

# **PARTNERSHIP ACT**

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Class-room live lectures edited, enlarged  
and updated**

# PARTNER SHIP ACT

- 1 Nature of Partnership.
- 2 Relations of Partners to one another.
- 3 Relations of Partners to third parties.
- 5 Incoming and outgoing partners.
6. Dissolution of a firm.
7. Registration.

## QUESTIONS BANK

1. Define 'Partnership'  
What are the essentials of a Partnership ? State and explain the tests of partnership.  
Distinguish Partnership from Joint Hindu Family Firm.
2. (a) Can a minor be admitted to the benefits of Partnership.  
What are his rights and liabilities ?  
(b) What are the mutual rights and liabilities of Partners ?
3. Write a note on :  
(i) Firm Name (ii) Holding out (iii) Goodwill of the firm (vi) Property of the firm
4. What are the rights and liabilities of incoming and outgoing . partners.?
5. What are the modes of dissolution of a firm ?  
What are the rights of partners after dissolution?
6. Explain the mode of settlement of accounts between partners after dissolution. Refer to leading cases.
7. "Registration of a firm is optional" - Discuss.
8. What is implied authority? What are its limits?

## CHAPTER-4

### PARTNERSHIP ACT

#### Ch. 4-1. Partnership :

##### Definition and Essentials : (sn.4):

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

Such persons are partners and collectively called a firm and the name under which business is carried on is called the "firm name".

##### Essentials:

i) There must be an **agreement** among all the partners.

Minors are incompetent, but may be admitted to the benefits of partnership , (Sn. 30).

ii) **Sharing of profits** of business : Partners should agree to share the profits or the losses.

A and B agree to work as carpenters. A is to receive all profits and B is to work for wages, A and B are not partners.

iii) Business carried on by all: The fundamental principle is that partners are agents as well as principals.

A, B and C are partners. D deals with the firm through C. As between C and D, C is principal. As between A, B and C, C is agent. Hence, A, B or C may sue D if D defaults.

##### iv) "The relation of partnership arises from contract and not from status"

The basis essential is the agreement among partners to create a partnership. Every partner is an agent of the firm. They become liable for the liabilities.

Sn5. of the Partnership Act clearly says:

##### Partnership not created by status

The relation of partnership arises from contract and not from status; and, in particular, the members of a 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[Hindu family] business

v) Partnership different from Joint Hindu Family:

### **Partnership business**

1. There is a contract of partnership among partners (partnership deed). There is no status by birth.
2. Each partner is the agent of the other in dealings with third parties.
3. Death of partner may dissolve a firm (unless agreed otherwise).
  
4. Partners should account for expenses ; each partner can ask for accounts of profit and loss.
5. Partners may borrow in the course of business to bind other partners.
6. Minors have some advantages, not liable for losses.
7. Implied authority comes from deed of partnership.
8. Female may be a partner
9. Insolvency of partner - he ceases to be partner.
10. Firm may be dissolved by partners.

### **Joint Hindu family business**

Status is by birth.  
There is no agreement.

There is no agency among com-parceners.

Death will not dissolve. By death the interest passes by survivorship, and hence, the share will increase by death, decrease by birth in the family. There is not accounting between partners. Karta is the head of the family. Coparcener cannot ask him for accounts. Karta alone may borrow.

No such advantages.

Karta may pledge J.F. property to bind coparceners. Female not coparcener. Insolvency does not affect his status. J.F. cannot be dissolved. Coparcener may claim partition.

#### Ch.4-2. Tests of Partnership : (Sn-6) :

In determining the existence of a partnership, the following tests are generally applied. These come from :

Cox Vs Hickman

Bullen Vs Sharp

Ross Vs. Parklin, which are the leading cases.

1. Regard shall be had to the **real relation** between the parties. The facts and circumstance shall be relevant. The real intention of the parties and the contract among them should be considered,

2. Sharing of profits does **not by itself** make the contract a partnership. Persons who hold joint-interest or common interest in a property may not be partners.

