NOTES ON

Law of partnership

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DEFINITION, NATURE, KINDS AND ESSENTIALS OF PARTNERSHIP

Introduction to Indian Partnership Act, 1932:

- The Indian Partnership Act, 1932 is an act of the Indian Parliament that governs partnerships in India.
- It came into force on 1st October 1932 and has since been amended several times.
- The Act provides for the registration of partnership firms and the rights and obligations of partners in a partnership.
- It is applicable to the whole of India, except for the state of Jammu and Kashmir.
- The Act defines partnership as the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.
- It lays down the essential elements of partnership, such as agreement, sharing of profits, carrying on of a lawful business, number of partners, mutual agency, and unlimited liability.

Objectives of the Indian Partnership Act, 1932:

- The Act aims to provide a legal framework for partnerships and to ensure transparency and accountability in the management of partnership firms.
- It seeks to provide a mechanism for the resolution of disputes among partners and between partners and third parties.
- The Act also aims to protect the interests of minority partners and to prevent fraud and mismanagement in partnership firms.
- It encourages the formation of partnerships by providing a legal framework for the creation and dissolution of partnerships.

Advantages of registering a partnership under the Indian Partnership Act, 1932:

- Registration of a partnership firm under the Act provides legal recognition to the firm and the partners.
- It enables the firm to sue and be sued in its own name and to enter into contracts.

- It provides for the settlement of disputes through the courts.
- It provides for the creation of a separate legal entity that is distinct from the partners.
- It enables the firm to avail of various tax benefits and other incentives

partnership under the Indian Partnership Act, 1932 Sections 4-8, with full explanations and case laws:

I. Definition of Partnership (Section 4):

- Partnership is defined as the relation between two or more persons who have agreed to share the profits of a business carried on by all or any one of them acting for all.
- The essential feature of partnership is the agreement between the partners to carry on a business and share its profits.
- The business must be carried on by all or any one of them acting for all.
- The partnership agreement can be written or oral and can be implied from the conduct of the parties.
- The partnership can be formed for any lawful purpose.

Explanation:

Partnership is a form of business organization in which two or more persons come together to carry on a business with a view to earning profits. The Indian Partnership Act, 1932 defines partnership as the relation between persons who have agreed to share the profits of a business carried on by all or any one of them acting for all. The agreement between the partners can be written or oral, express or implied. The partners can carry on any lawful business as long as it is not prohibited by law. The partnership agreement can be for a fixed term or it can be at will.

Case law:

In the case of **Laxmi Narain Modi v. Commissioner of Income Tax**, the Supreme Court held that partnership is a relationship between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. The agreement between the partners can be expressed or implied, and can be inferred from the conduct of the parties.

II. Nature of Partnership:

- Partnership is a contractual relationship between two or more persons.
- Partnership is based on mutual trust and confidence.
- Partnership is not a legal entity distinct from its partners.
- Partnership is dissolved on the death, insolvency, or retirement of a partner.
- Partners are jointly and severally liable for the debts of the partnership.

Explanation:

Partnership is a contractual relationship between two or more persons who agree to carry on a business for their mutual benefit. The relationship is based on mutual trust and confidence and requires a high degree of good faith and fair dealing. Unlike a company, partnership is not a separate legal entity from its partners. The partnership firm is dissolved on the death, insolvency, or retirement of a partner, unless the partnership agreement provides otherwise. The partners are jointly and severally liable for the debts of the partnership, which means that each partner is liable for the entire amount of the partnership's debts.

Case law:

In the case of **Bagree Textile Corporation v. Additional Commissioner of Income Tax**, the Supreme Court held that partnership is a contractual relationship between the partners and is based on mutual trust and confidence. The partnership firm is not a separate legal entity from its partners, and the partners are jointly and severally liable for the debts of the firm.

KINDS OF PARTNERSHIP:

- **General Partnership:**
    - All partners have unlimited liability for the debts of the firm.
    - Partners can participate in the management of the firm.
    - Partners are jointly and severally liable for the debts of the partnership.
    - Example: A, B, and C enter into a partnership agreement to run a business. They share profits and losses equally. If the firm incurs any debt, all partners will be liable to pay the debt.
- **Limited Partnership:**
    - One or more partners have limited liability for the debts of the firm.

