price.

Nandlal Sohanlal, Jullunder v. C.I.T., Patiala, AIR 1977 P&H 320:

Thus on the death of a partner the firm is dissolved provided that there is no contract to the contrary between partners. If the remaining as surviving partners continue the business of the firm, it will be deemed that they have constituted a new firm by mutual consent.

Jai Narayan Misra v. Hasmathunnisa Begum, MANU/AP/0333/2002 : AIR 2002 AP 384:

When one of the two partners of a firm dies, the firm is automatically dissolved. Even a clause in partnership deed that the firm would continue for certain number of years despite death of one of the two partners will not save the firm from dissolution where heirs of the deceased partner are not willing to continue the firm.

Ravi Prakash Goel v. Chandra Prakash Goel, MANU/SC/7232/2007 : AIR 2007 SC 1517:

It has been held by the Supreme Court that if a dispute had arisen during the lifetime of the deceased, the deceased's legal representative can take legal proceedings under section 20 of the Arbitration Act, 1940.

C.I.T., Madhya Pradesh v. Seth Govind Ram Sugar Mills, MANU/SC/0170/1965 : AIR 1966 SC 24:

The Supreme Court has held that where one of two partners dies, the firm automatically comes to an end and there is no partnership for a third party to be introduced therein. An agreement that on the death of a partner but it would be a new partnership. There cannot be a contract between two persons, two partners that on the death of one of them the partnership will not be dissolved.

S. Pravathammal v. C.I.T., (1987) MANU/TN/0112/1984 : 163 ITR 161:

Where a partnership deed between two persons required that the partnership would continue for 42 years, the death of one of the partners would lead to dissolution of the partnership.

(4) Insolvency of Partner

When there is a partnership at Will it dissolves by notice explain!

A partnership may be dissolved among all the partners by the bankruptcy of any partner, and the estate of the bankrupt thereupon ceases to be liable for the partnership debts incurred after the bankruptcy. If a changing order is made upon a partner's share in respect of his separate debt, the other partners may at their option dissolve the partnership.

The firm is also dissolved unless there is an agreement between the remaining partners to the contrary. This provision has to be read alongwith section 41(a) which states that when all or all except one partner become insolvent, there is compulsory dissolution of the firm.

Section 43: Dissolution by Notice of Partnership at Will

(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) The firm is dissolved as from the date mentioned in the notice as the date of dissolution or if no date is so mentioned as from the date of the communication of the notice.

This section deals with dissolution by notice in case of partnership at Will.

(1) Notice

Where the partnership is at Will, it is the duty of the partner intending to dissolve the firm that he must give a notice to this effect to the remaining partners.

Sohanlal v. Amia Chand & Sons, AIR 1977 SC 2572:

It has been held by the Supreme Court that the trade mark of the firm is also a property of the firm and that if a retiring partner asks the other partners not to use the firm name then the other partners cannot be stopped from using that firm name.

(2) Dissolution at Will

Section 43 deals with dissolution of a partnership at Will by notice. Section 43 does not contract the other provisions of Chapter (i) and that it is possible to have partnership of a firm dissolved even where no notice in writing has been given under section 43. Under this section a partnership at Will may be terminated by notice to this extent, that the court will compel the parties to act as partners in a partnership existing only for the purpose of winding up the affairs.

Where a valid notice is given by a partner but has died before the expiration of the period mentioned in the notice as the date of dissolution or even before the receipt of the notice, where the notice was intended to dissolve the partnership the date of the dissolution is the date of the death of the partner and not the date of notice.

(3) Dissolution by notice

McLood v. Dowling, (1927) 43 TLR 655:

By section 32(c) of the Partnership Act, 1980, "Subject to any agreement between the partners, a partnership is dissolved if entered into for an undefined time, by any partner giving notice to the others of his intention to dissolve the partnership". The partnership is dissolved as from the date mentioned in the notice as the date of dissolution or if no date is so mentioned, as from the date of the communication of the notice.

Carrying on business is, no doubt, the purpose of partnership and discontinuance of business ordinarily puts an end to the main partnership activity, but it does not, by itself bring an end to the legal relationship between the partners. Indeed there are cases where even after dissolution, the business may be carried on if only for the purpose of the more beneficial winding up of the affairs of the partnership.

(4) Notice must be reasonable

It is settled principle of the law of partnership, that if it be without any definite period, any partner may withdraw at a moment's notice, when he pleases, and dissolve the partnership. It is true that if a reasonable notice is given it would be advantageous to the firm, but the section does not make it requisite.

Banarsidas v. Kanshiram, 1963 SCD 758: MANU/SC/0302/1962 : AIR 1963 SC 1165:

In case of partnership at Will mere filing of a suit for dissolution of partnership does not amount to a notice of dissolution of the partnership and a partnership shall be dissolved when the summons accompanied by a copy of the plaint is served on the defendant, when there is only one defendant and on all defendants, when there are several defendants. Since a partnership will be deemed to be dissolved only from one date, the date of dissolution would have to be regarded to be the one on which the last summon was served.

Featherst for Laugh v. Fenwick, (1810) 17 Ves 298:

Date of dissolution of the deed in the case of a partnership at Will is the date of execution of the deed of dissolution notwithstanding that a future date is mentioned as a date of dissolution which should be treated as the date of dissolution.

Erach F.D. Mehta v. Minoo F.D. Mehta, MANU/SC/0002/1970 : (1970) 2 SCC 724: AIR 1976 SC 1653:

The Supreme Court has expressed the opinion that in a partnership consisting of the partners only, if there is any provision regulating the mode of retirement, it will in essence be an agreement as to dissolution. The firm will not be 'at Will' and the provisions relating to retirement will have to be followed for dissolution also.

Abbasbhai v. R.G. Shah, MANU/MH/0336/1988 : AIR 1988 Bom 187:

Where all the partners but one retires, this may invoke a dissolution, but not a necessary dissolution, the single partner may take in some other partners and the firm shall be deemed to have been continued.

McLood v. Dowling, (1927) 43 TLR 655:

Where a partner sent a notice of dissolution to his only other partner and died before the other received the notice, it was held that the firm became dissolved by death of a partner and not by notice.

Subhash Chandra Kesarwani v. Asstt. Registrar Firms Societies & Chits Allahabad, MANU/UP/0219/2003 : AIR 2003 All 254:

Where there is an agreement between the partners that partnership shall not be dissolved after the death of any partner and will be continued with remaining partners or with any modification but on the death of a partner, one partner is not willing to continue as partner thereafter and the remaining partners are willing to continue partnership business, in such circumstances, order of the Registrar registering reconstituted firm is not improper.

Section 44: Dissolution by the court

Explain the grounds on which the court may dissolve the firm.