3. The receipt by a person of a share of profits of business, will **not, by itself**, make him a partner, in the firm.

Hence, i) A money lender's receipt of money from a partner;

ii) A servants receipt of money as remuneration from a partner;

iii) The receipt of money by the widow of a deceased partner, or,

iv) The receipt of a previous owner or part owner of the business –

will not by itself make such a receiver of money, a partner in the partnership business.

The true test is to find out whether a **relation of principal and agent** subsisted between the parties. The question is one of agency and authority.

In **Cox Vs. Hickman**, some traders who were in difficulties assigned all their properties to the trustees who were carrying on the business. One Cox, also a trustee, did not take part in that business, at all.

The question was whether Cox was liable "as a partner", for the liabilities incurred by the trustees.

The House of Lords, held that Cox was **not liable**. Held: sharing profits is no doubt an accurate test, but that was not conclusive ;

the real test is whether the business was carried on, on behalf of Cox and whether he stood as principal towards the traders.

## **DISSOLUTION AND SETTLEMENT OF ACCOUNTS**

### **Ch. 5-1. Dissolution of a firm :**

The dissolution of the partnership is called the dissolution of the firm. It may be dissolved as follows :

1. By agreement: - A firm is dissolved with the consent of all the partners or as per the contract between the partners.

2. Compulsory dissolution:

i) Insolvency of partners, dissolves the firm.

ii) On the business becoming unlawful, the firm is dissolved.

3. By efflux or expiry of time, where the firm is constituted for a fixed term.

4. On completion of a purpose for which the firm was constituted.

Ex.: A and B constitute a partnership firm to build 3 houses for C. The firm is dissolved on completion of the 3 houses.

5. By the death of a partner, the firm is dissolved, unless otherwise agreed.

6. By insolvency of a partner, unless otherwise agreed.

7. Partnership at will may be dissolved by a partner giving notice.

8. Dissolution by Court: At the suit of a partner, the court may dissolve a firm on the following grounds. Courts are given discretionary powers to dissolve on the grounds of justice and equity. If the court finds that it is not possible practically to run the business by the partners, it may dissolve.

For Ex.: In case of mutual distrust and hatred among partners, the court may dissolve the firm.

Public notice must be given for dissolution, otherwise, the partners will be liable to the 3rd parties for any act of the partners. The liability ceases only after giving public notice. But no such notice is necessary in case of (1) a deceased partner (2) partner adjudged insolvent (3) Dormant partner concealed.

#### **The grounds for dissolution are :**

i) Insanity of a partner.

ii) Permanent incapacity to perform the duties of a partner

, iii) Misconduct of a partner affecting the business prejudicially. iv) Persistent breach of agreement by a partner, v) Business carried on at a loss, vi) Transfer of the whole of the share to a third party, vii) Any other just and equitable ground.

### **Ch. 5-2. Right of partners after dissolution :**

The partners have the right to wind up the firm after its dissolution. That is, every partner is entitled to have the property of the firm applied:

- 1) in payment of the debts and liabilities of the firm.
- 2) to have the surplus distributed among the partners according to their rights.

### **Ch. 5-3. Mode of settlement of accounts between partners :**

Leading cases: 1) Gamer Vs. Murray. 2) Nowell Vs. Nowell.

In settling the accounts of a firm after dissolution the following rules shall be observed.

1) Losses including deficiencies of capital, shall be paid first out of profits, next out of capital and lastly by partners personally according to their shares.

• 2) The assets of the firm, including partner's contributions are to be applied in the following manner and order :

- i) To pay the debts to third parties.
- ii) To pay each partner rateably towards his advance.
- iii) To pay each partner rateably towards his capital.
- iv) The residue, if any, shall be divided among the partners in the proportion in which they were entitled to share profits.

#### **Garner Vs. Murray :**

A, B and C were partners. Profits were to be shared equally on dissolution. The firm was dissolved.

