

Business Law Paper-II

Business Regulatory Framework

(S.Y.B.A.F.)

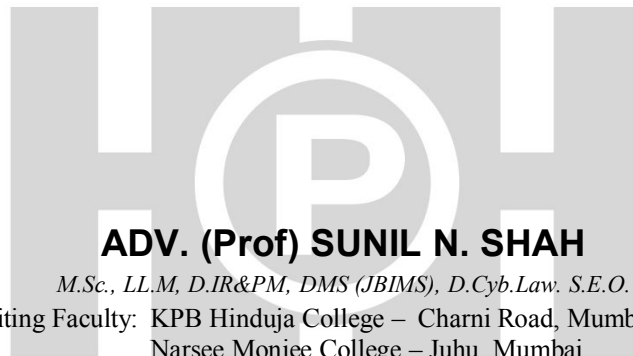
ADV. (Prof.) SUNIL N. SHAH

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BUSINESS LAW PAPER - II

**BUSINESS REGULATORY
FRAMEWORK**

(New Syllabus w.e.f from June 2014
For S.Y. BAF, Semester III, Mumbai University)



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Preface

It gives me a great pleasure in placing the book *Business Regulatory Framework* of S.Y. BAF (Sem-III) of Mumbai University. (Revised syllabus).

The book is written in lucid language, with a special focus on conceptual clarity, point by point analysis of feature of each topic or defination.

I express my sincere thanks to Mrs. Veena Saurabh Trivedi for giving me inspiration to write this book.

I solicit suggestions from our esteemed faculty and students which would enable us to incorporate in next edition and send e-mail at sunilnshah@rediffmail.com

I thank the director of Himalaya Publishing House Pvt. Ltd. Shri K.N. Pandey and Regional Manager Mr. S.K. Srivastava, Ms. Nimisha Kadam and Ms. Archana Gupte.

Adv. Sunil N. Shah

Syllabus

Business Law Paper – II (Business Regulatory Framework)

Sr. No.	Modules	No. of Lectures
1.	The Indian Partnership Act – 1932	30
2.	Limited Liability Partnership Act – 2008	10
3.	Factories Act – 1948	20
	Total	60

Sr. Modules/ Units

No.

1. The Indian Partnership Act – 1932

- (a) Concept of Partnership
 - Partnership and Company
 - Test for Determination of Existence for Partnership
 - Kinds of Partnership
- (b) Registration and Effects of Non-registration of Partnership
- (c) Rights and Duties of Partners
- (d) Authority and Liability of Partners
- (e) Admission, Retirement and Expulsion of Partner
- (f) Dissolution of Partnership

2. Limited Liability Partnership Act – 2008

- (a) Concept, Formation, Membership and Functioning of Partnership
- (b) Dissolution of Partnership

3. Factories Act – 1948

- (a) Definitions
 - Section 2 (k) – Manufacturing Process,
 - Section 2 (l) – Workers
 - Section 2 (m) – Factory
- (b) Provisions Pertaining to
 - (i) Health - Section 11 to Section 20
 - (ii) Safety - Section 21 to Section 41
 - (iii) Welfare - Section 42 to Section 49

Question Paper Pattern

Maximum Marks: 75 Questions to be Set: 05 Duration: 2½ Hrs.

All Questions are Compulsory Carrying 15 Marks each.

Q-1 Objective Questions

(A) Sub Questions to be asked 10 and to be answered any 08

(B) Sub Questions to be asked 10 and to be answered any 07

(*Multiple choice / True or False / Match the Columns,

Fill in the blanks

15 Marks

Q-2 Full Length Question OR Q-2 Full Length Question **15 Marks**

Q-3 Full Length Question OR Q-3 Full Length Question **15 Marks**

Q-4 Full Length Question OR Q-4 Full Length Question **15 Marks**

Q-5 Full Length Question OR Q-5 Short Notes to be asked
05 to be answered 03 **15 Marks**

Note: Full length question of 15 marks may be divided into two sub questions of 08 and 07 marks.

