



**NITIKA BACHHAWAT**

**BUSINESS LAWS**

**REVISION NOTES**

# **THE INDIAN PARTNERSHIP ACT**

**IN FORCE**

**since 1<sup>st</sup> oct, 1932**

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## Partnership is

- an agreement
- Between two or more persons
- To share the profits
- Of the business
- To be carried on by all or any one or more acting for all

## Essentials of partnership:

1. Agreement between two or more persons: partnership cannot arise by status there must be an agreement. The agreement can be express or implied .
2. To share profits: sharing of profit does not necessarily mean sharing of losses but when the partners share the profits they must also bear the losses.
3. Carry on a business: business means any trade, profession or occupation which is recurring in nature.
4. Business carried on by all or any one or more acting for all: the partner carrying the business is the agent as well as principal for the purpose of business of the firm. The act of the partner shall bind the firm and so partnership is the extension of law of agency and this is the cardinal principle of partnership.

## 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

1. There was an **agreement** between all the parties concerned.
2. The agreement was to **share the profits** and
3. The business was **carried by all or any one or more acting for all.**

Sharing of profit is the prima facie evidence of partnership true test is mutual agency

## TYPES OF PARTNERS

	Active	Sleeping	Nominal
➤Capital	Yes	Yes	No
➤Business	Yes	No	No
➤Profit (loss)	Yes	Yes	No
➤known	Yes	No	Yes
➤Liable	Yes	Yes	Yes
➤Notice	Yes	No	Yes

## Partners in profit only:

- They share only the profit not the loss.
- They are liable for the acts of the firm.

## Sub partner:

- Partner's partner.
- No rights or liabilities against the firm.
- Rights only against the partners share.

## Partners by Estoppel or Holding Out:

- Partner represents another person as a partner to third party.
- Outsider represents himself as a partner to a third party.
- Both the cases the person will have a severe liability.

# MINOR

“A minor cannot become a partner of the firm, he can only be admitted to the benefits of the firm.”

## RIGHTS OF A MINOR:

- Will get his share of profits.
- Can check, inspect and copy the accounts of the firm.
- Can sue the other partners for his share provided he severs all his connections with the firm.

## MINOR ( *CONTD.* )

### LIABILITY:

Minor will not be personally liable, liability of his property will be against his share.

### WITHIN 6 MONTHS

From the day he  
attains majority

**or**

Day he comes to  
know he was a  
beneficiary of the  
firm

*Whichever is later*

➤ Give a notice to the registrar of whether he wants to become a partner or not. If he fails to give the notice he will become the partner.

➤ If he becomes a partner he will be liable from the day he was admitted to the benefits of the firm.



## Rights of partner

1. Right to take part in the business of the firm.
2. Right to be consulted.
3. Right to check, inspect and copy the accounts of the firm. Should be bonafide
4. Right to remuneration. Only if stated in the agreement or if it is the custom of the firm.
5. Right to share of profit.
6. Right to interest on capital. Only if agreement or custom or statutory provision. Paid only out of profit and upto the day the firm is working.
7. Right to interest on advance. Even if there is a loss, if contract silent @6% and paid upto the date the advance is not paid off.
8. Right to be indemnified.
9. Right to stop the admission of a new partner.
10. Right to retire.
11. Right not to be expelled.
12. Right to get a subsequent share of profit.
13. Right to carry a competitive business.
14. Right to dissolve the firm.

## Duties of partner

1. The partners are bound to carry on the business to the common advantage.
2. They should be just and faithful to each other.
3. To render to any partner or his legal representatives, a true account and full information of all things affecting the firm.
4. Every partner is liable to indemnify the firm for any loss caused to it due to the fraud of a partner.
5. Every partner is bound to attend diligently to his duties relating to the conduct of the firm's business.
6. However, he cannot claim remuneration for participating in the business of the firm.
7. All partners are liable to contribute equally to the losses sustained by the firm.
8. A partner must indemnify the firm for any loss caused to the firm due to his willful neglect.
9. If a partner earns any profit from any transaction of the firm or by using the name, assets or connections of the firm he must account for the profit and refund it to the firm.
10. If a partner carries on a personal business competing with the firm he must account for and refund the profit earned to the other partners.