The firm was due to A £ 2500 and to B £ 314. After paying this the deficiency was found to be £ 840. Each partner was to pay £ 280 i.e., equally. C was insolvent. Therefore, he could not contribute. Held: A or B cannot be called to contribute for C. Hence, A and B are to contribute only £ 280 each.

## **CHAPTER - 6**

### **REGISTRATION**

#### **Ch.6-1. Registration of a firm : (Sn.69) :**

Under the Partnership Act, Registration is not compulsory, it is optional.

Registration may be made by making an application to the Registrar of firms giving details of:

- i) Firm name.
- ii) Place of business.
- iii) Date of joining of partners, their names and addresses.
- iv) Duration of the firm, etc.

This must be signed by the partners. The prescribed fee must be paid. The application must be filed with the original copy of the partnership deed, fee paid receipt etc. The Registrar will register, if he is satisfied that all the formalities are complied with. Alterations or amendments may be made. But, the text of amendment must be filed with the Registrar, who may record the same after observing the formalities.

Ex : A, B, C, D are partners of an unregistered firm. A is wrongfully expelled. He wants to sue B, C, D in a court. He cannot sue, but if the firm had been registered he could have sued in a court.

**Effect of Non-registration:**

- i) The firm is not entitled to sue third parties for dues ; Even partners are not allowed to sue, in their name.
- ii) A partner is not allowed to recover his dues from the other partners.
- iii) A partner may sue for dissolution or for the accounts, after dissolving the firm.



## CHAPTER-7

### GENERAL TOPICS

#### Ch. 7-1. Property of the firm :

The property of a firm includes :

1. All property and rights and interests in the property originally brought into the stock of the firm.
  2. All property acquired by purchase or otherwise, by or for the firm, or for the purposes or in the course of the business of the firm.
  3. Also, the goodwill or the business.
  4. All property acquired with the money of the firm becomes the property of the firm.
- The test is whether the funds of the firm are used

A and B are partners. A without authority, buys shares in his own name, but in the accounts of the firm. Held, the shares are "Partnership Property".

#### Ch.6-2. Goodwill: (Sn.55) :

It is considered as an advantage acquired by a business organisation. It is more than mere capital, stock or other property. It is the public patronage and encouragement. It is in fact the reputation of the firm. It is often the very sap and life of a business. It may be of appreciable value. Goodwill, according to Sn.55, Partnership Act may be sold separately or along with the other properties of the firm.

The seller of the goodwill may not use the firm name or represent himself as carrying on business or solicit the customers of the dissolved firm. This is subject to the agreement between the seller and the buyer.

Reasonable restrictions, not to compete with the firm within a specified area or for a specified period of time may be imposed. This will not be a restraint on trade according to Contract Act Sn.27.

#### Ch. 7-3. Holding out:

A person who by written or spoken words, 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 any one who has, on the faith of any such representation, given credit to the firm. (Sn.28).

This is the doctrine of holding out, which is part of the law of estoppel. (Evidence Act  
msrlawbooks Partnership Act P T O

Sn. 115).

A person becomes ordinarily liable for the debts of a firm if he is a partner. But a person who is not a partner may also become liable to a third party, if he represent himself as a partner and induces the third party to give credit to the firm. The objective is to protect the interests of innocent third persons.

The example is the case of a retiring partner. If he retires, without giving public notice but uses the firm name, bills, letter heads etc., he will be holding out as a partner. If A has given advances to such a retired partner R, he may sue R as a partner of the firm, and recover his advances.

The leading cases are *Martyn Vs. Gray* and *Scarf: Vs. Jardine*.

**Scarf Vs. Jardine** : A, B and C were partners of a firm. C retired without giving public notice and D joined the firm. M had made some advances, to C. In a suit for recovery, it was held the ex-partner C was liable as a partner.

**Effect:** If a person holds himself out to be the partner of a firm, he becomes personally liable. He does not become in fact a partner or agent in the firm. He merely makes himself personally liable for the credit given to the firm on the strength of his representation.

#### **Ch.7-4. Firm name :**

The name under which the business of the partners is carried on is called the "Firm name". According to English Law the name should not be "Crown", "Emperor", "Imperial", etc.