Contents

- 1. The Indian Partnership Act – 1932** **1 – 21**
 - 1.1 Concept of Partnership
 - 1.2 Registration and Effects of Non-registration of Partnership
 - 1.3 Rights and Duties of Partners
 - 1.4 Authority and Liability of Partners
 - 1.5 Admission, Retirement and Expulsion of Partner
 - 1.6 Dissolution of Partnership

- 2. The Limited Liability Partnership Act – 2008** **22 – 55**
 - 2.1 Definitions
 - 2.2 Nature of Limited Liability Partnership
 - 2.3 Incorporation of Limited Liability Partnership and Matters Incidental Thereto (*Formation of LIP*)
 - 2.4 Partners and Their Relations
 - 2.5 Extent and Limitation of Liability of Limited Liability Partnership and Partners
 - 2.6 Winding Up and Dissolution

- 3. Factories Act – 1948** **56 – 104**
 - 3.1 Definitions
 - 3.2 Health
 - 3.3 Safety
 - 3.4 Welfare

1 **The Indian Partnership Act – 1932**

Chapter

Structure:

- 1.1 Concept of Partnership
- 1.2 Registration and Effects of Non-registration of Partnership
- 1.3 Rights and Duties of Partners
- 1.4 Authority and Liability of Partners
- 1.5 Admission, Retirement and Expulsion of Partner
- 1.6 Dissolution of Partnership

1.1 Concept of Partnership

The Indian partnership Act came in to force on Oct 1, 1932 except 69 which came in to force in later.

Section 4 of the Indian partnership Act 1932 defines partnership as the relation between the person who has agreed to share the profit of business carried on by all or any of them acting for all.

Persons who have entered in to partnership with one and another are called individual and collectively a firm and the name under which their business is carried on is called the firm Name.

The Term “firm” is merely a commercial notion. Law does not invest the firm with legal personality apart from its Partners except for the purposes of assessment of Income Tax. A firm cannot become the member of another partnership firm though its partner can join any other firm as partners.

The name of the firm should neither violate any law relating to trade name or goodwill nor should it be calculated to mislead or cause confusion in the minds of those who happen to deal with it.

A partnership firm may add or delete any provision according to the requirement of the firm and its partners and in the interest of firms business.

Section 4 states that 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.

Essentials:

1. Association of two or more person
2. Agreement
3. Business
4. Sharing of Profits
5. Mutual Agency

1. Association of Persons: There should be at least two person should join together to constitute a partnership. Person can have any name for partnership unless it is misleading or prohibited.

2. Agreement: There must be an agreement entered in to by all people to carry on business them. Section 5 states that partnership is created by contract and not status. This is a very important point which shows distinction between a partnership and other business relation such as joint family business. The agreement may be express or implied. However, it is not necessary that there should be formal or written agreement. An agreement to create partnership may even arise from the conduct of the partners,

Case Law: In the case of *Abdul Vs Century wood Industries* it was held that agreement need not be express it can arise of course of business.

Also there should be contract to carry out the on business. The contract may be for fixed period or for temporary period. It May be for Particular venture or at will. The contract should have the entire essential element under Indian Contract Act. Co. owners or joint owners of any property are not partners unless there is an agreement between them to carry on business.

3. Business: A partnership can exist in business alone. Business includes every Trade, occupation and profession. Every trade may be a business but every occupation and profession is not a business. There is no judicial definition of this term. Different acts have given inclusive definition. It has been held a single transaction does not constitute a business. The concept of

business requires continuity of transaction. It is not necessary that the business should consist of a long and permanent undertaking. A partnership may exist in single business venture also. An agreement to carry on business at a future time does not result in partnership. Business must be for lawful purpose.

Case Law: Rangaswami Vs. Easwar Murthi.

IT was held that an agreement to purchase property at auction sales does not amount to partnership.

4. **Sharing of Profits.** The sharing of profits is an essential element of partnership agreement.

Case law: Cox Vs. Hickman: It was held that No man who is a partner unless he has the right to share the profit or the business but every man who receives the profit is not necessary a partner. Therefore, sharing of profit is only evidence of partnership, members of charitable, religious, political, social or cultural or clubs are not profits because they do not have any intention of making profits and sharing them. An Agreement may not mention any thing regard sharing of losses, because every man has a share in the profits has to share the lossess. The partners may agree themselves that one or more of them shall not be liable for loss. Partners can agree to share profits in different proportions. They may agree to share profits in different proportions. They may agree to receive fixed monthly payment instead of profits.

5. **Mutual Agency:** Business carried on by all or any of them acting for all this is a most important characteristic of a partnership. The person carrying on the business acts not only for himself but for others also. The person who carry on the business they do so agents for all persons in partnership. They are agents of each other and they are principal themselves. Their relationship is governed by law of agency therefore, a partner has double role that of Principal and Agent. In order to bind the partners it is necessary that they should contract in the Firms name and also in the course of business. The Partner contracting in his own name can create only personal liability.

Who is not a Partner?

Section 6 states the following persons are not partners

- (a) Joint owner sharing gross return
- (b) Lender of money receiving profits
- (c) Servant or agent receiving profits

- (d) Widow or child of deceased partner
- (e) Seller of goodwill.