## Partnership property

The term “partnership property”, “partnership assets”, “joint stock”, “common stock” or “joint estate” all denotes all the rights, liabilities and interest to which the firm may be entitled.

All property, rights and interest that the partner may have brought into the common stock at their contribution.

All the property, rights or interests purchased by or for the firm, for the purpose of the business of the firm.

Goodwill of the business - As per section 14 goodwill of a business is regarded as a property of the firm subject to a contract between the partners.

## Personal profits earned by a partner

A - From any transaction of the firm or using the name or assets of the firm or from any personal business competing with that of the firm.

He will have to share the profit with the other partners.

B - If the agreement specifies that a partner cannot carry any personal business but a partner carries on a business not competing with that of the firm he will have to give damages to the other partners.

# IMPLIED AUTHORITY

Authority of the partner to act on behalf of the firm and bind the firm by his acts

A            B            C  
(Firm deals in sugar)

**The firm is liable**



A places an order with T for  
100 kgs of sugar

The act must be done in the ordinary course of the business

A            B            C  
(Firm deals in sugar)

**The firm is not liable**



A places an order with T  
for 100 kgs of rice

If the act is not done in the usual course of the business but the other partners ratify it is valid.

If usual act is done in an unusual manner duty of the third party to confirm with the other partners before acting on it.

