CA Foundation Revision Notes- Business Laws

The Partnership Act, 1932
The Limited Liability Partnership Act, 2008

"Dream is not that which you see while sleeping. It is something that does not let you sleep."

- Dr. APJ Abdul Kalam

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UNIT 1: GENERAL NATURE OF PARTNERSHIP

WHAT IS A PARTNERSHIP?

- Relation between two or more persons;
- Who have agreed;
- to share profits;
- of a business;
- Carried on by all or any of them acting for all;

Key Terms

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

THE ELEMENTS OF A PARTNERSHIP

1) Association of two or more persons
    - Persons recognized by law can enter into an agreement of partnership
    - Minor can be a partner in a partnership but can be admitted to benefits of a partnership, with the consent of all partners
    - Maximum number of partners is 50 as per section 464 of the Companies Act, 2013. Partnership Act 1932 is silent about this
2) Agreement
    - A partnership must be a result of an agreement between two or more persons
    - Must be an agreement between all the parties concerned
    - It can be oral or in writing
3) Business
    - There must be a business
    - Business can be any trade, occupation, or profession
    - For acquisition of gains
4) Agreement to share profits
    - There can't be partnerships with only one of the partners take all the profit
    - Partners must share the profit as agreed
    - But sharing of losses is not essential
    - Unless agreed, losses also shared in the ratio of profit sharing
    - If silent about profit sharing ratio, profit shall be shared equally
5) Business carried on by all or any of them for all
    - Cardinal principle of the partnership law
    - Simply there must be a binding contract of mutual agency

- Act done by a partner in the course of business on behalf of the firm will be considered as it is done by all the partners
- Every partner is a principle and agent at the same time

TRUE TEST OF PARTNERSHIP

Whether there is a partnership or not between two or more regard shall be had to the real relation along with all the relevant facts together. for determining the existence of partnership, it must be proved that:

- There was an agreement between all the parties concerned;
- The agreement was to share the profits and
- The business was carried by all or any one or more acting for all- Mutual agency

COMPARISON WITH OTHER TYPES OF ENTITIES

A. Partnership Vs Company (Limited Liability Company/Joint Stock Company)

Basis	Partnership	Company
Legal status	Not a separate legal entity. No legal personality distinct from partners	Separate legal entity and distinct from members
Agency	Mutual agency	Members are not agents of the company
Profit distribution	All the profits must be distributed as per agreement	Not compulsory. Can keep reserves and distribute dividend
Liability	Unlimited liability for partners. Can be recovered from private assets	The liability of members is limited to the extent of unpaid capital. Private assets are not affected
Holding property	Can't hold assets in the name of a partnership. It will be considered as joint assets only	Can own in its own name and separately from its members
Transfer of shares	Can't be transferred with the consent of all partners	Can be transferred, subject to MOA and AOA
Management	Unless otherwise mentioned in the agreement, all the partners	Members are not entitled to manage- Managed by the directors
Registration	Optional	Compulsory
Winding-up	Can be dissolved at any time with an agreement between partners	Can be dissolved by voluntary winding up with the approval of NCLT or struck off by ROC

Maximum number of members	At present 50	For OPC-1, for private company- 200, for a public company, any number
Duration	Death, retirement, or insolvency of a partner can be resulted in dissolution unless otherwise mentioned in the agreement	Perpetual succession

B. <u>Partnership Vs Club</u>

Basis	**Partnership**	**Club**
Meaning	It is an association of persons formed for earning profits from a business carried on by all or any one of them acting for all.	A club is an association of persons formed with the object not of earning a profit, but of promoting some beneficial purposes such as improvement of health or providing recreation for the members.
Relationship	Persons forming a partnership are called partners and a partner is an agent of other partners.	Persons forming a club are called members. A member of a club is not the agent of other members.
Interest in property	Partner has interest in the property of the firm.	A member of a club has no interest in the property of the club.
Dissolution	Death, retirement etc may affect the existence of the firm, subject to the partnership deed	Change in members does not affect the existence of a club

C. <u>Partnership Vs HUF (Hindu Undivided Family)</u>

Basis	**Partnership**	**HUF**
Mode of creation	Created by agreement	By birth in the family
Death of a member	May lead to dissolution subject to the agreement	Does not lead to the dissolution
Management	By all partners, subject to the agreement	Generally, by Karta
Authority to bind	Every partner can, by his act, bind the firm.	Katha has the right to contract for the family business and bind other family members

Minor's capacity	Can't become a partner, but can be admitted to the benefits	In HUF business, a minor becomes a member of the ancestral business by birth. He does not have to wait for attaining the majority.
Continuity	Subject to a contract between the partners gets dissolved by death or insolvency of a partner.	A Joint Hindu family has continuity till it is divided.
Number of Members	50	Unlimited
Share in the business	As agreed by the partners	No definite share. Affected by the number of members.