"At the suit of a partner, the court may dissolve a firm on any of the following grounds namely:-

- (a) that a partner has become of unsound mind, in which case the suit may be brought as well as next friend of the partner who has become of unsound mind as by any other partner,
- (b) that a partner, other than the partner suing has become in any way permanently incapable of performing his duties as partner,
- (c) that a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of the business, regards being had to the nature of the business,
- (d) that a partner, other than the partner suing, willfully 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 conducts himself in matter relating to the business that it is not reasonably practicable for the other partners to carry on the business in partnership with him.
- (e) that a partner, other than the partner, suing has in any way transferred the whole of his interest in the firm to a third party, or has allowed his share to be charged under the provisions of rule 49 of Order XXI of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), or has allowed it to be sold in the recovery of arrears of land revenue or of any dues recoverable as arrears of land revenue due by the partner.
- (f) that the business of the firm cannot be carried on save at a loss; or
- (g) on any other ground which renders it just and equitable that the firm should be dissolved."

Section 44 empowers the court, at a suit of a partner, to dissolve the firm on the happening of any one of the ground enumerated in clauses (a) to (g). These grounds for judicial dissolution corresponds, with verbal variation and additional provisions adapted to in Indian Procedure to section 35 of the English Act, which was itself a somewhat enlarged version of section 254 of Indian Contract Act. According to section 44 the Court may dissolve a firm on any of the following grounds-

(a) A partner becoming of unsound mind

Since a person of unsound mind cannot properly perform the works of partnership firm, it is in the interest of such a person as well as other partners that the firm be dissolved.

(b) A partner becoming permanently incapable

At the suit of a partner, the court may dissolve a firm on the ground that a partner other than the partner suing, has become in any way permanently incapable of performing his duties as partner.

(c) Partner guilty of conduct

At the suit of a partner, the court may dissolve a firm on the ground that a partner, other than a partner suing, is guilty of conduct which is likely to affect prejudicially the carrying of the business.

(d) Wilful or persistence breach of agreement

When a partner, other than the partner suing persistently commits breach of agreement relating to the management of the firm or otherwise so conducts himself in matters relating to the business than it is not reasonably practicable for the other partners to carry on the business in partnership with him, the court may order dissolution.

(e) Transfer of interest

When 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 interest to be charged.

V.H. Patil & Co. v. Hirubhai Himabhai Patel, (2000) 4 SCC 38:

At the suit of a partner the court may dissolve a firm on the ground that a partner other than the partner suing has in any way transferred the whole of his interest in the firm to a third party.

(f) Perpetual loss

At the suit of a partner, the court may dissolve a firm on the ground that the business of the firm cannot be carried on

or save at a loss.

Jennings v. Baddley, (1856) 3 K&J 78; 69 ER 1029:

If the circumstances are such that this chief objective cannot be attained and the business of the firm cannot be carried on save at a loss, firm may be dissolved by the court on this ground.

(g) Just and equitable

Section 44(g) gives very wide powers to the court. Whenever a case is brought to the court under section 44(g), the court has to decide whether it would be just and equitable to dissolve the firm and such matters cannot be left for the decision or award of the arbitration.

Narinder Singh Randhwa v. Hardial Singh Dhillon, AIR 1985 P&H 41 (42); Suraj Bhadur v. Mahadeo, MANU/RH/0077/1963 : AIR 1963 Raj 241:

A partnership is always established in order to attain a given objective. When it becomes no longer possible to attain that objective with which the partnership was started, there is no hesitation in saying that a case is made out for dissolution which may be the only remedy under the circumstances.

Section 45: Liability for acts of partners done after dissolution

Whether a partner is liable for acts done after dissolution.

"(1) Notwithstanding the dissolution of a firm, the partner continues 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:

Provided that the estate of a partner who dies or who is adjudicated an insolvent, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable under this section for acts done after the date on which he ceases to be a partner.

(2) Notices under sub-section (1) may be given by any partner."

Share in the partnership assets

Parmanand Vadilal Vasanti v. State of Gujarat, MANU/GJ/0146/1994 : AIR 1994 Guj 206:

On dissolution of the firm, the partnership assets would devolve upon its partners or the representatives of the partners as tenants-in-common. It would mean that each person getting his or her share in the partnership assets would be getting his distinct share therein even if the partnership assets remain undivided.

Mayo Pharmacy v. Aboobacker Haji, 1990 (1) KLT 153:

This section provides that notwithstanding dissolution the partners continue to be liable to parties for any act done by any of them which would have been an act of the firm if done before its dissolution until public notice of the dissolution. This section thus makes it clear that partners, continue to be liable to third parties until public notice is given of the dissolution.

Section 46: Rights of partners to have business wound-up after dissolution

What is the procedure to wind-up the firm after dissolution?

"On the dissolution of a firm every partner or his representative is entitled, as against all the other partners or their representatives, 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."

Section 46 applies after the firm is dissolved for distributing the assets of the firm and for settlement of accounts. During this period partnership exists for a limited purpose.

Trilok Chand Jain v. Darshan Lal Jain, AIR 1985 JK 50:

Where a suit for dissolution of partnership is instituted directions were given to the commissioner for taking accounts. It is as such clear that the accounts have to be taken of the partnership business including all its assets, liabilities, goodwill as also profits and losses.

Section 47: Continuing authority of partners for purpose of winding-up

The partners are in the continuing authority in a firm even after dissolution explain!

"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 transaction 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".

Section 48: Mode of Settlement of accounts between partners

What are the methods in settling the accounts of firm after dissolution?

"In settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed-

- (a) 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,
- (b) the assets of the firm, including any sums contributed by the partners to make up deficiencies of capital shall be applied in the following manner and order-
 - (i) in paying the debts of the firm to third parties,
 - (ii) in paying to each partner ratably which is due to him from the firm for advances as distinguished from capital,
 - (iii) in paying to each partner rateably what is due to him on account of capital, and
 - (iv) the residue, if any shall be divided among the partners in the proportions in which they were entitled to share profits."

K.A. Gundu Rao v. Shri Ramnarayan Avadhani, MANU/KA/0030/1994 : AIR 1994 Kant 217:

Section 48(b)(iii) provides for the refund of the actual capital contributed and if the available assets are insufficient to refund the said amount, a rateably reduced amount shall have to be refunded. The term 'capital' referred here cannot be equated to the term assets of the firm as all capital contributed by the partner is in the nature of the advance or a loan advanced to the firm by a partner, it has no higher quality at all. Just as the loan advanced by the partner does not get expanded in proportion to the enhanced value of the assets the capital contributed by a partner also does not get augmented in proportion to the assets of the firm.

Commissioner of Income-Tax, Madhya Pradesh v. Dewas Cine Corporation, MANU/SC/0140/1967 : AIR 1968 SC 676:

The distribution of surplus is for the purpose of adjustment of the rights of the partners in the assets of the partnership, it does not amount to transfer of assets.

