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VIRTUAL COACHING CLASSES ORGANISED BY BOS, ICAI

FOUNDATION LEVEL PAPER 2A: BUSINESS LAWS

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Topics to be covered

Mutual
Rights
and
Duties

Relation
of
Partners
with Third
parties

Implied
Authority
of a
Partner

Partners
coming in
and going
out



Relation of Partners to one another

General Duties of Partners

- 1) To carry on the business of the firm, **to be just and faithful**, to give true accounts and complete information.
- 2) To **indemnify the firm for the loss** caused by him during the conduct of the firm's business
- 3) To contribute to the losses of the firm in equal proportion.
- 4) Not to assign his own share to some other party
- 5) To attend to his **duties diligently**



Rights of Partners

1. Right to take part in the **conduct of the business.**
2. Right to be **consulted.**
3. Right to **access** the books.
4. Right to **remuneration.**
5. Right to **share the profits.**
6. Right to **interest on capital**
7. Right to **interest on advances.**
8. Right to **be indemnified.**



Partnership Property

The Property of the firm
(Section 14)



GOODWILL OF THE
FIRM



Application of the property
of the firm (Section 15)

Personal profits earned by Partners (Section 16)



1. A,B,C and D set up partnership business for refining sugar. A, who was himself a wholesale grocer was aware of the variations in sugar market and has already kept in stock the sugar at low price. He sold the same sugar to the firm at the time of need without informing that the sugar belongs to him. It was held that A was bound to account for the profits made by him in this transaction.
2. A,B, C And D started partnership business for importing salt from foreign ports and selling it at Chittagong. A, struck certain transactions in salt on his account, which were found to be of the same as the business carried on by the Partnership. It was held that A was liable to account to the firm for the profits made by him for his business.



Relation of Partners to Third Parties

1. Nature and extent of liability of firm for the acts of a partner (Sec. 18-27)
2. Doctrine of Holding out, Creating liability of a non partner (Sec. 28)
3. Rights of transferee of a partner's interest (Sec. 29)
4. Position of Minor admitted to the benefit of Partnership (Sec. 30)





Nature and extent of liability of firm for the acts of a partner (Sec. 18-27)

Section 18 partners to be agent of the firm – subject to the provisions of this Act, a partner is the agent of the firm for the purpose of the business of the firm.

- All the laws applicable to agent would apply on partners as well.
- Agency **extended only to the business and does not cover works in the individual capacity.**
- The agency operates against sleeping or dormant partners as well, they too are liable for the acts of acting or ostensible partners.



Authority of a Partner

It means capacity of partner to bind others by his act.

Does All acts of partners binds the firm????

No, Only the acts related to the business of the firm binds the firm

Example - ABC firm, Mr. A, a partner in the firm books tickets through travel agent for a holiday. This partner A does not make payment to the travel agent, can we say firm is bound for this act of A?

Firm will not be bound by his acts because this act was done for his personal purposes.

Implied authority of the partners (Section 19)



Authority can be

1. **Expressed Authority** – given by Agreement or Partnership Deed
2. **Implied Authority** – the acts or conduct of the partners (i) related to the normal business of the firm(ii) acts in usual way of carrying the business (iii) acts in firms name or intention to bind the firm.

Example- The normal business is to purchase and sell the shoes. Say one of the partner purchase clothes instead of shoes. Does the partner has implied authority to do such an act? The answer is NO, because partner can do only the acts which are related to the business. Hence the firm will not be bound by such acts.



Restrictions on Implied Authority

Statutory restrictions on Implied Authority - means partners cannot do the following acts **unless** agreed in the partnership agreement:-

1. Submit a dispute for arbitration;
2. Open a banking account on behalf of the firm in his personal name;
3. Compromise or relinquish any claim by the firm;
4. Withdraw a suit or proceeding filed by firm
5. Admit any liability in a suit or proceeding against the firm;

Restrictions on Implied Authority

6. Acquire immovable property on firm's behalf;
7. Transfer immovable property belonging to the firm;
8. Enters into partnership on behalf of the firm



Extension and Restriction of Partner's Implied Authority(Section 20)

- Partners by *mutual agreement* extend or restrict the implied authority
- Third party is not bound by such restriction, unless he has knowledge about such restrictions
- **Example** – A,B and C partners selling furniture. A agreed not to buy furniture of more than Rs. 10,000. But he purchased furniture of Rs 20,000 from X. X is not aware of this restriction, so can always claim the money from the firm. But if X is aware of the restriction that A cannot buy more than 10,000 still he supplies him furniture for Rs. 20,000, then he cannot claim it from the firm as he was already aware of restriction.



