

Indian partnership act 1932 essay sample



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According to Section 4 of the Indian Partnership Act 1932, “ Partnership is the relation between persons who have agreed to share the profit of the business carried on by all or any one of them acting for all.” According to Prof. Haney, “ Partnership is the relation existing between persons competent to make contracts who agree to carry on a lawful business in common with a view to private gain. Here, business means and includes every trade occupation and profession which is legal. Features of Partnership

1. Contract or Agreement between the partners regarding the partnership. 2.

Association of two or more persons

3. Nature of activity. It must involve some legal business activity including profession, trade or occupation. 4. Sharing of profits equally or in proportion of the capital contributed by the partners. 5. Mutual agency: Every partner is both an agent and principal for himself and other partners.

Test of Partnership

There are various features of a partnership; a single trait cannot decide the existence of the partnership. There may be a business but not sharing of profit. Again, there may be sharing of profit but no relation of agency between the partners. The real test therefore is mutual agency i. e. whether a partner can act as an agent of all the other partners. We can conclude that all the features, most importantly the feature of mutual agency must be fulfilled for determining the existence of partnership.

Duration and Types of Partnership

Agreement between the partners and firm is the basis of formation of partnership. This agreement may be written or oral. But written agreement is

always preferred. The agreement must satisfy all the necessary elements of a valid contract. The duration of a partnership depends upon the nature of agreement between or among the parties.

1. Partnership at Will
2. Partnership for a fixed term
3. Particular Partnership.

1. Partnership at Will

There is no provision in the contract between the partners for the duration of the partnership. Any partner can dissolve the firm by giving notice to the other partners. If the partnership deed is silent regarding the term of the partnership then such partnership is said to be partnership at will. There exist some important features of a partnership at will a. No provision regarding duration of membership.

b. No provision for determination and termination of membership. c. Is supposed to be a partnership for an indefinite period. Section 7 of the IPA 1932 states that, “ Where no provision is made by contract between the partners for the duration of their partnership or for the determination of their partnership, this partnership is partnership at will.” 2. Partnership for a fixed term

In this case, the partnership is entered into for a fixed period of time, the completion of which entails the end of the partnership. The partners can however continue even after the completion of the term, upon which the partnership ceases to be partnership for a fixed term and becomes partnership at will. 3. Particular Partnership.

When two or more persons agree to carry on business in particular adventure of understanding, such a partnership is called a particular partnership. Such partnerships are formed to carry on certain ventures. If the partners agree to continue even after the completion of the venture, then the particular partnership ceases to exist and is replaced by partnership at will. Registration of partnership firms

1. All the essential elements of a valid contract must be fulfilled. 2. It is recommended that the partnership firm gets registration. Registration is voluntary but obligatory. 3. The proper drafting of the partnership deed is essential. The actual registration procedure of the firm is very simple. The firm has to submit application in the prescribed form with the registrar, where the firm is situated or proposed to be situated, along with prescribed fee and a copy of a partnership deed. After receiving the prescribed application form duly filed and signed by partners, the registrar shall see if all the provisions have been complied with. On satisfaction, the registrar will record the name of the firm in the Registrar of firms and the registration will be completed. Partnership firms are at liberty to register their firms at any time they please during the continuance of their business. Registration can also be done after a suit has been instituted but in that case such firm has to withdraw the suit first and get itself registered and then file a fresh suit again. Effect of non-registration

- a. Partner cannot sue other partners or the firm.
- b. Unregistered firm cannot sue third party.
- c. Unregistered firm cannot claim set off against the third party.

d. If a third party files suit against the company then the firm will have to bear the burden of compensation.