Challakuru Chandrashekhara Reddy v. Pamuru Vishnu Vinodh Reddy, MANU/AP/0007/1995 : AIR 1995 AP 49:

In cases where there is an agreement to purchase the share of a partner, the value of the share of the outgoing partner or retiring partner shall be ascertained on the basis of the value on the date of his retirement unless it is a case where the valuation is directed by the court in the exercise of its discretion in which event the relevant date will be the date on which the share is actually valued.

Section 49: Payment of firm debts and of separate debts

"Where there are joint debts due from the firm, and also separate debts due from any partner, 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 in payment of his separate debts and paid to him. The separate property of any partner shall be applied first in the payment of his separate debts and the surplus (if any) in the payment of the debts of the firm."

Section 50: Personal profits earned after dissolution

Define section 50

"Subject to contract between partners, the provisions of clause (a) of section 16 shall apply to transactions by any surviving partner or by the representatives of a deceased partner undertaken after the firm is dissolved on account of the death of a partner and before its affairs have been completely wound up:

Provided that where any partner or his representative has bought the goodwill of the firm, nothing in this section shall affect his right to use the firm."

The principle underlying this section is that as long as the affairs of the dissolved firm are in process of winding up it is still the duty of every partner or his representative as the case may be not to make any private advantage out of transaction which are in substance on the firm's behalf.

Clement v. Ball, (1818) 3 De G&J 173:

where private profits were earned from a renewal of the lease by the surviving partner, it was held that the representatives of the deceased partner were entitled to share such profits.

Janaki Prasad v. Someshwar Prasad, AIR 1923 Oudh 23:

Where before dissolution of a partnership certain goods had been ordered and price had been paid on behalf of the firm and the goods were received and profits were realised by the sale after dissolution and division of the stock, it was held that the defendant partner who had realised the profits was bound to pay the plaintiff, his co-partner his share of such profits.

Section 51: Return of premium on premature dissolution

"Where a partner has paid a premium on entering into partnership of a fixed term, and the firm is dissolved before the expiration of that term otherwise than by the death of a partner, he shall be entitled to repayment of the premium or of such part thereof as may be reasonable, regards being had to the terms upon which he became a partner and to the length of time during which he was partner unless-

- (a) the dissolution is mainly due to her own misconduct, or
- (b) the dissolution is in pursuance of an agreement containing no provisions for the return of the premium or any part of it."

Section 52: Rights where partnership contract is rescinded for fraud or misrepresentation

"Where a contract creating partnership is rescinded on the ground of the fraud or misrepresentation of any of the parties thereto the party entitled to rescind is without prejudice to any other right, entitled-

- (a) to a lien on, or a right of retention of, the surplus or the assets of the firm remaining after the debts of the firm have been paid, for any sum paid by him for the purchases of a share in the firm and for any capital contributed by him,
- (b) to rank as a creditor of the firm in respect of any payment made by him towards the debts of the firm; and
- (c) to be indemnified by the partner or partners guilty of the fraud or misrepresentation against all the debts of the firm."

Section 53: Right to restrain from use of firm name or firm property

Explain the restriction laid down in section 53 of Partnership Act.

"After a firm is dissolved, every partner or her representative may in the absence of a contract between the partners to the contrary, restrain any other partner or his representative from carrying on a similar business in the firm name or from using any of the property of the firm for his own benefit, until the affairs of the firm have been completely wound up:

Provided that where any partner or his representative has brought the goodwill of the firm, nothing in this section shall affect his right to use the firm name."

Section 53 lays down the right of a partner to restrain any other partner or his representative from carrying on a similar business but where any partner has purchased the goodwill of the firm this restriction shall not apply. It is to be noted that under section 50 provision has been made regarding personal profits earned by a partner after dissolution of the firm.

Section 54: Agreement of restraint of trade

"Partners may, upon or in anticipation of the dissolution of the firm, make an agreement with some or all of them will not carry on a business similar to that of the firm within specified period or within specified local limits, and notwithstanding anything contained in section 27 of Indian Contract Act, 1872 (9 of 1872), such agreement shall be valid if the restriction imposed are reasonable."

Section 55: Sale of Goodwill after Dissolution

In settling the account of a firm after dissolution, the goodwill shall, subject to contract between the partners be included in the assets, and it may be sold either separately or along with other property of the firm.

(1) Right of buyer and seller of goodwill

What are the rights of buyer and seller of goodwill?

Where the goodwill of a firm is sold after dissolution, a partner may carry on a business competing with that of the buyer and he may advertise such business, but subject to agreement between him and the buyer, he may not

- (a) use the firm name
- (b) represent himself as carrying on the business of the firm, or
- (c) Solicit the custom of persons who were dealing with the firm before its dissolution.

(2) Agreement in restraint of trade

Any partner may, upon the sale of the goodwill of a firm, make an agreement with the buyer that such partner 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 Indian Contract Act, 1872 (9 of 1872), such agreement shall be valid if the restrictions imposed are reasonable."

Goodwill: Sale after dissolution

Goodwill is a part of the assets of the firm and section 55(1) enacts that in settling the accounts of a firm after dissolution and the goodwill shall, subject to contract between the partners, be included in the assets and it may be sold either separately or along with other property of the firm. The prima facie rule therefore is that the goodwill of the firm being a part of the assets has to be sold just like other assets before the accounts between the partners can be settled and the partnership wound up; *Laxmidas Dayabhai Kabrawala v. Nanabhai Chunilal Kabrawala*, MANU/SC/0019/1963 : AIR 1964 SC 11.

Rights of partners as to goodwill

On the dissolution of a partnership; every partner has a right, in the absence of any agreement to the contrary to have the goodwill of the business sold for the common benefit of all the partners.

Khushi Lal Khemgar Shah v. Khorshed Banu Dadiba Boatwala, MANU/SC/0014/1970 : AIR 1970 SC 1147:

This, however, does not mean that goodwill is to be taken into account only when there is a general dissolution. Even the legal representative of deceased partner will be entitled to share in the goodwill of a partnership which is continued.

Goodwill does not survive

It was formerly supposed that on the death of a partner in a firm the goodwill survived, i.e., the surviving partners were entitled to the whole benefit of it without any express agreement to that effect. However, it is now well settled that this is not so. Surviving or continuing partners may, in various ways have the benefit of the goodwill and an intention to let them have it may be shown by conduct as well as words.

Menendez v. Holt, (1888) 128 US 514:

"Where a partner retires from a firm, assenting to or acquiescing in the retention by the other partners of possession of the old place of business and the future conduct of the business by them under the old name, the goodwill remains with the latter as of course."

Khushi Lal Khemgar Shah v. Khorshed Banu Dadiba Boatwala, MANU/SC/0014/1970 : AIR 1970 SC 1147:

"An agreement between the partners that the name, the place of business and the reputation of the firm are to be utilised by the surviving partners will not necessarily warrant an inference that it was intended that the heirs of the deceased partner will not be entitled to a share in the goodwill.