There are no restrictions in putting any name. It may be any style or order. X and C., XYZ and Son, X Y and Z, X Brothers etc. The only restriction is that the name adopted should not mislead the public.

**Firm** : Persons who have entered into partnership with one another are called collectively "a firm". The firm is not a legal entity like a Limited Company. The firm is merely a collective name for the individuals. Firm name indicates the name under which the partnership business is carried on.

## CHAPTER-8

### POSITION OF A MINOR

#### Ch.8. Minor admitted to the benefits of partnership :

Since a minor has no legal capacity to enter cannot become a partner in a firm. Moreover, partnership with a minor is voidable initio. However, a minor may be admitted to the benefits of partnership according to Sn. 30.

i) With the consent of all the partners of a firm, a minor may be admitted to the benefits of partnership. Such a minor gets a right to such a share of the property and of the profits of the firm as may be agreed upon by the partners. The minor may have the right of access to inspect and copy the accounts of the firm.

ii) The minor's share is liable for the acts of the firm but the minor is not personally liable for any such act.

iii) the minor has no right to sue for accounts or for payment of share etc., except when severing his connections with the firm. In such a case the valuation is to be made as per rules.

When there is such a suit by the minor (through his guardian), the partners may dissolve the firm. The court may proceed as in a suit for dissolution and for settlement of accounts. It may determine the share of the minor.

**iv) Option :** The minor, within 6 months of attaining majority or of obtaining knowledge of his admittance to the firm (whichever is later), may give public notice declaring his option to become or not to become a partner. If he does not give such a notice, he is deemed to be a partner on the expiry of the said 6 months. The burden of providing the absence of knowledge etc., is on the person asserting it.

v) Option to become a partner :

a) His rights and liabilities continue up to the date on which he

becomes a partner. He becomes liable personally to third parties for all previous acts of the firm since his admittance as a minor.

b) His share and his profits shall be the same as he was entitled as a minor.

vi) Option not to become a partner :

a) His rights and liabilities shall continue to be those of a minor upto the date of giving public notice.

b) His share shall not be liable for any acts of the firm, done after giving notice and

c) He shall be entitled to sue the partners for his share of property and profits.

## CHAPTER-9

### PARTNER'S RIGHTS AND LIABILITIES

#### Ch. 9-1. Mutual rights and liabilities of partners :

Sn. 13 of the partnership act deals with the mutual rights and liabilities of partners of a firm. These may be varied according to the contract between the partners in the deed.

##### i) Gratuitous work to the firm :

Partners are not entitled to receive remuneration for taking part in the conduct of the business of the firm. A partner cannot be an employee of his firm. Any remuneration or salary received by him is considered as profits of the firm.

##### ii) Sharing of profits:

The partners have a right to share equally the profits earned by the firm; and should contribute equally to the losses sustained by the firm. This may be modified by the partners. The partner-ship deed may fix up the percentage of share of profits or losses of each partner.

It may be provided that a partner is not liable for losses.

##### iii) Right to interest on capital subscribed :

A partner is entitled to interest on the capital subscribed by him. However, such an interest is payable only out of the profits of the firm. A partner is not a creditor to a firm. Any agreed rate of interest may be paid but this is to be paid from the profits only.

##### iv) Advances to the firm :

Apart from the capital subscribed by a partner, a partner may make payments called ' advances' to the firm, for purposes of its business. For such advances he is entitled interest per annum as may be agreed upon.

##### v) Indemnification of a partner :

The firm should indemnify a partner in respect of payments made and liabilities incurred by him, if these were in the ordinary and proper conduct of the business of the firm. The same rule applies in case of emergency if a partner has acted to protect the firm from losses. The test is that he should have acted like a diligent man, in similar circumstances in his own case.

##### vi) Indemnification of the firm :

It is the duty of the partners to indemnify the firm for any loss caused to it by the wilful negligence in the course of the business.

