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# **VIRTUAL COACHING CLASSES ORGANISED BY BOS, ICAI**

## **FOUNDATION LEVEL PAPER 2A: BUSINESS LAWS**

**Faculty: CA. Harleen Kaur**



# The Indian Partnership Act 1932

Section 4 of the Indian Partnership Act, 1932 defines Partnership in the following terms:

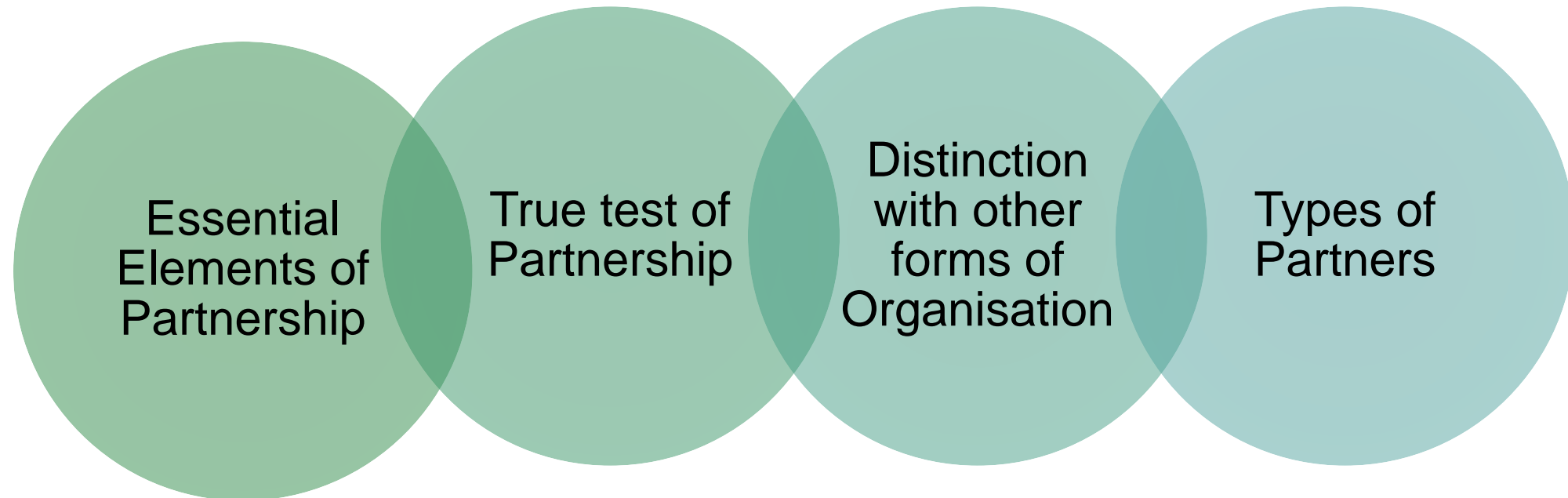
“ Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.”





# Topics to be covered

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# Elements of PARTNERSHIP

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Partnership is an association of two or more persons

The partnership must be a result of an agreement entered into by all persons concerned

Partnership is organised to carry on some business

The agreement must be to share the profits of the business

The business must be carried on by all or any of them acting for all



# True Test of Partnership

- 1) There must be **an agreement** between all the persons concerned
- 2) The agreement must be to **share the profits** of a business.
- 3) The business was **carried on by all or any of them** acting for all.





