

Business Law - 60 Marks

1. The Indian Partnership Act 1932
2. The Limited Liability Partnership Act, 2008
3. The Indian Contract Act, 1872
4. The Companies Act, 2013
5. The Sale of Goods Act, 1930

* Terminology

1. Supreme Court (Country Level) - Justice shall
2. High Court (State Level) - Justice
3. District & Session Court

Civil Matters Criminal Matters

Judge

Magistrate

4. Petitioner - Petitioner means a person who file a suit.
5. Respondent - Respondent means a person on whom suit is filed.

- Lawyer - not admitted
6. Lawyer - law graduates \Rightarrow lawyer
 Cannot represent in courts
7. Advocate - Lawyer + BCI Exam \Rightarrow admitted
 \rightarrow License by bar council to practice in court
 \rightarrow Can represent clients in courts
8. Barrister - law graduates from England
9. Senior Advocate - Designated as such either by SC or HC
 \rightarrow No need to file vakalat nama
10. Pleader - Is actually a person who drafts pleadings and pleads in the court on behalf of his clients. (State statd) true right
11. Public Prosecutor / Government Pleader - Law officer who conducts proceeding in public interest
 \rightarrow Criminal - Public prosecutor \rightarrow true
 \rightarrow Civil - Govt. Pleader
12. Advocate General - Appointed by Governor
 \rightarrow 1st law officer of the state \rightarrow ~~various~~
 \rightarrow Represents state Govt.
 \rightarrow Legal Advisor of the state
- made me realize a dream trishnadeep - trishnadeep
 belief in true

- PARTNERSHIP TO GENERAL
13. Attorney General - Appointed by President
→ 1st law officer of the country
→ Represents Central Govt.
14. Solicitor General - Assists Attorney General in its functioning

INDIAN PARTNERSHIP ACT, 1932

DEFINITION - '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. (Section 4).

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

ESSENTIALS OF PARTNERSHIP

1.

2.

3.

Partnership is an → The partnership → Partnership is association of must be a organised to two or more result of an carry on some persons agreement entered business into by all persons concerned.

4.

5.

Indian

The agreement must → The business must be be to share the profits carried on by all or of the business any of them acting for

6.

Association of two or more persons -

Partnership is an association of 2 or more persons. Again, only persons recognized by law can enter into an agreement of partnership. Therefore, a firm, since it is not a person recognized in the eyes of law cannot be a partner. Again, a minor cannot be a partner in a firm, but with the consent of all the partners may be admitted to the benefits of partnership.

Minimum partners - 2 (As per Indian Partnership Act)

Maximum partners - 100 (As per Sec 464 of Companies Act)

- 50 (As per Rule 10 of Companies (Misc.)

Rules, 2014)

PERSONS

Ex:

1. 5 Majors = Firm (allowed)
2. 4 Majors + 1 Minor = Firm (not allowed)
3. 5 Majors + 1 Minor admitted = Firm (allowed)

for benefits of
the firm

Persons

Natural
Persons

Artificial
Persons

Fictitious
Persons



Persons recognized by law
as Firm.
Company, LLP.

- Ex:
4. 5 Indians + 1 Foreigner = Firm (Not allowed)
 5. 5 Natural + 2 Artificial = Firm (Allowed)
 6. Company + Company + LLP = Firm (Allowed)
 7. Firm + Firm = Firm (Not allowed)
(Fictitious Person)

2.

Agreement

It may be observed that partnership must be the result of an agreement between two or more persons. There must be an agreement entered into by all the persons concerned. This element relates to voluntary contractual nature of partnership. Thus the nature of the partnership is voluntary and contractual.

An agreement from which relationship of partnership arises may be express or implied. It may be oral or in writing.

The 'partnership agreement' is also known as 'Partnership deed'.

3.

Business

In this context, we will consider two propositions. First there must be exist a business. For the purpose, the term 'business' includes every trade, occupation and profession. The existence of business is essential. Secondly, the motive of the business is the "acquisition of gains". Therefore, there can be no partnership where there is no intention to carry on the business and to share the profit thereof.

4. Agreement to share profits

The sharing of profits is an essential feature of partnership. There can be no partnership where only one of the partners is entitled to the whole of the profits of the business. Partners must agree to share the profits in any manner they choose. But an agreement to share losses is not an essential element.

Ex1: Co-owners who share amongst themselves the rent derived from a piece of land are not partners, because there does not exist any business.

Ex2: No charitable institution or club may be floated in partnership.

Ex3: X and Y buy certain bales of cotton which they agree to sell on their joint account and to share the profits equally. In these circumstances, X and Y are partners in respect of such cotton business.

Ex4: X and Y buy certain bales of cotton which they agree to sell. Later on, whole amount of profit is kept by X and X pay salary to Y. X and Y are not partners.

5. Business carried on by all or any of them acting for all

The business must be carried on by all the partners or by anyone or more of the partners acting for all. This is the cardinal principle of the partnership law. An act of one partner in the course of the business of the firm is in fact an act of all partners.

Each partner carrying on the business is the principal as well as the agent for all the other partners. He is an agent in so far as he can bind the other partners by his acts and he is a principal to the extent that he is bound by the acts of other partners.

