

Vipul'sTM
BAF Series

(Business Law - II)

BUSINESS REGULATORY FRAMEWORK

(Paper)

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Vipul's
(Business Law - II)
BUSINESS
REGULATORY
FRAMEWORK

(BAF Second Year : Third Semester)
(Core Courses – Compulsory)

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Chapter 1

Definition, Formation and Types of Partnership

DESIGN

- 1.1** DEFINITION AND ESSENTIALS OF PARTNERSHIP
- 1.2** TEST OF PARTNERSHIP
- 1.3** PARTNERSHIP DEED
- 1.4** PARTNERS, FIRM, FIRM NAME
- 1.5** TYPES OF PARTNERSHIP
- 1.6** DISTINCTION BETWEEN 'PARTNERSHIP' AND 'OTHER FORMS OF BUSINESS ACTIVITIES'
- 1.7** REGISTRATION OF FIRMS AND CONSEQUENCES OF NON-REGISTRATION

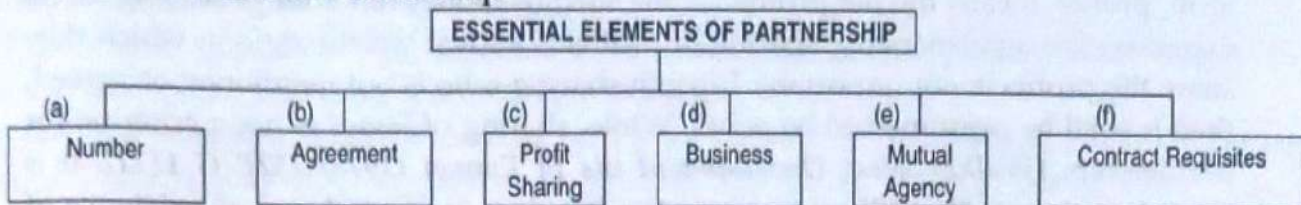
1.1 DEFINITION AND ESSENTIAL FEATURES OF PARTNERSHIP

S. 4 of the Act defines 'Partnership' as –

"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."

Persons who have entered into partnership with one another are called individually 'partners' and collectively 'a firm'. The name under which their business is carried on is called the 'firm name'.

Essential features of Partnership:



Acronym: Name, Address, Phone (of) Brihanmumbai Municipal Corporation

(a) **Number:** For a partnership agreement minimum two persons are required. In case of banking business the maximum number permissible is 10, while in any other business, the number cannot exceed 20. All persons must have the capacity to enter into a contract. Whenever the number exceeds the limit permissible, it becomes an illegal association of persons unless it takes another legal form of activity or business.

The following persons for want of capacity cannot enter into contract and accordingly cannot be a partner in a firm:

(i) **Minor:** A minor cannot become a partner in a firm, but with the consent of all the partners, a minor can be admitted to the benefits of partnership.

(ii) **Alien Enemy:** An Alien enemy cannot enter into a partnership with an Indian subject. However, a native of Alien friend country can enter into a partnership with Indian citizen.

(iii) **Person of unsound mind:** A person of unsound mind is not competent to enter into a contract of partnership.

(iv) **Firm:** A firm cannot be a partner in another firm as it has no legal existence of its own. However, a partner can be a partner in another firm.

(b) **Agreement:** There has got to be an agreement between two or more persons to form partnership. However, this agreement may be express which may be oral or in writing. Partnership may also be implied from the conduct of the partners. S.5 of the Act states, "the relation of partnership arises from a contract and not from status". An agreement to carry on business at a future time does not result in partnership unless that time arrives and business is commenced. The agreement must satisfy the essentials of a contract. The registration of the agreement is not a must.

Example: Carlos decides to paint houses during his summer break. He gathers some materials and gets several jobs. He hires Wally as a helper. Wally is very good, and pretty soon both of them are deciding what jobs to do and how much to charge, and they are

splitting the profits. They have an implied partnership, without intending to create a partnership at all.

Example: Two brothers sold their inherited property and invested the money in two separate timber business. There was no formal agreement. It appeared they agreed to share the profits. Held, it was partnership. [Abdul v. Century Wood Industries. (AIR 1954 Mys. 33)]

- (c) **Sharing of Profits:** The word 'partnership' is derived from the word 'to part' which means 'to divide'. Thus division or sharing of profits is a must in partnership. The term 'profits' means the net profits i.e. the surplus money left after providing for all expenses. For a partnership, sharing of profits is a must but the ratio in which they share the profits is not important. If profit sharing ratio is not mentioned or agreed, then it shall be presumed to be equal. While, sharing of losses is not a criterion for partnership. [*Walker West Development v/s FJ Emmet (1978) 252E G 1171*]. It is important to note that 'Sharing of profits is prima facie evidence of existence of partnership'.
- (d) **Business:** The definition clearly states, partnership can be formed only to carry on a business. Thus, there can be no partnership where there is no intention to carry on business. The term business is used in the widest sense, and it refers to any lawful activity, which if successful would result in profits. Thus, an ability of two or more persons engaged in theft or dacoity for example cannot be a business. And it includes every trade, occupation and profession. It may also be noted that it is not necessary that the business be a permanent nature. A partnership may exist even for a single venture.

Example: 'A' and 'B' are partners for a single road building contract. This, amounts to partnership.

However, an association created for a charitable, religious or social purpose cannot be a partnership as it is not a business.

- (e) **Mutual Agency:** There must exist a mutual agency relationship amongst the partners. Mutual agency relationship means a partner is both an agent and a principal. Thus, a partner is an agent of the other partner in the sense that by his acts he can bind the other partners. He is the principal in the sense that he can be held liable for the acts of the other partners. In other words when a partner enters into a contract on behalf of the firm, he is an agent while the other partners are principals. Similarly vice versa.

The mutual relationship of agency is emphasised in S.18 of the Indian Partnership Act, which reads –

"Subject to the provisions of this Act, a partner is the agent of the firm for the business of the firm." This principle is found in the words "business carried on by all or any of them acting for all" in the definition. Existence of mutual agency is a better test of partnership. Thus, if mutual agency is absent then there can be no partnership. Partners rights and duties are largely regulated by the law of principal and agent. The relations between partners are based upon mutual trust and confidence.

Every partner must act in the best interest of other partners and of the firm as a whole.

- (f) **Essentials of a Contract:** As partnership is an agreement it must satisfy the requirements of a contract.

1.2 TEST OF PARTNERSHIP

In order to determine; whether or not a group of persons constitute partnership or not, three tests need to be undertaken.

- (1) **There should be an agreement to share the profit.** (Explanation - refer to essentials). This is a good test of partnership.
- (2) **The business must be carried on by all or any of them acting for all** (Mutual agency). (Explanation - refer to essentials). This is a better test of partnership.
- (3) **Intention of the parties** - One has to look into the real intention of the parties. This may be gathered from the conduct of the parties, course of their dealings, circumstances of their entering into the business etc. This is the best test of partnership.

Example: A trader, owed money to several creditors. He agreed to pay his creditors out of the profits of his business, which was run under the creditors supervision. Held, no partnership existed between the trader and creditors. (Cox v. Hickman, 1860)

Non Partnerships interests or circumstances where sharing of profits is there, yet no relation of partnership.

Section 6, explanation I and II enumerates the circumstances where sharing of profits is there, yet there exists no relation of partnership. They are:

- (a) **Joint owners sharing profits on gross returns:** Joint owners who share the profits on gross returns are not partners.

Example: 'A' and 'B' jointly purchase a building by contributing equally and convert it into a hotel. They rent it out for INR 3,60,000 annually. They are not partners.

- (b) **Money-Lender receiving profits:** Sometimes a money-lender receives, in addition to or in place of his interest, a share of profits of a business. He cannot be said to be a partner.

Example: 'A', advanced large sum of money to a firm. 'A' was given extensive powers of control over the business and he got 10% commission on profits until the repayment of his loan with 12% interest. Held, 'A' was not a partner. Mollow March & Co. v. Court of Wards (1872) L.R. 2 (P 419)

- (c) **Servant or agent sharing the profits:** Where a servant or an agent of a business receives a share of the profits of the business in addition to or in place of regular remuneration that does not make him a partner.

Example: 'A', a manufacturer of dresses engaged 'B', as his agent in selling. 'B', was given 25% share of profits. 'B', will not become a partner.

- (d) **Widow or child of a deceased partner:** Sometimes, the widow or a child of a deceased partner receives a portion of profits as annuity. They will not be partners.

- (e) **Seller of goodwill:** Sometimes a person who sells his business along with the goodwill, is given a share in the profits of the business sold. In such cases, the person does not become a partner.

Example: 'A', sold his business of dry cleaning to 'B' along with goodwill. It was agreed 'A' would be given 10% of the profits for 6 months during which he shall introduce his customers to 'B'. 'A', is not a partner.

- (f) **Member of a Hindu undivided family:** Who carry on a family business are not partners. Because it is by status and not by agreement.
- (g) **Burmese Buddhist husband and wife:** If a Burmese Buddhist husband and wife carry on a business, are not partners.

Thus under S.6, receipt of profits will not automatically result in partnership. One needs to consider other factors like agreement, conduct of the parties and other circumstances if any as well.

1.3 PARTNERSHIP DEED

Though the law does not expressly require that the partnership agreement should be in writing, it is desirable to have 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 contains various provisions relating to various matters, such as:

- (a) Name of the firm:

Partners can choose any name for the firm other than any of the following words namely: "Crown", "Emperor", "Empress", "Empire", "Imperial", "King", "Queen", "Royal", or words expressing or implying the sanction, approval or patronage of Government, proviso being when the State Government signifies its consent to the use of such words as part of the firm name it must be by an order in writing. Also it shall not contain the name of the 'United Nations' or its abbreviations or 'World Health Organisation'. However, such names or abbreviations can be used with the prior permission of the concerned authority.

The statement shall be signed by all the partners, or by their agents specially authorised in his behalf.

- (b) Names and addresses of all partners.
- (c) Nature and place of business.
- (d) Date of commencement of partnership.
- (e) Duration of partnership.
- (f) Amount of capital of each partner.
- (g) Profit sharing ratio.
- (h) Interest on capital.
- (i) Interest on drawings.
- (j) Interest on loan advanced by a partner to the firm.
- (k) Salary or commission payable to any partner.

- (l) Method of valuation of goodwill and other assets and liabilities in case of admission, retirement or death of a partner.
- (m) Settlement of accounts in case of retirement/death of a partner or dissolution of firm.

The partners are free to add or omit any of the above. However, points a to f mentioned above are necessary.

1.4 PARTNERS, FIRM, FIRM NAME AND PARTNERSHIP

The term 'partners', 'firm' and 'firm name' are defined in S. 4 of the Act which reads as-

"Persons who have entered into partnership with one another are called individually 'partners' and collectively 'a firm' and the name under which their business is carried on is called the 'firm name'.

Hence-

Partners: The persons who form the partnership business are individually known as partners.

Firm: The partners collectively are known as a firm.

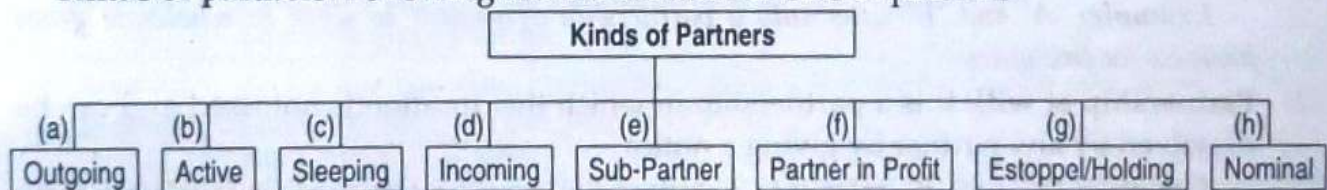
(Note: a firm is not a legal person.)

Firm name: The name under which partnership business is carried on is known as firm name.

Partnership: The relationship between partners is partnership.

Example: "Kirti" and "Kiran" entered into a partnership business for export of Indian clothes. They were carrying on the business under the name 'Kay & Kay'. Individually "Kirti" and "Kiran" are partners, together they are firm and 'Kay & Kay' is the firm name. The relationship between "Kirti" and "Kiran" as partners is partnership.

Kinds of partners: Following are the different classes of partners.



Mnemonics: OASIS PEN

- (a) **Outgoing partner:** A partner who leaves a firm, while the firm continues its business. An outgoing partner if was an active partner will be liable to the third parties for all acts of the firm the until public notice is given of his retirement.
- (b) **Active/ostensible partner:** Is one who becomes partner by agreement and takes active part in the business. Shares the profits. Is liable to the third parties for the acts of the firm, acts as an agent of other partners for all acts done in the ordinary course of business. Must give public notice on retirement.
- (c) **Sleeping or dormant partner:** Is a partner by agreement but does not take active part in the business. Shares profits. He is unknown to outsiders. Is liable to the third party for the acts of the firm. Public notice need not to be given on retirement.

- (d) **Incoming partner:** A person who joins an already existing firm as a partner. He can be admitted only with the consent of all the existing partners. An incoming partner is not liable for an act of the firm done before his admission as a partner.
- (e) **Sub-partner:** When a partner agrees to share his profits with a third person, that third person is known as sub-partner. The sub-partner cannot represent the firm nor he is liable to the acts of the firm. The right phrase for a sub-partner would be transferee of a partner's interest.
- (f) **Partner in Profits:** A partner who shares in the profits only without being liable of the losses is known as partner in profits. He does not take part in the management of the business but he is liable to third parties for all acts of profits only.
- (g) **Partner by estoppel or holding out:** A person who represent himself or permits to be represented to be a partner, but in reality he is not so. (In holding out credit is given on the basis of such representation.) He is liable to third parties and would be estopped from denying he is not a partner. However, he does not have a share in the profits. Estoppel is representation in the negative way, while holding out is in the positive way.
- (h) **Nominal partner:** Is a person who lends his name to the firm without having any real interest in it. No investment is done by a nominal partner and also does not take part in the conduct of the business. Does not share the profits. But he is liable to the outsiders for all debts of the firm.

1.5 TYPES OF PARTNERSHIP

- (1) **Partnership for a fixed term:** It is a partnership, where the time period is fixed. Such a partnership gets dissolved at the expiry of the time period. Before the fixed period, it may be dissolved by mutual consent. However, if it continuous after the fixed period, it becomes partnership at will.

Example: 'A' and 'B' enter into a partnership agreement to work in wholesale grain business for five years.

- (2) **Partnership at will:** It is a partnership in which the duration is not fixed and can be dissolved by any partner by giving a notice.

Example: 'A' and 'B' enter into a partnership agreement to work in wholesale grain business for five years.

- (3) **Particular partnership:** It is a partnership which is formed for the purpose of carrying on the particular venture or undertaking. Such particular partnership comes to an end on the completion of the venture or undertaking. Again if it continues after completion of the venture, it becomes partnership at will.

Example: Laying of Metro-3 Corridor between Colaba-Bandra-SEEPZ by Mumbai Metro Rail Corporation.

1.6 ` DISTINCTION BETWEEN PARTNERSHIP AND OTHER FORMS OF BUSINESS ACTIVITIES

(I) Distinction between 'Partnership' and 'Co-ownership'.

Criterion	Partnership	Co-ownership
1. Definition/ Meaning	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.	Means joint ownership of a business or property.
2. Agreement	It arises from an agreement.	It may or may not arise from agreement.
3. Business	It is formed to carry on a business.	It may or may not involve to carrying on a business.
4. Profit or loss.	It involves profit or loss.	It may or may not involve profit or loss.
5. Agency	A partner is the agent of the other partners	A Co-owner is not the agent of other co-owner/s.
6. Name of persons involved	The persons who form partnership are called partners.	The persons who own some property jointly are called co-owners.
7. Maximum limit	The maximum limit of partners is 10 for a banking business and 20 for any other business.	There is no maximum limit of co-owners.
8. Transfer of interest	A partner cannot transfer his share to a stranger without the consent of other partners.	A co-owner can transfer his share to a stranger without the consent of other co-owners.
9. Right to claim partition	A partner has no right to claim partition of property, but he can sue the other partners for the dissolution of the firm and accounts.	A co-owner has the right to claim partition of property.
10. Lien on property	A partner has a lien on the partnership property for expenses incurred by him on behalf of the firm.	A co-owner has no such lien.

(II) Distinction between 'Partnership' and 'Hindu Undivided Family'

Criterion	Partnership	Hindu Undivided Family
1. Definition/ Meaning	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.	A joint Hindu family which carries on business handed down from its ancestors.
2. Agreement	It can arise only by an agreement of the partners.	It arises by operation of law. It cannot be created by an agreement of the members.
3. Admission of new members.	A new partner can be admitted in the partnership, only with the consent of all the partners.	A person becomes a member only by birth in the family.

4. Acquisition of interest	A partner acquires interest in the business only by an agreement.	A person acquires interest in the business by birth in the family.
5. Number	There is a statutory limit on maximum number of partners i.e. 10 in case of a firm carrying on banking business and 20 in any other business.	There is no statutory limit on maximum number of members.
6. Minor members	A minor cannot become a full-fledged partner. He can only be admitted to the benefits of partnership with the consent of all the partners.	A minor is a full-fledged member. He becomes member merely by birth in the family.
7. Mutual agency	There is a relationship of agency between the partner i.e. all the partners are mutual agents.	There is no such agency relationship between all the members of the family. The karta (i.e. manager) of the family is the only representative of the family.
8. Implied authority	Every partner has an implied authority to bind the firm by his acts done in the ordinary course of the business.	Only the karta has an implied authority to bind the family by his acts. Other members of the family do not have such authority.
9. Liability	A partner is personally liable for the business obligations of the firm. The share of each partner in the partnership property and profits alongwith his private property is liable for the discharge of debts of the partnership.	A member is not personally liable for the business obligations of the family. Only his share of property and profits in the family is liable for the discharge of the debts of the family. However, the karta is personally liable for the business obligations of the family.
10. Effect of death/ insolvency	It is dissolved on the death or insolvency of any one partner.	It is not dissolved on the death or insolvency of any member.
11. Right to demand accounts	A partner has a right to demand, inspect and copy any accounts of the firm. Moreover, he also has the right to demand the dissolution of the firm.	A member has no right to ask for any accounts of the past dealings of the family. There is no concept of dissolution of the family.
12. Dissolution/ partition	A partner has right to demand for dissolution.	A member has a right to demand the partition of the joint family property.
13. Registration	The partnership is usually registered as an unregistered firm suffers from certain disabilities.	There is no concept of registration of Hindu undivided family. And thus, no disabilities on account of non-registration.

(III) Distinction between 'Partnership' and 'Company'

Criterion	Partnership	Company
1. Definition/ Meaning	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.	A company means a company formed and registered under this Act or an existing company.

2. A legal person	A firm is not a legal entity. Partnership is merely a collection or an aggregate of the partners.	A company, on the other hand, is a person legal, i.e., a legal person.
3. Number	Minimum is 2 and maximum 10 in banking and 20 for any other business.	Minimum can be 1 in one man company, 2 in case of private company and 7 in case of public company and maximum 200 in private and unlimited in public company.
4. Limited or Unlimited liability	In a partnership, the liability of partners is unlimited, i.e., each partner is liable not only to the extent of his share in partnership property but also the extent of his own private property for the debts of the firm in the course of the business of the firm.	In the case of a company, which is limited, the liability of its members is limited to the extent of the amount, which has remained unpaid on the shares held by them or the amount of guarantee, as stipulated in the Memorandum of Association of the Company.
5. Transfer of shares	In a firm, a partner cannot transfer or assign the whole of his share, (unless there is a contract to the contrary) without the consent of all the partners of the firm.	In a company, a shareholder can transfer his shares subject to the provisions of the Articles of the Company.
6. Mutual agents	In a firm, all partners are mutual agents.	In a company, a member is not an agent of the other members.
7. Registration	Registration of a firm is not compulsory under the Partnership Act, 1932.	Registration of a company is compulsory under the Companies Act, 2013.
8. Management	Management vests in the hands of the partners except in the case of sleeping partners.	Management vests in the Board of Directors, elected periodically by the shareholders.
9. Creditors	Creditors of firm are also creditors of the partners individually as well.	Creditors are only the creditors of the company and not of individual shareholders.
10. Statutory obligations	A partnership has less statutory obligations.	A company is strictly regulated under the Companies Act, 2013.
11. Accounts	Accounts of a partnership firm need not be audited by the auditor.	Accounts of a company must be audited by an auditor.
12. To whom property belongs?	The property of a firm belongs collectively to the partners.	The property of a company, on the other hand, belongs to the company, and not to the shareholders.
13. Effect of death of partners and members	In the case of a firm, death or insolvency of a partner results in the dissolution of the firm, unless there is a contract to the contrary.	In the case of a company, death or insolvency of a member of the company does not result in the dissolution of the company.