Partnership and Company

Partnership

1. A partnership firm has no existence apart from its members.
2. Partnership is founded on the idea of Mutual agency, that is every partners is an agent of the remaining partner.
3. Liabaility of the partner is unlimited, i.e., even assets are liable for the debts of the firm.
4. A partner cannot transfer his interest without the consent of all other partners.
5. Unless there is contract to the contrary the death retirement or in solvency of partner result in the dissolution of the firm.
6. The Minimum number of person required to the form is two.
7. A partnership cannot be formed for Business with person exceeding 20; the number is limited to 10, in case of banking companies.
8. The audit of the accounts of the firm is not compulsory as per Indian partnership Act 1932.
9. The partnership firm is not expensive.
10. Partners individually are the owners of the Firm.

Company

1. A Company is a Separate legal entity distinct from its members.
2. A member of a company is not an agent of other members.
3. Liability of the member or shareholder of a limited company is limited to the extent of the amount remaining unpaid shares held by him or the amount of guarantee as mentioned in MOA.
4. A share holder subject to restriction contained in the article can freely transfer shares.
5. A company enjoys perpetual sucession. Death or retirement or insolvency of a member does not affect the existence of a company.
6. The Minimum number required to form a private company is 2 and in case public company is 7.

7. In case of public company there is no limit to the maximum numbers of members and for a private company the maximum members are 50.
8. The audit of accounts of a company is mandatory.
9. Limited company is always expensive.
10. The shareholders are the owners of the Limited company.

Test for Determination of Existence for Partnership

Sometimes, it becomes very difficult to determine whether a group of person running a business constitutes a partnership firm or not. Section 6 of the partnership Act provides: “In determining whether a group of persons is or not a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together”.

The important facts which help in determining the existence of partnership firm are as follows:

1. Agreement
2. Sharing of profits
3. Mutual Agency.

Besides these facts, books of accounts, correspondence, evidence of employees etc. will also help in determining the existence of partnership. It is important to note that these facts are not to be considered individually but are to be taken collectively and their cumulatively effect should be studied.

1. **Agreement:** Partnership is created by an agreement and not by status. Section 5 of the act lays down relation of partnership arises from contract and from status and in particular, the member of HUF carrying on the family business as such, are not partner in such business. Thus, the agreement forms the foundation of the Partnership, and therefore serves as a good test for partnership. But this is not the true test. An agreement, the statement by the parties in a document that they are partners does not necessarily constitute them partners in law. Similarly a person whose name has not been mentioned as a partner in the partnership agreement may be deemed to be a partner, e.g., a partner by holding out or by estoppels.
2. **Sharing of Profits:** Section 6 explains that the sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not, of itself, makes such persons partners. The receipt by a person of share of the profits of a business or a payment contingent upon the

earning of profits or varying with the profit earned by a business, does not of itself, make him a partner with the persons carrying on the business. Receipt of such share or payment by the following person will not, of itself, make them partners in the firm:

- (a) By a lender of money to person engaged or about to engage in any business,
- (b) By a servant or agent as remuneration (salaries and bonuses)
- (c) By a previous owner of the business as consideration for the sale of goodwill or its share thereof.

Similarly there are certain categories of person who are not given any share in the profits of the partnership firms, and even they can be held liable as partners. For example, a partner by estoppel or a nominal partner does not get a share in the profits of the firm, but he can be held liable to any person who has given credit to the firm on the belief that he is partner in the firm. As held in the case of COX Vs. HICKMAN that the receipt of share of profit of a business is prima facie evidence that he is a partner, but this is not a conclusive test. Though sharing of profits of a business is essential but it does not follow that everyone who participates in the profits of a business shall necessarily become a partner. Sharing of profits UN accompanied by an agreement or mutual agency will not establish partnership. Existence of partnership property, capital or sharing of losses is not essential for the existence of partnership.

Case Law: Barklie Vs. Scott: The father of a minor, paid a sum of money as the minor's share in the capital of a partnership and it was agreed that during the Son's minority, the profit should be paid to A's Account. The court held that Father cannot be regarded as a partner, of the firm, there is conflict of interest and no community of benefit.

3. **Mutual Agency:** Law of partnership may truly be termed as “an extension of the general principles of agency.” The position of partners in a partnership business is largely regulated by the law of principal and agent. The element that the business of partnership may be carried on by all partners or any of them acting for all in the definition of partnership, clearly establishes an implied agency rights for a partner, who conducts the business of the firm, on behalf of other partners. In carrying on the business of the firm, partners act as agents as well as principals. While the relation between the partners inter se is that of principals, they are agents of the firm and of one another in

relation to the third parties, for the purposes of the business of the firm. Every Partner enjoys an implied authority of binding the firm by his acts provided they relate to the business of the firm and are done by him in the name of the firm and in the usual course of the business of the firm. Existence of the relation of the principal and agent between the partners, therefore, is the true test of the existence of the partnership firm. This relationship of principal and agent distinguishes business from co-ownership as well as from an agreement to share profit of the business.