# Partnership Vs Company

Basis	COMPANY	PARTNERSHIP FIRM
LEGALITY	Company is an artificial legal person.(Saloman Vs Saloman)	Partnership is not a legal entity.
PERPETUAL SUCCESSION	Company has perpetual succession.	Partnership firm does not have perpetual succession.
REGISTRATION	Company is created by registration under Companies Act, 2013.	For a partnership firm registration is not compulsory. It is guided by Indian Contract Act and Partnership Act.
NUMBER OF MEMBERS	A Private Company can have maximum 200 and minimum 2 members. A Public can have any number of members but not less than 7. There can be OPC also.	As per Companies Act 2013, the number of members in any association shall not exceed 100. Rule given under the Companies (Miscellaneous) Rules, 2014 restrict the present



# Partnership Vs Company

Basis	COMPANY	PARTNERSHIP FIRM
DISTRIBUTION OF PROFITS	There is no such compulsion to distribute the profits among the members. Dividend is declared out of profits.	The profits of the form are distributed as per the Partnership Deed
PROPERTY	In Company, its property is separate from that of its members who can receive it back only in the form of dividends or refund of capital.	The firm's property is the "Joint Estate" of all the partners.
TRANSFER OF SHARES	Shares of a private limited company can be transferred with ease.	A share in Partnership cannot be transferred without the consent of all the partners.



# Partnership Vs Company

Basis	COMPANY	PARTNERSHIP FIRM
LIABILITY	In a Company, liability of the members can be limited by shares or by guarantee. There can be unlimited liability also.	Liability of members is unlimited in a partnership firm.
AGENCY	A member is not an agent of company or of other members.	Partner is an agent of firm and other partners.
MANAGEMENT	Only director members can take part in management	Partners can take part in management of a firm.
WINDING UP	A Company is wind up by National Company Law Tribunal or its name is struck of by the Registrar of Companies.	A partnership may be dissolved by any partner at any time if all the partners agree.





# Partnership Vs Club

Basis	PARTNERSHIP FIRM	CLUB
OBJECTIVE	Profit	Not Profit
RELATIONSHIP	Partners	Members
INTEREST IN PROPERTY	Yes	No
DISSOLUTION	Change in partners effect existence	Change in members don't effect existence



# Partnership Vs Co - Ownership

Basis	PARTNERSHIP FIRM	CO - OWNERSHIP
FORMATION	Contract – Express, implied	Agreement or operation of law (inheritance)
IMPLIED AGENCY	Yes	No
NATURE OF INTEREST	Sharing of profits and losses	Not necessarily profits and losses
TRANSFER OF OWNERSHIP	Only with consent of partners	Without consent



# Partnership Vs Association

Basis	PARTNERSHIP FIRM	ASSOCIATION
OBJECTIVE	To share the profits of a business.	Social Cause. Intention is not to enter into a business.
EXAMPLES	To run a business for Profit purpose	Charitable or Religious association



