

INDIAN PARTNERSHIP ACT, 1932

By Asmita Gupta

Law Lecturer

R.A. Podar College of Commerce and Economics

Some Questions....

What is Partnership?

Why do we need a partnership Act? What will happen if the Act was not there?

What is its position after coming of LLP Act, 2008. Has the Partnership Act, 1932 become redundant?

Partnership - Meaning

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
(mutual agency)

Partnership– Essentials

- Two or more persons – Min -2 , max – 10/20/100
- Agreement – express or implied, not from status, Sec 5
- Business – includes every trade, occupation or profession, even one transaction covered BUT profit motive essential
- Sharing of Profits – profit sharing essential though proportion can vary, however sharing of losses not compulsory
- Mutual Agency – conclusive test, authority to bind and be bound
- Essentials of contract

Q. Is profit sharing a sufficient proof of Partnership?

- definition
- all essentials
- Profit sharing a prima facie evidence
- Mutual agency a conclusive and better evidence

Case Studies

Q. A, B and C get together to teach village children. Each of them would be taking two classes per week. Is there a partnership between them?

Q. A, B and C, three friends, decide to carry on CA practice together after completion of their CA course. A decides to specialize in Direct Tax, B in Indirect Tax and C in Transfer Pricing. Can they register their practice under Indian Partnership Act, 1932? Why?

What alternative they have?

Types of Partnership (section 7 & 8)

- Partnership for a fixed period
(where the time period is fixed, gets automatically dissolved on expiry of fixed term, if continued after – becomes partnership at will)
- Particular Partnership
(formed for carrying on particular venture)
- Partnership at will
(when no provision is made in the contract for the duration of partnership or for determination of partnership
can be dissolved by any partner giving a written notice)

Partnership Deed

- Written document containing the terms of partnership as agreed among partners
- Not compulsory but desirable
- Helps in reducing disputes
- Must be stamped
- Contains provisions with respect to various matters like name of firm, name and address of partners, place of business, duration, profit sharing ratio, method of valuation on goodwill on admission/retirement of partner , interest on capital/loan etc

Partnership Property (Section 14)

Subject to contract between the partners, the property of the firm include:

- a) All property, rights and interests in property originally brought into the stock of the firm, or
- b) Acquired by or for the firm, and
- c) Goodwill of the business

- Personal property does not become partnership property merely by use unless intended by the partners
- Partnership property should be first applied to meet the partnership liabilities and then only separate property

Case Studies

Q. When partnership deed provides that partnership will continue till there are two partners, what is the type of partnership it is?

Q. Partnership between A, B and C dissolves by mutual consent, due to constant disputes between them. However, partnership has only assets worth Rs. 14,000 against total liabilities of Rs. 40,000. How should the liabilities be settled?

Dissolution of Firm (Section 39)

- Dissolution of Firm vs. dissolution of partnership
- Complete breakdown of relation between all partners vs. change in relationship like admission, retirement etc
- The business of the firm is wound up vs. the firm continues
- Wider vs. narrower

Modes of Dissolution (Section 40-44)

- Voluntary Dissolution
- Compulsory Dissolution/ By operation of Law
- On the happening of certain contingencies
- Dissolution by the intervention of the Court

Voluntary Dissolution

- By mutual consent – all partners must consent, can be even before the fixed duration
- By agreement – in accordance with the contract like expiry of term, venture, death etc
- By notice – peculiar to partnership at will

The firm is dissolved by any partner giving notice in writing to all other partners of his intention to dissolve the firm

Notice should be written, unambiguous, final and served on all, firm dissolved from the date mentioned in the notice or if no date is mentioned, from the date of communication

Compulsory Dissolution

- When all partners or all but one are declared as insolvent
- When the partnership becomes unlawful
- When the partnership business becomes unlawful

On the happening of certain contingencies

Subject to contract between the partners, the firm gets dissolved in the following circumstances:

- Expiry of the fixed term
- Completion of the business venture
- On death of a partner
- On insolvency of a partner

By the intervention of the Court

On suit by a partner, the Court may order for dissolution in the following cases:

- Insanity of a partner (suit can be filed by the next of friend of unsound partner also)
- Permanent incapacity of a partner, to perform his duties as partner
- Guilty of misconduct, which is likely to prejudicially affect the business of the firm
- Wilful or persistent breach of agreement

By the intervention of the Court

- Transfer of interest in partnership
- Business of the firm cannot be carried on except at a loss
- Any other just and equitable ground

Such a right to apply to the Court for dissolution on any of the above seven grounds cannot be excluded by an agreement to the contrary.

Public Notice of dissolution

- Public notice of dissolution of firm should be given, else partners will continue to be liable for acts of dissolved firm
- Can be given by:
 - For registered firm: By notice to Registrar + publication in Official Gazette + publication in atleast one vernacular newspaper
 - For unregistered firm: publication in Official Gazette + publication in atleast one vernacular newspaper

Registration of Firm and Consequences

- Registration of firm is not compulsory under IPA
- However, following disabilities attach to an unregistered firm :
 - Partners cannot file a suit against firm or partners
 - Firm or its partners cannot file a suit against third parties
 - No right to counter-claim or set-off

However, third party can file suit against firm and its partners, partners can apply for accounts or for realization of property on dissolution

Case Studies

Q. A, B and C are partners. The firm is carrying on the business of importing and exporting gun powder. What happens to the firm if Indian Government bans import of gun powder?

Q. D, E and F are partners. D is convicted of ticketless travelling by Railways, with an intent to defraud. Can E and F go to the Court for dissolution of the firm?