Rights of partners to restrain use of partnership name

After a dissolution, each of the partners in the dissolved firm or his representatives may, in the absence of any agreement to the contrary, restrain any other partner or his representatives from carrying on the same business under

the partnership name until the affairs of the firm have been wound up, and the partnership properly disposed of. Section 53.

Burchell v. Wilde, (1900) 1 Ch 551:

After the affairs of a dissolved firm are wound up, every partner is free to use the firm name in the absence of agreement to the contrary provided that he does not expose any late partner to liability.

Arenson v. Casson Beckman Ruttley & Co., (1977) AC 405:

When valuation of the goodwill of the firm is honestly made by the agreed values, it will bind the parties. Such valuation can, however, be set-aside on the ground of fraud or collusion. The dissatisfied partner may have remedy against the agreed values for damages in respect of his negligence.

Dissolution under trading with the enemy legislation

Where a partnership has been dissolved as the result of the trading with the enemy legislation and where one active partner has made use of the assets, such a partner is a trustee of those assets, and he must pay the other partner for his share of the profits with interest.

Ramnik Vallabhdas Madhvani v. Taraben Pravinlal Madhavani, MANU/SC/0891/2003 : (2004) 1 SCC 497:

The term 'goodwill' signifies the value of the business in the hands of successor, so far as increased by the continuity of the undertaking being preserved in the shape of the right to use the old name and otherwise. The goodwill is generally considered to be an asset of the partnership. Whenever a firm is dissolved, the value of the goodwill has to be worked out and divided between the partners. The High Court had assigned sufficient and cogent reasons for awarding a sum towards the plaintiff's share in goodwill.

Chapter VII

Registration of firms

(Sections 56-71)

Section 56: Power to exempt from application to this chapter

"The State Government of any State may by notification in the Official Gazette, direct that the provisions of this chapter shall not apply to that State or to any part thereof specified in the notification.

The purpose underlying this provision was to exempt any undeveloped area to which its provisions may not be suited. So section 56 authorises the State Government of any State to exempt that State from the operation of this chapter, operation of the Act.

Section 57: Appointment of Registrars

Explain the appointment of Registrars.

(1) The State Government may appoint Registrars of firms for the purpose of this Act and may define the areas within which they shall exercise their powers and perform this duties.

(2) Every Registrar shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860 (XIV of 1860).

Provision has been made under this section regarding the appointment of Registrar. Powers have been given to the State Government to appoint Registrar of firms for the purpose of this Act and may define the areas within which they will exercise their powers. Sub-clause (2) lays down that the Registrar shall be deemed to be public servant within the meaning of section 21 of Indian Penal Code.

Section 58: Application for Registration

What are the points which need to be mentioned in application for Registration.

(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 name,
- (b) the place or principal place of business of the firm,
- (c) the name 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.

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

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

(3) A firm name shall not contain any of the following words namely-

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

This section gives executive directions which speaks plainly for themselves. It can be taken to have been settled that the registration of a firm takes place only when the necessary entry is made in the Register of firms under section 59 by the Registrar.

Section 59: Registration

Define 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."

Arvind Construction Co. Pvt. Ltd. v. Kalinga Mining Corporation, MANU/SC/7697/2007 : AIR 2007 SC 2144:

"The Supreme Court held that re-registration of firm in the same name does not affect its status. In this case, the firm had been constituted in the year 1949. The appellant company had a contract with the said firm. It was being reconstituted from time-to-time. The fact that foolish or otherwise, a firm in the same name was again registered in the year 2005. It was held that it does not affect the status of the firm.

This section lays down that the Registrar shall record an entry of the statement in the register known as Register of firms only when he is satisfied that the provisions of this section have been duly complied with.

Section 60: Recording of alteration in firm name and principal place of business

(1) "When an alteration is made in the firm name or in the location of the principal place of business of a registered firm, a statement may be sent to the Registrar accompanied by the prescribed fee, specifying the alteration and signed and verified in the manner required under section 58.

(2) When the Registrar is satisfied that the provisions of sub-section (1) have been duly complied with, he shall amend the entry relating to the firm in the Register of firms in accordance with the statement, and shall file it along with the statement relating to the firm under section 59."

According to Lindley; As soon as the details are received with the Registrar; registration becomes complete. Filing of the deed and giving certificate thereon are all ministerial work and they will not deprive the firm from the advantage of the Act.

It is necessary that the notice be given to the Registrar for every change introduced in the name or place of business of the firm. Necessary fee is also required to be given to get the change registered for such purposes. Notice of change should be given according to the specifications laid down under section 58 and the same should be verified and signed. The Registrar will record the said change in the Register of firms when he is satisfied about the legality of procedure in giving notice.

Section 61: Noting of closing and opening of branches

"When a registered firm discontinues business at any place or begins to carry on business at any place, such place, not being its principal place of business, any partner or agent of the firm may send intimation thereof to the Registrar, who shall make a note of such intimation in the entry relating to the firm in the Register of firms and shall file the intimation along with the statement relating to the firm filed under section 59."

According to this section, when new branches of the firm are opened or any running branches of the firm are closed down its notice must be given to the Registrar. Notice of such particulars can be given by any partner of the firm. If, however, no such notice is given the status of the firm will remain the same as it is in case of an unregistered firm. Registrar thereon shall enter it at the concerned place.

Section 62: Noting of changes in name and addresses of partners

"When any partner in a registered firm alters his name or permanent address an intimation of the alteration may be sent by any partner or agent of the firm to the Registrar, who shall deal with it in the manner provided in section 61."

According to the section when any registered firm or any partner thereof wants to introduce any change in his name as permanent address then this fact must be informed to the Registrar of firms by any partner or agent of the firm. The Registrar will act thereon according to the provisions of section 61 of the Act.

Section 63: Recording of changes on dissolution of a firm

When a change occurs in the constitution of a registered firm any incoming, continuing or outgoing partner and when a registered firm is dissolved any person who was a partner immediately before the dissolution, or the agent of any such partner or person especially authorised in this behalf, may give notice to the Registrar of such change or dissolution, specifying the date thereof, and the Registrar shall make a record of the notice in the entry relating to the firm in the Register of firms, and shall file the notice along with the statement relating to the firm filed under section 59.

Recording of withdrawal of a minor

When a minor who has been admitted to the benefits of partnership in a firm attains majority and elects to become or not to become a partner, and the firm is then a registered firm, he or his agent specially authorised in this behalf, may give notice to the Registrar that he has or has not become a partner, and the registrar shall deal with the notice in the manner provided in sub-section (1)."