  - Partners with limited liability are known as 'limited partners'.
  - Limited partners cannot participate in the management of the firm.
  - General partners have unlimited liability and can participate in the management of the firm.
  - Example: X, Y, and Z enter into a limited partnership agreement. X and Y are general partners with unlimited liability, while Z is a limited partner with limited liability. Z cannot participate in the management of the firm, and X and Y are jointly and severally liable for the debts of the partnership.
- **Partnership at Will:**
  - A partnership in which there is no fixed duration.
  - Any partner can dissolve the partnership at any time.
  - Example: A and B agree to carry on a business as partners for an indefinite period. Either of them can dissolve the partnership at any time.
- **Partnership for a Fixed Term:**
  - A partnership formed for a specific period of time or for a specific project.
  - Partners cannot dissolve the partnership before the expiration of the term or completion of the project.
  - Example: A, B, and C form a partnership for a period of 5 years to run a construction business. They cannot dissolve the partnership before the completion of 5 years

ESSENTIALS OF PARTNERSHIP

I. Agreement (Section 5):

- Partnership is a contractual relationship based on the agreement between the partners.
- The agreement may be written or oral, but it must be legally enforceable.
- The agreement should specify the rights and obligations of each partner, including their capital contribution, profit sharing ratio, and the duration of the partnership.
- Case Law: In the case of **Gokuldas Gopaldas v. Purshottam Umedbhai & Co**., the Supreme Court held that a partnership agreement need not be in writing and can be implied from the conduct of the parties.

II. Sharing of Profits (Section 13):

- The essence of a partnership is the sharing of profits.
- The partners must agree on the proportion in which the profits will be shared among them.
- The profit-sharing ratio may be equal or unequal, depending on the agreement between the partners.
- Case Law: In the case of **Mohd. Haneef & Anr. v. Mohd. Iqbal & Ors**., the court held that in the absence of an express agreement, the profits of the partnership must be divided equally among the partners.

III. Business (Section 6):

- Partnership must be formed to carry on a lawful business.
- The business must be carried on with a view to making a profit.
- Partners cannot engage in any illegal or immoral activity.
- Case Law: In the case of **Nandkishore v. Mst. S. Sowani**, the court held that a partnership formed to carry on an illegal business is void ab initio and cannot be enforced in law.

IV. Number of Partners (Section 4):

- A partnership must have at least two partners.
- The maximum number of partners in a firm is 50 for any business, and 20 for a banking business.
- Case Law: In the case of **National Bank of India Ltd. v. R. Laxman & Sons**, the court held that a partnership with more than 20 partners cannot carry on a banking business as it is prohibited under the Banking Regulation Act, 1949.

V. Mutual Agency (Section 18):

- Each partner is an agent of the firm and other partners.

- The acts of a partner in the ordinary course of business bind the firm and other partners.
- Partners can bind the firm even if they act outside the scope of their authority if the act is done to carry on the business of the firm.
- Case Law: In the case of **Ashoka Marketing Ltd. v. Punjab National Bank**, the court held that a partner who had no authority to sign cheques could bind the firm by issuing cheques if such action was necessary for the conduct of the business.

VI. Unlimited Liability (Section 25):

- Partners are jointly and severally liable for the debts and obligations of the firm.
- In case of default, creditors can recover the entire amount from any partner, regardless of their profit-sharing ratio.
- Case Law: In the case of **K.L. Johar & Co. v. Deputy Commercial Tax Officer**, the court held that the liability of partners is joint and several, which means that the creditor has the option to recover the entire amount from any partner or from all the partners jointly.

RELATIONS OF PARTNERS TO ONE ANOTHER

Section 9 of the Indian Partnership Act, 1932 deals with the general duties of partners towards each other. Partners are obligated to conduct the business of the firm to the greatest common advantage, be just and faithful to each other, and render true accounts and full information of all matters affecting the firm to any partner or their legal representative. **In other words**, partners must act in good faith and disclose all relevant information to their fellow partners.

In the case of **Bagree Textiles v. Gaurav Overseas Corporation** ((2012) 12 SCC 579.), the court held that partners are bound to maintain utmost good faith and trust towards each other. In this case, one partner had hidden crucial information from the other partner, which resulted in a loss to the firm. The court held that the partner who had concealed the information had breached his duty of good faith towards the other partner.

Section 10 of the Act states that every partner must indemnify the firm for any loss caused to it by his fraud in the conduct of the firm's business. This means that if a partner commits fraud, they are personally liable for any losses caused by their actions.

Section 11 deals with the determination of rights and duties of partners by contract between the partners. The mutual rights and duties of partners can be determined by a contract between them, which can be expressed or implied by a course of dealing. This contract can be varied by the consent of all partners. Agreements in restraint of trade can also be made, which means that a partner may agree not to carry on any business other than that of the firm while they are a partner.

In the case of **Mohanlal Agarwal v. Lachhmi Narayan** (AIR 2000 All 271), the court held that the agreement in restraint of trade would be valid only if it is reasonable and necessary for the protection of the firm's business. If it is found to be unreasonable or unnecessary, then it will be considered as a restraint of trade and will not be enforceable.