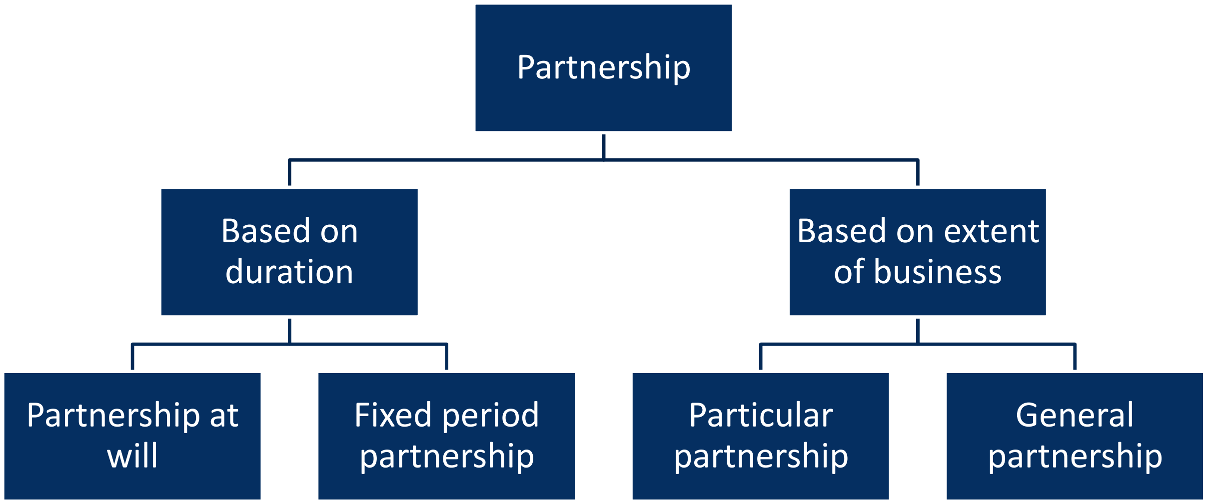
D. <u>Partnership Vs. Co-Ownership or joint ownership</u>

Basis	**Partnership**	**Joint ownership**
Formation	By an agreement	By an agreement or by the operation of law, such as by inheritance.
Mutual agency	Agents of other partners and firm	Not an agent of other co-owners
Nature of interest	To share profits in the agreed ratio	Co-ownership does not necessarily involve sharing of profits and losses.
Transfer of interest	With the consent of other partners	May transfer with the consent of other partners

E. <u>Partnership Vs. Co-Ownership or joint ownership</u>

Basis	**Partnership**	**Association**
Meaning	Partnership means and involves setting up relation of agency between two or more persons who have entered into a business for gains, with the intention to share the profits of such a business	Association evolves out of social cause where there is no necessarily motive to earn and share profits. The intention is not to enter in a business for gains.
Motive	To earn and share profit of a business	No intention of sharing profits of a business
Example	To share profits in the agreed ratio	Residents' association,

TYPES OF PARTNERSHIPS



Partnership for a specific period

- Provision is made by a contract for the duration of partnership
- Created for a particular time
    - Eg: partnership for two years from the date of agreement
    - Partnership until 31st March 2022
- Comes to an end by the expiry of duration

Partnership at will

- No fixed period agreed for the duration
- No provision made as to the determination of partnership
- May be dissolved by a partner giving notice to the other partners in writing to all other partners
- **If a fixed period partnership continues business after expiry, it will be considered as partnership at will**

Particular partnership

- Partnership for a single adventure or undertaking
- Dissolved by completion of adventure/ undertaking
    - Eg: partnership formed for construction of a specific building

General partnership

- To carry out the business, in general, it is said to be a general partnership.

  - Eg: to execute construction activities
- Unlike a particular partnership in a general partnership the scope of the business to be carried out is not defined. So, all the partners will be liable for all the actions of the 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.
- 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 is a document in which the respective rights and obligations of the members of a partnership are set forth.
- It should be drafted with care and be stamped according to the provisions of the Stamp Act, 1899.

Contents/ Details /Information contained in a partnership deed

1. Name of the partnership form.
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.
6. Capital contribution of each partner
7. Profit Sharing ratio of the partners.
8. Admission and Retirement of a partner.
9. Rates of interest on Capital, Drawings and loans.
10. Provisions for settlement of accounts in the case of dissolution of the firm.
11. Provisions for Salaries or commissions, payable to the partners, if any.
12. Provisions for expulsion of a partner in case of gross breach of duty or fraud

The terms laid down in the Deed may be varied by consent of all the partners, and such consent may be expressed or may be implied by a course of dealing [Sec. 11(1)].

TYPES OF PARTNERS

Types of partners

- Active or ostensible
- Sleeping/ Dormant partner
- Nominal partner
- Partner in profits only
- Incoming Partner
- Outgoing partner
- Partner by holding out

Active or Actual or Ostensible partner

A person → Has become partner by agreement → Actively participate in conduct of business

- He acts as an agent of other partners for all acts done in the ordinary course of business
- Must give a public notice in order to absolve himself from liabilities for the acts of other partners done after his retirement.

Sleeping or Dormant Partner

A person → Has become partner by agreement → Does not actively participate in conduct of business

- Share profits and losses and are liable to the third parties for all acts of the firm.
- Not required to give public notice of their retirement from the firm.

Nominal Partner

A person → Lend his name → Without any real interest in the firm → Not entitled to share profit → Not take part in business → But liable to third parties

Partner in profits only

Entitled to share profit only → Not liable for the losses → Liable to third parties for act of profits only

Incoming partner

A person → Admitted with the consent of all existing partners of an existing firm → Not liable for the acts prior to his admission

Outgoing partner

A person → leaves a firm in which the rest of the partners continue to carry on business → remains liable to third parties for all acts of the firm until public notice is given of his retirement

Partner by holding out/ Partner by Estoppel (section 28)

A person represent himself

↓

Or knowingly permits himself

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to be represented as a partner in a firm (when in fact he is not)

↓

he is liable, like a partner in the firm

↓

to anyone who on the faith of such representation has given credit to the firm.

UNIT 2: RELATIONS OF PARTNERS

MUTUAL RIGHTS AND DUTIES (SEC 11)

Subject to the provisions of the Indian Partnership Act, 1932:

- The mutual rights and duties of the partners of a firm may be determined by contract between the partners.
- Such contract may be expressed or implied.
- Such contract may be varied by consent of all the partners.
- And such consent may be express or may be implied

DUTIES OF PARTNERS

1) General Duties- Sec-9

a) Duty to carry on the firm business to the greatest common advantage
b) Duty to act on good faith to other partners
c) Render true accounts
d) Render full information of all things affecting the firm to any partner or his legal representative

2) Duty to indemnify for loss caused by fraud (sec. 10)

- A partner can cause loss to the firm by his neglect or want of skill or omission or fraud during the course of business
- When acts bonafide, the loss is generally borne by firm
- But if the loss is due to a fraud to a third party, the loss must be recovered from guilty partner and no need to be shared by the other partners
- Section 10 provides that "every partner must indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm."