Section 63 deals with the provision regarding changes in and dissolution of the firm. It lays down that when any change takes place in the constitution of the registered firm then any incoming, continuing or outgoing partner and when dissolution of the firm takes place then anyone who has been a partner just before the dissolution can give the notice of such change as dissolution of the firm mentioning therein the date of such dissolution. Registrar will enter the same in the relevant register. Such notice can be given by the firm itself. This however, makes it necessary for a minor after he attains majority to inform the Registrar as to whether he wants to continue or not to continue as partner.

Section 64: Rectification of mistakes

(1) "The Registrar shall have power at all times to rectify any mistake in order to bring the entry in the Register of firms relating to any firm into conformity with the documents relating to that firm filed under this chapter.

(2) On application made by all the parties who have signed any document relating to a firm filed under this chapter, the Registrar may rectify any mistake in such document or in the record or note thereof made in the Register of firms."

Rights have been given to the Registrar under this section to rectify the mistake which might have crept into while entering it in the register. This power of the Registrar to rectify the mistakes will include any error or omission by the office staff or by the person himself giving such notice.

Section 65: Amendment of Register by order of court

"A court deciding any matter relating to a registered firm may direct that Registrar shall make any amendment in the entry in the Register of firms relating to such firm which is consequential upon its decision, and the Registrar shall amend the entry accordingly.

Section 65 deals with the powers of the court determining the issue relating to firms. Court has been empowered by the virtue of this provision to issue directions to the Registrar to introduce such change in the register as has become necessary on account of certain decision of the court.

Section 66: Inspection of register and filed documents

(1) The Register of firms shall be open to inspection by any person on payment of such fee as may be prescribed.

(2) All documents, notices and intimation filed under this chapter shall be open to inspection subject to such conditions and on payment of such fee as may be prescribed.

This section deals with the inspection of register and filed document. The Register of firms shall be opened for inspection on payment of such fee as may be prescribed from time-to-time.

Sub-section (2) lays down that all such statements and informations etc., shall be open for inspection subject to the following two restrictions-

(i) payment of prescribed fee.

(ii) any other condition which may be imposed by the government.

Section 67: Grant of Copies

"The Registrar shall on application furnish to any person on payment of such fee as may be prescribed, a copy certified under his hand of any entry or portion thereof in the Register of firms."

According to this section anyone can get the copy of the entries in the register on payment of prescribed fee. Certified copy of the register is a sufficient proof that it may be acted upon. The right to obtain certified copy extends only to "any entry or portion thereof", in the register but does not extend to original documents. It is also to be noted that such rights can be exercised by any member of the public.

Section 68: Rules of evidence

(1) Any statement, intimation or notice recorded or noted in the Register of firms shall, as against any person by whom or on whose behalf such statement, intimation or notice was signed, be conclusive proof of any fact therein stated.

(2) A certified copy of an entry relating to a firm in the Register of firms may be produced in proof of the fact of the registration of such firm and of the contents of any statement, intimation or notice recorded or noted therein.

This section deals with the rules of evidence. According to this section, the original documents filed with the Registrar of firms are the conclusive proof of the facts contained in them in relation to any person who has signed them or as against any person who has signed on his behalf. [Birbal v. Firm Bogri Brothers, 1963 MPW (N) 50].

Kapurchand v. Laxman, MANU/NA/0081/1951 : AIR 1952 Nag 57:

Certified copies of the entries are evidence of registration and of the contents of the original but the same cannot be replaced by the secondary evidence.

Het Ram v. Firm Subhag Chand, AIR 1941 Oudh 376:

There is a presumption with the Register of firms that parties shown as members of the firm and as registered are actually members of the firm. Though of course such presumptions are rebuttable.

Section 69: Effect of non-Registration

What are the consequences of the non-registration of firm?

(1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of firms as a partner in the firm.

(2) No suit to enforce a right arising from a contract shall be instituted in any court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of firms as partners in the firm.

(3) The provisions of sub-sections (1) and (2) shall apply also to a claim of set off or other proceeding to enforce a right arising from a contract, but also not affect,-

(a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm, or

(b) the powers of an official assignee, receiver or court under the Presidency Towns Insolvency Act, 1909 (3 of 1909) or the Provincial Insolvency Act, 1920 (5 of 1920) to realise the property of an insolvent partner.

Comments

(a) to firms or to partners in firms which have no place of business in the territories to which this Act extends, or whose places of business in the said territories are situated in areas to which, by notification under section 56 of this chapter does not apply, or

(b) to any suit or claim of set off not exceeding one hundred rupees in value which, in the Presidency Towns, is not of a kind specified in section 19 of Presidency Small Cause Court Act, 1882 (5 of 1882), or outside the Presidency Town is not of a kind specified in the Second Schedule to the Principal Small Cause Courts Act, 1887 (9 of 1887) or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim."

(4) This section shall not apply-

This section lays down a nugatory principle. It means that no action will lie against partners or even against third person when the firm is not registered. Court is bound to observe this principle and no amount of agreement between partners can change. It is not only necessary that the firm should be registered but it is also necessary that all partners at the time of institution of suit must be or have been shown as such in the Register of firms.

Badrimal Ramcharan & Co. v. Gana Kaul, 1971 Kash LJ 127:

The object of this section is to make sure that the general policy of the Legislature that all partners should be registered should be carried out. It is also to be noted that though the Partnership Act came into force on 1st October, 1933 it was expressly provided that section 69 will come into force only on 1st October, 1933, and hence section 69 will not bar a suit which had accrued before section 69 came into force having regard to section 74 of the Act.

It may be noted that Partnership Act neither makes the registration of a firm compulsory nor does it impose any penalties for non-registration. However, it provides certain disabilities for an unregistered firm and partners of such a firm or the partners whose names have not been shown as registered partners even though the firm is registered.

Ram Adhar v. R.K. Tiwari, MANU/UP/0224/1981 : AIR 1981 All 405:

Yet registration becomes compulsory at one time or the other because section 69 seriously cuts short the capacity of an unregistered firm and its partners to sue.

Krishna Motors Service v. H.B. Vittala Kamath, MANU/SC/0558/1996 : (1996) 10 SCC 88: AIR 1996 SC 220:

Section 69 is mandatory in nature. Its effect is to render a suit by a partner in respect of a right vested in him or acquired under a contract which he entered into as a partner to be maintainable.

Andhra Pradesh Coop. Wool Spg. Mills Ltd. v. Mahanandi & Co., (2003) 3 BC 313:

The burden of proving that the firm is registered as required under the Act is on the firm or the partner suing.

Effects of non-registration

(1) Suits between partners and firm - Sub-section (1)

If a firm is not registered whether a suit can be instituted by or against the firm?

According to section 69(1), no suit to enforce a right arising from a contract or conferred by the Partnership Act can be instituted in any court unless the following two requirements are satisfied-

- (i) the partnership firm is registered, and
- (ii) the partners filing the suit have been shown in the Register of firms as the partners of the firm.

(1) Shivraj Fine Arts Litho Works v. Purushottam, MANU/MH/0003/1993 : AIR 1993 Bom 30.