Kinds of Partnership

Partnership could either be for fixed term or for a particular adventure or partnership at will.

- (i) **Partnership for a fixed term:** It means partnership for a definite period as mentioned in a partnership deed. If the partnership continues even after the fixed period has expired then partnership of fixed terms gets automatically converted to partnership at will, the rights and liabilities are UN affected.
- (ii) **Particular Partnership:** Section 8 states particular partnership would be for particular adventure or undertaking and the partner incurs no responsibility beyond the limits of a particular adventure or undertaking. Example; Two builder may be partners so far as particular construction of building is concerned when they agree to share the profit accruing there from such consideration of that building and no further.
- (iii) **Partnership at Will:** Where no provision is made by contract between the partners for duration of their partnership or for the determination of their partnership, partnership is partnership at will Section 7.

Partnership at will has no provision made in the contract regarding the duration of partnership and therefore such partnership continues till one of the partners exercises. Section 43 read as “where the partnership is at will the firm may, be dissolved by any partner giving notice in writing to all the partners of his intention to dissolve the firm”. The firm is dissolved, as from the date mentioned in the notice if no date is mentioned, as from date of communication of notice”. Notice is communicated, at least 14 days in advance. Dissolution comes in to effect either from dates of such notice or on the receipt of such notice. However, partnership at will may be dissolved by filing a suit for dissolution in court the date of dissolution will be the date fixed in the preliminary decree.

1.2 Registration and Effects of Non-registration of Partnership

There was no provision for the registration of the partnership prior to passing of the Partnership Act 1932. In order to avoid difficulties in the enforcement of Provision in the areas not sufficiently developed for registration, each state government has been empowered by Section 56 of the act, to direct by notification in official gazette, that the provision of the act shall not apply to the state, or to any part thereof, specified in the notification.

Registrar of Firms: Each state government has been empowered by Section 57 to appoint a registrar of Firms and define his jurisdiction, i.e. e.g. the areas within which he shall exercise his power and perform his duties. The Registrar of firms shall maintain “Register of firms”.

Procedure for Registration: The Procedure of registration of firm is very simple. An application in the prescribed form with the prescribed fees is to be filed with Registrar of the Area in which any place of business of the firm is situated or proposed to be situated. The application states the following:

1. The name of the Firm which shall not contain any of the following words, namely- “crown”, King, Queen royal, or words expressing or implying the sanction, approval or patronage of the government unless prior approval of the government has been taken.
2. The Principal Place of the Business of the Firm.
3. The name of any other place/s where the firm carries on business.
4. The date when each partner join the firm.
5. The duration of the firm.
6. The name in full and permanent addresses of the partner.

The application shall be signed and verified by each partner or his agent specially authorized for this purpose in the manner prescribed by law.

As per Section 69 when the registrar is satisfied that the provision of Section 58 above mentioned have been duly complied with, he shall make an application in the register of firms and shall file the same.

As held in the case of Ghelabhai and Co. Vs. Chunilal and Co. It is to be noted that registration is effected as soon as an application in the prescribed form with the prescribed fee and necessary details as to the particulars of the partnership is delivered to the registrar. The registrar in

this section is only required to perform a routine duty of making the entry in the register of Firms.

Need for Registration

A partnership firm need not necessarily be registered. It is optional for a firm either to get itself registered or not. It is agreement between two or more persons and not the registration which brings in to existence a partnership firm. Registration provides only reliable evidence and a conclusive proof of existence of partnership firm. It cannot create a partnership. However partners of an unregistered firm cannot avoid their liabilities by pleading non existence of the partnership. Registration is essential for filing of all those suits arising from the contract or in respects of rights conferred by the act. Non-registration of firm will not make the partnership agreement or any transaction between the partners and their parties void. More ever law does not impose any penalty for registration.

Consequences of Non-registration

Section 69 States that the partnership Act denies the followings rights to an unregistered firm or its partner.

1. A partner of unregistered firm cannot file a suit to enforce a right arising from the contract or conferred by the act against the firm.
2. A partner of an unregistered firm cannot bring a suit to enforce a right arising from a contract against any past or present partner of the firm.
3. An unregistered firm itself cannot enforce a right arising from a contract against a third part in a court of law. The same is the position with regard to a claim of set off or other proceedings to enforce a right arising from a contract. It cannot claim any set off in a suit filed against it.