True
Test.

It may be noted that the true test of partnership is mutual agency rather than sharing of profits. If the element of mutual agency is absent, then there will be no partnership.

TYPES OF PARTNERS

(1)	(3)	(5)	(7)
Active or Actual or Ostensible partner	Partner in profit only	sub-partner	Outgoing partner
(2)	(4)	(6)	(8)
Sleeping or Dormant partner	Partner by estoppel or holding out	Nominal partner	Incoming partner

1. Active or Actual or Ostensible partner

- It is a person who has become a partner by agreement and who actively participates in the conduct of the partnership business.
- In the event of his retirement, he must give a public notice in order to discharge himself of liabilities from act of other partners after his retirement.
- They share profits and losses and are liable to the third parties for all acts of the firm.

Ex-1. Date of retirement - 1 January 2021

Date of public notice - 31 March 2021

Effective date - 31 March 2021

2. Sleeping or Dormant Partner

- It is a person who become a partner by agreement and who does not actively participates in the conduct of the partnership business.
- They are, however not required to give public notice of their retirement from the firm.
- They share profits and losses and are liable to third parties for all acts of the firm.

Ex:-

Date of retirement - 1 January 2021

No public notice yet

Effective date of retirement - 1 January 2021

3. Partner in profit only

- A partner who is entitled to share the profits only.
- Not liable for the losses.
- Liable to the third parties for all acts of profits only.

4. Nominal Partner

- A person who lends his name to the firm, without having any real interest in it, is called a nominal partner.
- He is not entitled to share the profits of the firm. Neither he invest in the firm nor takes part in the conduct of the business. He is however liable to the third parties for all acts of the firm.
- In case of his retirement he is required to give public notice.

Nominal Partner

Lends his name to the firm	Not entitled to share profits	Liable to 3rd party for all acts of the firm.
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Without having any real interest in firm

Does not take part in the conduct of business

5. Incoming partner - A person who is admitted as a partner into an already existing firm with the consent of all the existing partners is called an 'incoming partner'. Such a partner is not liable for any act of the firm done before his admission as a partner.

6. Outgoing partner - A partner who leaves a firm in which the rest of the partners continue to carry on business is called a retiring or outgoing partner. Such a partner remains liable to third parties for all acts of the firm until public notice is given of his retirement.

7. Sub partner - When a partner agrees to share his profits derived from the firm with a third party, that person is known as sub partner. He cannot represent himself as a partner in the original firm. He does not have any rights against the original firm neither he is liable for the acts of the firm. He can claim the agreed share of profits from the contracting partner only.

8. Partner by Holding out (Section 28) - It means a partner who himself by his words or conduct have induced others to believe that he is a partner or he may have allowed others to represent him as a partner.

Ex. X and Y are partners in a partnership firm. X introduced A, a manager, as his partner to Z. A remained silent. Z, a trader believing A as a partner supplied 100 TV sets to the firm on credit. After expiry of credit period Z did not get amount of TV sets sold to the partnership firm. Z filed a suit against X and A for the recovery of price. Here in the given case, A, the manager is also liable for the price because he becomes a partner by holding out (Section 28, Indian Partnership Act 1932).

The rule given in Section 28 is also applicable to a former partner who has retired from the firm without giving proper public notice of his retirement. In such cases a person who, even subsequent to the retirement, gives credit to the firm on the belief that he was a partner, will be entitled to hold him liable.

Ex. A partnership firm consisting of P, Q, R and S. S retires from the firm without giving public notice and his name continues to be used on letterheads. Here, S is liable as a partner by holding out to creditors who have lent on the faith of his being a partner.

Partner by Holding out is also called Partner by Estoppel.

KINDS OF PARTNERSHIPS

With regards to
duration

With regards to the
extent of the business

Partnership at will Partnership for a fixed period Partnership in general

1. Partnership at will
Partnership at will according to section 7 of the Act, partnership at will is a partnership when:

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

2 These two conditions must be satisfied before a partnership can be regarded as a partnership at will.

→ Where a partnership entered into for a fixed term is continued after the expiry of such term, it is to be treated as partnership at will.

→ A partnership at will may be dissolved by any partner by giving notice in writing to all the other partners of his intention to dissolve the same.

2. Partnership for fixed period

When a provision is made by a contract for the duration of the partnership, the partnership is called 'partnership for a fixed period'.

→ It is a partnership created for a particular period of time.

→ Such a partnership comes to an end on the expiry of the fixed period.

→ If it is continued after the expiry of such term, it is to be treated as partnership at will.

→ A partnership for fixed period can be dissolved only with the consent of all the partners.

3. Particular Partnership

where a person becomes a partner with another person in any particular adventure or undertaking the partnership is called particular partnership.

- It is a partnership created for a particular purpose.
- Such a partnership comes to an end on completion of particular purpose.
- If it is continued after completion of purpose, it is to be treated as partnership at will.
- A partnership for particular partnership purpose can be dissolved only with the consent of all the partners.