(2) Kerala Roadlines Corp. v. C.I.T. Kerala, MANU/KE/0076/1964 : AIR 1964 Ker 251.

Thus, there should be registration of a firm and the persons suing are or have been shown in the register of firms as partners in the firm. The firm is registered when the entry of the statement is recorded in the Register of firms and the statement is filed by the Registrar as provided by section 59.

(3) Chimanlal v. Firm New India Traders, MANU/BH/0008/1962 : AIR 1962 Pat 25:

This provision bars a suit between partners or between partners and the firm if the firm is unregistered. Even if the firm is registered, only such partners can sue whose names appears in the Register of firms. Therefore, if some partners join after the firm with certain other partners who have already been registered, unless the newly introduced partners are also shown in the Register of firms, they suffer from the disability because only the registered partners can get benefit of the decree.

(4) Loonkaran Sethia v. Mr. Iva E. John, MANU/SC/0048/1976 : AIR 1977 SC 336:

The observation made by the Supreme Court-"A bare glance at the section is enough to show that it is mandatory in character and its effect is to render a suit by a plaintiff in respect of a right vested in him acquired by him under a contract which he entered into as a partner of an unregistered firm whether existing or dissolved void.

In other words, a partner of an erstwhile unregistered partnership firm cannot bring a suit to enforce a right arising out of a contract falling within the ambit of section 69 of the Partnership Act.

(5) Jagat Mittar Saigal v. Kailash Chander Saigal, AIR 1983 Del 134:

If the firm is not registered and has been dissolved and suit for accounts of the firm has been filed under section 20, the suit shall not be barred under section 69(1) because such suits have been protected under sub-section 3(a) and (b) of section 69, the right to refer a dispute to arbitrators arises out of contract between the parties. If the relief is limited to accounts or property of the dissolved firm, the non-registration of firm shall not bar the reference of matter to arbitration.

So, disability mentioned in section 69(1) is not such as cannot be cured or removed. In order to remove this disability, partners may get the firm registered before filing the suit.

(6) P. Ananda Rao v. G. Raja Rao, AIR 1978 AP 256:

In a case before the Andhra Pradesh High Court, on the death of a partner, his interest devolved upon his sons who became partners. But this change was not registered with the Registrar and therefore for purposes of suits the firm became an unregistered firm. The sons found that the other partner sold his interest to an outsider. This was a breach of the partnership agreement, which provided for sale only to the other partners. The sons attempted to enforce the partnership agreement but the suit was not allowed. This contention that they should be permitted to sue as the co-owners of the property was also not accepted. Thus, the only chance was dissolution and then to realise the assets of a dissolved firm.

(7) Oriental Fire and General Insurance Co. Ltd. v. Union of India, MANU/BH/0033/1991 : AIR 1991 Pat 250:

It has been held that when a firm takes an insurance policy on a motor vehicle belonging to the firm, the claim under that policy arises out of a contract of insurance, rather than out of statute i.e., the Insurance Act, and, therefore, the same cannot be enforced by filing a suit if the firm is unregistered.

(8) Mahendra Singh Chaudhary v. Tej Ram Singh, MANU/UP/0170/1987 : AIR 1987 All 152:

One of the partners of the firm i.e., 'A' brought an action for injunction requiring that the cheques for payment to the firm should not be paid singly to the other partner B but should be paid in the joint name of A and B so that the money could reach the coffers of the firm. The said firm was unregistered. It was held that the suit brought by A was on behalf of the firm, and the firm being unregistered, the suit was not maintainable under section 69.

(2) Suit only by an authorised person

Popular Auto Mobiles v. G.K. Channi, MANU/KE/0119/2001 : AIR 2002 Ker 33:

The suit was filed on behalf of the firm. The plaint was signed by the manager of the firm. No power-of-attorney was given to him by the firm to verify and sign plaint on behalf of the firm, nor his name appeared in the Register of firms as a partner. It was held that the suit was bad for non-compliance of mandatory provision contained in section 69(2) requiring the filing of the suit by a partner or an authorised person. Such suit is liable to be dismissed. Such defect cannot be cured by subsequent incorporation of verification and signatures by a partner.

Inder Singh Sham Singh v. Brahma Deo Prasad, (1958):

When one partner is a creditor of another partner or of the partnership, he may be allowed to bring an action for the same.

(3) Suits between firm and third parties section 69(2)

Section 69(2) deals with enforcing claims by the firm against third parties, and prohibits the enforcing in a suit of any right arising from a contract against a third party, unless the firm is registered and the persons suing are or have been shown in the Register of firms as partners in the firm.

One important point is to be noted in connection with this rule. This section does not affect the right of a third party to proceed against the firm or its partners even though unregistered, nor does it affect the right of the official assignee to realize the property of an insolvent partner.

It is also important to note that the Act does not lay down that any transaction of an unregistered firm will be invalid, it merely says that a firm will not be allowed to take the assistance of a civil court, except upon the condition precedent that it is registered. Registration may be affected by a firm at any time before filing a suit or taking other civil proceedings in a court against third parties.

Problems

A & Co. is registered as a partnership firm in 2000 with A, B and C as partners. In 2002 A dies. In 2003 B and C sue X in the name and on behalf of A & Co. without fresh registration. Is the suit maintainable? What difference would it make, if in 2003 B and C had taken a new partner D and then filed a suit against X without fresh registration?

Ans. The suit is maintainable without fresh registration if an additional partner D, had come into the firm as a partner and his name had not been entered in the register in accordance with notice of a change in the constitution could not sue, because although it was a registered firm D, one of the person suing, would not be shown in the Register of firms as a partner in the firm at the date of the suit. Pratapchand v. Jehangirji, 42 Bom LK 487.

According to section 69(2), if the firm is unregistered, no suit to enforce a right arising from a contract can be instituted by the firm or its partners against a third party. Sub-section (2) also requires two conditions to be fulfilled before a suit can be instituted against a third party.

(i) the firm must be registered firm, and

(ii) the person suing must be shown in the Register of firms as partner of the firm.

To enforce the rights against third party, it is not enough that the firm is registered, it is further necessary that the person suing is or has been shown in the Register of firms as a partner in the firm.

(1) Ram Adhar v. Rama Kiral Tiwari, MANU/UP/0224/1981 : AIR 1981 All 405:

The plaintiff sold bricks to the defendant. The defendant not having paid price of bricks to the partnership firm, the plaintiff sued the defendant for the recovery of the price of bricks. The Allahabad High Court held that such a suit is barred by section 69(2) and as such the suit was not maintainable.

- (2) Loonkaran Sethai v. Ivan E. John, MANU/SC/0048/1976 : AIR 1977 SC 336:

A plaint filed in violation of section 69(1) and (2) shall be void and cannot be amended under Order VI, rule 17 of Civil Procedure Court. The court is not competent to entertain such a plaint.