Non-registration of a firm does not, however affect the following rights:

1. The right of a partner to sue for the dissolution of a firm or for the accounts of a dissolved firm or to enforce any right or power to realize the property of a dissolved firm.
2. The power of an official assignee or receiver to realize the property of an insolvent partner.
3. The right of the firm or partners in a firm having no place business in India.

4. Any suit or set off in which the claim does not exceed rupees one Hundred.
5. The right of the partners of an unregistered firm to refer a Dispute to arbitration. A Partner of a un registered firm can get the arbitration clause in the partnership agreement enforced against the firm or other partner as held in case Jagdish Chandra Gupta Vs. Kajaria Traders.
6. The right of the partnership firm to set up its own claim or a Property under dispute by way of defense.
7. A suit for damages for misconduct against a partner by the firm or a partner of the firm on the firm behalf, as held in the case of Navinchandra Vs. Mool Chand.
8. The right of a third party to proceed against the unregistered Firm or its partners.

A partnership firm may be registered at any time even after the partners have agreed to dissolve it. But it must stand registered on the date of the institution of the suit; otherwise the suit will be dismissed. Also Registration during the pendency of the suit shall not prohibit the firm to file a fresh suit after registration, if it has not become time– barred.

1.3 Rights and Duties of Partners

1. Every partner has a right to take part in the conduct and management of the business. It is not necessary that each partner should participate in the conduct of business, but the right of participation is available to each partner.
2. Every partner has an inherent right to be consulted in all matters affecting the business of the partnership and express his views before other partners. Any difference on ordinary matter connected with the business may be decided by the majority and every partner has right to express his opinion before the matter is decided.
3. Every partner has right to have access to and to inspect and copy any books of the firm.
4. Subject to the contract between the partners, the property of the firms shall be held and used by the partners exclusively for the purpose of the business of firm.
5. The partner are entitled to share equally in the profits earned and shall contribute equally to the losses sustained by the firm

6. Where the partner are entitled to the interest, on capital subscribed by him such interest shall be payable only out of profits.
7. If the partner for the purpose of the business of the firm, has made any payment or advance beyond the amount capital he has agreed to subscribe is entitled, to interest thereon the rate of 6% per annum.
8. The partner has a right to be indemnified by the firm in respect of the payment and liabilities incurred by him in ordinary course of business and even when the partner has acted in emergency, for saving the firm as would have been done by person of ordinary prudence.
9. The partner has right not to be expelled, from a firm by any majority of partners except where expulsion is in good faith of powers conferred by the contract between the partners.
10. The partner has a right to prevent the introduction, of a new partner. All partners consent must be obtained for the admission of new partner.
11. Right to retire, a partner can retire either by consent of all partners or as the terms of contract states or by giving notice if it is partnership at will.
12. A partnership has a right to give notice to all the other partners of his intention to dissolve the firm where the partnership is at will.
13. Right of the partners to have the business wound up after the dissolution.

Duties of Partners

1. To carry on the business of the firm to the greatest advantage, to be just, faithful to each other, to render true accounts and full information of all things affecting the firm, to any partner or his legal representative.
2. Every partner shall indemnify the firm, for any loss caused to it, by his fraud in the conduct of the business of the firm.
3. Every partner is not entitled to receive remuneration, for taking part in the conduct of the business.
4. A partner shall indemnify the firm, for any loss caused to it, by his willful neglect in the conduct of the business of the firm.
5. If partners derive any profit for himself from any transaction of the firm, or from the use of the property or business connection

of the firm or in firm's name, he shall account for the profit and pay it to the firm.

6. If a partner carries on any business of the same nature, competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.
7. A partner is bound to act within the scope of his actual or apparent authority. In case he exceeds his authority and other partners do not ratify his unauthorized acts, he will be liable to the other partners for the loss that they may suffer on account of his such acts.
8. A partner cannot assign his rights or interest in a partnership firm to an outsider, so as to make the outsider a partner in the firm's business without the consent of other partners.
9. Every partner is liable, jointly with all the other partners and also severally, for all the acts of the firm done while he is a partner. A retired partner continues to be liable for the debts of the firm incurred till he gives public notice of his retirement.

1.4 Authority and Liability of Partners

Implied Authority: When the deed of partnership confers an authority on partners it is called an express authority. If an express authority is absent, and the partner carry out an act in the usual course and conduct of the business in the name of firm such an act is said to be done under an implied authority and therefore binds the firm. The act carried out; under implied authority binds only firm only.