#### Ch. 9-2. Right and liabilities of incoming and outgoing partners: (Sns. 31 to 37).

The Partnership Act, has put together the provisions relating to the incoming of new partners and the outgoing of existing partners, without putting an end to the firm or dissolving it. The continuing partners run the firm and the status of the firm remains unchanged.

##### New partners :

No new partner should be introduced as a partner in the firm, without the consent of all the existing partners. Such a new partner is not liable for the acts of the firm, done, before he became a partner. (Sn.

31).

**ii) Retirement of a partner :**

A partner may retire with the consent of the other partners or under an agreement with them or by giving notice to all others.

A retiring partner may be discharged from liability by an agreement with the third party and the partners of the reconstituted firm.

iii) The partnership deed may provide for expulsion of a partner. However, a majority of the partners must act in good faith and give an opportunity to the concerned partner before expelling.

**iv) Insolvency of a partner :**

When a partner is declared by the court as an 'insolvent', he ceases to be a partner from the date of the decision. The estate of that person is not liable for the acts of the firm done after that date.

**v) Death of a partner :**

If according to the partnership deed the firm is not dissolved on the death of a partner, the estate of the deceased is not liable for the acts of the firm done after his death.

**Rights of outgoing partners :**

a) An outgoing partner has a right to carry on business competing with that of the firm and he may advertise his business. However, certain restrictions may be imposed by the firm. He may not (1) use the firm name (2) represent the firm or (3) solicit the customers of the firm. Under an agreement, an outgoing partner may be restrained from doing a similar business or within a specified area or for a specified period of time. This will not amount to restraint of trade under Sn. 27 of the Contract Act.

A, B and C are partners of a firm : A & Co. A retires and his interest is purchased by B and C. D is taken as a new partner. The firm is re-constituted in the name of "A,B & Company". A may do similar business, but should not use A & Co.

**b) Right to share profits :**

Where a firm continues business using the property of the outgoing partner without final settlement of accounts, then, the outgoing partner has a right to the share of the profits, made after he ceases to be a partner, or he is entitled to 6% per annum, on his share in the firm.

**Ch. 9-3. Implied Authority of a Partner :**

Sn. 18 of the Partnership Act states that a partner is the agent of the firm for the purposes of its business. As such, an act of the partner done in the course of business binds the firm. This authority

of the partner to bind the firm is called the "implied authority" of the partner. Though this is the general rule, it is subject to the agreement between the partners.

**a) Limits on implied authority :**

Such an authority is not implied in the following circumstances i) To submit a dispute of the business of the firm to arbitration.

ii) To open a banking account on behalf of the firm in his own name.

- iii) To compromise or relinquish any claim of the firm.
- iv) To withdraw a case filed on behalf of the firm.
- v) To admit any liability in a case against the firm.
- vi) To acquire immovable property on behalf of the firm.
- vii) To transfer firm's immovable properties.
- viii) To enter into partnership on behalf of the firm.

In the above circumstances, there is no implied authority. However, a partner may be empowered to exercise such a power by its partners.

**b) Extension and restriction of implied authority.**

The implied authority of a partner, may be extended or restricted by the partners, and any act done there under binds the firm.

In an emergency, a partner may do all the acts diligently for protecting the firm from losses and such acts bind the firm.

All such acts must be done in the name of the firm, to bind the firm.

**THE END**

**REFERENCE SECTION**

**Selected Sections**

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CHAPTER II : THE NATURE OF PARTNERSHIP

4. Definition of "partnership", "partner", "firm" and "firm name"

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

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

**5. Partnership not created by status**

The relation of partnership arises from contract and not from status; and, in particular, the members of a 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.

**6. Mode of determining existence of partnership**

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 of 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 receipt 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 the widow or child of a deceased partner, as annuity, or

(d) by a previous owner or part owner of the business, as consideration for the sale of the goodwill or share thereof,

does not of itself make the receiver a partner with the persons carrying on the business.

**7. Partnership at will**

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".

**8. Particular partnership**

A person may become a partner with another person in particular adventures or undertakings.