Mutual Relations of Partners

Right of Partners

1. Right to take part in the conduct of business.
 2. Right to access of books
 3. Right to interest on capital
 4. Right to share profit
 5. Right to interest on advances.
 6. Right to be consulted
 7. Right to indemnity
 8. Right to use property
 9. Right to prevent new admission
 10. Right to retire
 11. Right to protect the firm
 12. Right to retain in the firm
 13. Right to carry on competing business.
 14. An incoming partner will not be liable for any debts or liabilities of the firm before he becomes a partner.
- Duties of Partners

1. Absolute duties

- a. Duty to carry on business to the greatest common advantage
- b. Duty to render true accounts
- c. Duty to provide full information
- d. Duty to be just and faithful to others
- e. Duty to be liable jointly and severally

f. Duty to indemnify for loss caused by fraud

g. Duty not to assign his interests

2. Qualified duties

a. Duty to attend diligently to his duties

b. Duty to account for personal profit derived

c. Duty to contribute to losses

d. Duty to indemnify for wilful neglect

e. Duty to work without remuneration

f. Duty not to complete with the business of the firm

g. Duty to use firms property exclusively for the firm

h. Duty to work within the authority

3. Authority

a. Implied authority of partner as agent of the firm

b. Extension and restriction of partner's implied authority
c. Partner's authority in an emergency

Admission, Retirement, expulsion of partners and their liabilities
Admission of a partner

As per Section 31(1) of the IPA 1932, " Subject to the contract between the partners and subject to the provisions of Section 30 which deals with the admission of a minor as a partner to the benefits of partnership, no person shall be introduced as a partner without the consent of all existing partners."

The following are eligible for admission in a partnership firm as partners

1. A minor after attaining majority can be admitted as a partner in the existing partnership firm.
2. A partner who is eligible for contract can be admitted in the existing partnership as a partner.
3. There must be consent of all the

existing partners. The rule of majority does not prevail in partnership.

Liabilities

The liability of a newly admitted partner commences from the date of his admission as a partner into the partnership firm. However, the new partner can be made liable to the creditors for the existing debts under the following circumstances. 1. If the new partner of the firm has agreed to take over the liabilities. 2. The creditors must accept the new firm as their debtor replacing the old firm.

Retirement of a partner

Any partner may retire from the existing partnership provided the following conditions are fulfilled.

1. Consent of all partners has been taken.
2. Fulfilment of all terms and conditions in the partnership deed.

Liabilities

1. A retiring partner is liable to third parties till the public notice of retirement is given
 2. Retiring partner is liable for the acts of the firm undertaken but not complete at the time of retirement.
 3. A retiring partner may be discharged of his liabilities provide that the creditors agree to transferring the debt to the new firm.
 4. A partner cannot retire without giving necessary public notice.
- Expulsion of a Partner [Section 33]

It is the right of every partner not to be expelled from the partnership.

However, a partner can be expelled subject to the following conditions 1.

When there is an agreement between the partners to expel a partner. 2. The right of expulsion is used in good faith

3. The partners using the power are in majority.
4. A reasonable opportunity should be given to the concerned partner for being heard. Dissolution of the firm

According to section 39 of the Indian Partnership Act 1932, “ The dissolution of partnership between or among all the partners of a firm is called dissolution of the firm.” There exists a conceptual difference between dissolution of partnership firm and dissolution of partnership. When there is dissolution of partnership between or among all the partners, it is called dissolution of the partnership firm. When there is a variation or change in the relationship of the partners, it is called dissolution of partnership. It can thus be concluded that the dissolution of a partnership necessarily means the dissolution of partnership. But, the dissolution of partnership does not necessarily result to the dissolution of the partnership firm.

A partnership firm can be dissolved in 3 ways:

1. Voluntary dissolution
 - a. By agreement
 - b. By notice
 - c. On the happening of certain contingencies
2. Compulsory dissolution
 - a. When all but one partner is declared to be insolvent
 - b. If the firm’s business is declared as illegal.
3. Dissolution by order of court
 - a. Unsound mind of partner
 - b. Permanent incapacity

- c. Improper conduct
- d. Wilful or persistent breach of agreement
- e. Transfer of interest
- f. Continuous losses
- g. Just and equitable grounds

Rights and liabilities of the partners on dissolution

Rights of Partners

1. Right of winding up of business
2. Right of partners to enforce winding up
3. Right of premium
4. Right to use the name of the firm
5. Right to use individual property
6. Right of lien
7. Right to impose restrictions

Liabilities of Partners

1. Liability to 3rd party for the act done by any partner even after the dissolution until the public notice of dissolution of partnership is given by the firm or partner.
2. Every partner is liable for the acts done by any of the partner, even after the dissolution until the procedure of winding is not completed. This is not applicable for the insolvent or deceased partners.