- (a) In the usual way, i.e., an act becomes necessary under the usual way of conducting business. E.g., an order for medical goods is placed by a partner in the garment firm. Such an order is not in the usual course of business.
- (b) It is the nature of business of which ascertains as to whether an act under implied authority was in usual way of conducting business.
- (c) The act be done in the name of the firm or the instrument be done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm's name or in any other manner expressing or implying, an intention to bind the firm.
- (d) In other words any act or instrument executed by a partner or other person be done in the name of the firm, there should be an intention to bind the firm.

However the Implied authority does not empower the partner to do the following unless trade or custom of business permits. Therefore the partner cannot do the followings.

1. To submit a dispute relating to business of the firm to arbitrator.
2. To open a bank account on behalf of firm in his own name.
3. To compromise or relinquish any claim portion of the claim by firm.
4. To withdraw a suit on behalf of firm.
5. To admit any liability on behalf of the firm.
6. To acquire any immovable property on behalf of the firm.
7. To transfer any immovable property belonging to the firm.
8. To enter in to partnership on behalf of firm.

By virtue of Section 20 implied authorities can be extended or restricted. By contract between partners implied authority can be restricted or extended, implied authority can be exercised under following:

1. To file and defend suit and even engage professional to do the needful.
2. A partner has authority to act in emergency to do all such acts for the purpose of protecting the firm from the loss as would be done by a person of ordinary prudence, in his own case acting under similar circumstances and such acts bind the firm. In the process of this act the partner has a right to be indemnified by the firm.
3. An admission or representation made by partner concerning the affairs of the firm, if it is made in ordinary course of business.
4. Admission or representation means a statement of fact, made by partner either orally or through documents such a statement, could be admitting the liability, but this admission is made in ordinary course of business of firm and must pertain to the business of firm only. Once this admission or representation is made it is binding on the firm.

1.5 Admission, Retirement and Expulsion of Partner

Any change in the relation of the partners will result in the constitution of the firm. Thus a Firm will be reconstituted on the happening of any of the following events:

1. Admission of a Partner
2. Retirement of a Partner
3. Expulsion of a Partner

Admission of Partner

Section 31 states that a new partner cannot be admitted without the consent of all partners unless otherwise agreed upon. The position of new partner will be as follows:

When a new partner is admitted to an existing firm, he is not liable to any debt of the firm incurred, before he comes in as a partner. The new partner cannot be held responsible for the acts of old partner unless it is proved that:

1. The reconstituted firm has assumed the liability to pay debt and
2. The creditor concerned has agreed to accept the reconstituted firm as his debtor and to discharge the old firm from liability.

It is only the minor admitted to the benefits of partnership who, if he elects to become partner in the firm after attaining majority, shall become personally liable for all the acts of the firms done since he was admitted to the benefits of the Partnership. A newly admitted partner shall be liable only for the debts incurred or transaction entered in to by the firm subsequent to his becoming a partner.

Retirement of Partner

Section 32 state that a Partner may retire from the firm:

1. In accordance with an express agreement,
2. With the consent of all other partners, or
3. Where the partnership is at will by giving notice in writing to all the other partners of his intention to retire. A retiring partner may carry on business competing with that often firm and may advertise such business. But he has no right to:
 - (a) Use the name of the firm,
 - (b) Represent himself as carrying on the business of the firm,
 - (c) Solicit the custom of old customers of the firm except when he obtains these rights by an agreement with the other partners of the firm. When a partner retires, the other partners may, by an agreement, discharge him from all the

liabilities already incurred when he was a partner in the firm. Creditors may also at their option grant him a complete release either by an express or implied agreement. Example: A customer of a banking partnership, after the death of one of the partners, removed a certain amount from his current account to a fixed deposit account at the same bank. He also accepts a deposit receipt from the surviving partner. It was held in the case of *Bilborough Vs Holmes* that this amounted to novation and that the estate of the deceased partner was discharged from liability.

Till the retiring partner gives public notice of his retirement, he with the other partners of the firm, shall continue to be liable to the third parties for all the acts of the firm done by any of the partner except when the third parties dealt with the firm without any knowledge of the fact that he was a partner in the firm. Thus a dormant or sleeping partner who is not known to be member of the firm to the third parties dealing with the firm, may retire without giving notice of his retirement to the public. He will not liable at all for debts contracted after his retirement. Such a public notice may be given either by retiring partner or by any partner of the reconstituted firm. Retirement of a partner by death or insolvency also does not require any public notice.