3) Duty to attend diligently to his duties [Sec 12(b)].

4) Duty to share losses

a. It is the duty of every partner to share equally the losses suffered by the firm.
b. However, this duty might be restricted by way of an agreement.

5) Duty to account for personal profits (sec 16)

Subject to the contract between the partners, if a partner makes personal profits in any of the following ways, he must give account of those profits and pay back the same to the firm.

- Personal profits from any transaction of the firm.
- Personal profits from the use of the property of the firm.

- Personal profits from the business connection of the firm.
- Personal profits from the use of the name of the firm.
- Personal profits from a business competing with the business of the firm

6) Duty to use firm property exclusively for firm

- The partners should use the partnership property for the firm's business only.
- This duty is also subject to an agreement to the contrary.

7) Duty to act within authority

- It is the duty of every partner that he should act within the scope of actual or implied authority.

Summary of duties of partners
1. Duty to carry on the firm business to the greatest common advantage 2. Duty to act on good faith to other partners 3. Duty to render true accounts 4. Duty to act render full information of all things affecting the firm to any partner or his legal representative 5. Duty to indemnify for loss caused by fraud 6. Duty to attend diligently to his duties 7. Duty to share losses 8. Duty to account for personal profits 9. Duty to use firm property exclusively for firm 10. Duty to act within authority

RIGHTS OF PARTNERS

The mutual rights of partners depend upon the provisions of the partnership agreement. However, subject to an agreement between the partners; the law confers the following rights upon all the partners:

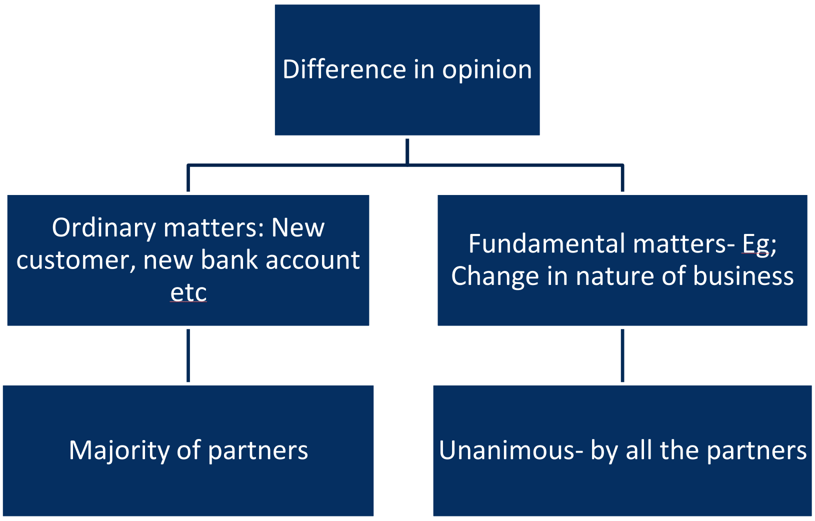
1) Right to take part in the conduct of the Business

- It is the right of every partner to take part in the management of the business.
- This right is available to all the partners.
- This is, however, subject to contract between the partners i.e., the partners may provide, by a contract, that this right shall not be available to some partners.

2) Right to be consulted:

- Right to be consulted in all matters affecting the business of the firm.
- Right to express his opinion before any decision is taken by the other partners.

In the case of difference in opinion:



3) **<u>Right to have access to books</u>**
- Every partner has the right to examine all the records, books and accounts of the firm.
- Also have the copy of such accounts etc
- Subject to a contract between the partners

4) **<u>Right to share profits</u>**
- Every partner has the right to have equal share in the profits of the firm.
- Partners may also agree to share the profits in different proportions

5) **<u>Right to interest on capital- Not a fundamental right</u>**
- Generally, the partners have no right to receive any interest on their contribution towards the capital
- Partnership agreement may provide that the partners shall be entitled to interest on capital at a certain rate.
- Such interest shall be payable only out of profits

6) **<u>Right to interest on advance</u>**
- If any partner makes any payment to the firm in addition to his capital
- He shall be eligible for interest on that advance amount at 6% per annum
- Even if there is no profit
- Need to be paid till the date of repayment

7) **<u>Right to be indemnified</u>**
- Right to be indemnified by the firm in respect of payments made and liabilities incurred by him for
    i. Expenses incurred in the ordinary course of business
    ii. Expenses incurred in an emergency
- No agreement between the partners can restrict this right.

8) **<u>Right to use the partnership property</u>**
- It is the right of every partner to use the partnership property.
- But should be used exclusively
- for the purpose of the partnership business

9) **<u>Right to be consulted at the time of admission of a new partner</u>**

- It is the right of every partner to be consulted at the time of admitting a new partner in the firm.
- Generally, admission require consent of all partners
- But agreement can provide otherwise

10) <u>Right to remuneration- Not a fundamental right</u>

- No partner is entitled to receive any remuneration in
- addition to his share in the profits
- But this rule can always be varied by an express agreement

11) <u>Right to retire from the firm</u>

12) <u>Right not to be expelled</u>

- Every partner has the right to continue in the firm and he cannot be expelled from it by the other partners. However, the partners may enter into a contract providing for the expulsion of a partner by majority of the partners. But the power of expulsion must be exercised in good faith