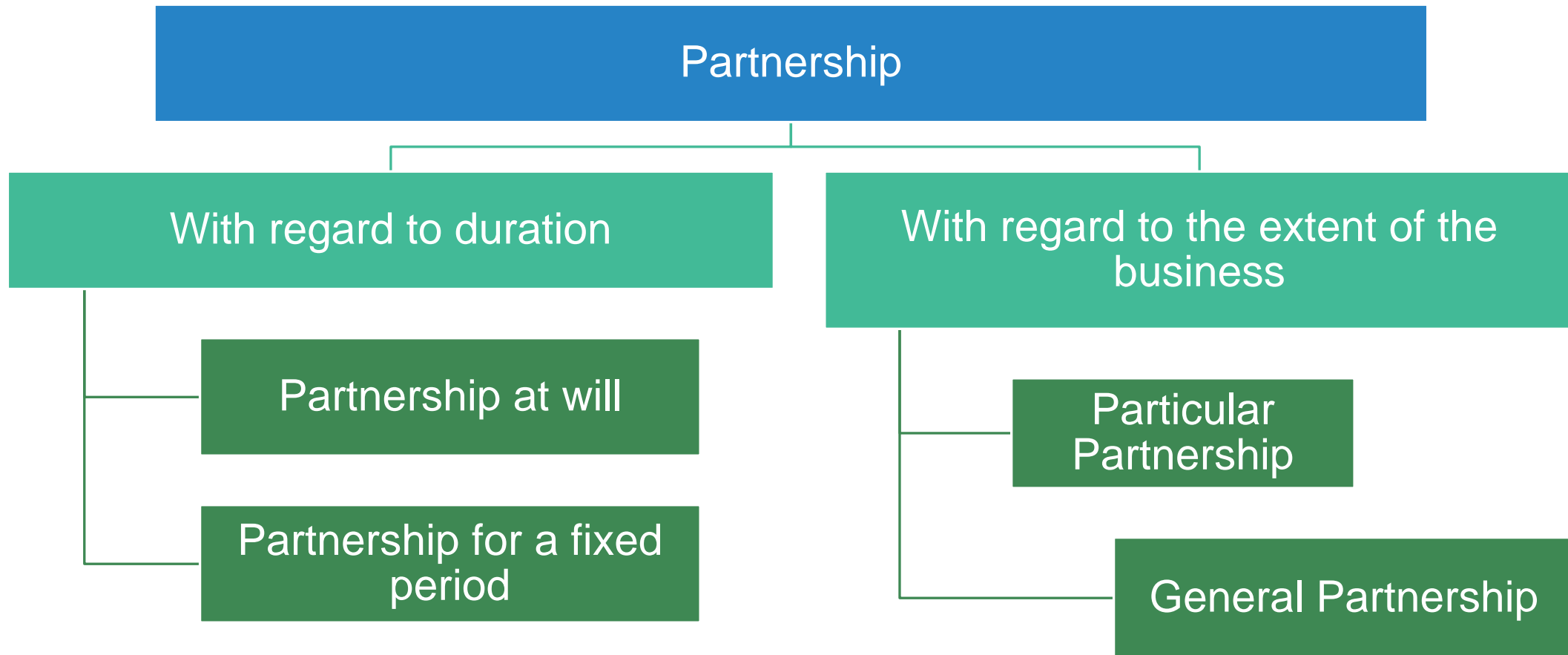
# Partnership Vs Joint Hindu Family

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- 1) Partnership is created by an agreement however right in the joint family is created by status means its creation by birth in the family.
- 2) In partnership, liability of partner is unlimited whereas in HUF, only liability of Karta is unlimited.
- 3) In case of partnership, number of members should not exceed 50 but members of HUF who carry on business can be unlimited.
- 4) In partnership, minor can be admitted for the benefits of partnership whereas in HUF, a minor becomes member of the ancestral business by birth and not by attaining majority.



# Kinds of Partnership





# Partnership Deed

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- ❑ A partnership is formed by an agreement.
- ❑ This agreement may be in writing or oral. though the law does not expressly require that the partnership agreement should be in writing, it is desirable to have it in writing in order to avoid any dispute with regard to the terms of the partnership.
- ❑ The document which contains the term of a partnership as agreed among the partners is **called “Partnership Deed”**.
- ❑ The partnership Deed is to be duly stamped as per the Indian Stamp Act, and duly signed by all the partners.



# A partnership deed should contain the following clause

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- Name of the parties
- Nature of business
- Duration of partnership
- Name of the firm
- Capital
- Share of partners in profits and losses
- Banking, Account firm Books of account



# A partnership deed should contain the following clause

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- Powers of partners
- Retirement and expulsion of partners
- Death of partner
- Dissolution of firm
- Provision for salaries or commissions, if any, payable to partners



# Types of Partners

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1. Active Partner
2. Sleeping or Dormant Partner
3. Nominal Partner
4. Partner in profits only
5. Incoming Partner
6. Outgoing Partner
7. Partner by Holding Out



# Active and Sleeping Partners



# Nominal Partner

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Lend his name  
to the firm

Does not have any  
real interest in firm

Not entitled to  
share the profits

No participation in  
conduct of business

Liable to third parties  
for all acts of firm

# Partner in Profits Only

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Entitled to share the profits only