Liability to Third Parties (Sec 25-27)

Liability of Partners is
Joint and Several
(Section 25)

Liability for Wrongful
Acts of a
Partner (Section 26)

Liability of firm for
Misapplication by
Partners (Section 27)



Liability to Third Parties (Sec 25-27)





Rights of transferee of partner's interest (Sec. 29)

- Introduction of a new partner-resulting into change in the nature of firm hence consent of all is mandatory.
- Failure to obtain consent – ground for demand of dissolution
- Interest in partnership firm may be transferred. Interest includes profit, assets of the firm.
- Rights of transferee 29(1) • Only receives the shares as per the profit declared by the partners. • No right to conduct business, accounts, inspection of books etc.



Rights of transferee of partner's interest (Sec. 29)

- Sec. 29(2) in case of dissolution of the firm transferee is entitled to the assets of the original partner and for that also to the accounts.

To Sum up-

- 29(1) deals with business in continuation
- 29(2) deals with the business when it comes to an end



Minor Admitted to the Benefit of Partnership (Sec. 30)

- Minor's contract – not valid
- Minor not competent to contract

Pre-requisites of admission Sec. 30(1) A minor may not be a partner in a firm, but with consent of all the partners for the time being, he may be admitted to the benefits of partnership.

- Existence of partnership firm
- Consent of the partners to admit minor in the firm





Minor Admitted to the Benefit of Partnership (Sec. 30)

- **Minor's position during minority** – He has right to profit and access to any of the firm's accounts and inspection of copies thereof. Limitation is that he cannot inspect other papers, books etc. Before suing the firm for accounts or to recover his share of property or profit, minor must sever his connection with the firm
- **Option on attaining majority** - With Public notice within 6 months of attaining majority or, Within 6 months of acquiring knowledge Minor can decide to continue or discontinue in partnership. Failure to give notice would result into his becoming a partner in the firm.



Incoming and outgoing of partners

Incoming Partners

- **Section 31 (1)** subject to contract and section 30, without unanimous consent no person shall be introduced as partner.
- **Section 31(2)** subject to provision of section 30, no person is to become liable for any act done before his partnership in the firm.
- Though nothing prevents him to take up liability if he wants to take for previous actions.



Outgoing Partners

Outgoing partners

- 1. Retirement (Sec. 32)
- 2. Insolvency (Sec. 34)
- 3. Expulsion (Sec. 33)
- 4. Death (Sec. 35)



The firm is not necessarily dissolved and partnership may continue with the existing partners.



Retirement of A partner

Retirement (Section 32)

1. With the consent of all the partners
2. As per agreement
3. By giving notice in partnership at will

Liability for acts done before retirement • Liable for all the acts done before retirement. Thus a partner can retire from the firm but not from the subsisting liability. He may be discharged from the liability to any third party for firm's acts done before his retirement by any agreement made by him with such third party



Retirement of A partner

Liability for acts done after retirement Sec. 32 (3) –

- Retiring partner continues to be liable for the acts done after retirement as well till the time public notice has been given.
- Retiring partner is not liable to any third party who deals with the firm without knowing that he was a partner.
- Notice may be given by the retiring partner or any other partner of the reconstituted firm.

Public notice is not necessary in the cases where partner is – Dead, Insolvent, Dormant



Expulsion of A partner (Section 33)

A partner may not be expelled from a firm by any majority of the partners, save in the exercise in good faith of powers conferred by contract between the parties.

1. The Power of expulsion must have existed in a contract between partners
2. The power has been exercised by a majority of partners
3. It has been exercised in good faith



Expulsion Of A Partner (Section 33)

The Expulsion must be in the interest of partnership

The partner to be expelled is served with a notice

He is given an opportunity of being heard



Insolvency of A partner (Section 34)

- **Section 34(1)** a partner ceases to be a partner on the date on which the order of adjudication is made. whether or not the firm has been dissolved.
- **Section 34(2)** where the firm has not been dissolved the estate of the insolvent partner is not liable for any act of the firm and the firm is not liable for any act of the insolvent done after the date on which the order of adjudication is made.



Death of A partner (Section 35)

Death of a partner (Sec. 35)

Where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death



Rights of outgoing partners

Section 36 right to carry on competing business subject to

- Use of the firm's name
- Representing himself as carrying on the business of firm or;
- Solicit the customers of the firm

Section 36 (2) Restriction on competing business Restriction on carrying the business within specified limits up to sometime can be included in the agreement.



Right to share subsequent profit

Section 37 right to share subsequent profit Subject to contract

1. Claim over profit proportionate to the share, or;
2. Interest @ 6% per annum.



THANK YOU