14. Contract with the firm or company	A partner cannot enter into a contract with the firm, in which he is a partner, because the firm is not a legal person.	A shareholder, on the other hand, can enter into a contract with the company, of which he is a member, because the company is a legal person.
15. Power to dispose of property	A partner can dispose of the property of the firm.	A shareholder cannot dispose of the property of the company.
16. Effect of Restrictions on authority	In a partnership firm, when restrictions are imposed on the authority of a partner, they are of no avail against third person who has no knowledge of it.	In the case of a company, the restrictions of a company are absolutely valid, because the memorandum and articles of a company serve as a public notice.
17. Limit on number of members	In the case of a firm, the number of partners must not exceed 10 for carrying on banking business and 20 for any other business.	In the case of a company, a private company can have as many as 50 members, whereas a public company can have any number of shareholders.

1.7 REGISTRATION OF FIRMS AND CONSEQUENCES OF NON REGISTRATION (SS. 57 – 69)

(1) Registration:

Registration of a firm is not compulsory under the Act. Hence non-registration of firm does not affect the partnership agreement or any transaction between the partners and third party.

Registration of a firm may be done at any time, by sending in the application form along with the fee to the Registrar of Firms of the area in which the place of business of the firm is situated or proposed to be situated. The form should contain the following particulars. (S. 58)

- (a) Name of the firm.
- (b) Nature of the business
- (c) Place or principal place of business.
- (d) Other places where the firm carries on business.
- (e) The date when each partner joined the firm.
- (f) The name in full and permanent address of partners.
- (g) The duration of the firm.

Each of the partner or their authorised agent to sign the statement.

After scrutiny, the Registration being satisfied that the provision of section 58 have been duly complied with, shall record an entry of the statement in a register called the Register of Firms, and shall file the statement. Registration of firm takes effect from the date of entry in register of firms (*CIT AP vs. Jaya Laxmi Rice Mills, AIR 1971 SC 1015*).

A registered firm can also change its name, principal place of business, add or close branches, change in partners by making an application to the Registrar who after verifying the facts and details shall record the same in the Register of Firms.

Any change in name, address or partner needs to be intimated to the Registrar within **3 months** of the change.

Any person who signs any statement, amending statement, notice or intimation containing any particulars which he knows to be false or does not believe to be true or containing particulars which he knows to be incomplete or does not believe to be complete, shall be punishable with imprisonment which may extend to **three months**, or with fine or with both.

(2) Consequences of non-registration or effect of non-registration:

Although the Partnership Act does not make registration of firms compulsory, yet attaches certain disabilities to non-registered firms.

- (a) **The partners cannot file a suit against the firm or other partners:** A partner of an unregistered firm cannot sue the firm or his other present or past partners, for the enforcement of any right arising from a contract or conferred by the Indian Partnership Act.
- (b) **The firm cannot file a suit against third parties:** An unregistered firm or the partners of the unregistered firm cannot sue the third party for acts arising from a contract or under the Act.
- (c) **No right to counter claim or set-off:** No unregistered firm and no partners of such unregistered firm shall, when sued be entitled to counter claim on set-off.

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

- (i) The right of a third party to sue an unregistered firm or its partners.
- (ii) The right of a partner to sue for the dissolution of a firm or for accounts of a dissolved firm or for realisation of the property of a dissolved firm.
- (iii) The power of an Official Assignee to realise the property of an insolvent partner.
- (iv) The rights of the firm or its partners are not affected if the firm has no place of business in India.
- (v) The right to suit or claim set-off not exceeding **Rs. 100** in value.
- (vi) One partner can bring a suit for damages for misconduct against another partner.

Registration of firms in Maharashtra: In Maharashtra, under the Indian Partnership (Maharashtra Amendment) Act, 1984, S. 69(2A) was inserted which made, registration of firms compulsory.

"S. 69(2A): No suit to enforce any right for the dissolution of a firm or for accounts of a dissolved firm or any right or power to realise the property of a dissolved firm shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm, unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm: Provided that the requirement of registration of firm under this sub-section shall not apply to the suits or proceedings instituted by the heirs or legal representatives of the deceased partner of a firm for accounts of a dissolved firm or to realise the property of a dissolved firm."

However, where a firm is not registered prior to 1989, can get it registered within 1 year of the date specified.

However, under the Partnership Act, 1932, a partner can sue for dissolution of a firm or for accounts of a dissolved firm or for realisation of the property of a dissolved firm even if the firm is an unregistered firm. But under S. 69(2) of the Maharashtra Rules, 1989, it cannot be done by a partner, unless the firm is registered and the person suing is shown as a partner in the register of firms. However, exception being legal heirs or representative of a deceased partner can bring an action for accounts of a dissolved firm.

However, this had been struck down by the Supreme Court in the year 2009 in the case of *V. Subramaniam v/s Rajesh Raghuvendra Rao* [AIR 2009 S.C 1858]

The Supreme Court observed: The provision violates Arts. 14, 19(1)(g) and 300A of the Constitution – It deprives a partner in an unregistered firm from recovery of his share in property of the firm or from seeking dissolution of the firm – Restrictions placed by s.69(2A) are arbitrary and of excessive nature and go beyond what is in the public interest

Thus, any such partner would be able to file a suit for (1) dissolution of the partnership or (2) accounts of a dissolved firm or (3) realize properties of a dissolved firm,.

PROCEDURE FOR REGISTRATION OF FIRMS IN MAHARASHTRA:

Until recently, the registration process in the State was performed manually. The State Government has now made the process online. The online process prompts the need of scanned documents along with online application forms.

The applicant has to log on to the official website

<https://rof.mahaonline.gov.in/IndividualRegister/IndividualRegister>

Create a User ID (New ID is required for Each Firm).

- Raise Form A (application for Registration)
- In Firm Management Tab click Raise Form "A".
- Fill in the required information, like Partnership name, Business Address, etc.

Upload the following documents: (Compulsory attachment)

- (1) Certified True Copy of Partnership Deed (Certified by C.A. or Advocate).
- (2) Certified True Copy of Marathi Translation of Partnership Deed (Certified by C.A. or Advocate).
- (3) Blank Stamp Paper of Rs. 10/- in the name of Partner or firm.
- (4) Authority letter signed by all partners if documents are submitted by C.A. or Advocate.
- (5) Covering letter with Rs. 5/- Court Fee Stamp.
- (6) Demand Draft of Rs. 1,600/- in favour of Registration of firms of your Area.
 - Take print out of Form "A" on Green Ledger Paper.
 - Sign Before designated authority like Notary & submit the attested form along with all the above documents to the designated office of Registrar.

POINTS TO REMEMBER

Essentials of Partnership – (a) Two or more persons; maximum 10 (banking) 20 (others). (b) Agreement - express or implied. (c) Sharing of profit must, sharing of losses not a criteria. (d) Business - any lawful activity which is successful would result in profit. (e) Mutual agency - each partner is both agent and principal. (f) Essentials of a contract.

Acronym: Name, Address, Phone (of) Brihanmumbai Municipal Corporation.

Test of partnership - 3 tests:

- (1) Sharing of profits.
- (2) Mutual agency.
- (3) Intention of parties.

Non-partnership interest - 7 circumstances where people share profits, yet not partnership: (1) Joint owner, (2) Lender of money, (3) Servant or agent, (4) Widow or child, (5) Seller of goodwill, (6) Member of HUF, (7) Burmese Buddhist husband and wife.

Classification of partners: (a) outgoing, (b) active, (c) dormant, (d) incoming (e) sub-partner, (f) partner in profit, (g) partner by estoppel or holding out, (h) nominal.

Mnemonics: OASIS PEN

Types of partnership: (1) at will, (2) for fixed term, (3) particular partnership.

Registration of firm not compulsorily. But non-registration leads to certain disabilities;

- (1) partners cannot file a suit against firm or co-partners,
- (2) firm cannot bring action against third parties,
- (3) no counter claim or set-off.

However registration is immaterial for: (1) third party to bring an action against firm, (2) for dissolution or for accounts, (3) for official assignee to realise property of insolvent party, (4) firm has no place of business in India, (5) set-off upto Rs. 100, (6) damages for misconduct.

[I] TEST YOUR KNOWLEDGE

(1) MULTIPLE CHOICE QUESTIONS

- (1) Prior to enactment of Indian Partnership Act, 1932, the laws relating to Partnership were governed by:
 - (a) English Partnership Act, 1890 (b) Indian Contract Act, 1872 (c) Companies Act (d) Hindu law
- (2) Indian Partnership Act, 1932 is governed by:
 - (a) Central Government (b) State Governments (c) Local authority (d) All of these
- (3) A Partnership agreement maybe:
 - (a) written (b) oral (c) implied from the conduct (d) all
- (4) A partnership firm is:
 - (a) a distinct legal entity different from its partners (b) not a distinct legal entity from its partners
 - (c) a juristic person
 - none of the above
- (5) The term 'persons' for the purpose of partnership agreement does not include:
 - (a) Firm (b) Women (c) Company (d) All
- (6) Partnership is a result of:
 - (a) status (b) contract (c) circumstances (d) none of the above
- (7) Under the act, business includes:
 - (a) every trade and occupation (b) every trade and profession (c) every profession and occupation
 - (d) every trade, occupation and profession
- (8) A partnership can be:
 - (a) particular partnership (b) partnership at will (c) partnership for fixed term (d) all the above
- (9) As per the law, which of the following is not a requisite of partnership:
 - (a) sharing of profits (b) sharing of loss (c) mutual agency (d) carrying on a business
- (10) Where the period of partnership is not fixed, it is:
 - (a) Partnership at will (b) Particular partnership (c) Partnership for a fixed tenure (d) Hindu undivided family

- (11) Which is not a consequence of non-registration of firms:
 (a) set off above rupees one thousand (b) partner cannot bring an action against the firm (c) firm cannot bring an action against the third party (d) partner can ask for dissolution of the firm
- (12) In case of banking business, the maximum number of partners permissible is:
 (a) 5 (b) 10 (c) 15 (d) 20
- (13) A partnership business where the number of persons exceed than that allowed under the partnership act will be:
 (a) a company (b) a partnership (c) illegal association (d) none of the above
- (14) A nominal partner:
 (a) shares profits (b) is liable to third party (c) (a) & (b) (d) neither shares profits nor is he liable
- (15) A registered firm is:
 (a) a legal entity (b) a company (c) not a separate legal entity different from its partners (d) none of the above
- (16) When a partnership firm is continued even after the expiry of fixed term it is:
 (a) Partnership at will (b) Particular partnership (c) Fixed Partnership (d) Not a partnership
- (17) Under the definition of partnership, business includes:
 (a) Every trade and occupation (b) Every occupation and profession (c) Every trade, occupation and profession (d) Every trade and profession
- (18) A partnership can be:
 (a) a particular partnership (b) partnership at will (c) (a) or (b) (d) (a) and (b)
- (19) For constituting a partnership:
 (a) The business has to be of permanent nature (b) The business can be of temporary nature (c) It is immaterial as to whether the business is of temporary or permanent nature (d) only (a) and not (b)
- (20) Profit sharing is the true test of partnership. (MU. Nov. 17)
 (a) True (b) False
- (21) Liability of partners under partnership is limited. (MU. Nov. 17)
 (a) True (b) False
- (22) A co-owner is the agent of the other co-owner. (MU. Nov. 17)
 (a) True (b) False

Ans.: (1) b (2) a (3) d (4) b (5) a (6) b (7) d (8) d (9) b (10) a (11) d (12) b (13) c (14) b (15) c (16) a (17) c (18) c (19) c (20) b (21) b (22) b.

(2) FILL IN THE BLANKS

- (1) _____ is a must for partnership.
- (2) Every partner is both an agent and a principal which is called _____.
- (3) The relationship between partners is called _____.
- (4) An unregistered firm _____ file a suit against third partner.
- (5) _____ partner does not take part in the day to day activities of the firm.
- (6) Business includes every _____, _____ and _____.
- (7) Sharing of profits is a must in partnership although sharing of _____ is not a requisite.
- (8) Persons who have individually entered into an partnership agreement are called _____.
- (9) Partners collectively are called _____.
- (10) The maximum number of partners permissible in case of non-banking activities is _____.
- (11) _____ partner takes part in the activities of the firm, shares profit and needs to give public notice on retirement.
- (12) _____ partner is not required to give notice on retirement.
- (13) _____ partner is one who lends his name to the firm without having any real interest in the firm.
- (14) _____ is the right phrase for sub-partner.
- (15) A person who represents himself as a partner, although in reality he isn't a partner, is called partner by _____.
- (16) Where the time of partnership period is not fixed, it is called _____ at _____.

- (17) A person may become a partner with another person in a particular adventure, is called _____ partnership.
- (18) If the firm is unregistered, the partner cannot bring an action against the _____ or other _____.
- (19) Only set-off upto rupees _____ is permitted in case of an unregistered firm.
- (20) Goodwill is an _____ of the firm and can be sold either separately or along with other property of the firm.
- (21) Registration of partnership in Maharashtra is _____. (MU. Nov. 17)
- (22) Karta of a Joint Hindu Family firm has _____ liability. (MU. Nov. 17)
- (23) A nominal partner is liable for the _____ of the firm. (MU. Nov. 17)
- (24) Firm has no _____ existence apart from its partners. (MU. March 18)
- (25) Dormant partner is also called _____ partner.
- (26) Goodwill of a business is a partnership _____. (MU. March 18)
- (27) The test of the existence of partnership is _____. (MU. Oct. 18)

Ans.: (1) Business (2) mutual agency (3) partnership (4) cannot (5) Dormant (6) trade, occupation, profession (7) losses (8) partners (9) firm (10) 20 (11) Active (12) Dormant (13) Nominal (14) Transferee (15) Holding out (16) partnership, will (17) particular (18) firm, co-partners (19) ₹100 (20) asset/property (21) compulsory (22) unlimited (23) debt (24) separate (25) sleeping/inactive (26) property (27) mutual agency.

[II] QUESTIONS

(1) SHORT QUESTIONS

- (1) Define partnership.
- (2) What is mutual agency?
- (3) When a partner is entering into an agreement on behalf of the firm, is he an agent or a principal? Comment.
- (4) What is a firm?
- (5) Does sharing of profits and losses a requisite of partnership?

(2) ESSAY TYPE QUESTIONS

- (1) Define partnership. Explain its essentials.
- (2) How will you determine whether a partnership does or does not exist between a group of persons?
- (3) "Sharing of profits is not the real test of partnership". Discuss.
- (4) Explain the procedure for registration of firms. What are the consequences of non-registration?
- (5) What constitutes property of the firm?
- (6) Explain the circumstances with examples, where there is sharing of profit, yet no relation of partnership.
- (7) Define partnership. Explain its types. (MU. March 18)
- (8) Mutual Agency is a true test of partnership? Explain. (MU. Oct. 18)

(9) Write short notes on:

- (a) Non-partnership interest.
- (b) Partnership deed.
- (c) Types of partners.
- (d) Types of partnership.
- (e) Nominal partner. (MU. Nov. 17)
- (f) Actual or Ostensible partner. (MU. Oct. 18)
- (g) Holding out. (MU. Oct. 18)

[III] CASE LETS

- (1) A number of ice manufacturers formed an association for the regulation of price, prevention of undercutting and protection of common interests. Are they partners? Explain.

Ans.: No.

- (2) 'A', 'B' and 'C' are partners of an unregistered firm. The firm sells goods to 'X'. 'X' pays the price to 'A' who refuses to part with. What is the remedy for 'B' and 'C'?
- Ans.: No remedy.**
- (3) An unregistered firm sold goods amounting to Rs. 25,000 on credit to X. X, failed to pay the price, can the firm recover the price through Court?
- Ans.: Under Partnership Law, No. Under Contract, Yes.**
- (4) A, a publisher agrees to publish at his own expense, a book written by B and to pay B, 15% of the net profit. Would this amount to partnership?
- Ans.: No. Sec. 6.**
- (5) A and B purchased a boat to ferry it in partnership. After 2 years, A sold it without B's consent. B, brought an action to recover his share in the sale proceeds. A, resisted B's claim on the ground that the firm was not registered, will B succeed in his claim?
- Ans.: No. Joint owners.**
- (6) A, B and C are in partnership. The firm borrows money from 'D', 'E' is a sub partner of 'C'. Is 'E' also liable or not for the loan borrowed?
- Ans.: No.**
- (7) X, Y and Z are partners in a textile firm. The agreement states the profit shall be shared by all three partner while losses shall be borne by X and Y alone. The firm runs under a loss of Rupees 25 lakhs. Is Z also liable? Explain.
- Ans.: Yes. (to outsiders).**

Chapter 2

Relations of Partners with One Another

DESIGN

- 2.1** MUTUAL DUTIES AND LIABILITIES OF PARTNERS
- 2.2** RIGHTS OF PARTNERS
- 2.3** MUTUAL RIGHTS AND DUTIES OF PARTNERS UNDER CERTAIN CIRCUMSTANCES
- 2.4** PROPERTY OF THE FIRM

Partnership being the result of an agreement, the rights and duties of partners are usually determined by the terms, specified in the agreement. These are called mutual rights and duties of partners. Mutual rights and duties may be express or implied by the course of dealing. Such contract may be varied by consent of all the partners. The consent may be express or implied. In this chapter, the fundamental principles that govern mutual relations of partners are dealt with. However, the agreement may not provide for all rights and duties of partners. In such situations the Partnership Act becomes applicable.

2.1 MUTUAL DUTIES AND LIABILITIES OF PARTNERS

Duties:

(1) **General Duties:** All partners are bound to:

- (a) carry on the business of the firm to the greatest common benefit;
- (b) be just and faithful to each other, in their mutual dealings; and
- (c) render true accounts and full information of all things, affecting the firm, to any partner or to his legal representative.

The accounts must not be merely submitted but must be explained and supported by proper vouchers and documents.

- (2) **Duty to attend diligently:** Every partner is bound to attend diligently to the duties relating to the firm's business.
- (3) **Duty to share losses:** Partners are to share the losses sustained by the firm equally unless there is a contrary agreement.
- (4) **A duty of a partner to indemnify the firm for any loss caused by his wilful neglect or fraud:** Every partner shall indemnify the firm for any loss, caused to it by his willful neglect or fraud in the conduct of the business of the firm.
- (5) **To account for private profits:** A partner deriving any profits for him while transacting for the firm or from the use of the property of the firm or by using the business connection of the firm or firm name, he shall account for that profit to the firm.
- (6) **Duty to account for profits in competing business:** Every partner is duty bound not to carry on business in competition with the firm. If any partner carries on competing business and earns profit, he has to account for such profits and pay the same to the firm.
- (7) **Duty not to transfer his rights and interest:** It is the duty of every partner not to transfer his rights and interest in the firm to outsiders.

Liabilities:

- (1) **Liability of a partner for acts of the firm:** Every partner is jointly and severally liable for all acts of the firm done while he is a partner. Because of this liability, the creditor of the firm can sue all the partners jointly or individually.
- (2) **Liability of a retiring partner:** A retiring partner is liable for the acts of the firm done before his retirement. But a retiring partner may not be liable for the debts

incurred before his retirement, if an agreement is reached between the third parties and the remaining partners of the firm, discharging the retiring partner from all liabilities.

- (3) **Liability of a nominal partner:** A nominal partner shall be liable to the third party for the acts of the firm.
- (4) **Liability by estoppel or holding out:** A partner by estoppel or holding out shall be liable to the third party, if he permitted to be represented as a partner or allowed credit to be given on the basis of such representation.

2.2 RIGHTS OF PARTNERS

The mutual rights of partners are result of an agreement between them. However, where the agreement is absent then the provisions of the Act shall apply. The mutual rights the partners may be varied by the consent of all the partners, and such consent may be express or may be implied by a course of dealing.

The following are the rights a partner can exercise against his co-partners.