### **CHAPTER III : RELATIONS OF PARTNERS TO ONE ANOTHER**

#### 9. General duties of partners

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 accounts and full information of all things affecting the firm to any partner or his legal representative.

#### 10. Duty to indemnify for loss caused by fraud

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

#### 11. **Determination of rights and duties of partners by contract between the partners**

(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 expressed or may be implied by a course of dealing.

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

(2) Agreements in restraints of trade-Notwithstanding anything contained in section 27 of the Indian Contract Act, 1872 (9 of 1872), such contracts may provide that a partner shall not carry on any business other than that of the firm while he is a partner.

#### 12. The conduct of the business

Subject to contract between the partners,-

- (a) every partner has a right to take part in the conduct of the business;
- (b) every partner is bound to attend diligently to his duties in the conduct of the business;
- (c) 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 the partners; and
- (d) every partner has a right to have access to and to inspect and copy any of the books of the firm.

#### 13. Mutual rights and liabilities

Subject to contract between the partners,-

- (a) a partner is not entitled to receive remuneration for taking part in the conduct of the business;
- (b) the partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm;
- (c) where a partner is entitled to interest on the capital subscribed by him such interest shall be payable only out of profits;
- (d) a partner making, for the purposes 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;
- (e) 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 act, 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; and
- (f) 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.



#### **14. The property of the firm**

Subject to contract between the partners, 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 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.

#### **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.

#### **16. Personal profits earned by partners**

Subject to contract between the partners-

(a) if a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm;

(b) if a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

#### **17. Rights and duties of partners**

Subject to contract between the partners-

(a) after a change in the firm-where a change occurs in the constitution of a firm, the mutual rights and duties of the partners in the reconstituted firm remain the same as they were immediately before the change, as far as may be;

(b) after the expiry of the term of the firm, and - 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; and

(c) where additional undertakings are carried out-where a firm constituted to carry out one or more 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 adventures or undertakings.

### **CHAPTER IV : RELATIONS OF PARTNERS TO THIRD PARTIES**

#### **18. Partner to be agent of the firm**

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

#### **19. Implied authority of partner as agent of the firm**

(1) Subject to the provisions of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.

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

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

(a) submit a dispute relating to the business of the firm to arbitration,

(b) open a banking account on behalf of the firm in his own name,

- (c) compromise or relinquish any claim or portion of a claim by the firm,
- (d) withdraw a suit or 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.

#### 20. Extension and restriction of partner's implied authority

The partners in a firm may, by contract between the parties, 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.

#### 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.

#### 22. Mode of doing act to bind firm

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.

#### 23. Effect of admissions by a 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.

#### 24. Effect of notice to acting 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.

#### 25. Liability of a partner for acts of the firm

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.

#### 26. Liability of the firm for wrongful acts of a partner

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 is incurred, the firm is liable therefor to the same extent as the partner.

#### 27. **Liability of firm for misapplication 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 any of the partners while it is in the custody of the firm, the firm is liable to make good the loss.

#### 28. **Holding out**

- (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 any one 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 act of the firm done after his death.

### **29. Rights of transferee or a partner's interest**

(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 as against the remaining partners to receive the share of the assets 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.

### **30. Minors 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 (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 shall 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.

## **CHAPTER V : INCOMING AND OUTGOING PARTNERS**

### **31. Introduction of a partner**

(1) Subject to contract between the partners and to the provisions of section 30, no person shall be introduced as a partner into a firm without the consent of all the 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.

### **32. Retirement of a partner**

(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 the 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.

### **33. Expulsion of a partner**

(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) and (4) of section 32 shall apply to an expelled partner as if he were a retired partner.

### **34. Insolvency of a partner**

(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 hereby 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 act of the insolvent, done after the date on which the order of

adjudication is made.

### **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.

### **36. Right of outgoing partner to carry on 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 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 he ceased to be a partner.