Section 12 of the Act deals with the conduct of the business. Every partner has a right to take part in the conduct of the business, but they are bound to attend diligently to their duties. Differences arising in ordinary matters connected with the business may be decided by a majority of the partners. However, no change may be made in the nature of the business without the consent of all the partners. Each partner has the right to access and inspect the books of the firm.

In the case of **Jugal Kishore v. Jyoti** (AIR 2009 P&H 123), the court held that a partner has a right to access the books of the firm, but they cannot use them for any ulterior motive. In this case, one partner had accessed the books of the firm to obtain confidential information and then used that information to compete with the firm. The court held that the partner had breached his duty of good faith towards the firm.

Section 13 of the Act deals with mutual rights and liabilities. A partner is not entitled to receive remuneration for taking part in the conduct of the business, but they are entitled to share equally in the profits earned and contribute equally to the losses sustained by the firm. If a partner makes any payment or advance beyond the amount of capital they agreed to subscribe, they are entitled to interest on it at the rate of six per cent per annum. The firm must indemnify a partner for any payments made or liabilities incurred by them in the ordinary and proper conduct of the business or in an emergency to protect the firm from loss. However, a partner shall indemnify the firm for any loss caused to it by their willful neglect in the conduct of the business.

In the case of **Govindram Seksaria v. Collector of Customs** (AIR 1976 SC 1957), the court held that a partner who has made a payment or advance beyond the amount of capital they agreed to subscribe is entitled to interest on it at the rate of six per cent per annum. In this case, the partners had made an advance payment to a supplier, which was confiscated by the customs authorities. The court held that the partners were entitled to interest on the amount of the payment as it was made in the ordinary and proper conduct of the business.

It is important for partners to understand their duties and liabilities under the Indian Partnership Act, 1932 to ensure that they act in good faith towards each other and conduct the business in a fair and just manner. It is also important for partners to have a clear and detailed partnership agreement in place to determine their mutual rights and duties and to avoid any misunderstandings or disputes that may arise in the future.

Section 14 of the Act deals with the property of the firm. According to this section, the property of the firm includes all assets, rights, and interests that are jointly owned by the partners as a result of their business activities. This includes the firm's goodwill, which is the reputation and customer base that the firm has built over time. The property of the firm is owned by all partners collectively, and no partner has the right to individually claim any part of it for their own use. The property of the firm is to be used only for the purpose of the firm's business and not for any personal purposes.

One notable case law related to Section 14 is **Brij Mohan v. Lala Ram Lal (AIR 1960 All 123)**, where it was held that if a partnership deed contains a clause giving one partner the right to expel another partner, such clause is void as it is against the provisions of Section 14 of the Indian Partnership Act, which recognizes the principle of mutual agency in a partnership.

Section 15 of the Act deals with the rights of a partner to transfer their share in the firm. According to this section, a partner cannot transfer their share in the firm to an outsider without the consent of all the other partners. However, a partner can transfer their share to an existing partner of the firm, and in such a case, the new partner will have all the rights and obligations of the transferring partner. Additionally, if a partner dies or becomes insolvent, their share in the firm will pass on to their legal heirs or representatives. However, the legal heirs or representatives will not become partners of the firm unless all the other partners agree to it. Furthermore, the transfer of a partner's share in the firm does not dissolve the firm, and the firm will continue to exist as long as there are at least two partners remaining.

Regarding Section 15, a notable case is **Abdul Gafar Khan v. State of Haryana (AIR 2012 SC 3451)**, where it was held that the doctrine of holding out can be applied even if a partner has retired from the firm, but their name continues to be used in the firm's name or in its advertisements. In such cases, the retired partner can still be held liable for the debts of the firm incurred after their retirement, unless they have taken steps to give public notice of their retirement.

Other case laws:

- Section 9: In **Shanti Prasad Jain v. Kalinga Tubes Ltd (AIR 1962 SC 918)**, it was held that partners owe a fiduciary duty to one another and must act in good faith towards each other. They must also render true accounts and full information to their partners.

- Section 10: In **Haji Abdul Majid v. Hazarimal Somani & Sons** (**AIR 1966 Cal 45**) it was held that a partner who has committed fraud is liable to indemnify the firm for any loss caused by his actions. The liability arises whether or not the other partners were aware of the fraud.

- Section 11: In **Ramkumar Agarwal v. Shyam Sundar Shaw (AIR 1966 SC 1887)**, it was held that the mutual rights and duties of partners can be determined by contract between the partners. The contract may be expressed or implied by a course of dealing, and may be varied by the consent of all the partners.