13) <u>Right to dissolve the firm</u>

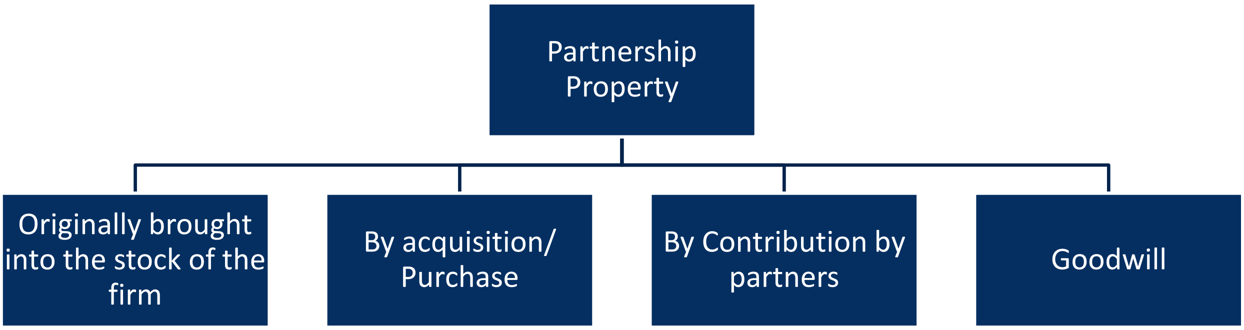
- partner has the right to dissolve the partnership with the consent of all partners.
- But where the partnership is at will the firm may be dissolved by any partner giving notice in writing to all other partners of his intention to dissolve the firm.

Summary of rights of partners
1. Right to take part in the conduct of the Business 2. Right to be consulted: 3. Right to have access to books 4. Right to share profits 5. Right to interest on capital- Not a fundamental right 6. Right to interest on advance 7. Right to be indemnified 8. Right to use the partnership property 9. Right to be consulted at the time of admission of a new partner 10. Right to remuneration- Not a fundamental right 11. Right to retire from the firm 12. Right not to be expelled 13. Right to dissolve the firm

<u>PROPERTY OF THE FIRM (Section 14)</u>

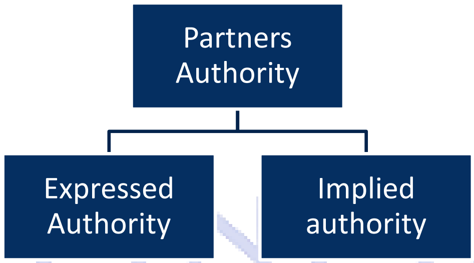
Subject to contract between the partners, the property of the firm includes:

1) All property and rights and interest in property
   - Originally brought into the stock of the firm, or
   - Acquired, by purchase or otherwise, by or for the firm
   - Or for the purposes and in the course of the business of the firm, and
2) Includes goodwill of the business



PARTNERS AUTHORITY

- Partner is an agent of the firm
- Authority means the right of a partner to bind the firm by his own acts.
- The authority of a partner to act on behalf of the firm can be divided into two
    1. Expressed authority
    2. Implied authority



Expressed authority

- Authority Expressly given by the partnership agreement
- Eg: Partner-1 shall be authorized to sign any contracts, tenders and agreements if any executed in the name of the LLP.
- The firm is bound by all acts done by a partner by virtue of any express authority given to him.

Implied authority (Section 19)

Authority arising by implication of law. The act of a partner binds the firm which is done:

- To carry on in the usual way
- The act must relate to a matter which is within the scope of the business of the firm
- And the act is in the name of the firm,
- Or in any manner expressing or implying an intention to bind the firm, and
- Done by him in his capacity as partner.

What comes under implied authority?

If the partnership be of a general commercial nature, following acts are within implied authority:

1. Buy or sell or pledge goods on account of the partnership
2. Incur normal expenses.

3. Borrow money and pay debts on account of the partnership
4. Drawing, making, signing, endorsing, accepting, transferring, discounting any negotiable instruments.

Extension or restriction of partners implied authority. (Section 20)

- The partners in a firm may, by contract between the partners, **extend or restrict** the implied authority of any partner.
- A third party is **not bound** by any such restrictions **unless the third party knows** about the restrictions.

Matters require express authority by agreement
Partners cannot do the following ***unless agreed by partnership agreement*** 1. Open a banking account on behalf of the firm in his own name 2. Submit a dispute relating to the business of the firm to arbitration 3. Compromise or relinquish any claim or portion of a claim by the firm 4. Withdraw a suit or proceeding filed on behalf of the firm 5. Admit any liability in a suit or proceeding against the firm 6. Acquire immovable property on behalf of the firm 7. Transfer immovable property belonging to the firm 8. Enter into partnership on behalf the firm

ADMISSION/REPRESENTATION BY A PARTNER (Section 23)

- 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 of course of business

EFFECT OF NOTICE TO ACTING PARTNER (section 24)

- 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

PARTNERS LIABILITY TO THIRD PARTIES

Sec 25	Sec 26	Sec 27
• Liability of a partner for acts of the firm	• Liability of the firm for wrongful acts of a partner	• Liability of firm for misapplication by partners

A) Liability of a partner for acts of the firm (Section 25)

- Every partner is liable, jointly and severally,
- for all acts of the firm done while he is a partner.

B) Liability for Wrongful Acts of a Partner (Section 26)

- Were, by the wrongful act or omission of a partner
- 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 therefore to the same extent as the partner.

C) Liability of firm for misapplication by partners (section 27):

- Where, a partner acting within his apparent authority receives money or property from a third party and misapplies it, or
- 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.

Eg: A, B, and C are partners of a place for car parking. P stands his car in the parking place but A sold out the car to a stranger. For this liability, the firm is liable for the acts of A.

TRANSFER OF PARTNER'S INTEREST

- A partner can be admitted with the consent of all partners
- Thus, for transferring the shares, consent of the all partners required
- But a partner can transfer interest in a firm- But The transferee thereby does not become a partner of the firm.