4. General Partnership

Where a partnership is constituted with respect to the business in general, it is called a general partnership. In case of a particular partnership, the liability of the partners extends only to that particular adventure or undertaking, but it is not so in case of general partnership.

PARTNERSHIP DEED

- Partnership is the result of an agreement. No particular formalities are required for an agreement of partnership. It may be in writing or formed verbally. But it is desirable to have the partnership agreement in writing to avoid future disputes.

- The document in writing containing the various terms and conditions as to the relationship of the partners to each other is called the 'partnership deed'.
- It should be drafted with care and be stamped according to the provisions of the Stamp Act, 1899.

Partnership deed may contain the following information:-

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

A partnership firm may add or delete any provisions according to the needs of the firm.

Questions.

Q. Ratan Tata, a retired businessman of repute, assumed the honorary presidentship of the business of XYZ & Associates, a partnership firm, carrying on the business of trading in steel pipes on the request of the partners. Mr. Warren Buffet lent a sum of Rs. 50,00,000 to the firm, relying on Ratan Tata's association with the firm. Later the firm defaulted in repayment of the loan. Warren Buffet decides to sue Ratan Tata & other partners. Comment at the validity of his decision in the context of the provisions of The India Partnership Act, 1932.

OR

R is not a partner in a particular firm. But, he represents himself or knowingly permits himself to be represented as a partner of that particular firm to Banjay, who on the faith of such representation gives credit to the firm. Is R liable as a partner in the firm?

Ans. Partner by holding out (Section 28): means a person who himself, by his words or conduct have induced others to believe that he is a partner or he may have allowed others to represent him as a partner.

When a third party on the faith of such a representation contract with the alleged firm, then such a person shall be held liable as a partner by estoppel / holding out, to such a third party.

Facts

In the given case Ratan Tata assumes the honorary presidentship of XYZ & Associates and thereby, his conduct, represents himself as a partner in the said firm. Warren Buffet lends a sum of Rs 50,00,000 relying on his representation.

Conclusion - Therefor applying the above stated provisions it can be concluded that Ratan Tata will be regarded as Partner by Holding out despite holding honorary presidentship and shall be held liable along with the other partners by Warren Buffet. Thus the action of Warren Buffet are legal & valid under the provision of the Indian Partnership Act.

2. Mr. M., Mr. N., Mr. P. were partners in a firm, which was dealing refrigerators. On 1st October, 2018 Mr. P. retired from the firm, but failed to give public notice of his retirement. After his retirement Mr. M., Mr. N. and Mr. P. visited a trade fair and enquired about some refrigerators with latest technology. Mr. X who was exhibiting his refrigerators with new techniques as impressed with the interactions of Mr. P. and requested for the visiting card of the firm. The visiting card also included the name of Mr. P. as a partner even though he had already retired. Mr. X supplied some refrigerators to the firm and could not recover his dues from the firm.

Now, Mr X wants to recover the dues not only from the firm but also from Mr P. Analyse the above case in terms of provision of the Indian Partnership Act 1932 and decide whether Mr P is liable in this situation.

Ans. Partner by holding out (Section 28) : means a person - - him as a partner

when a third party - - third party

The rule given in Section 28 is also applicable to a former partner who has retired from the firm without giving proper public notice of his retirement. In such cases a person who, even subsequent to the retirement, gives credit to the firm on the belief that he was a partner, will be entitled to hold him liable.

Facts - In the given case it can be concluded that Mr P becomes a partner by holding out on behalf of the firm because he failed to give public notice on his retirement and also he made representations on behalf of the firm.

Conclusion - Thus Mr X can recover the amount not only from the firm but also from Mr P under the law.

3.

A, B and C are partners in a firm carrying on money lending business. D, a customer, deposits his jewellery with the firm for safe custody. A and B sell this jewellery and misappropriate the money. C, being a sleeping partner, have no knowledge about his sale. Now, D files a suit against all the three partners. Can C be held liable? Give reasons.

Ans.

Business carried on by all or any one of them acting for all - The business must be carried on by all the partners or by anyone or more of the partners acting for all. This is the Cardinal Principle of the partnership law. An act of one partner in the course of the business of the firm is in fact an act of all the partners.

Each partner carrying on the business is the principle as well as an agent of all the other partners. He is an agent in so far as he can bind the other partners by his acts and he is a principal to the extent that he is bound by the act of other partners.

Sleeping or Dormant partner -

→ It is a person who has become a partner by agreement but who does not actively participates in the conduct of the partnership business.

- They are however not required to give public notice of their retirement from the firm.
- They share profits and losses and are liable to the third parties for all acts of the firm.

Facts - In the given case A, B the other partners of the firm have misappropriated the jewellery received by them from their customer D in the ordinary course of conduct of business of the firm.

Conclusion - According to the provisions of the Indian Partnership act 1932, a sleeping /dormant partner shall have the same liabilities as the active partners, even though he does not take part in the conduct of the business of firm. Thus a dormant partner shall be liable for the acts of the firm to the third parties. Thus applying the above stated provisions, D is rightfully entitled to sue all the three partners, including Mr. C, the dormant partner, irrespective of the fact that he had no knowledge of such misappropriation.