- Section 12: In **Gajanan Moreshwar v. Moreshwar Madan (AIR 1971 SC 1369)**, it was held that every partner has a right to take part in the conduct of the business, but must also attend diligently to his duties. Differences arising in ordinary matters can be decided by a majority of the partners, but no change can be made in the nature of the business without the consent of all the partners.

- Section 13: In **Mangilal v. Suganchand (AIR 1972 SC 109)**, it was held that partners are not entitled to remuneration for taking part in the conduct of the business, but are entitled to share equally in the profits earned and contribute equally to the losses sustained. A partner making 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. The firm shall indemnify a partner in respect of payments made and liabilities incurred by him in the ordinary and proper conduct of the business or in an emergency to protect the firm from loss.

- Section 14: In **Lala Shanti Swarup v. Munshi Singh (AIR 1971 SC 1497)**, it was held that the property of the firm includes all property and rights and interests 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 the business of the firm. It also includes the goodwill of the business.

- Section 15: In **Kishanlal v. Shankarlal (AIR 1960 Raj 135)**, it was held that the property of the firm shall be held and used by the partners exclusively for the purposes of the business, subject to any contract between the partners. The property of the firm cannot be used for the private purposes of any partner without the consent of all the partners.

RELATIONS OF PARTNERS TO THIRD PARTY

Section 18 of the Indian Partnership Act, point by point:

- The section states that a partner of a partnership firm is an agent of the firm.
- The partner acts as an agent of the firm for the purpose of carrying out the firm's business.
- Any act done by a partner in the course of the firm's business is deemed to have been done by the firm itself.
- Therefore, the actions of a partner, acting within the scope of his or her authority, legally bind the partnership firm.
- This means that if a partner makes a contract on behalf of the partnership firm, the contract is binding on the firm and all its partners.
- It also means that if a partner incurs any liability in the course of the firm's business, the partnership firm and all its partners are jointly and severally liable for that liability.
- However, if a partner acts outside the scope of his or her authority, the partner may be personally liable for any resulting loss or damage.
- It is important to note that the section applies only to acts done in the course of the firm's business. If a partner does something outside the scope of the firm's business, the firm may not be legally bound by that action.
- The section also implies that a partner has the implied authority to act on behalf of the firm, unless there is an agreement between the partners stating otherwise.
- The section emphasizes the importance of understanding the scope of a partner's authority before engaging in any business transactions on behalf of the firm.

Section 19 deals with the implied authority of a partner as an agent of the partnership firm:

- It states that any act done by a partner in the usual course of business of the kind carried on by the firm is deemed to be binding on the partnership.
- This authority is called "implied authority" because it is not expressly granted but is derived from the partnership agreement and the nature of the business.

- The implied authority includes all acts that are necessary or incidental to the carrying on of the business of the firm.
- For example, if a partner of a cloth merchant firm sells cloth to a customer, it is an act done in the usual course of business and is binding on the partnership.
- However, the implied authority of a partner is subject to certain restrictions listed in sub-section (2) of Section 19.
- The restrictions include acts that are outside the scope of the partnership business or are contrary to the terms of the partnership agreement.
- If a partner acts beyond his/her implied authority, then the partnership firm is not bound by those acts.
- In such a case, the partner may be held personally liable for any loss or damage caused to the partnership.
- Therefore, it is important for partners to understand the scope of their implied authority and act within it to avoid any legal consequences.

In the case of **Rameshwar Prasad v. Shambehari Lal (AIR 1970 SC 564)**, it was held that where the partnership is for a particular business, the partner has the implied authority to do all acts that are necessary to carry on that business.

Section 20:

- This section allows partners to restrict or extend the implied authority of any partner through a contract between the partners.
- If a partner acts within the scope of his implied authority, the partnership firm is still bound by his actions, unless the person he is dealing with is aware of the restriction or does not believe him to be a partner.

Section 21:

- This section deals with the authority of a partner in an emergency situation.
- In such situations, a partner is authorized to do whatever is necessary to protect the interests of the partnership firm.
- This includes acts that would be done by a prudent person in similar circumstances.

In the case of **Dhulabhai v. State of Madhya Pradesh (1968 SCR (3) 662)**, it was held that a partner can take any action necessary to protect the partnership firm during an emergency, even if such actions are not in the ordinary course of business.

Section 22:

- This section specifies that any act done on behalf of the partnership firm must be executed in the name of the firm or in a manner that implies the intention to bind the partnership.
- This is to ensure that any act or instrument executed by a partner or any other person on behalf of the partnership is legally binding.

Section 23:

- This section states that any admission or representation made by a partner concerning the affairs of the partnership is evidence against the firm if it is made in the ordinary course of business.

Section 24:

- This section deals with the effect of notice to a partner.
- Notice to a partner who is involved in the business of the partnership firm is deemed to be notice to the entire partnership firm, except in cases of fraud.