Rights of a transferee of a partner

- Entitled to receive share of profits
- During the continuance of partnership, such transferee is not entitled:
    - to interfere with the conduct of the business,
    - to require accounts, or
    - to inspect books of the firm.
- On the dissolution/retirement of transferor partner:
    - Right to receive share of assets of the firm to which the transferor partner entitles
    - For the purpose of ascertaining shares, entitled to accounts of the firm

MINOR'S POSITION IN PARTNERSHIP FIRM

- A minor cannot become a partner in a firm because partnership is founded on a contract and contract with a minor is void-ab-initio.
- Though a minor cannot be a partner in a firm, he can be admitted to the benefits of partnership with the consent of all the partners.

Minors' rights in a partnership

- Right to such share of the property and of the profits of the firm as may be agreed upon
- Right to inspect and to have copy of accounts
- Sue the partners for an account or payment of his share of the property or profits, only when severing his connection with the firm
- Right to become a partner within 6 months from the date of attaining majority or when he comes to know whichever is later.

Minors' liabilities in a partnership before attaining majority

- Liability of the minor is confined only to the extent of his share in the profits and the property of the firm.
- Minor is not personally liable for any such act of the firm

Minors' liabilities in a partnership before attaining majority

- Within 6 months of majority, or within 6 months of his obtaining knowledge that he had been admitted to the benefits of partnership he can elect or not elect to become a partner, whichever is later
- He has to give public notice about his decision
- If he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.
- Once he become partner, he can continue the benefits, but he will become personally liable for the acts of the firm
- If he elects not to become a partner and gives public notice, he can continue rights as a minor till the date of notice, he will not be personally liable for the acts of the firm and entitled to sue the partners for his shares and accounts

ADMISSION OF A PARTNER (Section 31)

- Also termed as Incoming partner
- A new partner can be admitted to an existing partnership only with the consent of all partners
- Or in accordance with a contract already entered into between the partners for the admission of a new partner.

Liability of incoming partners

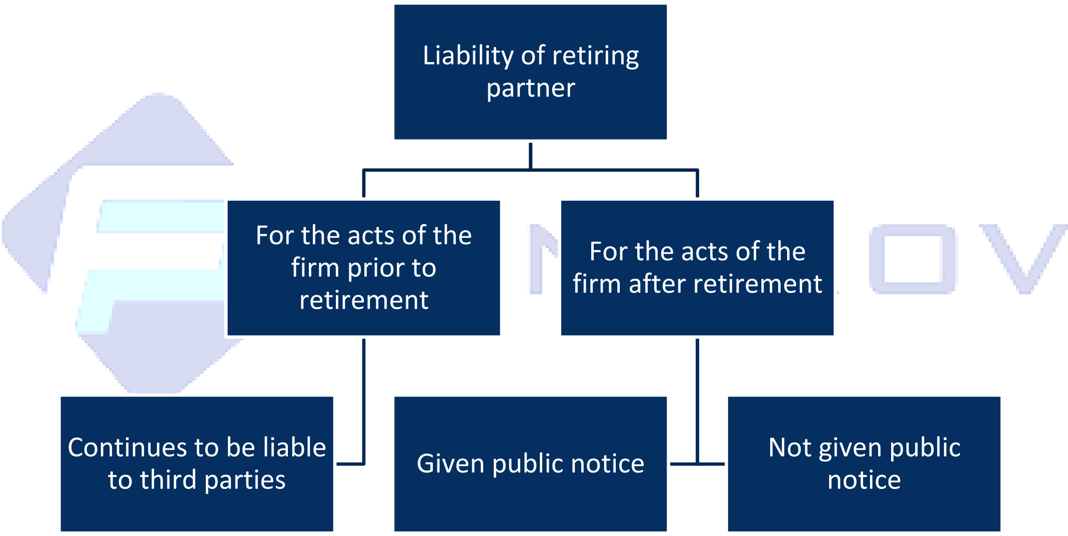
- Incoming partner shall not be liable for any acts done prior to his admission.
- But he can agree to become liable for obligations incurred by the firm prior to the date of his admission.

RETIREMENT OF PARTNERS (Section 32)

A partner may retire from the firm in anyone of the following three modes:

- with the consent of all the other partners;
- in accordance with an express agreement by the partners;
- where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.

Liability of outgoing partner



EXPULSION OF A PARTNER (SECTION 33)

- A partner cannot be ordinarily expelled from the firm.
- He can be expelled only if the following conditions are satisfied:
  - The power of expulsion should be given to the partners by an express contract between them.
  - should be exercised by majority of partners.
  - should be exercised in absolute good faith.

Test of good faith for expulsion

- The expulsion must be in the interest of the partnership.
- Partner to be expelled is served with a notice
- He is given an opportunity of being heard

INSOLVENCY OF A PARTNER (Section 34)

- The partner declared an insolvent, ceases to be a partner on the date.
- The firm is dissolved on the date of the order of insolvency unless there is a contract to the contrary.
- The estate of the insolvent is not liable for any act of the firm after the date of the order of insolvency.
- The firm cannot be held liable for any acts of the insolvent partner after the date of the order of insolvency.

DEATH OF A PARTNER (Section 34)

- Ordinarily, the effect of the death of a partner is the dissolution of the partnership
- However, contract may specifically say that death shall not dissolve the firm, except in the case of partnership with two partners.
- the estate of the deceased partner may be absolved from liability for the future obligations of the firm, even without public notice

RIGHTS OF AN OUTGOING PARTNER

- An outgoing partner may carry on a business, but it can be restricted by an agreement
- Subject to the agreement he cannot:
    - use the firm name,
    - represent himself as carrying on the business of the firm or
    - Solicit the customers of the old firm

UNIT 3: REGISTRATION AND DISSOLUTION OF PARTNERSHIP

REGISTRATION OF FIRM

- Registration is not compulsory, it is optional
- There is no penalty for non-registration of a firm
- The registration can be done anytime, either in the beginning or during the continuance of business.