- (1) **Right to take part in Business (B):** Every partner has a right to take part in the conduct of business of the firm. However, he is not entitled to receive remuneration for taking part in the business.
- (2) **Right to Access to books of the firm (A):** Every partner has a right to have an access to the books of the firm. He can examine, and copy such accounts.
- (3) **Right to Share profits (S):** Every partner has the right to share the profits in the agreed proportion or equally if no agreement to that effect is there.
- (4) **Right to Interest on capital (I):** Ordinarily, no interest can be claimed on the contribution towards the capital. However if agreed, interest made be paid but only out of the profits. For any advance interest at the @ of 6% is paid.
- (5) **Right to be Consulted (C):** Subject to the contract between the partners, every partner has a right to be consulted in all matters of the firm. However, with regard to ordinary matters, majority rule will prevail. But in crucial matters like introduction of a new partner, consent of all partners is a must.
- (6) **Right to Dissolve: (D)** A partner has the right to dissolve the partnership with the consent of all partners. But where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all other partners of his intention to dissolve the firm.
- (7) **Right of an Outgoing partner (O):** An outgoing partner can carry on a competing business. However, reasonable restrictions may be imposed by the firm.
- (8) **Right to Retire (R):** A partner can retire:
 - (i) with the consent of all partners,
 - (ii) in accordance with the terms of the agreement,
 - (iii) in case of partnership at will by notice.

- (9) **Right to Indemnify (I):** Every partner has a right to be indemnified for the expenses incurred in the ordinary course of business and for expenses incurred in an emergency.
- (10) **Right to be consulted at the time of admission of new partner (C):** Generally no person can be admitted as a partner without the consent of all partners, in other words, every partner has the right to be consulted for admission of new partner.

Mnemonics – BASIC DORIC.

2.3 MUTUAL RIGHTS AND DUTIES OF PARTNERS UNDER CERTAIN CIRCUMSTANCES

A change may take place in the firm by change in the composition of partners or where the partnership carries on other business/es other than for which it was originally formed or where the partnership is continued after the expiry of the term fixed or the purpose.

The mutual rights and duties of partners under certain circumstances are as follows:

- (1) **Rights and duties after change in the constitution of the firm:** Change in the constitution takes place when a new partner or partners join the firm or when some partner or partners go out, i.e. by death or retirement or expulsion. Subject to contract between the partners, when a change occurs in the constitution of the firm, the mutual rights and duties of the partners in the reconstituted firm remain the same, as they were immediately before the change in the constitution of the firm.
- (2) **Rights and duties after the expiry of the term of the firm:** Subject to contract between the partners, where a firm was constituted for a fixed term and continues to carry on business after the expiry of that period, the mutual rights and duties of the partnership remain the same, as they were before the expiry, so far as they may be consistent with the incidents of partnership at will.
- (3) **Rights and duties after additional undertakings are carried out:** Subject to contract between the partners, where a firm is constituted to carry out one or more ventures or undertakings, carries out other ventures or undertakings, the mutual rights and duties of the partners, in respect of the other ventures or undertakings, shall continue to be the same as those in respect of the original ventures or undertakings.

2.4 PROPERTY OF THE FIRM

Property of the firm may also be called joint stock or partnership assets. It is the joint property of all the partners. The partners in fact by an agreement amongst themselves may determine, what constitutes the property of the firm. In the absence of such agreement, the following shall constitute the property of the firm.

- (a) **Property originally brought in by the firm:** Any property which is brought by the partners, at the commencement of the partnership and put into joint stock of the firm.

- (b) **Property acquired afterwards:** Any property which is acquired by or for the firm, after the commencement of the partnership is the property of the firm.
- (c) **Partner's personal property in the firm's use:** Where the personal property of a partner is used in the business of the firm, it depends upon the intention of the parties whether it has become the property of the firm or not.

Example: A partner's personal car is being used exclusively for firm's purpose, the car becomes the property of the firm and the partner becomes creditor for that amount.

- (d) **Conversion of joint properties into separate property:** Where a property is bought with money of the firm, but in the name and for the exclusive benefit of a partner, the partner becomes a debtor to the firm for the purchase money; and the property becomes the personal property of the partner. Similarly, where a part of the joint properties is allotted to a partner, on the dissolution of a firm, it becomes his separate, personal property.

Example: Car bought out of the joint fund of the firm is used by 'A', a partner for private use only. The car should become the property of 'A' and 'A', becomes a debtor to the firm for the car amount.

- (e) **Goodwill of the business:** The term goodwill has not been defined in the Act. It means every advantage and the good representation which the firm has acquired while carrying on its business. In other words, it is an advantage acquired may be in the term of reputation, connection, etc. Goodwill could be on account of:
- (i) **its partners**, who have been running their business in the most competent and efficient manner,
 - (ii) **its long standing popularity** in the market or in the locality,
 - (iii) **business connections of the firm**, built up during the years of its existence, or
 - (iv) **the premises**, in which the business of the firm is carried on.

Two Types of Goodwill:

Goodwill is of two types:

- (1) Personal goodwill, and
 - (2) Firm goodwill.
- (1) **Personal Goodwill:** It is associated with the individual. When the owner or a partner(s) of the firm enjoys reputation in his/their own name(s), it is known as 'personal goodwill'.
- (2) **Firm's Goodwill:** It is associated with the premises of the firm, it is the firm name which enjoys the reputation or goodwill in the market.

Goodwill is an asset of the firm and as such it can be sold either separately or along with the other property of the firm. Hence, goodwill is a part of the property of the firm.

POINTS TO REMEMBER

Duties and liabilities are those duties and liabilities, which one partner can enforce against his co-partners.

Duties: (1) general duties, (2) to indemnify for loss caused by fraud, (3) to attend diligently to his duties, (4) to indemnify for loss caused by wilful neglect, (5) to account for private profits, (6) to account for profits in competing business, and (7) not to transfer his rights or interest.

Rights: (1) to take part in business, (2) to access books of account, (3) to share profit, (4) to interest on capital, (5) to be consulted, (6) to dissolve, (7) outgoing partner's rights, (8) to indemnity, and (9) to retire, (10) to be consulted at the time of admission of new partner.

Mnemonics - BASIC DORIC

(a) Incoming partner

Mutual rights and duties under certain circumstances: These are under different circumstances namely:

(1) change in constitution, (2) on expiry of the term, and (3) for additional undertaking.

Property of the firm includes:

(1) Property originally brought in, (2) property acquired afterwards, (3) partner's personal property in firm's use, (4) conversion of joint property into separate property, and (5) goodwill of the firm i.e., both property and personal.

[I] TEST YOUR KNOWLEDGE

(1) MULTIPLE CHOICE QUESTIONS

- (1) Which of the statements is incorrect:
 - (a) Every partner must work for the greatest common benefit of the firm
 - (b) Every partner must render true accounts
 - (c) Every partner must account for secret profits
 - (d) The firm need not indemnify the partner for expenses incurred while discharging his duties
- (2) Consent of all partners is necessary:
 - (a) in all fundamental matters
 - (b) in trivial matters
 - (c) in routine matters
 - (d) for all the above
- (3) Admission of a new partner requires:
 - (a) any partner desirous can take the decision
 - (b) consent of all partners
 - (c) majority partners must consent
 - (d) governments approval is necessary
- (4) Whenever additional undertakings are undertaken by an existing firm:
 - (a) old terms and conditions only apply
 - (b) new terms and conditions must be formulated
 - (c) old terms and conditions apply if new terms and conditions are not formulated
 - (d) 50% old terms and 50% new terms apply
- (5) Whenever the property of a partner is being used exclusively for the firm's activities, the property:
 - (a) belong to the partner nonetheless
 - (b) belongs to the firm
 - (c) the property belongs to the firm, and the partner is a creditor to that effect
 - (d) does not belong to the partner nor the firm
- (6) Goodwill of the firm includes:
 - (a) business trend
 - (b) personal goodwill
 - (c) business goodwill
 - (d) (b) & (c)
- (7) A partner can retire:
 - (a) anytime
 - (b) with the consent of all partners
 - (c) in accordance with the terms of the agreement
 - (d) all the above is true
- (8) An outgoing partner:
 - (a) can never start a competing business
 - (b) can start the business immediately
 - (c) can start the business subject to reasonable restriction imposed by the firm
 - (d) can start the business immediately or subject to reasonable restriction imposed by the firm as the case may be
- (9) Property of the firm includes:
 - (a) property acquired at the time of starting the firm
 - (b) property acquired during the existence of the firm
 - (c) goodwill of the firm
 - (d) all the above
- (10) Interest on the capital:
 - (a) is paid out of the capital if no profits
 - (b) is paid only out of the capital
 - (c) is paid only out of the profits
 - (d) cannot be paid at all

- (11) In the absence of specific provision in the partnership deed at what rate interest on advances shall be:
 (a) @ 6% (b) @ 8% (c) @ 10% (d) @ 24%
- (12) Which does not cause reconstitution of the firm:
 (a) admission of a partner (b) death (c) retirement of partner (d) illness of a partner
- (13) Which statement is correct:
 (a) partners share profit and losses in the ratio of their capital contribution (b) share the profits and losses equally irrespective of any agreement between them to the contrary (c) share the profits and losses equally in the absence of any agreement to the contrary between them (d) both (a) and (b)
- (14) Where a change occurs in the constitution of a firm and no new agreement is made:
 (a) ratio of profit sharing shall be equal for all partners (b) the ratio of profit sharing shall remain the same as it was before the change in the constitution (c) the ratio of profit sharing shall change in accordance with the inflation (d) the ratio of profit sharing shall change in the ratio of work done by each partner
- (15) Partner's personal property in firm's use:
 (a) becomes firm's property automatically (b) becomes firm's property depending on the intention of the partners (c) remains partner's individual property (d) depends on the judgement of the court

Ans.: (1) d (2) a (3) b (4) c (5) b (6) d (7) d (8) d (9) d (10) c (11) a (12) d (13) c (14) b (15) b.

(2) FILL IN THE BLANKS

- (1) A partner must indemnify the firm for loss caused to the firm by his act of _____.
- (2) Ordinarily no _____ is paid on the capital invested as the partner is already sharing the profits.
- (3) For ordinary matters, _____ rule prevails.
- (4) Whenever a partnership continues beyond the term prescribed, it becomes partnership _____.
- (5) A partner _____ transfer his interest to an outsider without the consent of co-partner.
- (6) Property of the firm is nothing but _____ of all the partners.
- (7) There are _____ types of goodwill.
- (8) A partner must _____ the firm for loss cause by fraud.
- (9) _____ of all partners is necessary at the time of admission of new partners.
- (10) Goodwill is an _____ of the firm and can be sold either separately or along with other property of the firm.
- (11) In case of reconstituted firm, _____ and _____ shall remain the same as before reconstitution unless otherwise agreed upon.
- (12) A profit made by a partner from a competing business generally belongs to the _____.
- (13) A partner _____ retire with the consent of all partners.
- (14) Property of the firm includes both tangible and intangible. (True/False)
- (15) Interest on capital is generally at _____ per cent.
- (16) Goodwill of a business is a partnership _____.
- (17) Property of the firm deemed to include _____ of the firm. (MU. March 18)
- (18) A partner is entitled to interest at _____ per annum on any payment made by him. (MU. March 18, Oct. 18)

Ans.: (1) fraud/willful neglect (2) interest (3) majority (4) at will (5) cannot (6) property (7) 2 (8) indemnify (9) consent (10) asset (11) terms, conditions (12) firm (13) can (14) True (15) 6% (16) property (17) goodwill (18) 6%.

[II] QUESTIONS

(1) SHORT QUESTIONS

- (1) What are the general duties of a partner towards the co-partners?
- (2) Can a partner start a competing business while being a partner of a firm carrying on similar business?
- (3) When a partner makes secret profits, to whom does the profit belong to?
- (4) Can every partner take part in the day to day activities of the firm?
- (5) What happens if the agreement is silent as to the ratio of sharing of profits?

(2) ESSAY TYPE QUESTIONS

- (1) Discuss the mutual rights and duties of partners.
- (2) What constitutes partnership property? Explain.
- (3) Write a note on mutual rights and duties when:
 - (i) Change in constitution occurs.
 - (ii) Firm continued after the expiry of the term.
 - (iii) New ventures are undertaken.
- (4) Write note on:
 - (a) Goodwill of the firm
 - (b) Concept of Goodwill. (MU. Nov. 17)

[III] CASE LETS

- (1) 'A' and 'B' are partners. 'A', while purchasing commodity for the firm, supplied his own commodity without the consent of 'B'. 'A' makes profit. To whom will it belong and why?
Ans.: To the firm. To account for private profits.
- (2) 'A', 'B' and 'C' have agreed to be partners in management consultancy business for 10 years. After 3 years 'B' decides to go abroad for further studies. Can he retire? Advice.
Ans.: Yes. Consent of all.
- (3) 'A' and 'B' are in partnership for supplying wheat to the government. Subsequently it is found out 'A' is engaged with 'C', in supplying of wheat to the same government. Can 'A' retain the profits made out of second engagement?
Ans.: No. To account for profits in competing business.
- (4) 'A' and 'B' are partners in cosmetic business. There is a dance sequence of Deepika Padhukone being shot nearby. 'A' who is alone in the business premises, leaves it unattended and goes to watch the shooting. Looting takes place in the premises. Can 'B' ask 'A' to make good the loss?
Ans.: Yes. Indemnify for willful neglect.
- (5) 'A', 'B', 'C', 'D' and 'E' are partners. 'B', retires and within few weeks 'D' dies. 'F' and 'G' join, and the business is continued. No fresh agreement is formed, regarding the duties and rights. Does this mean the new partners can do what they feel like?
Ans.: Partnership dissolves. If agreed continue and terms may apply.

Chapter 3

Relations of Partners with Third Parties

DESIGN

- 3.1** AUTHORITY OF PARTNER
- 3.2** LIABILITY OF PARTNERS AND THE FIRM TO A THIRD PARTY
- 3.3** PARTNER BY HOLDING OUT
- 3.4** RIGHTS OF TRANSFEREE OF A PARTNER'S INTEREST
- 3.5** MINOR'S POSITION IN PARTNERSHIP

We are aware by now; partnership comes into existence for carrying on business activities. In the conduct of business activities, the partners can enter into contracts with third parties on behalf of the firm. A partner is the agent of the firm for the purpose of the business of the firm. This chapter deals with the position of law in relation to those contracts entered by a partner on behalf of the firm.

3.1 AUTHORITY OF PARTNER

Every partner performs dual role, one as a principal and another as an agent. Whenever a partner is acting on behalf of the firm, he is acting as an agent and can bind the firm. In other words, every partner has the authority to bind the firm by his own acts. Such authority may be express or implied. In order to bind a firm, the act must be done or executed in the firm name or in any manner expressing or implying the interest to bind the firm.

An express authority is the authority given to a partner by words spoken or written, to act on behalf of the firm. Partnership Act is silent on what amounts to express authority. The Act only refers to the implied authority of a partner to bind the firm.

Implied authority: This is also known as the 'ostensible' authority. Implied authority is that authority of a partner to do an act, in the usual course of business of a firm and bind the firm. The partnership law has specifically laid down the conditions under which the firm is liable for the acts of the partner. Those conditions are:

- (1) The act must be done by the partner in the firm's name.
- (2) The act must be done in the usual way.
- (3) The act of the partner must relate to the normal business of the firm.

Acts within the implied authority:

The implied authority of a partner shall normally include the general powers of the partners as agents of the firm. If the partnership is of a general commercial nature, the implied authority of a partner shall include the following acts:

- (1) To buy or sell goods on account of the firm.
- (2) To pledge or sell the partnership property.
- (3) To borrow money, contract debts and pay debts on account of firm.
- (4) To draw, make, sign, endorse, transfer, negotiate and procure to be discounted or encashed: promissory notes, bills of exchange, cheques and other negotiable instruments in the name and on account of the firm.
- (5) To employ or engage servants necessary for carrying on firm's business.
- (6) To settle accounts with third parties dealing with the firm.
- (7) To receive payments of debts and give receipts for the same.
- (8) To present accounts to the creditors.
- (9) To engage a lawyer to defend the action brought against the firm.

It may be noted that an implied authority of a partner may differ from business to business.

Example: It may be usual for one partner of a firm carrying on banking business to draw, accept and endorse bills of exchange on behalf of the firm, but this act may be unusual to partner of a doctors' firm.

The partners in a firm may by contract between the parties, extend or restrict the implied authority of any partner.

Notwithstanding any such restriction, any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner.

In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm.

Acts outside the implied authority:

Sometimes certain restrictions are imposed on the implied authority of a partner. These restrictions may be studied under two headings:

- (a) Statutory restrictions.
- (b) Restrictions imposed by partnership deed.
- (a) **Statutory restrictions:** These restrictions are imposed by the Partnership Act itself. Following are the list of acts, which fall outside the scope of implied authority of a partner.

In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to:

- (1) submit a dispute relating to the business of the firm to arbitration,
 - (2) open a bank account on behalf of the firm in his own name,
 - (3) compromise or relinquish (give up) any claim or portion of a claim of the firm,
 - (4) withdraw a suit or proceeding existing against the firm,
 - (5) acquire immovable property on behalf of the firm,
 - (6) transfer immovable property belonging to the firm, or
 - (7) enter into partnership on behalf of the firm.
 - (8) admit any liability in a suit or proceeding filed on behalf of the firm.
- (b) **Restrictions imposed by partnership deed:** Restrictions on the implied authority may also be laid down by the partnership deed. However, the firm would still continue to be liable for the restricted acts against the third party (outsiders), who have no knowledge of such restrictions.

Authority in emergency: The Act lays down that in an emergency, a partner has authority to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, acting in his own case under similar circumstances. Such acts shall bind the firm.

Effect of admission (acknowledgement) by a partner: An admission (acknowledgement) or representation made by a partner in connection with the affairs of the firm is treated to be evidence against the firm, if it is made in the ordinary course of business of the firm.

Effect of notice to acting partner: The Act lays down that notice to a partner, who habitually acts in the business of the firm or of any matter relating to the affairs of the firm operates as notice to the firm. It means that 'notice to one partner is notice to all partners'. However, this rule would not apply in case of a fraud committed by a partner. It means that in a case of fraud, notice to one partner shall not be treated as notice to all partners.

3.2 LIABILITY OF PARTNERS AND THE FIRM TO A THIRD PARTY

- (1) **Liability of partners for acts of the firm:** Every partner is liable for the acts of the firm. The liability of the partners is joint and several.
- (2) **Liability of the firm for the wrongful acts of a partner:** The firm is liable for the loss caused to the third party on account of wrongful acts or omission done by a partner in the ordinary course of business or with the authority of all other partners.

Example: 'A' and 'B' are partners in a firm. 'B', bribed the clerk of 'C', to get confidential information. The clerk leaked the information, resulting in loss to 'C'. Held, the firm was liable.

- (3) **Liability of the firm for misapplication by partners:** Any money or property from a third party when received by a partner in the exercise of his authority or received by the firm in the ordinary course, if misapplied by a partner, the firm shall be liable.

Example: 'A', 'B' and 'C' are partners. 'D', a customer places order for goods worth INR 20,000/- and gives INR 10,000/- as advance to 'A'. 'A', uses that money to buy a T.V. for himself. Here 'D' is liable only to pay INR 10,000/- the balance on the supply of goods.

3.3 PARTNER BY HOLDING OUT

Generally a person becomes a partner by agreement which may be express or implied. Sometimes a person though not a partner is treated as a partner on account of his conduct. One such way is a partner by holding out.

S. 28 Partner by holding out:

"Any one who by words spoken or written or by conduct represents himself, or knowingly permits himself to be represented to be a partner in that firm, is liable as a partner in that firm to any one who has on the faith of any such representations given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit."

From the definition it is clear a person would be liable as a partner by holding out if –

- (a) he has represented himself as a partner either by express representation or by tacit representation, and

(b) the other party has given credit on the basis of such representation.

Note: It is immaterial whether the person so representing is aware or not, that the representation has reached the person giving credit.

A partner by holding out is liable to the third parties. However, he cannot take part in the activities of the firm nor does he share the profits.

Example: 'A' introduced 'B' to 'C' as his partner. 'B' remained silent. In fact 'A' and 'B' were not partners. In this case, 'B', becomes a partner by holding out.

However the doctrine of holding out does not apply in the following cases:

- (1) **Retirement of a sleeping partner:** A sleeping partner is a partner who is unknown to outsiders. He is liable so long as he is a partner. After his retirement he cannot be held liable by way of holding out.
- (2) **Deceased partner:** Sometimes a firm continues its business even when a partner dies. In such cases, the estate of the deceased partner cannot be held liable for any act of the firm after his death. It does not matter whether public notice was given or not.
- (3) **Insolvent partner:** An insolvent partner cannot be held liable for the acts of the firm entered after he was declared insolvent. Even in this case no public notice need be given. His liability gets terminated from the date he was declared insolvent.