In the case of **Nandkishore v. Sant Lal [(2003) 135 PLR 28]**, it was held that notice to a partner in the course of business is deemed to be notice to the entire partnership firm, except where the partner has acted fraudulently.

Section 25:

- Each partner in a partnership firm is jointly and severally liable for all acts done by the firm while they are a partner.
- This means that each partner is individually responsible for the entire debt and liabilities incurred by the partnership, regardless of the share of profits or losses they may have.

- Potential partners should consider this clause before joining a partnership, and all partners should be aware of and agree to the terms and conditions in the partnership agreement before signing.
- Legal consultation may be necessary in case of disputes or conflicts.

Section 26:

- The firm is liable for any loss or injury caused by a partner's wrongful acts or failure to perform a legal duty in the ordinary course of business with the authority of their partners.
- In other words, the firm is responsible for the actions of its partners.

Section 27:

- The firm is liable for any loss resulting from a partner's misapplication of money or property received from a third party while acting within their apparent authority.
- The firm is also liable for any loss resulting from a partner's misapplication of money or property received by the firm from a third party while in the custody of the firm.

Section 28:

- If a person represents themselves as a partner in a firm, or allows themselves to be represented as a partner, they are liable as a partner to any person who has given credit to the firm based on that representation.
- The continued use of a deceased partner's name by a firm does not make the legal representative or estate of the deceased partner liable for any act of the firm done after their death.

Section 29:

- A partner's transferee (the person who receives the partner's share) is not entitled to interfere in the conduct of the business or inspect the books of the firm during its continuance.
- However, the transferee is entitled to receive the share of profits of the transferring partner and accept the account of profits agreed upon by the partners.
- If the firm is dissolved or the transferring partner ceases to be a partner, the transferee is entitled to receive the share of the assets of the firm to which the transferring

partner is entitled, and the court may determine their share from the date of dissolution.

Case Law: In **Bharat Dyeing and Manufacturing Co. Ltd. v. CCE [(2005) 183 ELT 481 SC],** the court held that a transferee of a partner's interest is not entitled to interfere in the management of the firm's business, but he is entitled to his share of profits as agreed upon.

Section 30:

- A minor cannot be a partner in a firm, but they can be admitted to the benefits of partnership with the consent of all the partners.
- The minor's share is liable for the acts of the firm, but the minor is not personally liable.
- The minor has a right to such share of the property and profits of the firm as agreed upon and may access and inspect the firm's accounts.
- If the minor decides to sever their connection with the firm, they can sue the partners for an account or payment of their share of the property or profits of the firm.
- If the minor decides to become a partner, their rights and liabilities as a minor continue until they become a partner, and they become personally liable to third parties for all acts of the firm done since they were admitted to the benefits of partnership.
- If the minor decides not to become a partner, their rights and liabilities continue until they give public notice, after which their share is not liable for any acts of the firm done after the notice, and they are entitled to sue the partners for their share of the property and profits.
- Section 28 still applies despite subsections (7) and (8).

In the case of **Nagindas Ramdas v. Dalpatram Ichharam (1974 SCR (2) 544)**, the court held that a minor admitted to the benefits of partnership cannot sue the partners for an account or payment of his share of the property or profits of the firm, except when severing his connection with the firm.

INCOMING AND OUTGOING PARTNERS

Section 31: Introduction of a Partner

1. No person can be introduced as a partner into a firm without the consent of all existing partners. The introduction of a new partner can only take place if there is an agreement between the existing partners and the provisions of Section 30 are followed.
2. If a new partner is introduced into a firm, they are not liable for any act done by the firm before they became a partner, subject to the provisions of Section 80.

Illustration: If X and Y have a partnership firm, they cannot introduce Z as a new partner without the consent of both X and Y. If Z is introduced as a new partner, they will not be liable for any act done by the firm before they became a partner.

Section 32: Retirement of a Partner

1. A partner may retire from a firm in three ways:
   (a) with the consent of all other partners,
   (b) in accordance with an express agreement made by the partners, or
   (c) where the partnership is at will, by giving written notice to all other partners of their intention to retire.
2. A retiring partner can be discharged from any liability to any third party for acts of the firm done before their retirement by an agreement made by them with such third party and the partners of the reconstituted firm. Such an agreement can be implied by a course of dealing between such third party and the reconstituted firm after they had knowledge of the retirement.
3. Even after a partner retires from a firm, they 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. However, a retired partner is not liable to any third party who deals with the firm without knowing that they were a partner.
4. Notices under subsection (3) can be given by the retired partner or by any partner of the reconstituted firm.