Steps for registration of firm

1) A statement in prescribed form shall be submitted to the registrar with prescribed fees.
2) The following details shall be included in the form:
    - Name of the firm
    - Place of principle business of the firm
    - The names of any other places where the firm carries on business
    - Name and full permeant address of the partners
    - Date when each partners joined the firm
    - Duration of the firm
3) Get the form duly signed by all the partners or their agents
4) File the statement along with prescribed fees
5) Obtain a certificate or registration from the Registrar
6) The registration becomes effective from date of filing of duly signed and verified documents and not from the date of issue of registration certificate

Consequences of non-registration

- The partners cannot file a suit against the firm or other partners
- The firm cannot file a suit against third parties:
- But a third party can sue the firm
- The partner of the firm cannot claim a set-off
    - The term 'set-off' means the adjustment of debts by one party due to him from the other party who files a suit against him. The partners of an unregistered firm or the firm itself cannot claim a set-off, in a suit filed against them or the firm. But the right of set-off is not affected if the claim for setoff does not exceed Rs 100 in value.

Consequences of non-registration- Exceptions

- The third party can file a suit against the firm whether the firm is registered or not
- The partners of an unregistered firm can file a suit for the enforcement:

- for the dissolution of the firm
- for the accounts of the dissolved firm
- For realization of the property of the dissolved firm

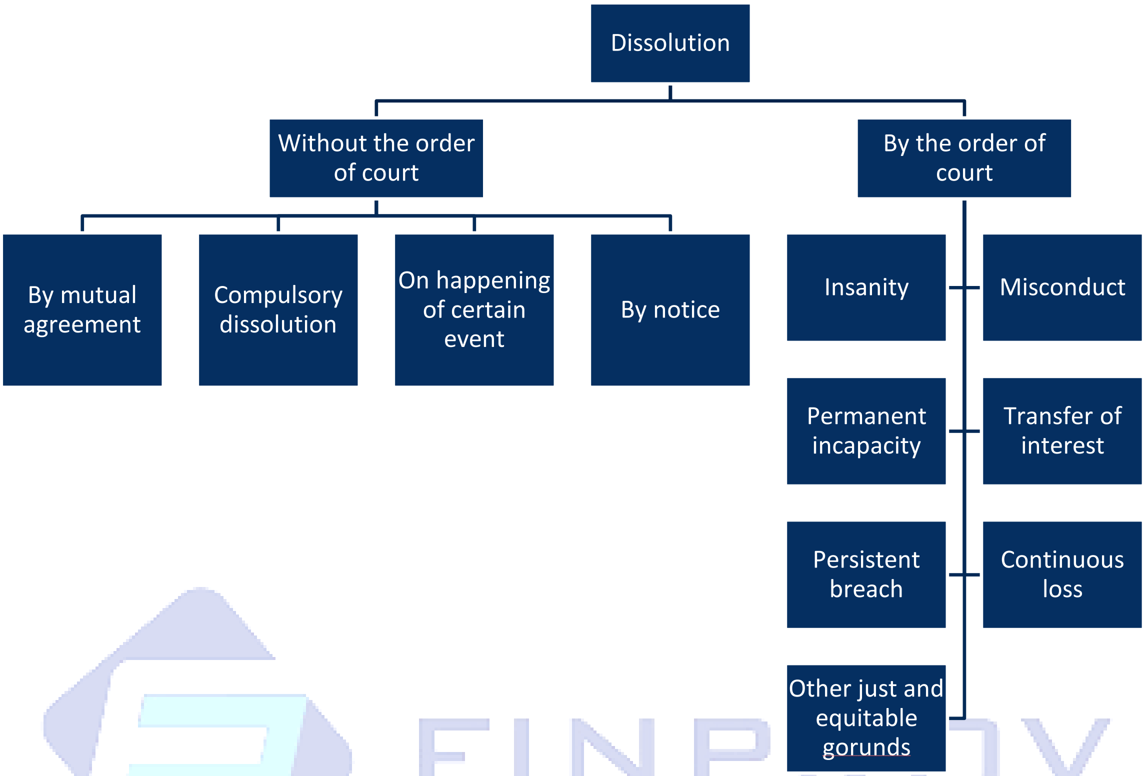
DISSOLUTION OF FIRM

- Sec. 39- the dissolution of partnership between all partners of a firm is called the 'dissolution of the firm'
- Discontinuation of the legal relation existing between all the partners
- When one or more partners retires/incapacitate or deceased, and the other partners continue, there will be no dissolution of firm, only reconstitution of the firm

Dissolution of firm Vs Dissolution of Partnership

Basis	Dissolution of firm	Dissolution of partnership
Continuation of business	Business discontinues	Other partners may continue the business under reconstituted partnership
Winding up	Firm winds up, all assets and liabilities will be realised and settled	No winding up, assets may be revalued by the partners
Order of court	May be dissolved as per court order	Not ordered by court
Final closure of books	Yes, for realisation and settlement	No final closure
Example	A, B, and C decides to dissolve the firm. They draft an agreement and realises all assets and liabilities and make final settlement to the partners	A retires from the partnership of A, B and C. B & C may reconstitute the firm and continue business

Modes of dissolution



Dissolution without court order/ voluntary dissolution

- Dissolution by agreement:
    - With the consent of all the partners or in accordance with a contract between the partners.
- Compulsory dissolution
    - When the business become unlawful
    - When all or except one of the partners become insolvent
- On happening of certain contingencies
    - Expiry of term- fixed period partnerships
    - Completion of adventure/undertaking- specific purpose partnerships
    - Death of a partner
    - Insolvency of a partner
- Dissolution by notice of partnership at will
    - 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
    - The effective date is the date mentioned. If no date is mentioned, the date of communication.