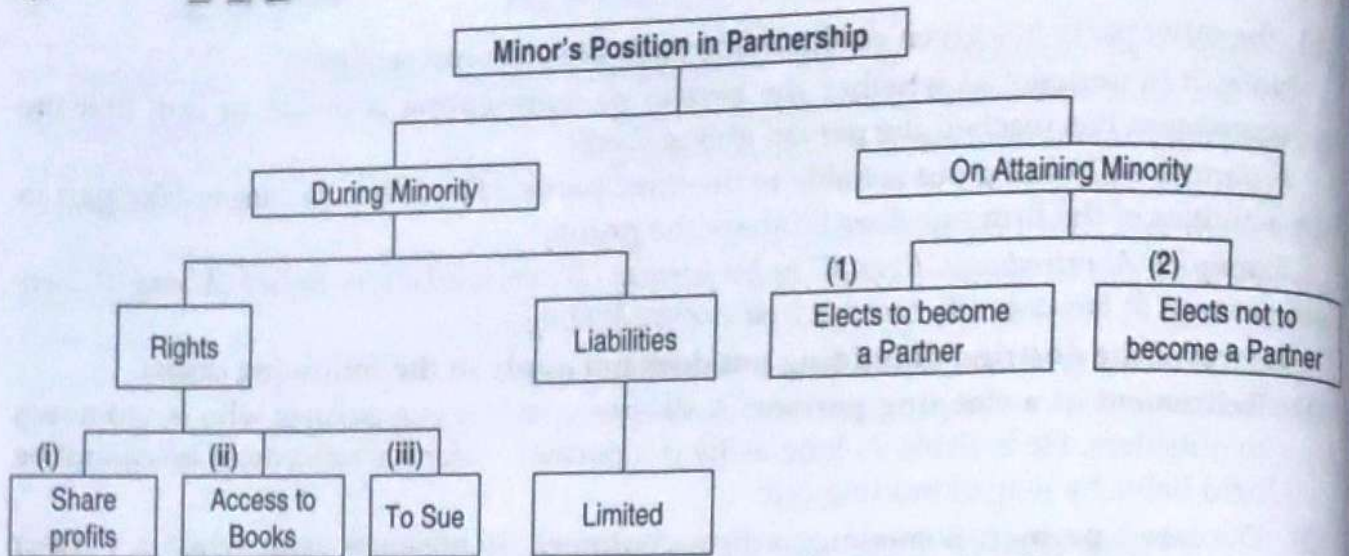
3.4 RIGHTS OF TRANSFEREE OF A PARTNER'S INTEREST

A partner can transfer his interest in partnership to a stranger absolutely or by mortgage or by creating charge or interest. In such circumstances, the transferee's interest can be studied under two headings:

- (1) **Rights of transferee during partnership:** During the continuation of the partnership, the transferee is entitled only to receive the share of profits of the transferring partner. However, the transferee cannot interfere in the conduct of the business nor can he ask for the accounts and inspect them.
- (2) **Rights of transferee after discontinuance of partnership:** Where the firm is dissolved or the transferring partner ceases to be a partner, the transferee is entitled to the transferor's share of assets in the firm.

3.5 MINOR'S POSITION IN PARTNERSHIP

A minor is a person below 18 years or 21 years of age in accordance with the law to which he is subject. As we are already aware, a minor cannot contract, he cannot enter into partnership agreement. However, under the Act, a minor can be admitted to the benefits of partnership. In this case the agreement shall be entered by the parent or next of friend. He will have to bring in capital and shall share profits as agreed upon.



The position of a minor can be studied under two headings namely:

- (1) Rights and liabilities of a minor during minority.
- (2) Rights and liabilities on attaining the age of majority.

(1) Rights and liabilities of a minor during minority:

Rights:

- (i) **To share profits:** A minor has the right to share profits and property as agreed upon.
- (ii) **Access to books:** During minority, a minor can look into the accounts but not the books of accounts.
- (iii) **To sue:** A minor has a right to sue for his share of profits or property of the firm. However, this right can be exercised only after coming out of the firm.

Liabilities:

A minor share only will be liable for any acts of the firm. Hence his liability is limited.

(2) Position of a minor on attaining the age of majority:

On attaining the age of majority, the minor has to decide within six months, whether or not he wants to become a full fledged partner.

A public notice must be given stating –

- (i) he has decided to become a partner, or
- (ii) he has decided not to become a partner.

If he fails to give notice, then he will automatically be deemed to have become a partner on the expiry of six months.

Rights and liabilities of a minor on attaining the age of majority:

(1) Where the minor elects to be a partner:

- (i) His rights and liabilities shall be similar to those of the full fledged partners unless there is an agreement to the contrary.
- (ii) His share in the property and profits shall be the same as was during minority unless there's an agreement to the contrary.

(iii) He becomes personally liable for all debts, since he was first admitted to the benefits of partnership.

(2) Where he elects not to become a partner:

(i) His rights and liabilities shall continue to be those of a minor, upto the date of public notice.

(ii) His share shall not be liable for any acts of the firm, done after the date of notice.

(iii) Finally, he can file a suit against the partners for his share of property and profits in the firm.

Example: 'A', 'B', 'C', 'D' are partners. 'E', a minor by contributing INR 5,00,000/- is admitted to the benefits of partnership on 1-1-2018. The agreement is entered by his guardian. On 1-1-19 'E', becomes a major. Within 30-6-19, 'E' has to decide whether or not he wants to become a partner. He gives a notice on 1-6-19:

(a) that he wants to become a partner. In this case his liability will go back since 1-1-2018 when he was admitted to the benefits of partnership.

(b) that he does not want to become a partner. In this case, his liability will be limited upto 1-6-19 only and it shall be limited.

Example: Partnership firm was being run wherein one of the partners was a minor (Respondent) and was admitted to the benefits of the partnership. The partnership was dissolved and subsequently the minor partner became a major. However, he (minor) did not exercise his option to become a partner under Section 30(5) of the Indian Partnership Act. When the appellants claimed their dues, the respondents were unable to pay them and so all three of them were sued by the appellants for adjudicating them for being insolvent. Held, under ordinary circumstances a respondent (minor) would be a partner of the firm. However, in this case he had attained majority only after the firm had been dissolved. A minor after attaining majority cannot elect to be a partner of a firm that does not exist. Hence Section 30 of the Partnership Act does not apply to him. [Shivagouda Ravji Patil v. Chandrakant Neelkanth Sedalge (1964) SCR 8 (233)]

POINTS TO REMEMBER

Implied authority of a partner: is the implied authority of a partner to do an act in the usual course of business of a firm and bind the firm provided the act is done in the firm's name. The act specifies what a partner can do and what cannot be done under this authority. Further parties by terms of the contract can also restrict implied authority. A partner in an emergency has the authority to do all such acts to protect the firm from loss as would be done by a person of ordinary prudence. Admission by a partner is binding on the firm. Similarly notice to a partner is notice to the firm, except in case of fraud.

Liability of partners and the firm:

- (1) Partners are liable for the acts of the firm.
- (2) Firm is liable for the wrongful acts of the partner.
- (3) Firm is liable for misapplication by partner.

Partner by holding out: Where a person not a partner either expressly or tacitly gives the impression that he is a partner to the outsider, who gives credit on such faith, is liable to the outsider. Partner by holding out is not applicable in case of (1) retirement of a dormant partner (2) death of a partner (3) insolvency of a partner.

A partner can transfer his interest to outsider. The transferee has the right only to share the partner's profit.

Minor's position in partnership: Minor can be admitted to the benefits of partnership.

Rights during minority: (1) to share profits (2) to have access to the accounts (3) to sue for his share by coming out of the firm.

Liability during minority is limited. On attaining majority – within six months, public notice must be given either when he elects to become or elects not to become a partner. If he elects he becomes a partner, his rights are as before but liability will date back to the date he was first admitted to partnership. If he elects not to become, his liability (limited) ceases with the date of notice.

[I] TEST YOUR KNOWLEDGE

(1) MULTIPLE CHOICE QUESTIONS

- (1) A partner may have:
 - (a) only implied authority (b) only express authority (c) (a) or (b) (d) (a) & (b)
- (2) Which statement is incorrect:
 - (a) a partner to bind the firm must act in the name of the firm (b) a partner to bind the firm, the act must relate to the normal business of the firm (c) a partner can draw, accept, endorse negotiable instrument (d) a partner can sell immovable property of the firm without the consent of co-partners
- (3) Which of the following is not a statutory restriction:
 - (a) Submit a dispute to an arbitrator (b) Compromise by a partner with regard to a claim of the firm (c) Submit a dispute to a lawyer (d) Enter into a partnership on behalf of the firm
- (4) Which statement is true:
 - (a) Every partner is liable to the acts of the firm (b) The firm is liable for the wrongful acts of the firm if done in the ordinary course of business (c) The firm is liable for the misapplication of the money received by a partner from the third party (d) All the above
- (5) The doctrine of holding out does not apply:
 - (a) after a sleeping partner retires (b) after a active partner retires by giving a public notice (c) when a person does not know that the representation has reached the person so giving credit (d) all
- (6) Which statement is inapplicable to a transferee of a partner's interest:
 - (a) cannot look into the accounts (b) cannot ask for dissolution of the firm (c) cannot interfere with the conduct of the business of the firm (d) cannot claim the transferor's interest, on the dissolution of the firm
- (7) As regards a minor who is admitted to the benefits of partnership, which of the statements is untrue:
 - (a) A minor does bring capital (b) A minor's liability is nil (c) A minor cannot sue during minority (d) A minor share the profits as well as is liable
- (8) What is the time period given to the minor after becoming a major, to decide whether he wants to be a full-fledged partner or not?
 - (a) 15 months (b) 12 months (c) 9 months (d) 6 months
- (9) In case a minor on attaining the age of majority, decides to become a partner his liability:
 - (a) is limited as during minority (b) is unlimited since the time of notice (c) is unlimited since the time he was admitted to the benefits of partnership (d) No liability at all
- (10) An admission made by a partner is:
 - (a) binding on the firm (b) is not binding on the firm (c) is binding only on the partner who makes the admission (d) not binding on any
- (11) A partner has no implied authority to:
 - (a) acquire immovable property for the firm (b) to take part in day to day affairs of the firm (c) to take payment and give receipt thereof on behalf of the firm (d) to engage staff for the affair of the firm
- (12) Notice to an active partner:
 - (a) is notice only to that partner (b) is notice to the firm (c) is an invalid notice (d) is notice to those partners who agree
- (13) Admission by a partner:
 - (a) is binding on the firm in all circumstances (b) is binding on the firm only if all partners agree (c) is binding on a firm if made in the ordinary course (d) is binding only on the partner who makes the admission

- (14) When the firm continues even after the death of a partner which statement is true:
 (a) The estate of the deceased partner will continue to be liable (b) The estate will be liable for acts only if approved by the legal representative (c) Other partners will have to share the burden of the deceased partner (d) Estate of the deceased partner will be liable for acts before the death of the partner
- (15) A minor who is admitted to the benefits of partnership:
 (a) has no liability (b) has limited liability to the extent of capital invested (c) has unlimited liability (d) is liable to the extent the minor desires.

Ans.: (1) d (2) d (3) d (4) d (5) c (6) d (7) b (8) d (9) c (10) a (11) a (12) b (13) c (14) d (15) b.

(2) FILL IN THE BLANKS

- (1) Every partner acts as an _____ while dealing with the third party and acts as a _____ while any other partner deals with the third party.
- (2) There are _____ kinds of restrictions imposed on the implied authority of a partner.
- (3) Partnership act only deals with _____ authority of a partner with regard to a partner acting with a third party.
- (4) In case of conflict between the implied and express authority of a partner, _____ authority will prevail.
- (5) In order to invoke the right of implied authority, the partner must act in the name of the _____.
- (6) A partner cannot open a bank account in _____ name.
- (7) Notice to an active partner in the normal course of business is _____ to the firm.
- (8) One partner _____ enter into a partnership with another firm.
- (9) The liability of partners is _____ and _____.
- (10) A person who knowingly permits himself to be represented as a partner, while he is not a partner and credit has been given on that basis, the person is a partner by _____.
- (11) A transferee of a partner's interest _____ interfere in the conduct of the business of the firm.
- (12) Whenever a partner is taking decision on behalf of the firm, he is acting as an _____.
- (13) A minor can be admitted to the _____ of partnership with the consent of all other partners.
- (14) During minority the minor's liability is _____.
- (15) On attaining the age of majority, the minor must give a _____ with regard to whether or not he wants to continue in the firm.
- (16) A minor admitted to the benefits of partnership can look into the _____ but not _____ of accounts.
- (17) A minor admitted to the benefits of partnership, share the _____.
- (18) If a minor elects to become a partner on attaining the age of majority, his liability will become _____ since the time he was admitted to the benefits of partnership.
- (19) A minor is given _____ to decide whether or not he wants to become a partner.
- (20) A partner who transfers his interest to a stranger is called _____.

Ans.: (1) agent, principal (2) 2 (3) implied (4) express (5) firm (6) own (7) notice (8) cannot (9) joint, several (10) holding out (11) cannot (12) agent (13) benefits (14) limited (15) public notice (16) account, books (17) profits (18) unlimited (19) 6 months (20) transferee.

[II] QUESTIONS

(1) SHORT QUESTIONS

- (1) What are the kinds of authorities a partner can exercise in relations to third party?
- (2) Would a partner's act during emergency, bind the co-partners?
- (3) Does an acknowledgement by a partner in an inebriated state bind the firm?
- (4) Is the firm liable to the third party for the misapplication of money by a partner?
- (5) Does a partner by holding out share the profits of the firm?
- (6) Does a transferee of a partner's interest, be liable to the firm for the losses?
- (7) Does a minor admitted to the benefits of the firm, share the losses?
- (8) Does a minor automatically become a partner, after attaining the age of majority?

(2) ESSAY TYPE QUESTIONS

- (1) Explain the implied authority of a partner to bind his firm.
- (2) What is meant by implied authority of a partner? Are there any restriction on the exercise of implied authority? If so what are they?
- (3) Explain the doctrine of 'holding out'.
- (4) What are the rights and liabilities of a minor admitted to the benefits of partnership. (MU. Nov. 17, March 18)
- (5) Write short notes on:
 - (a) Rights of transferee of a partner's interest.
 - (b) Liabilities of a partner for the acts of the firm.

[III] CASE LETS

- (1) 'A' and 'B' are partners of an investment firm. 'C' gives Rs. 5,00,000/- for investment to 'A'. 'A' uses it for lending at high interest. Is 'B' bound by it? Justify.
Ans.: Yes.
- (2) A hire purchase agreement was executed on behalf of the firm wherein it was stated to refer any dispute to arbitrator. This agreement was agreed by 5 partners out of 9 partners. What is the effect of such agreement?
Ans.: Not valid.
- (3) A minor is admitted to the benefits of partnership. After attaining the age of majority, he had not given a public notice whether to become a partner or not. In the meantime the firm is dissolved. Discuss the liability of the minor.
Ans.: Becomes full pledged partner at the end of 6 months.
- (4) 'X' and 'Y' are partners of a banking firm. 'X', receives certain securities from a customer for safe custody and puts in the safe custody of the firm. 'Y', disposes off those securities and applies the money for his own use. Is the firm liable for Y's Act?
Ans.: Yes.
- (5) Sachin Tendulkar, the cricketer assumed the honorary president of a sports wear business at the request of the partners 'A', 'B' and 'C'. 'X' gave credit to the firm on the assumption that Sachin Tendulkar was a partner. Is Sachin Tendulkar liable?
Ans.: Yes. Not if referred to an arbitrator.
- (6) 'A', 'B' and 'C' are partners in a firm. 'D' brings a defamatory suit against the firm. 'C', in the absence of 'A' and 'B' engages a lawyer, Mr. Ram Jethmalani to defend the suit. Are 'A' and 'B' bound by this appointment? Would it make any difference if 'C', engaged Mr. Mohan an arbitrator.
Ans.: Yes. No in case of arbitrator.

Chapter 4

Incoming and Outgoing Partners

DESIGN

- 4.1 NEW PARTNERS
- 4.2 RETIREMENT OF A PARTNER
- 4.3 EXPULSION OF A PARTNER
- 4.4 INSOLVENCY OF A PARTNER
- 4.5 DECEASED PARTNER
- 4.6 RIGHTS OF AN OUTGOING PARTNER

4.1 NEW PARTNER:

No person can be introduced as a partner without the consent of all the existing partners. The new partner is not liable for any act of the firm, done prior to his admission. However, even in the case of the new partner agreeing to be liable, the agreement will not confer any right on creditors to impose the old debts on the new partner. The creditor can acquire the right by entering into an agreement with the new partner either expressly or impliedly.

Example: 'A & B' firm was started by two partners on 1st January 2016. A loan of INR 5,00,000 was taken from a bank in May 2016. However, on 1st January 2017 'C' was introduced into the firm. 'C', cannot be held liable for the loan taken in 2016.

4.2 RETIREMENT OF A PARTNER:

The Act specifies three modes by which a partner can retire.

- (1) with the consent of all the other partners; or
- (2) in accordance with the express agreement between the 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 be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm. Such agreement may be expressly entered by the reconstituted firm and the third party or may implied by a course of dealing between such third party and the reconstituted firm after he after he had knowledge of the retirement.

However, a partner although retired will continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm, if done before the retirement until public notice is given of the retirement. The notice of retirement may be given by the retired partner or by a partner of the reconstituted firm. A retired partner is not liable to any third party who deals with the firm without knowing that he was a partner.

4.3 EXPULSION OF A PARTNER:

A partner may be expelled by the firm by majority of the partners, save in the exercise in good faith of powers conferred by the contract between the partners. Regarding liability, the same rules as in the case of retirement of a partner shall apply.

4.4 INSOLVENCY OF A PARTNER:

The adjudication of one of the partner as an insolvent generally dissolves of the firm. A partner who is adjudicated as insolvent ceases to be a partner from the date he is adjudicated as an insolvent. However, if there be a provision in the contract of

partnership that the firm is not to be treated as dissolved by the adjudication of a partner as insolvent, in such a case, the firm will not be dissolved. The estate of the insolvent partner shall not be liable for any act of the firm nor the firm for the act of the insolvent partner after the date on which the order of adjudication is made.

4.5 LIABILITY OF ESTATE OF DECEASED PARTNER:

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.

4.6 RIGHTS OF OUTGOING PARTNER TO CARRY ON COMPETING BUSINESS:

(1) An outgoing partner may carry on a business competing with that of the firm and he may advertise such business but, subject to contract to the contrary, he may not -

- (a) Use the firm name,
- (b) Represent himself as carrying on the business of the firm,
- (c) Solicit the customers who were dealing with the firms before he ceased to be a partner.

(2) **Agreement in restraint of trade:** A partner may make an agreement with other partners that on ceasing to be a partner he will not carry on any business similar to that of the firm within a specified period or within specified local limits; and, notwithstanding anything contained in Sec. 27 of the Indian Contract Act, 1872, such agreement shall be valid if the restrictions imposed are reasonable.

(3) **Right of outgoing partner in certain cases to share subsequent profits:** The section states that when upon the death of a partner, the surviving partners carry on the business of the continuing firm with the property of the firm without any final settlement of accounts between them and the estate of the deceased partner, then his estate is entitled to such profits which had been made since the former partner ceased to be a partner as may be attributed to the use of the share of his property.

POINTS TO REMEMBER

New partner:

No person can be admitted as a partner without the consent of all existing partner.

Retirement of a partner:

A partner may retire by consent in accordance with express agreement or by notice in case of partnership at will.

Expulsion of a partner:

By the consent of majority partners and in good faith, a partner may be expelled.

Insolvency of a partner:

Where a partner is adjudicated insolvent, he ceases to be a partner on the date on which adjudicated insolvent.

Liability of estate of deceased partner:

Where firm continues the estate of deceased partner is not liable after the death.

Rights of outgoing partner to carry on competing business:

A outgoing partner may carry on competing business subject to reasonable restrictions if any.