- (3) Shreeram Finance Corporation v. Yasin Khan, MANU/SC/0341/1989 : AIR 1989 SC 1769:

On the date when the suit was filed, two of the partners shown as partners as per the relevant entries in the Register of firms were not in fact partners, one new partner had come in and two minors had been admitted to the benefit of the partnership firm regarding which no notice was given to the Registrar of firms.

- (4) Shreeram Finance Corp v. Yasin Khan, MANU/SC/0341/1989 : AIR 1989 SC 1769:

The Supreme Court held that the suit filed by the appellants is clearly hit by the provisions of sub-section (2) of section 69 and is not maintainable.

- (5) C.M. Mutukumaraswami v. Kumar Textiles, MANU/TN/0080/1996 : AIR 1996 Mad 433 (435):

The provisions of section 69(2) are mandatory. If the firm suing has not been registered and even if no objection has been made by defendant on this aspect, the Trial Court must arrive at a finding on this issue after giving opportunity to both the parties to adduce evidence.

- (6) C.M. Muthukumaraswami v. Kumar Textiles, AIR 1966 Mad 433:

It has been held that the provision contained in 69(2) is mandatory and registration of the firm is a condition precedent to its right to institute a suit. Even if the defendant does not raise an objection, the provisions contained in section 69 cannot be flouted. The Trial Court is to find if the plaintiff firm is registered and for that purpose the court should enable the parties to adduce evidence to that effect.

- (7) Gandhi & Co. v. Krishna Glass Pvt. Ltd., MANU/MH/0272/1987 : AIR 1987 Bom 348:

It was held that if the name of one of the partners had not been shown in the Register of firms, the suit filed by the partnership firm must fail.

- (8) Kavita Trehan v. Balsara Hygiene Products Ltd., AIR 1992 Del 92:

If a suit is filed by the partners of a firm which is not registered on the date of the institution of the suit, the same would be hit by the provisions of section 69(2) of the Partnership Act and shall be dismissed.

- (9) J.K. Finance Chit Funds v. R. Surya Kumar, MANU/AP/0927/2003 : AIR 2004 AP 190:

The registration of the firm is sufficient to maintain the suit against any third party. The only requisite under section 69(2) of the Act is that a registered firm can only file a suit against third party and the persons suing have been in the Register of firms as partners in the firm. Therefore, there is no need for registration of the partnership deed of the registered firms.

- (10) Gandhi & Co. v. Krishna Glass Private Ltd., MANU/MH/0272/1987 : AIR 1987 Bom 348:

It was held that the suit filed by a partnership firm must fail, if the name of one of the partners has not been shown in the Register of firms on the date of filing of the suit.

- (11) Shreeram Finance Corporation v. Yasin Khan, MANU/SC/0341/1989 : AIR 1989 SC 1769:

The suit was filed by Registered firm, but there was a change in its constitution. Two of the partners shown in the Register of firms retired, one new partner was added and minors admitted to the benefit of the firm. The suit was filed by the firm after change in constitution, but before change was notified to the Registrar, the suit was held to be not maintainable as the current partners on the date of the suit were not shown in the Register of firms.

Rights arising from a contract

What are the rights which arise only from a contract?

Section 69(2) applies to a suit to enforce a right arising out of a contract. A suit, therefore, is not barred if a statutory right or a common law right is being enforced. The purpose behind section 69(2) was to impose a liability on the unregistered firm or its partners to enforce rights arising out of contracts entered into by the plaintiff firm with the

third party defendant in the course of the firm's business transaction. Once a firm is registered, there is nothing in law to disable it from bringing about claims or from pursuing remedies in a court of law in relation to transactions, which preceded such registration.

Haldiram v. Anand Kumar, MANU/SC/0144/2000 : AIR 2000 SC 1287:

In this case, the emphasis was on the words "right arising from a contract" in section 69(2) of the Partnership Act, 1932. After looking into the report of the Special Committee which preceded the Partnership Act, 1932, the Apex Court rules that the contract by the unregistered firm referred to in section 69(2) must not only be one entered into by the plaintiff firm in the course of business dealings of the plaintiff firm with such third party defendant. Thus, the Legislature when it used the words arising out of contract in section 69(2).

Kishore Kumar B. Zaveri v. Navinchandra H. Somaiya, MANU/MH/0338/1998 : AIR 1998 Bom 153:

Bombay High Court after a perusal by section 69(2) and (2A) of the Indian Partnership Act, 1932 observed that the bar under section 69(2) can be raised when a suit is instituted in the name of a firm. The suit may be filed by the firm or on behalf of the firm by some other individuals. If the suit is filed by some individuals, then it would be necessary that the names of the persons suing are shown in the Register of firms as partners of the firm.

Uttat Pradesh State Sugar Corpn. Ltd. v. Jain Construction Co., MANU/SC/0681/2004 : AIR 2004 SC 4335:

If a unit of a registered firm which is not separate from it, sells some goods and files the suit for recovery of price, it cannot be said that the said unit is not registered of consequently section 69(2) will not apply.

For initiation of arbitral proceedings, the firm must be registered at the time and initiation thereof and not later on.

No. 3 Bar to claim of set-off and other proceedings

Whether section 69 is also applicable on set-off or counter-claim.

What are the exceptions of section 69?

According to sub-section (3) the disabilities mentioned above also apply to a claim of set-off or other proceedings to enforce a right arising from a contract. For example if a third party brings an action against the firm to recover some money, the firm cannot say that the third party also owes some money to the firm and therefore the claim of third party should be adjusted against the claim of the firm, which means the unregistered firm cannot claim a set off.

The two disabilities also apply to a claim of set off or other proceedings to enforce a right arising from a contract. Rabindra Nath v. P.A. Padmanabhan, MANU/TN/0051/1992 : AIR 1992 Mad 264:

"A claim of set off means that if for example, an unregistered firm is sued by a third party to recover a sum of money the firm cannot say that the money owing by that third party to the firm should be set off against the claim. The word other proceedings had created some difficulty as to their import particularly in reference to the question whether they included arbitration proceedings."

Jagdish Chandra Gupta v. Kajaria Traders (India) Ltd., AIR 1964 SC 1881:

The Supreme Court ended this controversy and held that the words "other proceedings to enforce a right arising from a contract" include arbitration proceedings because the right to refer to arbitration depends on the contract between parties.

Where a dispute between an unregistered firm and the other party was referred to arbitration at the instance of the other party and the arbitrator having submitted his award which went in favour of the firm, the question arose whether the firm had the right to get the award converted into a court decree and then enforce it.

Ram Nandan Prasad Sinha v. K.M. Consultants, MANU/MH/0540/2001 : AIR 2002 Bom 90:

Where a reference to arbitration was possible without recourse to the court, it was held that unregistered firm could do so.