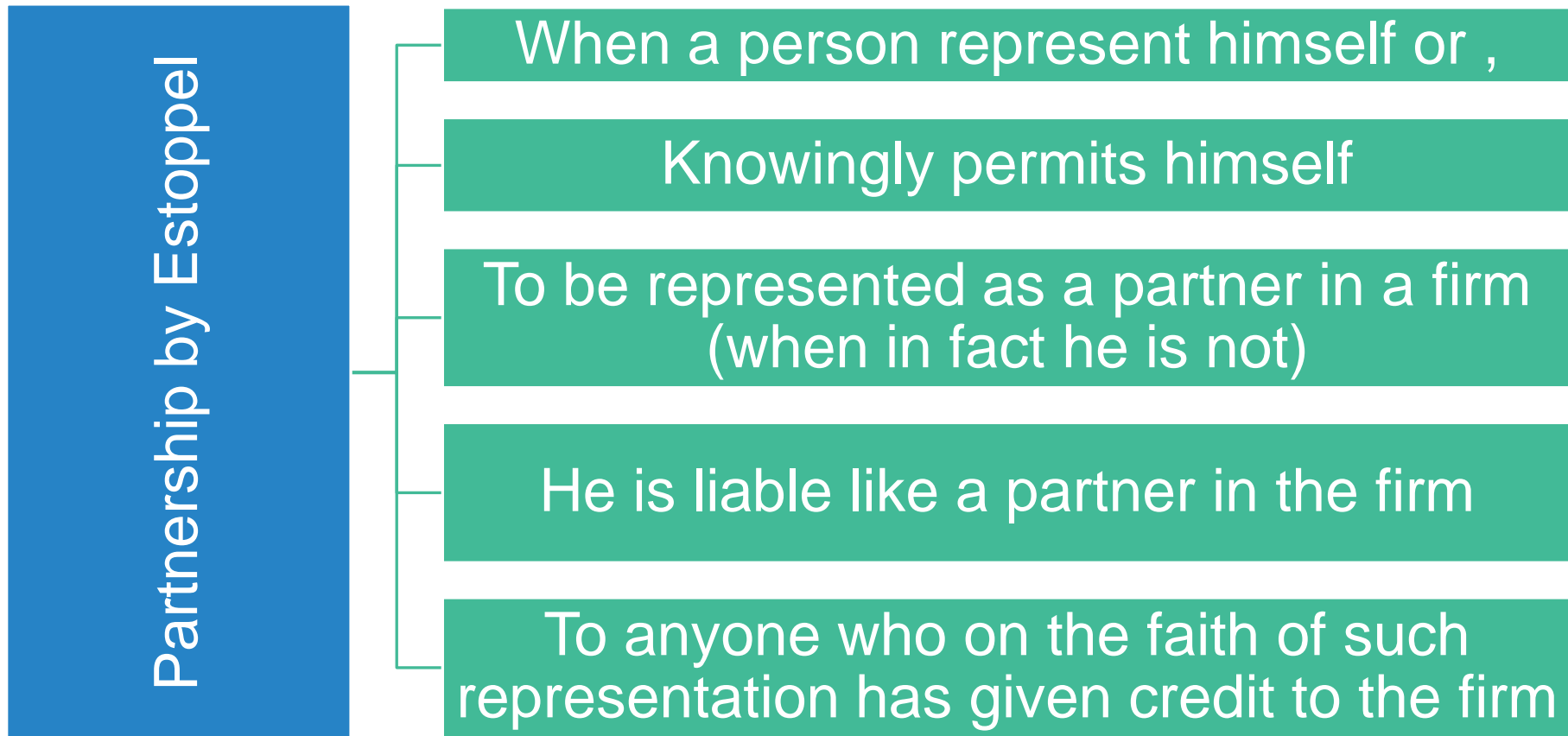
Not liable for the losses



Liable to third parties for the acts of PROFITS only



# Partner by Holding out – Section 28





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**THANK YOU**