Expulsion of a Partner (Section 33)

Ordinarily, a partner cannot be expelled from a partnership firm. However such expulsion can be made if all the following conditions are satisfied:

1. The power to expel a partner is available by an express agreement between partners.
2. The power has been exercised by a majority of the partners in good faith.
3. The partner, who has been expelled, was given reasonable notice and opportunity to explain his position and to remove the cause of his expulsion. An irregular or a malafide expulsion will not be operative. A partner, who is irregularly expelled, will not cease to be partner. He may, with the help of the law course, get himself reinstated. But in any case, he would not be allowed to recover damages from the other partners for his wrongful expulsion as held in case of *wood Vs wood*. The rights and liabilities of the expelled partners are the same as that of a retiring partner.

1.6 Dissolution of Partnership

The Partnership act makes difference between dissolution of partnership and dissolution of firm.

Dissolution of partnership: Any change in relationship of the partners is called dissolution of partnership. Thus in all those cases where a partnership is reconstituted, there is a dissolution of the partnership. For example in case there is a partnership between X and Y and new Partner Z is admitted, the partnership between X and Y comes to an end and new partnership between X, Y and Z comes in to existence. Hence in dissolution of the partnership, the firm continues in a reconstituted form.

Dissolution of the firm: According to Section 39 the dissolution of partnership between all the partners of a firm is called the dissolution of the firm. In the case of the dissolution of the firm, the business of the firm is closed down and its affair is wound up. The assets are realized and the liabilities are paid off.

The dissolution of a partnership may or may not result in the dissolution of the firm but the dissolution of a firm will necessarily result in the dissolution of the Partnership.

E.g. If there are three partners A, B & C in a business and C becomes insolvent. In the absence of any contract to contrary, the firm will stand dissolved on the insolvency of C. This will automatically result in the dissolution of the partnership. But A and B may agree to continue the business of the firm. In such a case, the firm continues though in a reconstituted form and, therefore, there is only the dissolution of the partnership and not the dissolution of firm.

Compulsory Dissolution - A Firm is Dissolved

- (a) By the adjudication of all the partners or of all partners but one as insolvent or,
- (b) By the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership.

Where more than one separate adventure or undertaking is carried on by the firm, the illegality of one or more shall not of itself cause the dissolution of the firm in respect of its lawful adventures and undertakings.

Sec-41 When all the partners or all the partners except one declared insolvent, firm shall be dissolved

Dissolution on the happening of certain contingencies - Subject to contract between the partners a firm is dissolved -

- (a) If constituted for a fixed term, by the expiry of that term

- (b) If constituted to carry out one or more adventures or undertakings by the completion thereof.
- (c) By the death of a partner.
- (d) By the adjudication of a partner as an insolvent.

On completion of the work, partnership come to an end - Dayalal vs. Harjeevan,

Partnership will be deemed to be dissolved after expiry of the fixed period 89.

Dissolution by notice of partnership at will:

1. 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.
2. The firm is dissolved as from the date mentioned in the `notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.

Dissolution of partnership at will Notice in writing to other partners is necessary - Asha Ram vs. Ramchander

Dissolution by the Court

At the suit of a partner, the Court may dissolve a firm on any of the following grounds, namely:

- (a) That a partner has become of unsound mind, in which case the suit may be brought as well by the next friend of the partner who has become of unsound mind as by any other partner.
- (b) That a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner.
- (c) That a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of the business, regard being had to the nature of the business.
- (d) That a partner, other than the partner suing, willfully or persistently commits breach of agreement relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conducts himself in matter relating to the business that it is not reasonably practicable for the other partners to carry on the business in partnership with him.
- (e) That a partner, other than the partner suing has in any way transferred the whole of his interest in the firm to a third party, or has allowed his share to be charged under Code of Civil Procedure, 1908 or has allowed it to be sold in the recovery of

arrears, of land revenue or of any dues recoverable as arrears of land revenue due by the partner.

- (f) That the business of the firm cannot be carried on save at a loss.
- (g) On any other ground which renders it just and equitable that the firm should be dissolved.

Liability for Acts of Partners Done after Dissolution

1. Notwithstanding the dissolution of a firm the partners continue to be liable as such to third parties for any act done by any of them which would have been an act of the firm if done before the dissolution unit public notice is given of the dissolution. The estate of a partner who dies, or who is adjudicated an insolvent or of a partner who not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable under this section for acts done after the date on which he ceases to be a partner.

2. Notices under Such - Section 91 may be given by any Partner

Right of partners to have business wound by after dissolution - On the dissolution of a firm every partner or his representative is entitled, as against all the other partners or their representatives, to have the property of the firm applied in payment of the debts and liabilities of the firm and to have the surplus distributed among the partners or their representatives according to their rights.