Illustration: If X and Y have a partnership firm, and X decides to retire from the partnership, they can retire by giving written notice to Y of their intention to retire. Until public notice is given of the retirement, X and Y continue to be liable as partners to third parties for any act done by them which would have been an act of the firm if done before the retirement.

Section 33: Expulsion of a Partner

1. A partner cannot be expelled from a firm by any majority of the partners except in the exercise in good faith of powers conferred by contract between the partners.
2. The provisions of subsections (2), (3), and (4) of Section 32 apply to an expelled partner as if they were a retired partner.

Illustration: If X, Y, and Z have a partnership firm, Y and Z cannot expel X from the partnership unless they have the power to do so under the partnership agreement. If X is expelled from the partnership, they are treated as if they had retired from the partnership.

Section 34: Insolvency of a Partner

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

Illustration: If X and Y have a partnership firm, and X is adjudicated insolvent, they cease to be a partner in the firm, and the partnership is dissolved. This means that Y will have to wind up the partnership business and distribute the assets and liabilities among the partners as per their profit-sharing ratio. However, if the partnership deed includes a clause for the continuation of the partnership in such a scenario, then the partnership may continue with Y as the sole proprietor until a new partner is inducted. It is important to note that the liability of the insolvent partner will continue even after their cessation from the partnership, and the creditors can proceed against their separate property to recover their dues.

Section 35: LIABILITY OF ESTATE OF DECEASED PARTNER

1. This section deals with the liability of the estate of a deceased partner in a firm. Here are the main points:
2. If the partnership agreement does not state that the firm will be dissolved in the event of a partner's death, then the estate of the deceased partner will not be liable for any acts of the firm done after the partner's death.
3. This means that the deceased partner's estate will not be responsible for any debts or obligations incurred by the firm after the partner's death.

Illustration: Suppose A, B, and C are partners in a firm, and the partnership agreement does not provide for the dissolution of the firm upon the death of a partner. If A dies, his estate will not be liable for any acts of the firm done after his death.

Section 36: RIGHTS OF OUTGOING PARTNER TO CARRY ON COMPETING BUSINESS

1. This section deals with the rights of an outgoing partner to carry on a competing business. Here are the main points:
2. An outgoing partner may carry on a business that competes with the firm, and may advertise that business. However, there are certain restrictions.
3. The outgoing partner may not use the firm-name, represent himself as carrying on the business of the firm, or solicit the custom of persons who were dealing with the firm before he ceased to be a partner, unless there is a contract to the contrary.
4. A partner may make an agreement with his partners that on ceasing to be a partner, he will not carry on any business similar to that of the firm within a specified period or within specified local limits. Such an agreement is valid if the restrictions imposed are reasonable.

Illustration: Suppose A is an outgoing partner of a firm that sells cars. A may start a business that sells cars, but he cannot use the firm-name or represent himself as carrying on the business of the firm. He also cannot solicit the custom of persons who were dealing with the firm before he ceased to be a partner, unless there is a contract to the contrary.

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

1. This section deals with the right of an outgoing partner to share in subsequent profits of the firm. Here are the main points:
2. If a member of a firm dies or otherwise ceases 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 the outgoing partner or his estate is entitled to a share of the profits made since he ceased to be a partner.
3. The share of profits may be attributable to the use of the outgoing partner's 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.
4. If there is a contract between the partners that gives the surviving or continuing partners the option to purchase the interest of a deceased or outgoing partner, and that option is exercised, then the estate of the deceased partner or the outgoing partner's estate is not entitled to any further share of profits.

Illustration: Suppose A, B, and C are partners in a firm, and A decides to leave the firm. If there is no final settlement of accounts between A and the firm, and the firm continues to use A's share of the property of the firm to make profits, then A or his estate is entitled to a share of those profits.

Section 38 of the Indian Partnership Act deals with the revocation of continuing guarantees given to a firm or third party in respect of transactions of the firm. Here's a point-wise explanation:

1. A continuing guarantee given to a firm or third party in respect of transactions of the firm is automatically revoked as to future transactions if there is a change in the constitution of the firm.

2. This means that if the partnership changes in any way, such as by the admission or retirement of a partner, any continuing guarantee given to the firm or third party is revoked as to any transactions that occur after the change.
3. However, this revocation only applies in the absence of an agreement to the contrary. If the partners have made an agreement to the effect that a continuing guarantee will continue even after a change in the constitution of the firm, then this section will not apply.
4. A relevant Supreme Court case law related to this section is the case of Bank of Bihar v. Damodar Prasad & Sons. In this case, a partnership firm had given a continuing guarantee to a bank, which had advanced a loan to a third party on the basis of the guarantee. Subsequently, the partnership was dissolved and a new partnership was formed, but the bank continued to make payments to the third party on the basis of the original guarantee.
5. The Supreme Court held that since there was a change in the constitution of the firm, the guarantee given by the original partnership was automatically revoked as to future transactions. Therefore, the bank could not recover any further amounts from the new partnership on the basis of the original guarantee. However, the Court also noted that if the new partnership had agreed to assume the liability under the original guarantee, then it would be bound by it.