Dissolution by court order

- A partner may file a suit for dissolution of the firm on anyone of the following grounds
    - Insanity/unsound mind of a partner other than sleeping partner- Suit by other partners or next friend of insane partner
    - Permanent incapacity in performing duties
    - Misconduct of a partner
    - Persistent breach of agreement-
        - Embezzlement,
        - Keeping erroneous accounts
        - Holding more cash than allowed
        - Refusal to show accounts despite repeated request etc.
    - Transfer of interest by the party to a third party or the property of a partner sold as per court direction or as part of revenue recovery
- Transfer of interest by the party to a third party or sold as per court direction or as part of revenue recovery
- Any other Just and equitable grounds
    - Deadlock in the management
    - Partners are not in talking terms between them
    - Loss of substratum
    - Gambling by a partner in stock exchange

Liability of partners after dissolution (Section 45)

- Liable for the acts done after dissolution if pubic notice is not given
- Not applicable for deceased /insolvent partners/ dormant partners

Right of partners to have business wound up after dissolution (Section 46)

On the dissolution of the firm, each partner/legal representative is entitled to the following rights:

- to have the property of the firm utilised in payment of its debts and liabilities
- to have the surplus distributed among all the partners according to their rights
- surplus here means the surplus amount left after the payment of all the debts and liabilities of the firm

Continuing authority of partners for purposes of winding up (Section 47)

On the dissolution of a firm, the authority of each partner to bind the firm continues for the following purpose:

- If it is necessary to wind up the affairs of the firm

- If it is necessary to complete the transactions started but not completed at the time of dissolution.

Mode of settlement of accounts

- Settled as per the agreement
- If nothing mentioned in agreement, as per partnership Act

Mode of settlement of accounts- Payment of losses

The losses of the firm, including the deficiencies of capitals shall be paid in the following manner and order:

- First- out of profits
- If the profits, are not sufficient to pay the losses, then the balance of loss shall be paid out of capital.
- If still some balance of losses remains, it shall be paid by the partners individually in the proportion in which they were entitled to share profits.

The Limited Liability Partnership Act, 2008

MEANING OF LLP

- An LLP is a new form of legal business entity with limited liability
- The LLP is a separate legal entity and, while the LLP itself will be liable for the full extent of its assets, the liability of the partners will be limited.
- Since LLP contains elements of both 'a corporate structure' as well as 'a partnership firm structure' LLP is called a hybrid between a company and a partnership.

PARTNERS OF LLP

- Any individual or body corporate may be a partner in an LLP
- an individual shall not be capable of becoming a partner of a LLP, if:
    - Person found to be of unsound mind by court and the finding is in force
    - Insolvent
    - Applied to be adjudication as insolvent and application is pending
- Minimum number of partners-2
- Maximum number of partners- unlimited

Number of Partners of LLP

- Minimum number of partners-2
    - If at any time the number of partners of an LLP is reduced below two
    - and the LLP carries on business for more than six months while the number is so reduced,
    - the person, who is the only partner of the LLP during the time that it so carries on business after those six months and
    - has the knowledge of the fact that it is carrying on business with him alone,
    - shall be liable personally for the obligations of the LLP incurred during that period.
- Maximum number of partners- unlimited- No limits are specified in LLP Act, 2008

Designated partners

- “Designated partner” means any partner designated as such pursuant to section 7.
- Minimum two designated partners
- Designated partners must be individuals
- One of them must be resident in India (at least 182 days in India). Nationality or citizenship is not an issue.
- If all or any of the partners are body corporates, there must be at least two designated partners are individuals who are partners or nominee of such body corporates.

FEATURES / CHARACTERISTICS OF LLP

1. **LLP is a body corporate**
   - As per section 3, of LLP Act 2008, LLP is a body corporate
   - Body corporate includes:
     - A company
     - An LLP
     - LLP incorporated outside India
     - Company incorporated outside India
     - But not includes- A corporation sole, Co-operative society, and any body-corporate not being a company or LLP

2. **Perpetual succession**
   - LLP can exist without affecting any changes in partners
   - Death, insolvency, retirement or insanity will not impact the existence of LLP.
   - Can be dissolved by law

3. **Separate Legal Entity**
   - Partners are separate from LLP
   - Liability of partners limited to the agreed contribution
   - Creditors can sue the LLP only
   - No personal liability for partners
4. **Agency**
   - A partner is agent of the LLP only
   - No mutual agency between the partners
5. **LLP Agreement**
   - Rights and responsibilities of the partners and governance of the LLP guided by an agreement between the partners
   - In the absence of LLP agreement, it shall be governed as per LLP Act 2008

6. **Artificial Legal Person**
   - LLP is a legal person created by law
   - Have all the rights of an individual
   - Can sue and can be sued

7. **Common Seal is not mandatory as per LLP Act, 2008**
   - LLP acts though partners and designated partners
   - May have common seal, if decided by agreement
   - Not mandatory
8. **Limited Liability**
   - Partners liability is limited to agreed contribution amount
   - If contribution is paid in full, no further liability

9. Management of business

- Can be managed by any partners/designated partners
- Only the designated partners are responsible for legal compliances
-

10. Number of partners

- Minimum 2 persons
- No maximum limit

11. Business for profit only

- Only to carry on lawful business for profits
- Not for any charitable or non-economic activities

12. Conversion into LLP

- A firm, private company or an unlisted public company would be allowed to be converted into LLP in accordance with the provisions of LLP Act, 2008.

13. E-Filling of Documents

- Every form or application of document required to be filed or delivered under the act and rules made thereunder, shall be filed in computer readable electronic form on its website www.mca.gov.in and authenticated by a partner or designated partner of LLP by the use of electronic or digital signature.