[I] TEST YOUR KNOWLEDGE

(1) MULTIPLE CHOICE QUESTIONS

- (1) A new partner:
 - (a) may be admitted by giving capital (b) may be admitted only with consent of all existing partner
 - (c) may be admitted only with consent of majority of partners (d) cannot be admitted
- (2) A new partner:
 - (a) is liable for all debts of firm (b) is not liable for debts of the firm entered prior to his admission
 - (c) is not liable for debts of the firm entered prior to his admission unless agreed upon
- (3) A partner can retire:
 - (a) with consent of all partners (b) by notice, if partnership at will (c) in accordance with express agreement (d) all the above
- (4) Expulsion of a partner:
 - (a) not possible (b) possible (c) possible if done in good faith and consented by majority partners
- (5) Whenever a partner becomes insolvent:
 - (a) he ceases to be a partner (b) he continues to be a partner (c) depends on the choice of insolvent partner (d) depends on the choice of the remaining partners
- (6) Whenever a partner becomes insolvent:
 - (a) he ceases to be a partner (b) he continues to be a partner (c) depends on the will of the partner (d) depends on the legal _____.
- (7) An outgoing partner:
 - (a) can carry on a competing business (b) can carry on a competing business subject to reasonable restrictions if any (c) cannot carry on a competing business at all (d) cannot carry on a competing business for 3 years
- (8) The death of a partner dissolve the firm. (MU. Nov. 17)
 - (a) True (b) False
- (9) A retiring partner need not give a public notice of his retirement. (MU. Nov. 17)
 - (a) True (b) False

Ans.: (1) b (2) c (3) d (4) c (5) a (6) a (7) b (8) b (9) b.

(2) FILL IN THE BLANKS

- (1) A new partner may be admitted with the _____ of existing partner.
- (2) There are _____ modes of retirement of a partner.
- (3) In case of partnership at will, a partner can retire at any time by giving _____.
- (4) A partner who has retired, will be liable to third parties until _____ is given.
- (5) The outgoing partner _____ use the firm name.
- (6) An outgoing partner may _____ the profit till the final settlement of accounts.
- (7) No Public notice is to be given in case of _____ of a partner. (MU. March 18)

Ans.: (1) consent (2) 3 (3) notice (4) public notice (5) cannot (6) share (7) death.

[II] QUESTIONS

(1) SHORT QUESTIONS

- (1) Can a firm admit a new partner?
- (2) What are the modes of retirement of a partner?
- (3) What is the liability of an expelled partner?
- (4) What is the liability of the estate of a decreases partner?
- (5) What is the liability of an insolvent partner for debts incurred prior to his adjudication and insolvent?

(2) ESSAY TYPE QUESTIONS

- (1) What are the modes of retirement of a partner? Explain the liability of the retired partner.
- (2) Describe the rights and restrictions of an outgoing partner to carrying on a competing business.
- (3) How can a partner be expelled? What would be his liability?
- (4) Discuss, the liability of outgoing partners under various circumstances.

(3) WRITE SHORT NOTES ON:

- (a) Admission of partner. (MU. March 18)
- (b) Expulsion of a partner. (MU. March 18)

[III] CASE LETS

- (1) A partnership firm having 5 partners was carrying on business of gas station at Chembur. One partner retired and wanted to start a gas station at Panvel in his name. The other partners objected, stating he cannot start a competing business. Are they justified?

Ans.: No. As restriction unreasonable.

- (2) XYZ were partners in a shoe manufacturing business. 'X' died on 6th May 2013. 'Y' and 'Z' continued the business. For loan taken in January 2014 from 'A' is the estate of 'X' liable as no public notice of X's death was given.

Ans.: Not. Estate can be held liable only for debts prior to the death.

- (3) XYZ were partners in a firm. In January 2014, 'A' was admitted to the firm. 'A' agreed with the other partner to be liable for all debts entered between 1st January 2013 – 31st December 2013. 'X' is a creditor who lent money on 1st June, 2013 wants to enforce the liability again. 'A' as the liability of the partners are joint and several can he do so? Justify.

Ans.: No. Ill party can enforce only if an agreement is entered between the new partner and Ill party.

Chapter 5

Dissolution of Firm

DESIGN

- 5.1** MEANING OF DISSOLUTION
- 5.2** MODES OF DISSOLUTION
- 5.3** CONSEQUENCES OF DISSOLUTION
- 5.4** PUBLIC NOTICE

5.1 MEANING OF DISSOLUTION

Partnership, as we are aware is a result of an agreement. All agreements can be discharged or terminated. This termination of the contractual relationship in case of partnership is called as dissolution. Dissolution under the partnership law can be mean 'dissolution of the firm' as well as 'dissolution of partnership'. Commonly both are taken to mean the same and are used interchangeably. However, legally there is a difference in the two. Dissolution of the firm means complete breakdown of the relations amongst all partners. Whereas dissolution of the partnership means, the relationship between same partners came to an end, while the firm continues. It would be right for us to say dissolution of the firm necessarily implies dissolution of partnership, whereas dissolution of partnership does not necessarily involve dissolution of firm.

Example:

- (i) 'A', 'B', 'C' and 'D' are partners in a firm. 'A' dies. 'B', 'C', 'D' decide to close down the firm. This amounts to dissolution of the firm.
- (ii) 'A', 'B', 'C', 'D' and 'E' are partners in a firm. There is an agreement that the firm shall not be dissolved on the death, retirement or expulsion of any partner. 'C' dies. This amounts to dissolution of partnership as the firm continues. Only the relationship with 'C' comes to an end.

5.2 MODES OF DISSOLUTION

There are three modes of dissolution of a firm namely:

- (1) Voluntary dissolution.
- (2) Dissolution by operation of law.
- (3) Dissolution by the intervention of the Court.

(A) Voluntary Dissolution:

- (1) **By consent:** All partners may consent for the dissolution of the firm. This can happen whether the firm is for a fixed duration or not.
- (2) **By agreement:** A firm may be dissolved in accordance with a contract.

Example: Partnership for a fixed term.

- (3) **By notice:** Whenever a partnership is at will, any partner can give a notice for dissolution, and dissolve the firm.

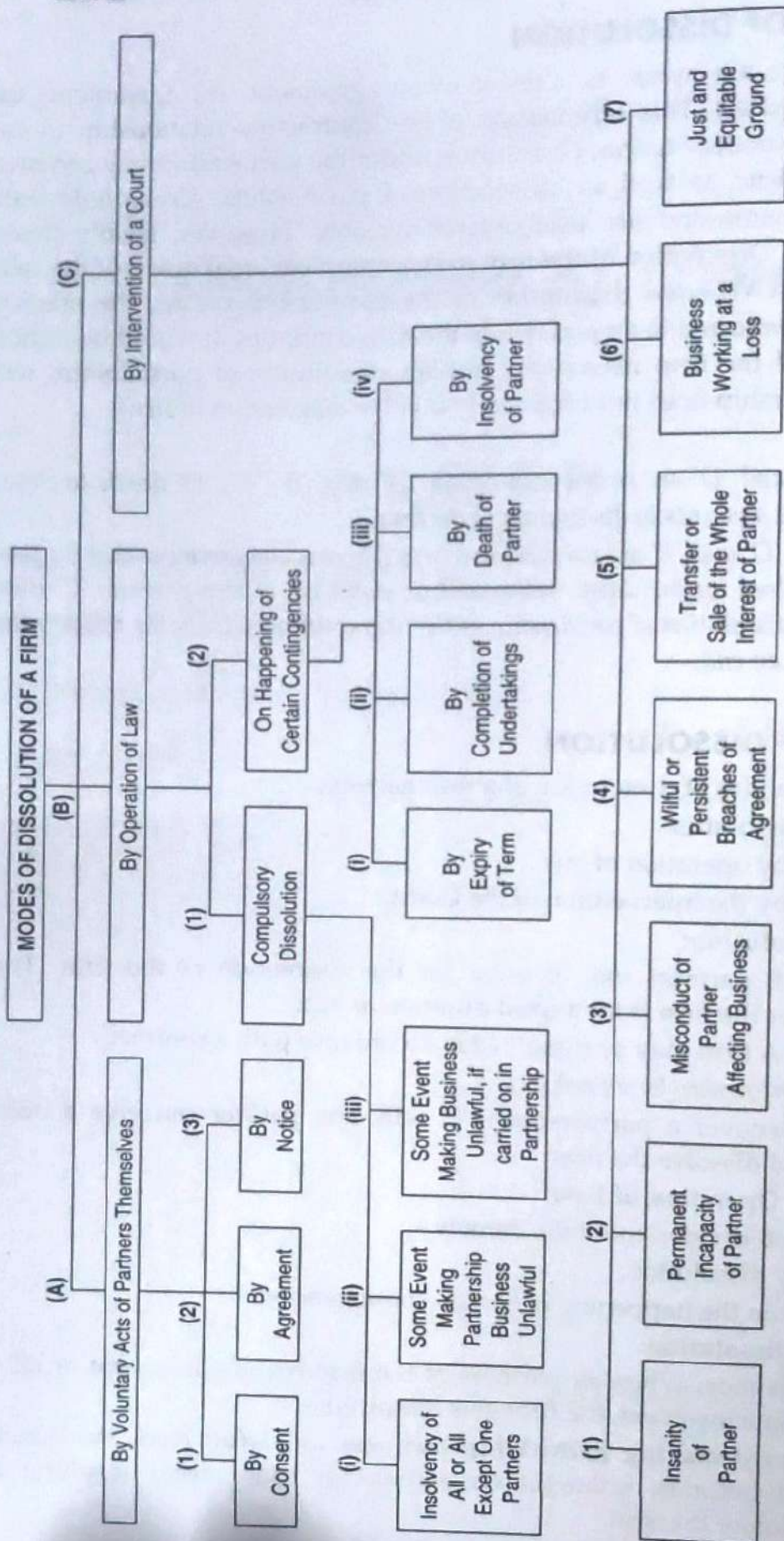
(B) Dissolution by Operation of Law:

This is further sub-divided into two, namely –

- (1) Compulsory dissolution,
- (2) Dissolution on the happening of certain contingencies.

(1) Compulsory Dissolution:

- (i) **By Insolvency:** When all partners of the firm become insolvent or all except one become insolvent, the firm gets dissolved.
- (ii) **Some event making partnership business unlawful:** Here, the business of the firm becomes unlawful on account of some event resulting in the dissolution of the firm.



Example: A firm was importing rice from another country. Subsequently, the government bans the import of rice. The firm gets dissolved, as the business has become unlawful.

- (iii) **Some event making the business unlawful, if carried on in partnership:** Sometimes the business may be lawful but carrying on in partnership is unlawful. In such cases the firm gets dissolved.

Example: A firm carrying on business in stationery item having twenty-one partners. Here, it cannot be a firm any longer, as maximum numbers permissible is twenty.

- (2) **Dissolution on the happening of certain contingencies:** The firm may get dissolved, subject to the contract between the partners in the following circumstances:

- (i) Expiry of the firm for which the firm was constituted,
- (ii) On completion of the venture,
- (iii) On death of a partner, and
- (iv) On insolvency of a partner.

(C) Dissolution of the firm by Intervention of the Courts:

On the filing of a suit, the Court after hearing the parties may order for the dissolution of the firm in following circumstances:

- (1) **Insanity of a partner:** When a partner becomes of unsound mind. The case may be instituted by the next of friend or other partners.
- (2) **Permanent incapacity:** Sometimes, a partner may become permanently incapable of discharging his duties. In such cases also, the Court may order dissolution of the firm.
- (3) **Misconduct of a partner:** When a partner, other than the partner suing, is guilty of misconduct which is likely to affect the business of the firm, the Court may order for dissolution of the firm.
- (4) **Wilful or persistent breaches of agreement:** Sometimes, a partner wilfully or persistently commits a breach of agreement relating to the management of the affairs of the firm or conducts the business in such a way that the other partners find it difficult to carry on the business with him. In such cases any partner other than the guilty partner may approach the Court for dissolution.
- (5) **Transfer of interest:** Sometimes a partner may transfer the whole of his interest or share to a third party, or the share may be charged or the share has been sold for the recovery of arrears of land revenue, in which cases, the other partner or partners may seek for dissolution of the firm.
- (6) **Losses in business:** Where the business of a firm cannot be carried on except at a loss, the Court can order for dissolution.
- (7) **Any other just and equitable grounds:** Where the Court is satisfied that it is just and equitable to dissolve the firm.

Note: The right of a partner to file a suit for dissolution on any of the above seven grounds cannot be excluded by any agreement to the contrary. [Hardit Singh v. Mukha Singh (AIR 1973 J&K 46)]

5.3 CONSEQUENCES OF DISSOLUTION

Dissolution of a firm is not done by a single act. Rather it involves a process. In the process of winding up, the partners assume certain rights and liabilities. They are:

(1) Rights of a Partner:

- (a) **Right to have the business wound up:** Every partner is entitled to have the property of the firm, applied towards the payment of debts and liabilities of the firm. After discharging the liabilities, surplus if any should be distributed amongst the partners according to their rights.
- (b) **Right to repayment of premium on premature dissolution:** Where a partner has joined a firm, which was in existence for a fixed term and had paid a premium, is entitled to reimbursement of the amount either wholly or partly. The amount to be repaid, depends on the agreement and the length of time he was a partner.

Example: 'A', 'B' and 'C' were partners. 'D', by paying INR 50,000/- as a premium becomes a partner. The term was for 10 years. The firm was dissolved after 3 years. Here, 'D' is entitled to repayment of $(\text{INR } 50,000/- \div 10 = \text{Rs. } 5,000 \times 7 \text{ years})$ INR 35,000/-.

The repayment shall be made only if there is an agreement or the person claiming is not guilty in bringing about dissolution or the dissolution is not on account of death of a partner.

- (c) **Rights of partner in case of dissolution on account of fraud or misrepresentation:** Where the firm was dissolved on account of fraud or misrepresentation by a partner, the innocent partners can rescind the contract of partnership and also have the right to retain the surplus if any for the capital and sum paid and to be indemnified for all debts paid with regard to the firm.
 - (d) **Right to restrain partners from the use of firm name or firm property:** Every partner has the right to restrain other partners from, carrying on same business, or use of firm's name or property.
- #### (2) Liabilities of a partner on dissolution of a firm:
- (a) **Liability for acts done after dissolution:** Every partner continues to be liable to the third parties for the acts of the firm even after dissolution until the public notice is given.
 - (b) **Continuing authority of partners after dissolution:** The partners would even on dissolution, continue to be liable for acts of winding up as well as for transactions began but remained unfinished at the time of dissolution.
 - (c) **Liability to account for personal profit:** Sometimes, a firm is dissolved on account of the death of a partner. And before the affairs are wound up, the surviving partners continue to carry on business. Any profit made in such a case needs to be accounted for.

5.4 PUBLIC NOTICE

(1) Circumstances when a public notice is required to be given:

- (a) On the retirement/expulsion of an active partner.

- (b) On dissolution of the firm.
 - (c) On the election to become or not to become a partner, by a minor on attaining age of majority.
- (2) **Mode of giving public notice:**
- (a) **In case of registered firms:**
 - (i) Publication in the official gazette.
 - (ii) Notice to the registrar of firms.
 - (iii) By publication in at least one vernacular newspaper.
 - (b) **In case of unregistered firms:**
 - (i) Publication in the official gazette.
 - (ii) By publication in at least one vernacular newspaper.
- (3) **Consequences of not giving public notice:**
- (a) **In case of retirement and expulsion of partner:** In case no public notice is given, then he shall continue to be liable to the third parties for the acts of the firm.
 - (b) **In case of dissolution of the firm:** Where no public notice is given on the dissolution of the firm, all partners would continue to be liable to the third parties for the acts of the dissolved firm.
 - (c) **On election to become or not to become a partner by a minor on his attaining the age of majority:** Minor with a period of six months of his attaining the age of majority is required to give public notice, declaring whether or not he wants to become a partner. If no notice is given, he is deemed to have become a partner.

POINTS TO REMEMBER

Meaning of Dissolution: Dissolution of a firm means complete breakdown. Whereas dissolution of partnership means the firm continues while relationship between some partners ceases.

Modes of Dissolution: Three modes:

(A) Voluntary dissolution:

- (1) By consent
- (2) By agreement
- (3) By notice.

(B) By Operation of Law: is further sub-divided into two:

- (1) **Compulsory dissolution:** (i) By insolvency. (ii) Some event making partnership unlawful. (iii) Some event making business unlawful, if carried on a partnership.
- (2) **On the happening of certain contingency:** (i) Expiry of the term. (ii) On completion of the venture. (iii) On death of a partner. (iv) On insolvency of a partner.

(C) Dissolution of the firm by intervention of the Courts: There are 7 modes:

- (1) Insanity of partner. (2) Permanent incapability. (3) Misconduct of a partner. (4) Wilful or persistent breaches of agreement. (5) Transfer of interest. (6) Losses in business. (7) Any other just and equitable ground.

Consequences of Dissolution: Results in both rights and liabilities:

Rights:

- (a) Right to have business wound up.
- (b) Right to repayment of premium.

- (c) Rights in case of dissolution on account of fraud or misrepresentation.
- (d) Right to restrain the use of firm's name or property.

Liabilities:

- (a) Liability for acts alone after dissolution.
- (b) Continuing authority of partners after dissolution.
- (c) Liability to account for private profits.

Public Notice: need to be given when:

- (a) a partner retires or is expelled.
- (b) on dissolution of a firm.
- (c) on election to become or not to become a partner, by minor or attaining age of majority.

Mode of giving public notice:

- (a) Publication in official gazette.
- (b) To registrar of firms.
- (c) In vernacular paper.

All three need to be done if the firm is registered. If unregistered, notice to registrar need not be given.

Failing to give notice, will hold them liable (in case of expulsion, retirement or dissolution). While in case of minor, he shall be deemed to have consented to become a partner.

[I] TEST YOUR KNOWLEDGE

(1) MULTIPLE CHOICE QUESTIONS

- (1) Dissolution of the firm means:
 - (a) the firm is dissolved (b) the partnership is dissolved (c) (a) & (b) (d) none of the above
- (2) Which of the following is not a voluntary mode of dissolution of the firm?
 - (a) By agreement (b) Some event making the business unlawful if carried on in partnership (c) By consent (d) By notice
- (3) Which is a mode of dissolution of the firm by operation of law?
 - (a) Some event making the partnership business unlawful (b) Insanity of a partner (c) Business undergoing losses (d) Just & equitable ground
- (4) Which statement is incorrect?
 - (a) Death of a partner, dissolves the firm unless otherwise agreed upon (b) On dissolution of the firm, public notice is required (c) Any incapacity of a partner, will make the court to dissolve the firm (d) A firm gets dissolved when all but one partner become insolvent
- (5) Public notice is necessary:
 - (a) when an active partner retires (b) when the firm is dissolved (c) when a minor admitted to the benefits of partnership, decides to become a partner (d) all the above
- (6) Notice to the registrar on dissolution of the firm is necessary:
 - (a) if the firm is unregistered (b) if the firm is registered (c) in both cases (d) (a) & (b)
- (7) Publication in the official gazette is necessary:
 - (a) When a registered firm is dissolved (b) When an unregistered firm is dissolved (c) (a) & (b)
- (8) The death of a partner dissolves the firm.
 - (a) True (b) False

Ans.: (1) c (2) b (3) a (4) c (5) d (6) b (7) c (8) a.

(2) FILL IN THE BLANKS

- (1) Legally speaking, dissolution of firm includes dissolution of the _____ but not the vice-versa.
- (2) In case of dissolution of partnership, the _____ may _____.
- (3) There are _____ modes of dissolution of a firm.
- (4) In case of dissolution of the firm, the relationship of _____ comes to an end.
- (5) When a firm has 21 partners and is carrying on the business of trading in rice, the business has to be dissolved as the business is _____ if carried on in _____.
- (6) When the firm is dissolved on account of fraud by a partner, the firm can retain the _____ of the partner for repayment of debt of the firm.

- (7) During dissolution, the partners have _____ authority.
 - (8) Public notice must be given under _____ circumstances.
 - (9) A minor on attaining majority, if intends to become a partner must give _____.
 - (10) A _____ has to be given for dissolution of the firm.
 - (11) In case of dissolution of registered firm, _____ has to be given to the _____ of firms.
 - (12) Publication in the _____ is necessary for dissolution of firms irrespective of whether the firm is registered or not.
 - (13) Where the _____ is necessary and if not given, the firm or the partner as the case be, will continue to be liable.
 - (14) No public notice is to be given in case of _____ of a partners. (MU. Nov. 17; March 18)
 - (15) Sleeping partner need not give any _____ about its retirement from the firm. (MU. Oct. 18)
 - (16) A firm may be dissolved with the _____ of all partners. (MU. Oct. 18)
- Ans.: (1) partnership (2) firm, continue (3) 3 (4) partnership (5) illegal, partnership (6) capital (7) implied (8) 3 (9) public notice (10) public notice (11) notice, Registrar (12) newspaper (13) public notice (14) death (15) public notice (16) consent.