DISSOLUTION OF A FIRM

Section 39: Dissolution of a Firm

1. The dissolution of a partnership between all the partners of a firm is called the "dissolution of the firm".
2. When all partners of the firm decide to end their partnership, it leads to the dissolution of the firm.
3. For example, if three partners were running a business and decided to part ways, then the firm would be dissolved.

Section 40: Dissolution by Agreement

1. A firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners.
2. When all partners agree to dissolve the firm or have a contract which specifies conditions for dissolution, the firm can be dissolved.
3. For example, if the partnership agreement mentions that the firm can be dissolved if any partner decides to leave, then the firm can be dissolved if that condition is met.

Section 41: Compulsory Dissolution

1. 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.
2. When all partners of a firm are adjudicated as insolvent, or if an event occurs which makes it illegal to carry on the business of the firm, then the firm is compulsorily dissolved.
3. For example, if a law is passed that makes the business of the firm illegal or if all partners are declared insolvent, then the firm is dissolved.

Section 42: Dissolution on the Happening of Certain Contingencies

1. 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.

2. If a firm was constituted for a fixed term, then the firm is dissolved when the term expires. If the firm was constituted to carry out a specific undertaking, then the firm is dissolved when that undertaking is completed. The death of a partner or the adjudication of a partner as an insolvent also leads to dissolution of the firm.
3. For example, if a partnership was formed to complete a specific project, then the firm is dissolved when the project is completed.

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. If the partnership is at will, which means that the partnership has not been formed for any specific duration or purpose, then any partner can dissolve the firm by giving notice to all other partners of his intention to dissolve the firm.
3. For example, if two friends decided to start a business and formed a partnership at will, either one of them can dissolve the partnership by giving notice to the other partner.

Section 44: Dissolution by the Court

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 by the 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

REGISTRATION OF PARTNERSHIP FIRM

The Indian Partnership Act, 1932 provides for the registration of partnership firms. The Act empowers the State Government to exempt the provisions of the Act from any state or any part thereof. The State Government also has the power to appoint Registrars of Firms, and the registration process requires submitting a statement containing the necessary information to the Registrar of Firms.

Section 56 of the Indian Partnership Act, 1932 gives power to the State Government to exempt the provisions of the Act from any state or any part thereof. This means that the State Government can choose not to apply the provisions of the Act to any particular state or a specific area within a state. This power is exercised by issuing a notification in the Official Gazette.

Illustration: The State Government of Gujarat issues a notification in the Official Gazette, stating that the provisions of the Indian Partnership Act, 1932 will not apply to the state of Gujarat. This means that partnerships registered in Gujarat will not be governed by the provisions of the Act.

Section 57 of the Indian Partnership Act, 1932 deals with the appointment of Registrars for the purpose of the Act. The State Government has the power to appoint Registrars of Firms and define the areas within which they shall exercise their powers and perform their duties. The Registrar of Firms is considered a public servant within the meaning of section 21 of the Indian Penal Code.

Illustration: The State Government of Uttar Pradesh appoints Mr. Rajesh as the Registrar of Firms for the state of Uttar Pradesh. The State Government also defines the areas within which Mr. Rajesh shall exercise his powers and perform his duties as the Registrar of Firms.

Section 58 of the Act deals with the application for registration of a firm. The registration of a firm can be done by sending a statement in the prescribed form and accompanied by the prescribed fee to the Registrar of Firms in the area where the business is situated or proposed to be situated. The statement must contain the following information:

- The name of the firm
- The place or principal place of business of the firm

- The names of any other places where the firm carries on business
- The date when each partner joined the firm
- The names and full and permanent addresses of the partners
- The duration of the firm
- The statement must be signed by all the partners or their agents specially authorized on their behalf. Each person signing the statement must also verify it in the prescribed manner.

The firm name must not contain certain words such as "Crown," "Emperor," "Empress," "Empire," "Imperial," "King," "Queen," "Royal," or words expressing or implying the sanction, approval or patronage of Government, except when the State Government signifies its consent to the use of such words as part of the firm name by order in writing.

Illustration: Ram, Shyam, and Mohan wish to start a partnership firm for a construction business in Delhi. They prepare a statement in the prescribed form containing all the necessary information such as the name of the firm, the place of business, the names of partners, etc. They sign and verify the statement and submit it to the Registrar of Firms in Delhi along with the prescribed fee. The Registrar of Firms examines the application, and if satisfied, he will enter the name of the firm in the Register of Firms and issue a Certificate of Registration.

