UNIT – IV

Indian Partnership Act, 1932

Nature of Partnership • Relations of Partners • Admission, Retirement, Dissolution • Registration

OVERVIEW

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Admission, Retirement, Expulsion, Dissolution & Registration

Incoming/outgoing partners, dissolution, registration of firms

Definition of Partnership

Section 4: “Partnership” is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

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

Essentials:
1. Agreement between two or more persons
2. The agreement must be to share the profits of a business
3. The business must be carried on by all or any of them acting for all (mutual agency)

Mode of Determining Existence of Partnership

Section 6: 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 is only prima facie evidence; it is not conclusive. Receipt of a share of profits by a lender, servant, agent, widow or child of a deceased partner, or by a previous owner as consideration for sale of goodwill, does not of itself make the receiver a partner.

Explanation 2: The existence of mutual agency is the true test of partnership.

Relations of Partners to One Another

General duties (S. 9): Partners are bound to carry on the business of the firm to the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information.

Duty of indemnity (S. 10): Every partner shall indemnify the firm for any loss caused by his fraud.

Rights of partners (subject to contract):

- Right to take part in the conduct of the business (S. 12)
- Right to express opinion and to be consulted (S. 12)
- Right of access to books (S. 12)
- Right to share profits equally (S. 13)
- Right to interest on capital only out of profits (S. 13)
- Right to indemnity for payments made and liabilities incurred in the ordinary course (S. 13)

Relations of Partners to Third Parties – Implied Authority

Section 18: A partner is the agent of the firm for the purposes of the business of the firm.

Section 19: The act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. This is called the "implied authority" of a partner.

The implied authority does not empower a partner to:
• Submit a dispute to arbitration
• Open a bank account on behalf of the firm in his own name
• Compromise or relinquish any claim
• Withdraw a suit or proceeding
• Admit any liability in a suit
• Acquire immovable property on behalf of the firm
• Transfer immovable property belonging to the firm
• Enter into partnership on behalf of the firm

(unless custom or usage of trade permits).

Holding Out – Liability of a Person as Partner

Section 28: 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 to anyone who has on the faith of any such representation given credit to the firm.

This is the doctrine of holding out (or estoppel). The person held out becomes liable as if he were a partner, even though he is not a partner in fact.

The representation may be made by the person himself or by others with his knowledge and consent. Credit must have been given on the faith of the representation.

Admission, Retirement and Expulsion of Partners

• Introduction of a partner (S. 31): No person shall be introduced as a partner without the consent of all existing partners (subject to contract).

• Retirement (S. 32): A partner may retire with the consent of all other partners, or in accordance with an express agreement, or where the partnership is at will by giving notice.

• Expulsion (S. 33): A partner may not be expelled by a majority unless the power is conferred by contract and is exercised in good faith.

• Insolvency (S. 34) and death (S. 35) of a partner.

• Rights of outgoing partner (S. 36–37): To carry on competing business (subject to restrictions), to share in profits after retirement until accounts are settled, etc.

Dissolution of a Firm

Dissolution of partnership vs dissolution of firm:

• Dissolution of partnership – change in the relation of partners (e.g., by admission or retirement)
• Dissolution of firm – the firm completely ceases to exist

Modes of dissolution of firm:
• By agreement (S. 40)
• Compulsory dissolution (S. 41) – insolvency of all partners, or business becoming unlawful
• Contingent dissolution (S. 42) – on expiry of term, completion of adventure, death or insolvency of a partner (subject to contract)
• By notice (S. 43) – in partnership at will
• By the court (S. 44) – on grounds of insanity, permanent incapacity, misconduct, persistent breach of agreement, transfer of interest, business working at a loss, or any other just and equitable ground

Registration of Firms

Registration of a firm is not compulsory, but an unregistered firm suffers serious disabilities (S. 69):

- No suit can be filed by the firm or by any partner against any third party to enforce a right arising from a contract
- No suit can be filed by a partner against the firm or other partners to enforce a right arising from a contract or conferred by the Act
- The firm cannot claim a set-off exceeding ₹100 in a proceeding

Exceptions exist for suits for dissolution, for accounts of a dissolved firm, for realisation of the property of a dissolved firm, and for certain other limited purposes.

Registration is effected by sending a statement to the Registrar of Firms with the prescribed particulars and fee.

Landmark Judgments

Cox v. Hickman (1860)

Classic authority – sharing of profits is not conclusive; mutual agency is the true test.

Miles v. Clarke

On the nature of partnership property and the rights of partners.

Snow White Food Products v. Sohanlal

On the consequences of non-registration under S. 69.

CIT v. R.M. Chidambaram Pillai

On the relationship between partners and the firm for tax and other purposes.

SUMMARY

Key Takeaways – Unit IV

- 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 (S. 4).
- Mutual agency is the decisive test of partnership (S. 6 Explanation 2).
- Every partner is an agent of the firm; the firm is bound by acts done within the implied authority of a partner.
- A person may become liable as a partner by holding out (S. 28).
- An unregistered firm cannot sue to enforce contractual rights (S. 69) – a major practical consequence.
- Dissolution of the firm may be by agreement, compulsory, contingent, by notice, or by the court.

Quick Reference – Important Sections

Definition of Partnership	S. 4
Mode of determining existence	S. 6
General duties of partners	S. 9
Implied authority of partner	S. 19
Holding out	S. 28
Introduction / Retirement / Expulsion	Ss. 31–33
Dissolution of firm	Ss. 39–44
Effect of non-registration	S. 69

End of Unit – IV

Indian Partnership Act, 1932

Proceed to Unit-V: Sale of Goods Act