[II] QUESTIONS

(1) SHORT QUESTIONS

- (1) What is meant by dissolution of the firm?
- (2) Are dissolution of the firm and dissolution of partnership one and the same?
- (3) What does dissolution by operation of law mean?
- (4) Would notice of dissolution of the firm brings an end to the firm immediately?
- (5) What is public notice?
- (6) Short note on expulsion of a partner.
- (7) Short note on Compulsory Dissolution. (MU. Oct. 18)

(2) ESSAY TYPE QUESTIONS

- (1) Explain the circumstances under which a firm is compulsorily dissolved.
- (2) What is a dissolution of a firm? Under what circumstances can a court dissolve the firm? Explain.
- (3) Explain the rights and liabilities of a partner on dissolution of a firm? (MU. Oct. 18)
- (4) Explain in detail the rules regarding public notice under the partnership law.
- (5) "Dissolution of the partnership need not result in the dissolution of the firm." Comment.
- (6) What is dissolution of a firm? Explain the grounds of dissolution of firm by court? (MU. Nov. 17)

[III] CASE LETS

- (1) 'A', 'B' and 'C' are partners. 'A' is negligent in his work. Would this be a ground for dissolution? Explain.
Ans.: No. Unless resulting in persistent loss.
- (2) 'A' and 'B' enter into a partnership. One of the clause of the partnership agreement is to the effect that on the death of either partner, their heirs shall take their place in the partnership. 'A' died. Can his heirs automatically become partner with 'B'?
Ans.: No.
- (3) 'A', 'B', 'C' and 'D' are partners. The deed is silent on dissolution. 'A', 'B', 'C' become insolvents. Will the firm continue or not?
Ans.: No. minimum 2 partners are necessary.
- (4) 'X', an Indian, 'Y', a Pakistani are partners. The firm is carrying on the business of importing and exporting sugar and precious stones. What happens to the firm, if Indian government bans import of sugar?
Ans.: For precious stones can continue.
- (5) 'X', 'Y' and 'Z' are partners. 'X', is convicted of travelling by railways without a ticket and with an intent to defraud. Can 'Y' and 'Z' go to the court for dissolution of the firm?
Ans.: No.

MATCH THE COLUMNS

A	B
(a) Registration of partnership (MU. March 18)	(1) Agreement
(b) Partner (MU. Oct. 18)	(2) Not a partner
(c) Dormant partner (MU. March 18)	(3) Tangible & intangible
(d) Partners	(4) Notice to the firm
(e) Money lender receiving a share in the profits	(5) Not compulsory
(f) Partnership	(6) Limited
(g) Liability of karta	(7) For expulsion of partner
(h) Interest on capital	(8) Dissolution of firm
(i) Partnership deed (MU. March 18)	(9) Premature dissolution of firm
(j) Goodwill	(10) Sleeping partner
(k) Implied authority of partner	(11) Principal and agent
(l) Notice to active partner	(12) Belongs to the firm
(m) Liability of minor	(13) Unlimited
(n) Consent of majority of partner necessary	(14) Relationship subsisting between partners.
(o) Insolvency of all or all but one partner	(15) 6% per annum
(p) Right to repayment of premium	(16) Notice to registrar of firms
(q) Secret profit made by a partner	(17) Ostensible
(r) Dissolution of registered firm	(18) Not necessary
(s) Banking business	(19) Profession, trade, occupation
(t) Business	(20) 10

Ans.: a (5) b (11) c (10) d (11) e (2) f (14) g (13) h (15) i (1) j (3) k (17) l (4) m (6) n (7) o (8) p (9) q (12) r (16) s (20) t (19).

Twenty Chartered Accountants start a LLP named "One Stop Solution LLP" for all business requirements.

How do they go about?

Limited Liability Partnership, 2008 is their guide.

Limited Liability Partnership, 2008

Limited Liability Partnership concept could be traced to France as early as 19th century. Now, large number of countries like USA, UK, Singapore, Japan, China, Australia, Germany, Canada have incorporated the concept of Limited Liability Partnership.

As regards India, the need for Limited Liability Partnership (LLP) has been felt for a very long time. Various committees had been set up from time to time to study the need for Limited Liability Partnership Law.

In 1957, Law Commission was set up to revise the Indian Partnership Act, 1932. A sub-committee of Shri G. S. Pathak and Shri G. N. Joshi was set up, which recommended Limited Liability Partnership to be recognised.

In 1972, Bhat Commission recommended limited liability for Small Scale Industrial entrepreneurs so that more persons could be persuaded to invest in new small enterprises.

The 1991, Abid Hussain Committee was set up. The committee had proposed an enactment of a Limited Partnership Act so that it would be easier for small scale entrepreneurs to source additional funding from other partners who could invest in partnership as sleeping partners. Based on this recommendation, the Expert Group recommended that the Limited Partnership Act should be enacted as soon as possible.

This was followed by Dr. S. P. Gupta's Committee in 2001. The Committee felt that with Indian professionals increasingly transacting with or representing multi-nationals in international transactions, the extent of the liability they could be exposed could be extremely high. Hence, in order to encourage Indian professionals to participate in the international business community without apprehension of being subject to excessive liability, the need for having a legal structure like the LLP was expressed. The committee also expressed that the limit of 20 partners in businesses was an impediment for operating on an international scale. The committee also observed that, not incorporating LLP would exclude Indian professionals from the arena of international community.

In 2003, Naresh Chandra Committee too stressed that the partnership with unlimited liability is both risky and has become an unattractive business proposition. Indeed, this is the chief reason why partnership firms of professionals, such as

accountants, have not grown in size to successfully meet the challenge posed today by international competition. Thus requiring the introduction of LLP on a priority basis was felt.

Dr. J. J. Irani Committee on Company Law was appointed by the Department of Company Affairs in 2004 to examine the issue of LLP. The committee also recommended the enactment of LLP law and held that LLP is conducive not only to the service sector but also to small enterprises, which would be able to compete globally.

Following this, the ministry placed a consultative paper for recommendations from all stake holders by December 31, 2005. Comments and suggestions received from different quarters were examined and Limited Liability Partnership Bill, 2006 was drafted. The Bill after being approved by the Cabinet on December 7, 2006, was introduced in the Rajya Sabha on December 15, 2006. It was later referred to the Department Related Parliamentary Standing Committee on Finance for examination and report. The Committee submitted its report recommending some changes along with some suggestions.

Thereafter, the Limited Liability Partnership Bill, 2008 was drafted and introduced in the Rajya Sabha. The LLP Bill received the assent of the President of India on January 7, 2009 and it became the LLP Act, 2008. The Government of India appointed the 31st Day of March, 2009 as the date on which the various sections of LLP Act would become applicable.

Thus, the Limited Liability Act, 2008 is a flexible, hybrid act which facilitates entrepreneurs, service providers, small and medium enterprises, venture capitalists and professionals to organise and operate in an innovative and efficient manner and to compete in the global market.

The Act has 14 Chapters, 81 Sections, 4 Schedules in addition to Rules and Forms.

Schedule I: Provisions regarding matters relating to mutual rights and duties of partners and limited liability partnership and its partners applicable in the absence of any agreement on such matters.

Schedule II: Conversion from firm into limited liability partnership

Schedule III: Conversion from private company into limited liability partnership

Schedule IV: Conversion from unlisted public company into limited liability partnership

The Act has to be read along with Limited Liability Rules, 2008 which has been amendment in 2012, 2016 and 2017 and more recently in 2018.

Only relevant portions of the Act have been covered.

Chapter 6

Nature of Limited Liability Partnership

DESIGN

- 6.1 SALIENT FEATURES OF THE ACT
- 6.2 DEFINITIONS
- 6.3 CHARACTERISTICS OR SALIENT FEATURES
- 6.4 LLP AGREEMENT
- 6.5 ADVANTAGES OF LIMITED LIABILITY PARTNERSHIP
- 6.6 DISADVANTAGES OF LIMITED LIABILITY PARTNERSHIP
- 6.7 PROCEDURE FOR INCORPORATION (SS. 11-21)
- 6.8 DISTINCTION BETWEEN LIMITED LIABILITY PARTNERSHIP, 2008 AND PARTNERSHIP ACT, 1932
- 6.9 DISTINCTION BETWEEN 'LIMITED LIABILITY PARTNERSHIP' AND 'COMPANY'

6.1 SALIENT FEATURES OF THE ACT

History has proved that both business models namely the partnership as well as a company have advantages as well as limitations. The company enjoys limited liability, while bound by rigid technicalities of law. While partnership enjoys flexibility in carrying its business but liability is unlimited. Thus, LLP is a mix of both models of business, having limited liability of a company at the same time permitting the flexibility of carrying on the business like that of a partnership.

- (1) The LLP shall be a body corporate having a separate legal entity which shall be different and distinct from the partners. The LLP shall have perpetual succession.
- (2) LLP is incorporated for a business activity with the aim of making profit. Thus, entities with charitable or not for profit objectives cannot form LLP.
- (3) The mutual rights and duties of partners of an LLP intersect and those of the LLP and its partners shall be determined by an agreement between partners or between the LLP and the partners. However, where the agreement is lacking, the mutual rights and duties shall be governed by the Act, 2008.
- (4) The liability of the LLP shall be to the full extent of its assets, while the liability of the partners shall be limited to their agreed contribution.
- (5) Every LLP shall have at least two partners and shall have at least two individuals as Designated Partners, of whom at least one shall be a resident of India.
- (6) The LLP is required to maintain annual accounts which shall be filed with the Registrar every year.
- (7) The Central Government shall have powers to investigate the affairs of a LLP, if required, by appointment of competent inspector, for the purpose.
- (8) The compromise or arrangement including merger and amalgamation of LLPs shall be in accordance with the provisions of the act.
- (9) A firm, private company or an unlisted public company would be allowed to be converted into a LLP in accordance with the provisions of the act.
- (10) The winding up of the LLP may be either voluntary or by the Tribunal to be established under the Companies Act, 1956.
- (11) The Act confers powers on the Central Government to apply provisions of the Companies Act, 1986 as appropriate.

Thus, LLP is an alternate corporate business undertaking which offers the benefits of corporate entity at the same time enabling its partner the flexibility of organising their internal structure as a partnership based on a mutually arrived agreement.

6.2 DEFINITIONS

Body Corporate:

S.2(d) means

a company defined in section 3 of the Companies Act, 1956 and includes:

- (a) *a limited liability partnership registered under this Act;*
- (b) *a limited liability partnership incorporated outside India; and*

(c) a company incorporated outside India' but does not include:

- (a) a corporate sole
- (b) a cooperative society registered under any law for the time being in force; and
- (c) any other body corporate (not being a company as defined in section 3 of the Companies Act, 1956 or a limited liability partnership as defined in this Act), which the Central Government may, by notification in the Official Gazette, specify in this behalf.

Explanation: The definition of body corporate needs to be understood in the light of the meaning of 'body corporate' and 'company' under the Companies Act, 1956 now Companies Act, 2013. Under the Companies Act, 1956, S.2(7) defines a body corporate while the Act, 2013, S.2(11) defines the same.

Under the Act, 1956 a body corporate or corporation includes a company registered outside India but does not include corporate sole, cooperative societies registered under the Societies Registration Act and entities specifically excluded.

Thus, body corporate means a corporate entity which enjoys a separate entity distinct and different from the members, having perpetual succession, capable of holding and disposing off its property and may sue and be sued in its own name.

Thus the following entities are included within the definition of a body corporate under the LLP, Act.

- LLP registered under this Act
- LLP registered outside India
- Company formed and registered under Companies Act, 1956 and existing company i.e., a company formed and registered under any of the previous companies laws. Further company includes both private and public company.
- Company incorporated outside India

However, the following have been excluded:

- **Corporate Sole:** Corporate sole has not been defined. However, a corporation sole is a legal entity consisting of a single ("sole") incorporated office, occupied by a single ("sole") natural person e.g. Bishop.
- **Cooperative Society:** A co-operative society registered under any law relating to co-operative societies. [Board of Trustees Ayurvedic & Unani Tibia College v. State of Delhi & another. AIR 1962 S.C. 458]
- Any other body corporate (not being a company or LLP), which the Central Government may, by a notification in the official gazette, specifically exclude.

Business:

S.2(e) means

includes every trade, occupation, profession, service and occupation.

Explanation: Every trade, profession, service and occupation which is lawful is included. The definition business shall have the same meaning as under the Indian Partnership Act, 1932.

Designated Partner:

S2.(j) means

any partner designated as such partner pursuant to Section 7.

S.7. Designated partners:

(1) Every limited liability partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India:

Provided that in case of a limited liability partnership in which all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such limited liability partnership or nominees of such bodies corporate shall act as designated partners.

(2) Subject to the provisions of sub-section (1),

(i) if the incorporation document:

(a) specifies who are to be designated partners, such persons shall be designated partners on incorporation; or

(b) states that each of the partners from time to time of limited liability partnership is to be designated partner, every such partner shall be a designated partner;

(ii) any partner may become a designated partner by and in accordance with the limited liability partnership agreement and a partner may cease to be a designated partner in accordance with limited liability partnership agreement.

(3) An individual shall not become a designated partner in any limited liability partnership unless he has given his prior consent to act as such to the limited liability partnership in such form and manner as may be prescribed.

(4) Every limited liability partnership shall file with the registrar the particulars of every individual who has given his consent to act as designated partner in such form and manner as may be prescribed within thirty days of his appointment.

(5) An individual eligible to be a designated partner shall satisfy such conditions and requirements as may be prescribed.

(6) Every designated partner of a limited liability partnership shall obtain a Designated Partner Identification Number (DPIN) from the Central Government and the provisions of sections 266A to 266G (both inclusive) of the Companies Act, 1956 shall apply mutatis mutandis for the said purpose.

Explanation:

Every LLP shall have at least two designated partners who are individuals. Of the two at least one of them shall be a resident in India. The term 'resident in India' means a person who has stayed in India for a period of not less than **one hundred and eight two days** during the immediately preceding one year. In case of a LLP in which partners is body corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as designated partners. The prior consent of the partners to be a designated partner is necessary

A person shall not be capable of being appointed as a designated partner of a limited liability partnership, if he –

- (a) has at any time within the preceding five years been adjudged insolvent; or
- (b) suspends, or has at any time within the preceding five years suspended payment to his creditors and has not at any time within the preceding five years made a composition with them; or
- (c) has been convicted by a Court for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months; or
- (d) has been convicted by a Court for an offence involving fraud with the intention of defrauding the creditors. (Refer S. 30 of the Act.)

The Central Government may, by notification, in the Official Gazette, remove the disqualification incurred by any person either generally or in relation to any LLP or LLPs specified in the notification. (Refer Rule 9, Limited Liability Partnership Rules, 2012).

Every designated partner of a LLP shall obtain a Designated Partner's Identification Number ('DPIN' for short) from the Central Government which is valid for life. Now DPIN is synonymous with DIN (Director Identification Number).

Designated partners shall be accountable for regulatory and legal compliance in addition to their liability as partners per se.

(l) "financial year", in relation to a limited liability partnership, means the period from the 1st day of April of a year to the 31st day of March of the following year:

Provided that in the case of a limited liability partnership incorporated after the 30th day of September of a year, the financial year may end on the 31st day of March of the year next following that year;

(m) "foreign limited liability partnership" means a limited liability partnership formed, incorporated or registered outside India which establishes a place of business within India;

(n) "Limited liability partnership" means a partnership formed and registered under this Act;

(o) "Limited liability partnership agreement" means any written agreement between the partners of the limited liability partnership or between the limited liability partnership and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to that limited liability partnership;

Explanation: A written agreement dealing with mutual rights and duties between partners of LLP or between LLP and partners with regard to the LLP.

(p) "Name", in relation to a partner of a limited liability partnership, means-

(i) if an individual, his forename, middle name and surname; and

(ii) if a body corporate, its registered name;

(q) "Partner", in relation to a limited liability partnership, means any person who becomes a partner in the limited liability partnership in accordance with the limited liability partnership agreement;

S.5. Partners:

Any individual or body corporate may be a partner in a limited liability partnership: *Provided that an individual shall not be capable of becoming a partner of a limited liability partnership, if-*

(a) he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;

(b) he is an undischarged insolvent; or

(c) he has applied to be adjudicated as an insolvent and his application is pending; or
 (d) voluntarily ceases to be a partner in accordance with an agreement or where there is no agreement by giving a notice in writing of not less than 30 days to the other partners of his intention to resign.

Explanation: In relation to LLP, partner means a person who becomes a partner in a LLP in accordance with the LLP agreement. In case of LLP, partner can be an individual or body corporate. However, an individual can be a partner in an LLP only if he is not:

- of unsound mind; or
- an un-discharged insolvent;
- or has not applied to be declared as insolvent;
- or has voluntarily ceased to be a partner.

Note: Minimum two partners are necessary in case of a LLP. Maximum number has not been stipulated by the Act.

(s) "Registrar" means a Registrar, or an Additional, a Joint, a Deputy or an Assistant Registrar, having the duty of registering companies under the Companies Act, 1956;

S.3. Limited liability partnership to be body corporate:

(1) A limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.

(2) A limited liability partnership shall have perpetual succession.

(3) Any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership.

Explanation: LLP once registered with the Registrar of Companies becomes a body corporate. Body corporate has been defined under S.2(d) of the Act. LLP is a legal entity separate from its partners, having perpetual succession and any change in the composition of partners shall have no effect on the rights or liabilities of a LLP. Thus, LLP has the attributes of a company like can hold and dispose of property in its own name, may sue and be sued in its own name. Both natural and artificial persons can form LLP.

6.3 CHARACTERISTICS OF LLP OR FEATURES OF LLP

- (1) LLP is a hybrid form of business activity imbibing both the traits of partnerships and a company.
- (2) LLP is a body corporate with a separate legal entity, perpetual succession, can own and dispose of assets, sue and be sued in its own name.
- (3) LLP is a business activity with sharing of profits. LLP is allowed for all lawful profit making business activities.
- (4) Minimum 2 partners are required and no maximum limit. Individuals or body corporate may be a partner.
- (5) LLP is administered by Registrar of Companies.
- (6) LLP must have at least two individuals as designated partners. At least one of the designated partners must be a resident in India.

- (7) No partner is liable for the misconduct or negligence of the other partners of the LLP. The liability of a partner is only as per the agreement.
- (8) Rights and duties of partners of an LLP and mutual rights and duties between the partners and LLP are governed by the LLP agreement subject to the Act.
- (9) Partners are agents of the LLP and not of the other partners.
- (10) Right of a partner to share the profits and losses of the LLP is transferable.
- (11) Concept of 'whistle blower' is incorporated in the LLP Act.
- (12) LLP is required to file statement of account and solvency together with the annual returns in the prescribed form annually.
- (13) A partnership firm, private company or an unlisted public company may convert itself to an LLP.
- (14) The Act has provisions for compromise, arrangement, amalgamation or reconstruction of LLP.
- (15) The Central Government may permit setting up of a place of business in India for a foreign limited liability partnership.
- (16) Although LLP is a hybrid of a company and partnership form of carrying on the business yet the Indian Partnership Act, 1932 is not applicable, while there are lots of similarities with the Companies Act.

6.4 LLP AGREEMENT

An agreement between the partners of LLP and between the LLP and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to that of LLP is to be entered. However, in the absence of any agreement, mutual rights and duties shall be determined as per Schedule I of LLP Act, 2008.

The Agreement shall include:

- (1) Names of the partners be it individual or body corporate.
- (2) Objectives of the LLP
- (3) Definition and interpretation clause
- (4) Commencement of business of LLP
- (5) Duration of LLP
- (6) Details of designated partner
- (7) Role of partners in management or else any partner can take part in management.
- (8) Details of which contribution of partners, be it in cash or kind.
- (9) Partner's powers, duties and authorities.
- (10) Details of share in the capital, profit and losses. If not mentioned all partners shall share equally as per Schedule I.
- (11) Details of remuneration to working partners if any or else it shall be presumed no remuneration.

(12) Specify interest to partners.

(13) Power to expel to be mentioned or else nobody can be expelled as per Schedule I.