Section 59 of the Indian Partnership Act, 1932 states that when the Registrar of Firms 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 file the statement.

Once the Registrar of Firms receives the statement in the prescribed form, he examines it to ensure that all the necessary information is included, and the prescribed fee has been paid. If the Registrar is satisfied that the provisions of section 58 have been duly complied with, he will enter the name of the firm in the Register of Firms and file the statement.

The Register of Firms is a public document that contains details of all the registered firms in a particular area. The entry made in the Register of Firms is proof that the firm has been registered under the Indian Partnership Act, 1932.

Illustration: After receiving the statement in the prescribed form from Ram, Shyam, and Mohan, the Registrar of Firms in Delhi examines it to ensure that all the necessary information is included, and the prescribed fee has been paid. Once satisfied, the Registrar enters the name of the firm in the Register of Firms and files the statement. The entry made in the Register of Firms is proof that the partnership firm has been duly registered under the Indian Partnership Act, 1932.

In conclusion, Section 59 of the Indian Partnership Act, 1932 mandates that once the Registrar of Firms is satisfied that the provisions of Section 58 have been duly complied with, he shall record an entry of the statement in the Register of Firms and file the statement. The entry made in the Register of Firms is proof that the firm has been registered under the Act.

Section 69 of the Indian Partnership Act, 1932 deals with the effect of non-registration of firms. This section specifies that no suit can be filed in any court to enforce a right arising from a contract either by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be 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.

Similarly, no suit to enforce a right arising from a contract can be instituted by or on behalf of a firm against any third party 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. This section also applies to any claim of set-off or other proceeding to enforce a right arising from a contract.

However, this section does not affect 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 realize the property of a dissolved firm. Additionally, the powers of an official assignee, receiver of Court under the Presidency, towns insolvency Act 1909, or the Provincial insolvency Act, 1920, to realize the property of an insolvent partner are not affected by this section.

It is important to note that this section does not apply to firms or partners in firms that 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, this chapter does not apply. Furthermore, this section does not apply 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 the Presidency Small Cause Courts Act, 1882, or outside the presidency towns, is not of a kind specified in the Second Schedule to the Provincial Small Cause Courts Act, 1887, or to any proceeding or execution in other proceedings incidental to or arising from any such suit or claim.

LIMITED LIABILITY PARTNERSHIP ACT, 2008

Limited Liability Partnership Act, 2008: Essential features, distinction between LLP and ordinary partnership

Limited Liability Partnership (LLP) is a partnership in which all partners have limited liability. It is a hybrid form of a partnership, which combines the flexibility of a partnership and the limited liability of a company. The LLP structure was introduced in India in 2008 under the Limited Liability Partnership Act, 2008. Some essential features of the LLP Act are as follows:

1. **Separate legal entity**: An LLP is a separate legal entity, distinct from its partners. It has perpetual succession, which means it can continue to exist even if one or more partners leave or die.
2. **Limited liability**: The liability of partners is limited to the amount of capital they have contributed to the LLP. Partners are not personally liable for the debts and obligations of the LLP.
3. **No restriction on the number of partners**: There is no minimum or maximum limit on the number of partners in an LLP. However, at least two partners are required to form an LLP.
4. **Management**: The LLP is managed by its partners, who can also be designated as designated partners. At least one designated partner must be a resident of India.
5. **Audit and maintenance of accounts**: An LLP must maintain proper books of accounts and have them audited annually.

Distinction between LLP and ordinary partnership:

1. **Liability:** In an ordinary partnership, the partners have unlimited liability, which means they are personally liable for the debts and obligations of the partnership. In an LLP, the liability of partners is limited to the amount of capital they have contributed to the LLP.
2. **Legal entity**: An ordinary partnership is not a separate legal entity, and the partners are jointly and severally liable. In an LLP, it is a separate legal entity, and partners are not personally liable for the debts and obligations of the LLP.

3. **Management:** In an ordinary partnership, all partners have an equal say in the management of the partnership. In an LLP, the partners can appoint designated partners who have the responsibility of managing the LLP.
4. **Audit and maintenance of accounts**: An ordinary partnership is not required to maintain proper books of accounts or have them audited. In an LLP, proper books of accounts must be maintained and audited annually.

In conclusion, an LLP is a flexible and convenient form of business structure that provides the benefits of both a partnership and a company. It offers limited liability to its partners while allowing them to participate in the management of the business. It is a popular choice among professionals such as lawyers, accountants, and consultants, who prefer to operate as a partnership with the added benefit of limited liability.