INCORPORATION OF LLP

Essential requirement for incorporation of LLP

- To complete and submit incorporation document in the form prescribed with the Registrar electronically.
- To have at least two partners for incorporation of LLP [Individual or body corporate]
- To have registered office in India to which all communications will be made and received
- To appoint minimum two individuals as designated partners, one of them must be a resident in India
- A person or nominee of body corporate intending to be appointed as designated partner of LLP should hold a Designated Partner Identification Number (DPIN) or DIN allotted by MCA.
- To execute a partnership agreement between the partners, inter se or between the LLP and its partners.
- To execute a partnership agreement between the partners or between the LLP and its partners.
- To create an LLP, proper formation document must be filled with the registrar along with the necessary filing fees
-

Steps for LLP incorporation

1. **Decide the designated partners**
   - Minimum two individuals
   - Obtain digital signature and DIN/DPIN for designated partners
2. **Name reservation**
   - The first step to incorporate Limited Liability Partnership is reservation of name of LLP.
   - Applicant has to file e-Form 1 (now LLP RUN), for ascertaining availability and reservation of the name of an LLP business.
   - Approved name will be valid for three months
3. **Filing of incorporation forms with the ROC**
   - After reserving a name, user has to file e- Form 2 (Now form Fillip) for incorporating a new Limited Liability Partnership.
   - e-Form 2 contains the details of LLP proposed to be incorporated, partners'/ designated partners' details and consent of the partners/designated partners to act as partners/ designated partners
4. **Issue of Certificate of incorporation by the ROC**
   - If satisfied, ROC will issue certificate of incorporation as conclusive evidence that all the requirements under LLP Act 2008 have been complied with in relation to the incorporation of LLP
5. **LLP Agreement**
   - Execution of LLP Agreement is mandatory as per Section 23 of the Act
   - LLP Agreement is required to be filed with the registrar in e-Form 3 within 30 days of incorporation of LLP

Contents of Incorporation Document

- It shall be in prescribed form
- Name of the LLP
- Proposed business of the LLP
- Address of registered office of the LLP
- Name and address of the partners at the time of incorporation
- Name and address of designated partners at the time of incorporation
- Any other information as may be prescribed
- Also, to be a submit by a statement by an advocate, Chartered accountant, Company secretary, or cost accountant, who engaged for incorporation of LLP and any one of the subscribers at all requirement under the Act and rules are complied with

Effect of registration of LLP

An LLP, in its own name:

- Can sue

- Can be sued
- Can have common seal
- Hold assets and properties
- Enter into legal acts and contracts as a body corporate

COMPARISON WITH OTHER FORMS OF LEGAL ENTITIES

1. LLP Vs Partnership Firm

Basis	LLP	Partnership
Regulating law	Partnership Act, 1932	Limited Liability Partnership Act, 2008
Body corporate	Yes	No
Separate legal entity	Yes	No
Creation	By legal process	By agreement
Perpetual succession	Yes	No
Name	Ends with LLP	No guidelines
Liability	Limited to agreed contribution, except in case of fraud	Unlimited
Mutual agency	No mutual agency, Agent of LLP only	Agent of firm as well as the other partners
Designated partners	At least two individual designated partners. One of them must be resident	No such requirement
Common seal	Optional	No such concept
Responsibility for legal compliance	Only designated partners	All partners
Annual filing	Annual filings - Annual statement of accounts - Statement of solvency - Annual return with the ROC	No annual returns
Foreign partnership	Foreigners can become partners	Not allowed
Minor as partner	Minor cannot be admitted to the benefits	Minor can be admitted to the benefits

1) LLP Vs Company/Limited Liability Company/Joint Stock Company

Basis	LLP	Company
Regulating law	LLP Act, 2008	Companies Act 2013
Members/Partners	Those who contributed capital known as partners	Investors known as members
Name	Ends with LLP	Ends with Limited/Private Limited /(OPC) Private Limited
Internal governance	Governed by Agreement	Government by company law (Companies Act, 2013)
Minimum number of designated partners	2 individuals. One of them must be resident in India	1 for OPC- resident individual 2 individuals for Private company. One of them must be resident
Liability of members/partners	Limited to the extent of agreed contribution except in the case of fraud	To the extent of unpaid amount of shares
Management	As per agreement- Partners/Designated partners or both	Directors
Minimum number of designated partners	2 individuals. One of them must be resident in India	• 1 for OPC- resident individual • 2 individuals for Private company. One of them must be resident • 3 individuals for public company- One of them must be resident

<u>CONVERSION TO LLP</u>

- A partnership, private company and unlisted public company can be converted to LLP
- Documents for conversion shall be submitted to registrar of companies
- If the ROC is satisfied that all the requirement under LLP Act is complied with, he shall issue certificate of registration
- Within 15 days of issue of registration certificate, the so converted LLP shall inform the concerned Registrar of Firms or Companies about the conversion
- The name of the LLP will be specified in the registration certificate
- All the assets and liabilities, rights and obligations of the firm/company will be transferred to the LLP
- Old firm/company will be dissolved
- Partners/shareholder of the firm/company become partner of the LLP

COMPULSARY ANNUAL FILINGS BY LLP

1. **Filing of Annual return with the ROC**
   - Within 60 days from the end of financial year
   - In Form 11
   - Fine for LLP-₹ 25000- 5,00,000
   - Fine for designated partners- ₹10,000- 1,00,000
2. **Filing of Statement of Account and Solvency with the ROC**
   - Within 6 months from the end of every financial year
   - Prepare and submit statement of solvency and financials
   - As on the last day of the financial year
   - Signed by designated partners
   - In Form 8
   - Fine for LLP-₹ 25000- 5,00,000
   - Fine for designated partners- ₹10,000- 1,00,000