Exceptions

The disabilities discussed above are not applicable to the unregistered firm in the following exceptional cases:

(1) Suit for dissolution-section 69(3)(a)

Section 44 mentions certain circumstances under which on the suit of a partner the court may dissolve a firm.

Chagganlal Gupta v. State of Uttar Pradesh, AIR 2008 (NOC) 2638:

Section 69(3) (a) permits a suit even by the partners of an unregistered firm to sue for the dissolution of a firm or for the accounts of a dissolved firm.

Pradeep Kumar v. Gopal Chandra, MANU/WB/0025/1981 : AIR 1981 Cal 85:

In case the firm has already been dissolved, the partners of the unregistered firm can realise the property of the dissolved firm. The right includes enforcing a claim arising from contract prior to dissolution. The disability for non-registration works only during the subsistence of the partnership.

D.C. Upreti v. B.D. Karnatak, MANU/UP/0176/1986 : AIR 1986 All 32:

After the firm is dissolved, it is not the disability mentioned in sub-sections (1) and (2) of section 69 which governs the position, but it is the provisions of section 69(3) (a) which operates giving the partners power to "realise the property of the dissolved firm."

S. Ahmed Khan v. Turup Mohd Hayat, AIR 1953 Mys 4.

"A and B purchased a taxi to ply it in partnership. They had done business for about a year when A, without the consent of B, disposed of the taxi. B brought an action to recover his share in the sale proceeds. A's only defense was that the firm was not registered.

The court held that the business having being closed on the sale of the taxi, the action was for the realisation of the assets of a dissolved firm and, therefore maintainable.

Rampadevi v. Bishambar Nath, MANU/UP/0005/1976 : AIR 1976 All 19:

The right to go to the court for dissolution and accounts continues to enjoy full respect inspite of the fact that the firm was not registered and there was an arbitration clause which was not enforceable because of non-registration.

In this case an earlier suit for accounts was dismissed for want of registration, yet that was not a bar (res judicata) for a subsequent suit for dissolution and accounts.

(2) Suit on behalf of an insolvent partner section 69(3)(b)

Section 69(3)(b) mentions another exception when an action would be brought on behalf of an insolvent partner against an unregistered firm. It provides that an official assignee, receiver of court has the power to bring an action to realise the property of the insolvent partner.

(3) Suit where provisions relating to registration of firms do not apply [section 69(4)(a)]

Section 69(4) (a) exempts such firm from the operation of the provisions of this section whose place of business is not in India or whose place of business is in such areas, where because of notification under section 56, this chapter does not apply.

(4) When value of the suit does not exceed Rs 100 (section 69(4)(b))

Section 69 (4)(b) provides an exception for firms having small claims. If the value of the suit does not exceed Rs 100, an unregistered firm or its partner can bring an action against the third party.

Suit filed in Individual Capacity

Kishore Kumar B. Zaveri v. Navin Chandra H. Somaiya, MANU/MH/0338/1998 : AIR 1998 Bom 153:

It has been held that if a suit has been filed in the individual capacity by a person who had been a partner of the dissolved firm against another person who had also been a partner of the dissolved firm, the bar under section 69(2A) would not be attracted.

Registration Subsequent to the filing of the suit

If the firm is not registered on the date of the filing of the suit, the suit is liable to be dismissed. In view of the mandatory provisions of section 69 making registration a condition precedent to the institution of the suit, registration of the firm subsequent to institution of the suit cannot cure the defect.

Criminal proceedings

A criminal proceedings under section 138 of the Negotiable Instruments Act, 1881 for the dishonour of a cheque is not in the nature of a civil suit and therefore, the bar of section 69 would not prevent an unregistered firm from launching such a proceeding.

Section 70: Penalty for furnishing false particulars

What penalty is imposed for furnishing false particulars?

Any person who signs any statement, amending statement, notice or intimation under this chapter containing any particulars which he knows to be false or does not believe to be true, or containing particulars which he knows to be incomplete or does not believe to be complete shall be punishable with imprisonment which may extend to three months, or with fine, or with both.

This section deals with the penalty for furnishing false particulars and lays down that if any person has signed any statement or notice which contains any particulars which he knows to be false or even does not believe to be true shall be punishable with imprisonment which may extend to three months or with fine or with both.

Section 71: Power to make rules

Define the law-making powers of State Government.

(1) The State Government may by notification in the Official Gazette make rules describing the fees which shall accompany documents sent to the Registrar of firms, or which shall be payable for the inspection of document in the custody of the Registrar of firms or for copies from the Register of firms:

Provided that such fees shall not exceed the maximum fees specified in Schedule I.

(2) The State Government may also make rules,-

- (a) Prescribing the form of statement submitted under section 58 and of verification thereof;
- (b) requiring statements, intimations and notices under sections 60, 61, 62 and 63 to be in prescribed form and prescribing the form thereof;
- (c) prescribing the form of the Register of firms and the mode in which entries relating to firms are to be made therein and the mode in which such entries are to be amended or notes made therein;
- (d) regulating the procedure of the Registrar when disputes arise;
- (e) regulating the filing of documents received by the Registrar;
- (f) prescribing conditions for the inspection of original documents;
- (g) regulating the grant of copies;
- (h) regulating the elimination of registers and documents;
- (i) providing for the maintenance and form of an index to the Register of firms; and
- (j) generally, to carry-out the purpose of this Chapter.

(3) All rules made under this section shall be subject to the condition of previous publication.

(4) Every rule made by the State Government under this section shall be laid as soon as it is possible, before the State Legislature.

Power has been given to the State Government to prescribe fee which should accompany the document sent to the Registrar of Firms. The State Government shall also prescribe fee which is to be charged from anyone who applies for inspection of documents kept in the custody of Registrar of Firms.

Chapter VIII

Supplemental

Section 72: Mode of giving public Notice

A public notice under this Act is given,-

- (a) where it relates to the retirement or expulsion of a partner from a registered firm, or to the dissolution of a registered firm, or to the election to become or not to become a partner in a registered firm by a person

attaining majority who was admitted as a minor to the benefits of partnership, by notice to the Registrar of Firms under section 63, and by publication in the Official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business.

(b) in any other case, by publication in the Official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business.

Section 73: Repeals

[Rep. by Repealing Act, 1938 (1 of 1938) section 2 and Sch.].

Section 74: Savings

Nothing in this Act or any repeal effected thereby shall affect or be deemed to affect,-

- (a) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act, or
- (b) any legal proceeding or remedy in respect of any such right, title, interest, obligation or liability, or anything done or suffered before the commencement of this Act, or
- (c) anything done or suffered before the commencement of this Act, or
- (d) any enactment relating to partnership not expressly repealed by this Act, or
- (e) any rule of insolvency relating to partnership, or
- (f) any rule of law not inconsistent with this Act.

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Bevan v. Webbs., 1903 All ER	38
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