(2) Agreements in restraint of trade-A partner may make an agreement with his partners that on ceasing to be a partner he will not carry on any business similar to that of the firm within a specified period or within a specified local limits; and, notwithstanding anything contained in section 27 of the Indian Contract Act, 1872 (9 of 1872), such agreement shall be valid if the restrictions imposed are reasonable.

### **37. Right of outgoing partner in certain cases to share subsequent profits**

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 representatives 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.

### **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 transactions 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.

## **CHAPTER VI : DISSOLUTION OF A FIRM**

### **39. Dissolution of a firm**

The dissolution of partnership between all the partners of a firm is called the "dissolution of the firm".

### **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.

### **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.

#### **42. Dissolution on the happening of certain contingencies**

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.

#### **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.

#### **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 prejudicially the carrying on of the business, regard being had to the nature of the business;
- (d) that a partner, other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conducts himself in matters 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.

#### **45. Liability for acts of partners done after dissolution**

(1) Notwithstanding the dissolution of a firm, the partners continue to be liable as such to third parties for any act done by any of them which would have been an act of the firm if done before the dissolution, until public notice is given of the dissolution:

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.

#### **46. Rights of partners to have business wound up 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.

#### **47. Continuing authority of partners for purposes of winding up**

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 affair of the firm and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise:

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

#### **48. Mode of settlement of accounts between partners**

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 rateably what 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.

#### **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 or 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.

#### **50. Personal profits earned after dissolution**

Subject to contract between the 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 name.

#### **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, regard being had to the terms upon which he became a partner and to the length of time during which he was a partner, unless-

- (a) the dissolution is mainly due to his own misconduct, or
- (b) the dissolution is in pursuance of an agreement containing no provision for the return of the premium or any part of it.

#### 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 purchase of a share in the firm and for any capital contributed to 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.

#### 53. **Right to restrain from use of firm name or firm property**

After a firm is dissolved, every partner or his 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 bought the goodwill of the firm, nothing in this section shall affect his right to use the firm name.

#### 54. Agreements in restraint of trade

Partners may, upon or in anticipation of the dissolution of the firm, make an agreement that some or all of them will not carry on a business similar to that of the firm within a specified period or within specified local limits; and notwithstanding anything contained in section 27 of the Indian Contract Act, 1872 (9 of 1872), such agreement shall be valid if the restrictions imposed are reasonable.

#### 55. **Sale of goodwill after dissolution**

(1) In settling the accounts 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.

(2) 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.

(3) 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 the Indian Contract Act, 1872 (9 of 1872), such agreement shall be valid if the restrictions imposed are reasonable.

## **CHAPTER VII : REGISTRATION OF FIRMS**

### 56. Power to exempt from application of this Chapter

The 3[State Government of any State], may, by notification in the Official Gazette, direct that the provisions of this Chapter shall not apply to 4[that State] or to any part thereof specified in the notification.

### 57. Appointment of Registrars

(1) The State Government may appoint Registrars of Firms for the purposes of this Act, and may define the areas within which they shall exercise their powers and perform their duties.

(2) Every Registrar shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

### 58. 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 names of any other places where the firm carries on business,
- (d) the date when each partner joined the firm,
- (e) the names in full and permanent addresses of the partners, and
- (f) the duration of the firm.

The statement shall be signed by all the partners, or by their agents specially authorised in this 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, 5[Government], except 6,[when the State Government] signified 7[its] consent to the use of such words as part of the firm name by order in writing 8[\*\*\*].

### 59. Registration

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 9 .

### 60. Recording of alterations 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 filed under section 59.

### 61. Noting of closing and opening of branches

When a registered firm discontinued 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.

#### 62. Noting of changes in names 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.

#### 63. Recording of changes in and dissolution of a firm

(1) 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 specially 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.

(2) 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).

#### 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.

#### 65. Amendment of Register by order of court

A court deciding any matter relating to a registered firm may direct that the 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.

#### 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 statements, notices and intimations filed under this Chapter shall be open to inspection, subject to such conditions and on payment of such fee as may be prescribed.

#### 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.

#### 69. Effect of non-registration

(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.

**THE END**