Continuing authority of partners for purposes of winding up - After the dissolution of a firm the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners, continue notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise. The firm is no case bound by the acts of a partner who has been adjudicated insolvent, but this proviso does not affect the liability of any person who has after the adjudication represented himself or knowingly permitted himself to be represented as a partner of the insolvent.

Suit on pronote filed by two partners - One partner died Surviving partner is competent to continue the suit - Abdul Rehman vs. Rameshwar Dayal.

Mode of settlement of accounts between partners - In setting the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed.

- (a) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital and, lastly, if necessary, by the partners individually in the proportion in which they were entitled to share profits.
- (b) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, shall be applied in the following manner and order:
 - (i) In paying the debts of the firm to third parties,
 - (ii) In paying to each partner rateably what is due to him from the firm for advances as distinguished from capital,
 - (iii) In paying to each partner rateably what is due to him on account of capital, and
 - (iv) The residue, if any shall be divided among the partners in the proportions in which they were entitled to share profits.

Personal profits earned after dissolution - Subject to contract between the partners, the provisions of clause:

- (a) Of section 16 shall apply to transactions by any surviving partner or by the representatives of a deceased partner, undertaken after the firm is dissolved on account of the death of a partner and before its affairs have been completely wound up. Where any partner or his representative has bought the good will of the firm nothing in this section shall affect his right to use the firm name.

Return of premium on premature dissolution – Where a partner has paid a premium on entering into partnership for a fixed term, and the firm is dissolved before the expiration of that term otherwise than by the death of a partner, he shall be entitled to repayment of the premium or of such part thereof as may be reasonable, regard being had to the terms upon which he became a partner and to the length of time during which he was a partner unless

- (b) The dissolution is mainly due to his own misconduct or The dissolution is in pursuance of an agreement containing no provision for the return of the premium or any part of it.

Rights where partnership contract is rescinded for fraud or misrepresentation

Where a contract creating partnership is rescinded on the ground of fraud or misrepresentation of any of the parties thereto, the party entitled rescind is, without prejudice to any other right entitled:

- (a) To a lien on or a right of retention of, the surplus of the assets of the firm remaining after the debts of the firm have been paid for

any sum paid by him for the purchase of a share in the firm and for any capital contributed by him,

- (b) To rank as a creditor of the firm in respect of any payment made by him to wards the debts of the firm, and
- (c) To be indemnified by the partner or partners guilty of the fraud or misrepresentation against all the debts of the firm.

Right to restrain from use of firm name or firm property - After a firm is dissolved, every partner or his representative may in the absence of a contract between the partners to the contrary, restrain and other partner or his representative from carrying on a similar business in the firm name or from using any of the property of the firm for his own benefit, until the affairs of the firm have been completely wound up and that Where any partner or his representative has bought the goodwill of the firm, nothing in this section shall affect his right to use the firm name.

Agreement in Restraint of Trade

Partners may upon or in anticipation of the dissolution of the firm, make an agreement that some or all of them will not carry on a business similar to that of the firm within a specific period or within specified local limits and notwithstanding anything

contained in Section 27 of the Indian Contract Act 1872 such agreement shall be valid if the restrictions imposed are reasonable.

Sale of good will after:

1. In settling the accounts of a firm after dissolution the goodwill shall, subject to contract between the partners, be included in the assets, and it may be sold either separately or along with other property of the firm.
2. Right of buyer and seller of good will – Where the goodwill of a firm is sold after dissolution, a partner may carry on a business competing with that of the buyer and he may advertise such business, but subject to agreement between him and the buyer, he may not:
 - (a) Use the firm name,
 - (b) Represent himself as carrying on the business of the firm, or
 - (c) Solicit the custom of persons who were dealing with the firm before its dissolution.
3. Agreement in restraint of trade- Any partner may, upon the sale of the goodwill of a firm, make an agreement with the buyer that such partner will not carry on any business similar to that of the firm within a specified period or within specified local limits and

notwithstanding any thing contained in Section 27 of the Indian Contract Act, 1872, such agreement shall be valid if the restrictions imposed are reasonable.

Goodwill is a part of assets of the partnership firm – *Khusal Khemgal Shah vs. Mrs. Khurshed Banu*

Mode of giving public notice – A public notice under this Act is given.

- (a) Where it relates to the retirement or expulsion of a partner from a registered firm, or to the dissolution of a registered firm, or to the election to become or not to become a partner in a registered firm by a - person attaining majority who was admitted as a minor to the benefits of partnership, by notice to Registrar of firms under Section 63, and by publication in the Official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business and.
- (b) In any other case, by publication in the Official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business.