6.5 ADVANTAGES OF LIMITED LIABILITY PARTNERSHIP

- (1) **Nature of business:** LLP is a form of business activity which is carried on in an organised manner on the basis of an agreement yet flexible in nature.
- (2) **Corporate entity:** An LLP on registration becomes a corporate body having the right to its own existence independent of the partners. Thus, it can enter into contracts, hold and can dispose of its property, can sue and be sued in its own name.
- (3) **Procedure and Legal requirements:** The procedure for registration of an LLP is simple and no capital requirement is there. Minimum number of partners is two and maximum is unlimited.
- (4) **Liability of partners:** The liability of the partners is limited to their agreed contribution in the LLP. No partner is liable on account of the independent or unauthorized actions of other partners, thus individual partners are protected from joint liability created by another partner's wrongful business decisions or misconduct.
- (5) **No distinction between partners and LLP:** The partners are the persons who manage the LLP unlike that of a company, where there is a distinction between the directors and shareholders.
- (6) **Flexible and Compliance:** LLP has greater flexibility in its operation and lesser compliance to be adhered to when compared to a company.
- (7) **Winding up procedure:** The procedure for winding up of a LLP is simple.
- (8) **Conversion:** The Act also provides for conversion of existing partnership firm, private limited Company and unlisted public Company into an LLP by registering the same with the Registrar of Companies (ROC).

6.6 DISADVANTAGES OF LIMITED LIABILITY PARTNERSHIP

- (1) **Limitation in the formation of an LLP:** Formation of an LLP requires minimum two persons. LLP cannot be formed by a single person. NRI/ foreign national who want to form an LLP in India must have at least one partner who should be a resident of India. Two foreign partners cannot form LLP without having one resident Indian partner along with them.
- (2) **Limitation regarding capital:** Capital required for the LLP is contributed by the partners in the form of tangible or intangible assets. However, the LLP cannot go to the public to raise its funds.
- (3) **Audit and Financial Disclosure:** It is necessary for LLP to get its accounts audited annually and to prepare its balance sheet and profit and loss account in accordance with the prescribed guidelines. Information as to the financial condition of the

- business is required to be disclosed and all such documents are available for public inspection. Therefore, it is not possible to maintain financial secrecy of the business.
- (4) **Partners are agents of the firm:** As partners are agents of the firm, the act of the partner is binding on the firm.
 - (5) **No separation of management and owners:** Partners are both the owners as well as are responsible for the management.
 - (6) **Winding up procedure:** Procedure for winding up is complex and procedure lengthy.
 - (7) **Alteration of agreement:** Any change in the address, change in partners and change in the share of any partner will require the amendment of the agreement which is complex.

6.7 PROCEDURE FOR INCORPORATION: (SS. 11-21)

- (1) **Number of partners:** Minimum two partners and maximum number is not specified by the Act. A partner can be an individual or a body corporate.

By an amendment to the Rules in 2013, it has been clearly stated a Karta of an HUF cannot become a partner or as HUF is not a body corporate.

However, as regards an individual as a partner, he should not be a minor, should not be of unsound mind, not be undischarged insolvent, or a person who has applied to be adjudicated as an insolvent. The name and address of each of the person who is to be partner on incorporation is to be furnished.

However, if at any time the number of partners falls below 2 and the LLP carries on its business for more than six months, then the partner who so carries on the business shall become personally liable for acts done.

- (2) **Filing of e-Form 2:** eForm 2 to be filled with the following details:

- Name of the LLP
- State in which the registered office is to be situated
- Nature of the business to be carried on
- Details of the partners and designated partners,
- Monetary value of the contribution of each of the partner and the total monetary value of the contribution
- Statement by Advocate/Company Secretary/Chartered Accountant/ Cost Accountant
- Digital signature of the authorising officer

The filing has to be along with the payment of the requisite fee as specified in Annexure A of the Limited Liability Rules, 2009.

- (3) **Designated partners:** Every LLP shall be required to have at least two designated partners who shall be individuals and at least one of the **Designated Partner shall be a resident of India**. If LLP fails to have minimum 2 designated partners, LLP and its every partner shall be punishable with fine not less than **ten thousand rupees** but which may extend upto **rupees five lakhs**.

- In case of designated partners the following are also held to be disqualifications:
- (a) Any person who has at any time within the preceding 5 years been adjudicated as insolvent; or
 - (b) Any person who suspends or has at any time within the preceding 5 years suspended payment to his creditors and has not at any time within the preceding 5 years made a composition with them; or
 - (c) Any person who has been convicted for it to imprisonment for not less than 6 months; or
 - (d) Any person who has been convicted by a court for an offence of fraud under the Act; or
 - (e) Any person who has been declared as unsound mind by the court; or any person who has applied to be adjudicated as insolvent.

The designated partners must intimate in writing, their consent to the Registrar in the prescribed form within 30 days of his appointment. Failing to do may invoke a penalty of not less than ten thousand rupees and may extend upto rupees one lakhs on the LLP and its every partner.

Every designated partner shall obtain the *Designated Partner Identification Number (DPIN)* from the Central Government. Now, DPIN has been substituted with Director's Identification Number (DIN). DIN once obtained is valid for life.

The partners/designated partners whose signature is required on the e-forms are required to get the digital signature from the competent authority whose list has been published in the LLP portal. Any vacancy in the designated partner shall be filled in within 30 days of the vacancy arising. Failing which a penalty of not less than ten thousand rupees and which may extend upto rupees one lakhs be levied on the LLP and its every partner.

A partner is an agent of the firm and not of the co-partners.

A designated partner is responsible to discharge all acts of the LLP in accordance with the Act and agreement. Designated Partners shall also be accountable for regulatory and legal compliances, besides their liability as partners, per-se. Also, the designated partners are liable severally to all penalties imposed on the LLP for any contravention of the provisions of the Act.

- (4) **Name availability form:** The partners can chose any name for the LLP. However, care has to be taken to ensure that the name is not an undesirable one or identical to an LLP already registered or is a registered trade mark. After finalisation of name, an application of name availability to be filed in Form 1.

The Form 1 permits to select choices of 6 names in the order of preference. The Registrar reserves any name of the choices given. That becomes the name of the proposed LLP. Once the Registrar reserves a name, Form 2 shall be submitted by the LPP.

- (5) **Preparation and Filing of LLP Agreement:** The partners of the LLP have to prepare and abide by the agreement prepared. In the event of lack of LLP agreement, schedule I shall be made applicable.

Broadly speaking the LLP agreement is required to conform with the Form 3 of the LLP Rules, 2012. The following details are necessary-

- Name of the LLP
- Address of the registered office
- Business to be carried
- Names of the partners, designated partners their contribution and profit sharing ratio
- Powers, duties and restrictions if any with regard to partner, designated partner
- Management and administration of LLP,
- Clauses regarding admission of new partner, expulsion, cessation and resignation of partner,
- Clauses regarding voluntary winding up
- Any other necessary information

The agreement may be filed along with the incorporation Form or may be filed within 30 days of incorporation.

(6) **Filing of Incorporation Documents:** The following documents to be filed with the Registrar of Companies:

- (a) Details of partners which shall be witnessed by any Chartered Accountant/ Company Secretary/Practicing Advocate.
- (b) Consent of each partner.
- (c) Form 2 Rule 11 states the details that needs to be filled up:
 - The Name of the limited liability partnership.
 - The proposed business of the limited liability partnership.
 - The address of the registered office of the limited liability partnership.
 - The name and address of each of the persons who are to be partners of the LLP on incorporation
 - The name and address of the persons who are to be designated partners of the LLP incorporation.
- (d) Other attachment if any.

Along with the requisite fees (which may range from INR 500/- to INR 5,000/- depending on the contribution), there shall be filed a statement in the prescribed form by an advocate or a company secretary or a chartered accountant or a cost accountant stating that all the requirements under the Act and Rules have been complied with. In case a person gives a false statement or does not believe the statement to be true, the Registrar of Companies (ROC) has the power to punish them with imprisonment up to 2 years and or fine which shall not be less than Rupees ten thousand and not more than Rupees five lakhs.

The form, documents along with the requisite fee shall be filed with the Registrar of Companies (ROC) for registration. The ROC after scrutiny shall grant it a 'Certificate of

Incorporation' within **14 days** of submission of the form. The certificate of incorporation is a conclusive evidence of LLP having a separate legal entity of its own. The LLP on registration shall have the acronym 'LLP' at the end of the name.

LIMITED LIABILITY PARTNERSHIP (SECOND AMENDMENT) RULES, 2018.

Procedure for incorporation: Every application for incorporation, shall be made through the web service, RUN-LLP, available at www.mca.gov.in

- Form RUN-LLP (Reserve Unique Name-Limited Liability Partnership), Form FiLLiP (Form for incorporation of Limited Liability Partnership), Form 5, Form 17 and Form 18 shall be processed by the Registrar, Central Registration Centre (CRC) for and on behalf of the jurisdictional Registrar. (Central Registration Centre means the office of Central Registration Centre as established under Companies Act, 2013).

FiLLiP LLP Form 2 is replaced by FiLLiP.

- FiLLiP to be filed with the Registrar having jurisdiction over the State in which the registered office of the limited liability partnership is to be situated alongwith fee as provided in Annexure 'A'.
- Where the Registrar, on examining Form FiLLiP, finds that it is necessary to call for further information or finds such application or document to be defective or incomplete in any respect, he shall give intimation to the applicant to remove the defects and re-submit the e-form within **fifteen days** from the date of such intimation given by the Registrar.

After re-submission of the document, if the Registrar still finds that the document is defective or incomplete in any respect, he shall give one more opportunity of **fifteen days** time to remove such defects or deficiencies. However, the total period for re-submission of documents shall not exceed **thirty days**.

FiLLiP may be used for the following:

- Incorporation of LLP
- Name reservation
- DPIN
- Change of name of LLP
- Conversion of private company/unlisted public company/firm to LLP

Formation of LLP:

STEP	RULES, 2009	RULES, 2018
I Pre incorporation	Identify designated partners and apply for DIN/DPIN in Form 7	Where the designated partner/s has no DIN or DPIN, up to 2 designated partners may apply through FiLLiP (Form for incorporation of LLP)

<p>II Name approval</p>	<ul style="list-style-type: none"> • Check availability of name using name search facility on MCA portal. • Apply for name reservation in Form I • Registrar shall inform to the applicant for reservation or non-reservation of the changed name or the name with which the proposed LLP is to be registered ordinarily within seven days of the receipt of application. 	<ul style="list-style-type: none"> • Application for reservation of name may be made through Form RUN-LLP (Reservation of Unique Name Limited Liability Partnership) of through FiLLiP. • Provided an applicant had applied for reservation of name under rule 18 in Form RUN-LLP and which has been approved, he may fill the reserved name as the proposed name of limited liability partnership. RUN-LLP which may either be approved or rejected, as the case may be, by the Registrar after allowing a re-submission of such application within fifteen days for rectification of defects.
<p>III Incorporation</p>	<ul style="list-style-type: none"> • Incorporation document shall be filed in Form 2 with the Registrar having jurisdiction over the State in which the registered office of the limited liability partnership is to be situated along with the fee as provided in Annexure 'A'. • Submission of incorporation documents and subscribers statements along with various required information and documents. • Form 2 to be signed by designated partners and also to be certified by Advocate/CA/CS/ Cost Accountant in practice. 	<ul style="list-style-type: none"> • For Rule-8 (Designated partner DIN), Rule 11 (Incorporation of LLP) and Rule 18 (Reservation of name) Shall be made through FiLLiP (Form for Incorporation of Limited Liability Partnership). • LLPIN (Limited liability Identification Number) of CIN (Company Identification Number) to be obtained • Submission of documents, signature of designated partners and certification by Advocate/CA/CS/Cost Accountant in practice shall be done digitally.

IV Incorporation	Registrar after satisfying himself about the completeness with regards to information, documents and compliances issue Certificate of Incorporation in Form 16 within 14 days of submission of Form 2	Where the Registrar, on examining Form FiLLiP, finds that it is necessary to call for further information or finds such application or document to be defective or incomplete in any respect, he shall give intimation to the applicant to remove the defects and re-submit the e-form within fifteen days from the date of such intimation given by the Registrar. After re-submission of the document, if the Registrar still finds that the document is defective or incomplete in any respect, he shall give one more opportunity of fifteen days' time to remove such defects or deficiencies provided that the total period for re-submission of documents shall not exceed thirty days . The Certificate of Incorporation of limited liability partnership shall be issued by the Registrar in Form 16.
V Post incorporation Compliance	Simultaneously at the time of filing of Form 2 or within 30 days of incorporation, Form 3 (LLP agreements) & Form 4 (details of Partners) to be filed with the Registrar.	

6.8 DISTINCTION BETWEEN 'LIMITED LIABILITY PARTNERSHIP, 2008' AND 'PARTNERSHIP ACT, 1932'

Sr. No.	Criterion	Limited Liability Partnership, 2008	Partnership Act, 1932
1	Governing Act	Limited Liability Act, 2008	The Indian Partnership Act, 1932
2	Minimum and Maximum Number of Partners	Minimum 2 partners, maximum has not been specified	Minimum 2 partners and maximum 10 partners in case of banking and 20 maximum in all other businesses.
3	Legal status	LLP on registration acquires an independent personality of its own distinct and different from the partners.	Registration is not compulsory. Even if registered, the firm does not have a separate legal entity of its own.

4	Perpetual succession	LLP is a body corporate with perpetual succession.	Firm does not have perpetual succession.
5	Registration	Compulsory	Optional
6	Liability	The liability of the partners is limited to the extent of capital invested.	The liability of partners is unlimited.
7	Legal Proceeding	As LLP is a legal entity, it can sue and be sued in its own name	Only registered firm can sue third parties
8	Principle of Principal and agent	A partner is an agent of the LLP and not of co-partners. The LLP is only the principal.	Every partner is an agent of every other partner. Thus, a partner is both a principal and an agent.
9	Ownership of assets	As LLP has its own entity, assets belong to LLP and not to the partners.	As the firm has no separate entity, the property collectively belongs to all the partners.
10	Transfer of interest	Transfer of interest is governed by agreement.	Generally transfer of interest is not permissible except with the consent of all partners.

6.9 DISTINCTION BETWEEN A 'LIMITED LIABILITY PARTNERSHIP' AND A 'COMPANY'

Sr. No.	Criterion	LLP	Company
1	Governing Act	LLP Act, 2008	Companies Act, 2013
2	Minimum Number	2	1 - OPC 2 - Private Company 7 - Public Company
3	Capital	An LLP can receive capital from its partners only. It cannot offer equity shares in the business to non-LLP members. Loans can be taken from outsiders.	A limited company can receive capital and loans from outside investors.
4	Constitution	Agreement between members recommended but not essential. In case of no agreement, provisions as per schedule I to the Bill would be applicable.	Memorandum of Association (MOA) and Articles of Association (AOA) are the basic documents under which a company would regulate its affairs.
5	Liability of Members/ Partners	Limited to amount of capital agreed to be contributed, according to LLP agreement.	Limited to the extent of shares invested in case of limited company. Unlimited in case of company with unlimited liability.
7	Profit sharing ratios	LLP Agreement would determine all such issues.	May pay salaries and dividends from distributable profits.

8	Management	At least two Designated Partners are must. One of Designated Partners must be resident in India. Subject to this requirement and subject to LLP Agreement, all partners would have equal powers.	Management through 'Board of directors'. Private company to have at least two directors, public company to have at least three directors.
9	Decisions taking mechanism	LLP Agreement to decide decision taking mechanism. If no agreement except for a few decisions on which unanimous approval of partners is required, majority rule would prevail.	Majority rules prevails in directors meetings. In case of shareholders, there can be ordinary resolution or there can be special resolution
10	Meetings	No such requirement. No such stipulation for meeting of partners either periodically or annually.	At least one Annual General Meeting (AGM) of members required. Board of directors to meet at least four times in a year.
11	Written Resolutions	There is no requirement in the proposed Bill of taking decisions by way of written resolutions,	Decisions are taken by way of written resolutions
12	Registration as a Non for Profit Organisation	Not permitted	Possible for companies under sec 25 of the Companies Act

POINTS TO REMEMBER

Characteristics of LLP: LLP is a body corporate with the name ending with LLP. Minimum 2 partners necessary and maximum not specified. LLP requires minimum 2 designated partners. Partners are agent of the firm and not of other partners and the liability is limited.

Procedure for incorporation: Application along with the fee is made to the ROC in the required format with a statement of compliance of legal requirement by a Chartered Accountant, Cost Accountant or Company Secretary. Within 14 days of submission, certificate of incorporation is granted.

[I] TEST YOUR KNOWLEDGE

(1) MULTIPLE CHOICE QUESTIONS

- (1) LLP is governed by:
 - (a) Indian Partnership Act, 1932
 - (b) Limited Liability Partnership, 2008
 - (c) Companies Act, 1956
 - (d) Indian Contract Act, 1872
- (2) Which of the statement, does not apply to LLP, 2008?
 - (a) Liability of each partner is unlimited
 - (b) No limit as to maximum number
 - (c) LLP has perpetual succession
 - (d) Liability of the each partner is limited
- (3) Minimum number of designated partners necessary for LLP:
 - (a) 1
 - (b) 2
 - (c) 3
 - (d) 4
- (4) Registration of LLP is granted by:
 - (a) Collector of the district
 - (b) Registrar of Cooperative Societies
 - (c) Registrar of Companies
 - (d) Registrar of firms
- (5) Atleast one designated partner must be:
 - (a) a resident of India
 - (b) resident of a foreign country

- (6) Every designated partner shall obtain:
 (a) Adhar card (b) DPIN/DIN (c) APN (d) Nationalised Bank Account No
- (7) If the designated number falls below 2 for 6 months, the penalty imposed on every partner is:
 (a) Fine of Rs. 10,000 to Rs. 5 lakhs (b) Fine of Rs. 7,000 to Rs. 75,000 (c) Fine of Rs. 5,000 to Rs. 50,000 (d) Fine of Rs. 3,000 to Rs. 30,000
- (8) Generally the ROC grants registration within:
 (a) 1 week of submission (b) 2 weeks of submission (c) 3 weeks of submission (d) 4 weeks of submission
- (9) LLP is:
 (a) a partnership firm with unlimited liability (b) a business activity not recognised by law (c) a business enterprise (d) a body corporate with separate entity and perpetual succession
- (10) A private company can be converted into a LLP:
 (a) Yes (b) No
- (11) Under LLP, the term business only includes trade. (MU. Nov. 2017)
 (a) True (b) False
- (12) Atleast one of the designated partner shall be a resident of India. (MU. Nov. 17)
 (a) True (b) False
- (13) Under LLP the term business only includes trade. (MU. Nov. 17)
 (a) True (b) False

Ans.: (1) b (2) a (3) b (4) c (5) a (6) b (7) a (8) b (9) d (10) a (11) b (12) a (13) b.

(2) FILL IN THE BLANKS

- (1) The minimum number required for a LLP is ____ and maximum is ____.
- (2) Individually the member of LLP are called ____.
- (3) A LLP must be ____.
- (4) LLP on registration becomes a ____.
- (5) Minimum ____ designated partners are necessary for LLP.
- (6) The liability of partners of LLP is ____.
- (7) The partner of a LLP is an ____ of the firm and not of the other partners.
- (8) The liability of LLP is met out of the property of the ____.
- (9) Vacancy of designated partners needs to be filled within ____ months of the arising of the vacancy.
- (10) ____ is the registering authority for LLP.
- (11) The contribution constitutes capital of LLP and is kind of ____ to the external world. (MU. Nov. 17, March 18)
- (12) An unlisted ____ may be converted into a LLP. (MU. Oct. 18)

Ans.: (1) 2, unlimited (2) partners (3) registered (4) body corporate (5) 2 (6) limited (7) agent (8) LLP (9) 6 (10) Registrar of Companies (11) capital (12) public company.

[II] QUESTIONS

- (1) Explain the salient feature of the LLP Act, 2008.
- (2) Discuss the advantages and disadvantages of LLP.
- (3) Define LLP.
- (4) Write short note on Designated Partners. (MU. Nov. 17)
- (5) Who can be partners in a LLP?
- (6) "LLP on registration is a body corporate". Comment.
- (7) Discuss the characteristics of LLP.
- (8) Explain the procedure for registration of LLP.
- (9) Who is a designated partner? Explain in detail the incorporation of LLP. (MU. March 18)
- (10) Define LLP. Discuss the nature of LLP. (MU. Nov. 17)
- (11) What is the advantage of LLP? Distinguish between 'LLP' and 'Partnership Firm'. (MU. Nov. 17)
- (12) Define LLP. Explain its features, advantages? (MU. Oct. 18)

(13) Distinguish between:

- (a) LLP, 2008 and Indian Partnership Act, 1932.
- (b) LLP and Company.

[III] CASE LETS

(1) 7 friends wanted to register a LLP by name 'A&A' LLP. In the details of business it was stated 'to encourage street children to attain their potential'. They further stated that profit was not their motive. The ROC, refused to register. Is the ROC justified or not in doing so? Give reasons.

Ans.: Yes. LLP requires profit motive.