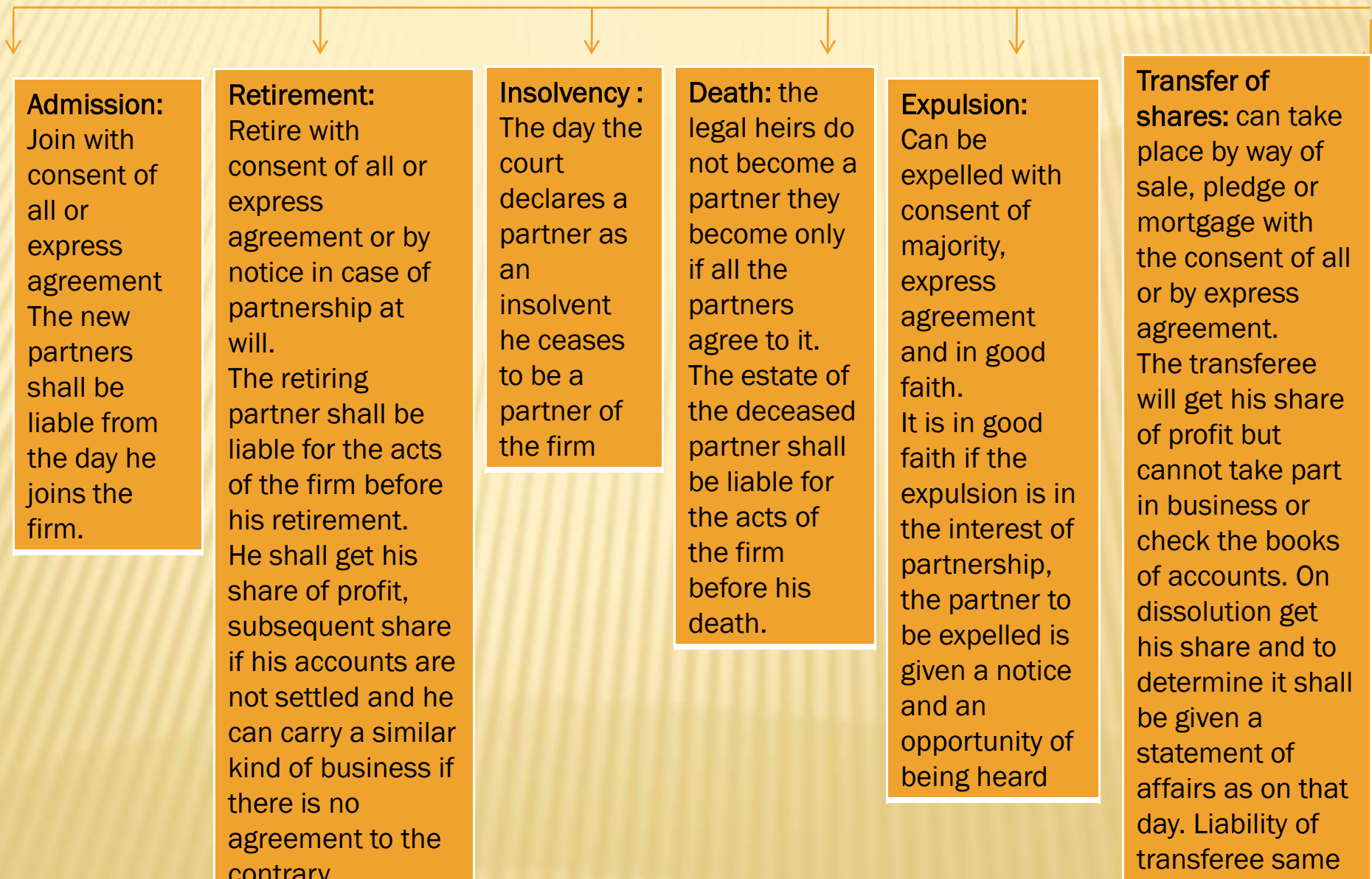
## Acts beyond implied authority

1. submit a dispute relating to the business of the firm to arbitration,
2. open a banking account on behalf of the firm in his own name,
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, or
8. enter into partnership on behalf of the firm.

## Extension or Restriction of Implied Authority of a Partner

- The implied authority of a partner can either be extended or restricted by express agreement.
- An outsider dealing with the firm shall be bound by such restrictions if he has knowledge about such restrictions.

## Dissolution of partnership



### Admission:

Join with consent of all or express agreement  
The new partners shall be liable from the day he joins the firm.

### Retirement:

Retire with consent of all or express agreement or by notice in case of partnership at will.  
The retiring partner shall be liable for the acts of the firm before his retirement. He shall get his share of profit, subsequent share if his accounts are not settled and he can carry a similar kind of business if there is no agreement to the contrary.

### Insolvency :

The day the court declares a partner as an insolvent he ceases to be a partner of the firm

### Death:

the legal heirs do not become a partner they become only if all the partners agree to it. The estate of the deceased partner shall be liable for the acts of the firm before his death.

### Expulsion:

Can be expelled with consent of majority, express agreement and in good faith.  
It is in good faith if the expulsion is in the interest of partnership, the partner to be expelled is given a notice and an opportunity of being heard

### Transfer of shares:

can take place by way of sale, pledge or mortgage with the consent of all or by express agreement. The transferee will get his share of profit but cannot take part in business or check the books of accounts. On dissolution get his share and to determine it shall be given a statement of affairs as on that day. Liability of transferee same

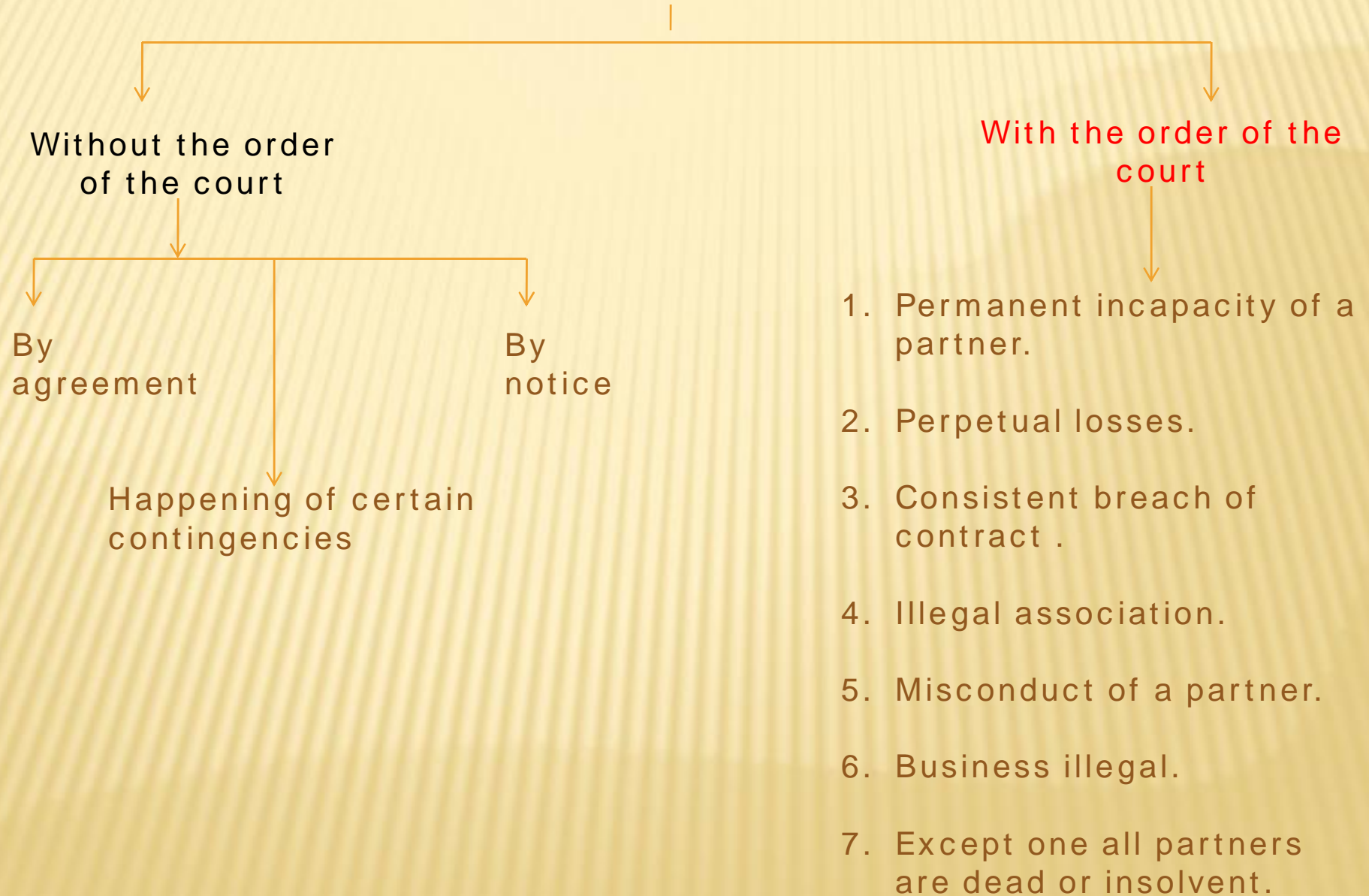
# REGISTRATION OF PARTNERSHIP

“Registration of partnership is optional but desirable”

## Disability of an unregistered firm:

- It cannot sue a third party but a third party can sue the firm.
- It cannot claim a set off of more than Rs. 100.
- The partners cannot sue each other but they can sue each other for the dissolution of the firm.

# DISSOLUTION OF FIRM





### Order of payment:

- outside liability
- Partners advance
- Partners capital
- Surplus (if any) distributed amongst the partner in PSR

If the assets of the firm is not sufficient to pay the debts of the firm the partners shall contribute to the deficit in their profit sharing ratio.

If a partner has both personal and partnership debts his personal assets shall be used first to pay his personal debts and then his partnership debts.

### Rule of Graner V, Murray

The solvent partners will bear their loss on realization in their profit sharing ratio.

The loss arising due to the insolvency of the partner shall be borne by the solvent partners in their last agreed capital ratio.

# DISSOLUTION OF THE FIRM DUE TO THE FRAUD OF A PARTNER

Exercise **lien** on the surplus

**Recover** expenses paid on behalf of the firm

Recover the **loss** from the fraudulent partner

## RETURN ON PREMIUM PAID

A partner pays premium to the other and the firm is dissolved before time the partner paying the premium can claim a return on the premium paid

Fault of both or neither

Fault of the partner receiving the premium

Insolvency of the partner receiving the premium

## RETURN ON PREMIUM PAID (contd.)

But partner **WILL NOT GET** return on premium in the following cases:

Fault of the partner paying the premium

Death of a partner

Express agreement

## **PUBLIC NOTICE**

- Official Gazette.
- Vernacular language newspaper.
- Registrar (if the firm is registered).