(2) 10 partners were there in a LLP called 'X' & 'Y' LLP. The LLP had 2 designated partners. One of the designated partner resigns. The firm continues for a year with only 1 designated partner. The government authorities want to take action. Can an action be taken or not and if so against whom and what action? Justify

Ans.: Yes. Against partners.

(3) 2 friends want to register a LLP with themselves as partners with the objective of 'carrying on charitable activity of educating street children of Dharavi, Mumbai'. Can they do so? Explain.

Ans.: No. Profit not there.

(4) Two body corporate together want to register themselves as a LLP in India. Can they do so? Explain.

Ans.: Yes.

(5) Two foreign companies want to register themselves as LLP in India. Can they do so?

Ans.: No. Indian Resident Necessary.

DESIGN



Chapter 7

Extent and Limitation of Liability of LLP and Partners (Ss. 26-31) and Contribution (Ss. 32-33)

DESIGN

- 7.1 LIABILITY OF A PARTNER
- 7.2 HOLDING OUT
- 7.3 LIABILITY OF LIMITED LIABILITY PARTNERSHIP
- 7.4 WHISTLE BLOWING
- 7.5 CONTRIBUTION

The liability for any act or omission of the LLP whether arising out of a contract or otherwise solely vest with the LLP. The liability shall be met out of the assets of the LLP. Partners will not be jointly or generally liable for the act or omission of any other partner. This is on account of the LLP is a body corporate with a separate entity of its own and limited liability.

Partners in a LLP will not be responsible for another partner's debts, obligations, or liabilities resulting from negligence, malpractice or misconduct. According to Black's Law Dictionary, a limited liability partnership is "a partnership in which a partner is not liable for a negligent act committed by another partner or by an employee not under the partner's supervision".

This topic may be broadly looked into from three aspects

- (1) Liability of a partner
- (2) Extent of liability of LLP
- (3) Whistle blowing

7.1 LIABILITY OF A PARTNER

A LLP is a corporate body managed and run by the partners. Every partner can take part in the management of the LLP. In the normal course of business, a partner has the capacity to represent the partnership and undertake contracts of the LLP. Such acts shall be binding on the LLP. Also a notice to a partner of LLP is notice to the LLP, irrespective of the authority of the partner. A partner can exercise his discretion and has the power to do all lawful things in doing the assigned act. In case of emergency, the partner's authority extends to do all such acts for the purpose of protecting the principal's interest, provided the partner had acted as a man of ordinary prudence.

The Act provides for a minimum of two partners to carry on LLP. If at anytime the number of partners of a LLP is reduced below two and the limited liability partnership carries on business for more than **six months** while the number is so reduced, the person, who is the only partner of the limited liability partnership during the time that it so carries business after those six months and has the knowledge of the fact that it is carrying on business with him alone, shall be liable personally for the obligations of the LLP incurred during that period.

Liability of a partner may be considered from the following aspects:

- (1) **Partner as an agent:** S.26 – "*Every partner of a limited liability partnership is, for the purpose of the business of the limited liability partnership, the agent of the limited liability partnership, but not of other partners.*"

A partner of a LLP acts as an agent of the LLP and not of the other partners. . Also, mutual agency principle does not apply. The partners of an LLP enjoy limited liability. Hence, a partner shall not be liable for the acts of the co-partners. It is the LLP that shall be liable for the acts of the partners. All partners, not just the designated partners, are agents of the LLP, and as such owe the duties of an agent to the LLP. The Act, has not specified the duties. However, it is implied that the partner as an agent shall abide by the obligations of agents which include

obligations to act in the interest of the principal (i.e. the LLP), to avoid conflict of interests and a prohibition on the making of secret profits. Under this Act, the law of agency as stated in the India Contract Act, 1872 cannot be applied in its totality and may be considered subordinate to the Contract Law.

- (2) **Extent of liability of partner.** S.28 – (1) A partner is not personally liable, directly or indirectly for an obligation referred to in sub-section (3) of section 27 solely by reason of being a partner of the limited liability partnership. (2) The provisions of sub-section (3) of section 27 and sub-section (1) of this section shall not affect the personal liability of a partner for his own wrongful act or omission, but a partner shall not be personally liable for the wrongful act or omission of any other partner of the limited liability partnership.

As discussed earlier the liability of a partner of the LLP is limited. It is the LLP whose liability is unlimited as the LLP has a separate corporate body. Thus, the liability of a partner shall not extend for the acts of the co-partners. However, a partner shall be held liable personally for the wrongful act or omission involving him.

- (3) **Liability in case of fraud: (S.30):**

(1) In the event of an act carried out by a limited liability partnership, or any of its partners, with intent to defraud creditors of the limited liability partnership or any other person, or for any fraudulent purpose, the liability of the limited liability partnership and partners who acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited for all or any of the debts or other liabilities of the limited liability partnership: Provided that in case any such act is carried out by a partner, the limited liability partnership is liable to the same extent as the partner unless it is established by the limited liability partnership that such act was without the knowledge or the authority of the limited liability partnership.

(2) Where any business is carried on with such intent or for such purpose as mentioned in sub-section (1), every person who was knowingly a party to the carrying on of the business in the manner aforesaid shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

(3) Where a limited liability partnership or any partner or designated partner or employee of such limited liability partnership has conducted the affairs of the limited liability partnership in a fraudulent manner, then without prejudice to any criminal proceedings which may arise under any law for the time being in force, the limited liability partnership and any such partner or designated partner or employee shall be liable to pay compensation to any person who has suffered any loss or damage by reason of such conduct: Provided that such limited liability partnership shall not be liable if any such partner or designated partner or employee has acted fraudulently without knowledge of the limited liability partnership.

The LLP and every partner shall be liable unlimitedly for acts done with the intention to defraud the creditors or any other person or entered with fraudulent purposes. The

LLP may be exempt from the liability provided the act was done without the knowledge or consent of the LLP.

Every person who was knowingly a party to the carrying on of the business in the manner aforesaid shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees. Also the limited liability partnership and any such partner or designated partner or employee shall be liable to pay compensation to any person who has suffered any loss or damage. However, the LLP may be exempt from liability provided the act was done without its knowledge.

7.2 LIABILITY OF LIMITED LIABILITY PARTNERSHIP

S.27: "(1) A limited liability partnership is not bound by anything done by a partner in dealing with a person if— (a) the partner in fact has no authority to act for the limited liability partnership in doing a particular act; and (b) the person knows that he has no authority or does not know or believe him to be a partner of the limited liability partnership.

(2) The limited liability partnership is liable if a partner of a limited liability partnership is liable to any person as a result of a wrongful act or omission on his part in the course of the business of the limited liability partnership or with its authority.

(3) An obligation of the limited liability partnership whether arising in contract or otherwise, shall be solely the obligation of the limited liability partnership.

(4) The liabilities of the limited liability partnership shall be met out of the property of the limited liability partnership."

The LLP is a body corporate and thus is answerable for its own acts. The obligations are to be met out of the property of the LLP. But, as the LLP is an entity, it has to act through the agency called partners. Thus, the extent of partner's power may be ascertained from the agreement, if the agreement is absent then in accordance with Schedule I of the Act.

The LLP is liable for even the wrongful act or omission of the partner, if the act or omission is done in the ordinary course of business or with the authority.

However, the LLP is not bound by anything done by a partner in dealing with a person, if the partner had no authority to act for the LLP in doing a particular act and the person knows that the partner has no authority to act for the LLP.

However, a partner cannot do the following acts and bind the LLP:

- Submission of a dispute relating to the business of the LLP to an arbitrator;
- Opening a bank account on behalf of the LLP in his own name;
- Relinquishment of any LLP's claim or portion thereof by a partner;
- Withdrawing a suit or proceeding filed by or on behalf of the LLP;
- Admission of any liability in a suit or proceeding against the LLP;
- Acquisition of immovable property on behalf of the LLP;
- Transfer or other disposition of immovable property of the LLP;
- Entering into partnership with the LLP as a partner.

7.3 HOLDING OUT (S. 29)

S. 29: (1) Any person, who by words spoken or written or by conduct, represents himself, or knowingly permits himself to be represented to be a partner in a limited liability partnership is liable to any person who has on the faith of any such representation given credit to the limited liability partnership, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit: Provided that where any credit is received by the limited liability partnership as a result of such representation, the limited liability partnership shall, without prejudice to the liability of the person so representing himself or represented to be a partner, be liable to the extent of credit received by it or any financial benefit derived thereon.

(2) Where after a partner's death the business is continued in the same limited liability partnership name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the limited liability partnership done after his death.

Section 29 deals with the principle of holding out. Generally a person becomes a partner by agreement. Sometimes a person though not a partner of the LLP is held liable as a partner. This principle is applicable under section 28 of the Indian Partnership Act, 1932.

Whenever any person, who by words spoken or written or by conduct, represents himself, or knowingly permits himself to be represented to be a partner in a limited liability partnership is liable to any person who has on the faith of any such representation given credit to the limited liability partnership, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

The limited liability partnership is also liable for the credit received as a result of such representation.

Where after a partner's death the business is continued in the same limited liability partnership name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the limited liability partnership done after his death.

Rules of holding out:

- A person is liable by holding out, if he has represented himself as a partner either by express representation or by tacit representation, and
- The other party has given credit on the basis of such representation.

It is immaterial whether the person so representing as a partner is aware or not, that the representation has reached the person giving credit.

7.4 WHISTLE BLOWING (S. 31)

S.31 Whistle blowing: (1) The Court or Tribunal may reduce or waive any penalty leviable against any partner or employee of a limited liability partnership, if it is satisfied that – (a) such partner or employee of a limited liability partnership has

provided useful information during investigation of such limited liability partnership;
or

(b) when any information given by any partner or employee (whether or not during investigation) leads to limited liability partnership or any partner or employee of such limited liability partnership being convicted under this Act or any other Act.

(2) No partner or employee of any limited liability partnership may be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against the terms and conditions of his limited liability partnership or employment merely because of his providing information or causing information to be provided pursuant to sub-section (1).

Commonly, whistle blowing means exposing a wrong doing in the hope of bringing it to an end. This section provides the powers to the Court or Tribunal to waive or reduce any penalty levied against any partner or employee of a LLP if it is satisfied:

- (a) that the partner or employee (the whistle blower or accused turned approver) has provided useful information during the investigation of LLP with regard to the offence or
- (b) has provided information, whether or not during investigation, that leads to the conviction of the LLP or any of its partner or employee.

Further, the whistle blower shall be granted statutory protection against discharge, demotion, suspension, threats, harassment or discrimination in any manner.

7.5 CONTRIBUTION

A LLP is a business model thus requires capital for its running. This capital comes in the form of contribution from the partners. Thus, contribution can be termed as, what a partner is contributing towards the LLP for running of the business. Contribution in case of LLP is like a share capital in case of Company. Chapter VI sections 32 and 33 deal with the provisions of contribution.

Form of contribution S.32 – (1) A contribution of a partner may consist of tangible, movable or immovable or intangible property or other benefit to the limited liability partnership, including money, promissory notes, other agreements to contribute cash or property, and contracts for services performed or to be performed.

(2) The monetary value of contribution of each partner shall be accounted for and disclosed in the accounts of the limited liability partnership in the manner as may be prescribed.

A contribution of a partner may consist of any of the following or a combination thereof:

- Movable property
- Immovable property
- Intangibles
- Money
- Promissory notes

- Contract of services
- Any other benefit

It can also be an agreement to perform in future. When the contribution is in any form other than money, a monetary value to the contribution needs to be worked out. The following persons can act as a valuer for valuation of contribution:

- A practicing Chartered Accountant
- A practicing Cost Accountant
- An approved Valuer from the panel maintained by the Central Government

S. 33. Obligation to contribute: (1) *The obligation of a partner to contribute money or other property or other benefit or to perform services for a limited liability partnership shall be as per the limited liability partnership agreement.* (2) *A creditor of a limited liability partnership, which extends credit or otherwise acts in reliance on an obligation described in that agreement, without notice of any compromise between partners, may enforce the original obligation against such partner.*

The LLP agreement shall govern the contribution of partners. The LLP Rules, 2009 deals with the rules regarding contribution. It is necessary to disclose the contribution of partners in the accounts. The LLP agreement shall determine the time frame within which the contribution by the partners needs to be made, whether the contribution may be increased or decreased. However, the Act only stipulates refund of contribution on cessation of partner.

The contribution shall not be a criterion for determining the profit sharing ratio. The LLP agreement shall determine the profit sharing ratio. Where the agreement is silent, profit and loss sharing shall be equal. Also in the event of nil contribution the ownership can be determined as per the agreement or in the absence of agreement it should be equal.

Whenever there is a change in contribution, a new agreement is required to be filed within 30 days from the date of modification along with the requisite fees.

Where a creditor of LLP gives credit or acts on the basis of commitment made in the agreement, he will be able to enforce his right against the partner, even in the event of there being an compromise between the partners provided the creditor was ignorant of the compromise.

POINTS TO REMEMBER

Liability of a partner: A partner can take part in the management of the firm. Partner can do all lawful things. Minimum 2 partners are necessary. If the number falls below 2 partners and the LLP continue to function so beyond 6 months, the only partner shall become personally liable.

Partner as agent: Partner is an agent of the LLP and not of his co-partners. Partner shall not be liable for the acts of his co-partners.

Extent of liability of partner: Liability of a partner of LLP is limited except for wrongful act or omission involving him when he will be personally liable.

Liability in case of fraud: The LLP and partners shall be liable unlimitedly for acts done with the intention to defraud creditors or any other person.

Liability of LLP: LLP is a body corporate and thus is answerable for its own acts. The liability shall be met out of the property of the LLP. There are acts which a partner cannot do to bind the LLP.

Holding out: A person is liable for the credit given as a partner, even though he is not a partner but permitted to be so represented. A LLP which receives credit on the basis of such representation is liable to that extent. Legal representative or the estate of a deceased partner will not be liable, even if the LLP continues.

Whistle blowing: Any partner or employee, who helps in investigating authority in its investigation of the LLP for an offence, may be given lesser punishment or waiver of punishment. Whistle blower may also be statutory protection.

Contribution: Partners to contribute on the basis of agreement. It may be in the form of Movable property, immovable property, intangibles, money, promissory notes, contract of services, any other benefit. If intangible, valuer will value the same.

[I] TEST YOUR KNOWLEDGE

(1) MULTIPLE CHOICE QUESTIONS

- (1) Liability of partner in LLP is:
 - (a) limited (b) unlimited (c) as per the agreement
- (2) Notice to a partner is notice to the LLP:
 - (a) True (b) False (c) Only in an emergency
- (3) Ratification means
 - (a) an act approved by LLP done by a partner with consent (b) an act approved by LLP done by a partner without authority (c) an act done by a partner with consent and also approved by LLP (d) an illegal act done by a partner without authority and approved by LLP.
- (4) Holding out means:
 - (a) a person not a partner but represents or allows to be represented as a partner and credit is given on the assumption (b) a LLP pretends to be a partner and credit is given to the LLP (c) a partner takes credit from an outsider, representing that he has authority from LLP
- (5) A partner of a LLP is:
 - (a) agent of his co-partners (b) agent of the LLP as well as co-partners (c) agent of the LLP (d) the principal and LLP is the agent
- (6) Which statement is true as regards whistle blowing:
 - (a) the partner helps the investigation authority (b) the partner misguides the investigating authority (c) the partner makes public disclosure of the LLP (d) the partner helps the culprit escape
- (7) where a partner knowingly defrauds the creditors of LLP:
 - (a) his liability is limited (b) his liability is unlimited (c) his liability depends on this bargaining capacity (d) is Nil
- (8) Contribution of partner may be by way of:
 - (a) Movable (b) Immovable (c) Intangibles (d) All
- (9) Contribution of a partner is determined by:
 - (a) LLP Act, 2008 (b) Agreement (c) None of them
- (10) Contribution shall be the criterion for determining the profit sharing.
 - (a) True (b) False

Ans.: (1) a (2) a (3) b (4) a (5) c (6) a (7) b (8) False (9) b (10) a.

(2) FILL IN THE BLANKS

- (1) Every partner is an _____ of the LLP and the liability is _____.
- (2) Any lawful act done by a partner without authority may be _____ by the LLP.
- (3) LLP is a body corporate and the obligations are to be met out of the _____ of the LLP.
- (4) A LLP is _____ for the wrongful acts of a partner if done in the ordinary course of business.
- (5) When a LLP is continued after the death of a partner, the legal representatives of the deceased partner is _____ as holding out.
- (6) The _____ shall be given a statutory protection against demotion, discharge or harassment.

- (7) When a partner is guilty of fraud, his liability is _____.
- (8) If the tribunal is of the opinion that the LLP is to be wound up, intimation to ROC is to be given within _____ days.
- (9) If agreement is silent on the profit sharing ratio, it shall be _____.
- (10) Profit sharing of a partner is determined by _____ and not contribution.
- (11) Contribution can be _____ or _____.
- (12) The contribution constitute capital of LLP and is kind of _____ to the external world. (MU. Nov. 17, March 18)
- (13) The _____ constitutes capital of LLP. (MU. Oct. 18)
- Ans.: (1) agent, limited (2) ratified (3) assets (4) liable (5) not liable (6) whistle blower (7) unlimited (8) 30 (9) equal (10) agreement (11) tangible, intangible (12) share capital or capital (13) contribution.

[II] QUESTIONS

(1) SHORT QUESTIONS

- (1) Write Short notes on:
- Liability of Partner
 - Liability of LLP
 - Holding out
 - Whistle Blower
 - Liability for fraud

(2) ESSAY TYPE QUESTIONS

- Discuss the extent and liability of Partner in an LLP.
- Discuss the extent of liability of the LLP.
- Discuss all about contribution of a partner towards the LLP.
- Define contribution. Explain its provision under LLP Act. (MU. March 18)
- What is the provision of contribution under LLP Act? (MU. Oct. 18)

[III] CASE LETS

- A partner of an LLP commits fraud on 'X', in order to get business for the firm. On coming to know of the fraud, 'X', brings an action against the LLP. Discuss the liability of the LLP.
Ans.: LLP liable.
- 'A', is not a partner of 'Y LLP'. However, his friend 'X', without the knowledge of 'A', tells 'B' that 'A' is partner in the 'Y LLP'. On the basis of this statement 'B' gives credit to 'Y LLP'. Can 'A' be held liable by way of holding out? Give reasons.
Ans.: LLP liable.
- 'Ram' an employee of 'Z LLP' gives vital information regarding the LLP during investigation by competent authority for fraud and embezzlement of funds committed by the partners of the LLP. The LLP brings an action against Mr. Ram for leaking information of the LLP. Ram wants protection. Explain the law.
Ans.: Whistle blower.
- A partner of a LLP whose business is trading enters into a contract to buy a hotel property. Is the LLP bound by it?
Ans.: No.
- Five partners start an LLP. One partner, in a case filed by the LLP, relinquish a part of the claim without consulting other partner believing it to be in the interest of the LLP. Two of the partners object to the relinquishment of claim. Is the firm bound by the act of the partner?
Ans.: No. Partner individually liable.

Chapter 8

Conversion to Limited Liability Partnership

DESIGN

- 8.1 CONVERSION OF FIRM TO LLP
- 8.2 CONVERSION OF PRIVATE COMPANY TO LLP
- 8.3 CONVERSION OF UNLISTED PUBLIC COMPANY TO LLP
- 8.4 REGISTRATION AND EFFECT OF REGISTRATION

A firm, private limited company and an unlisted public company can get itself converted to a LLP. Chapter X, sections 55-58 along with clause 58 and schedule II, III and IV deal with procedure for the conversion to LLP. Under Limited Liability Partnership (Second Amendment) Rules, 2018 conversion application shall be filed using RUN-LLP under www.mca.gov.in. However there is no provision for a LLP to convert itself into a firm, private limited company or an unlisted public company.

8.1 CONVERSION OF FIRM TO LLP

Schedule II of the LLP Act lays down the provisions for conversion of a partnership firm to a LLP.

Conversion of firm to limited liability partnership S.55. – “A firm may convert into a limited liability partnership in accordance with the provisions of this Chapter and the Second Schedule.”

Following are the procedure for conversion to LLP:

- Conversion of a firm into LLP must be agreed upon by all the partners of the firm. Also the LLP to be formed must include only the existing partners of the firm and no one else.
- Statement by all the partners regarding the name and registration number if any, date on which registered and incorporation document.
- The Form to be submitted to the Registrar of Companies together with the requisite fee as may be prescribed by the Central Government.
- The Registrar shall scrutinise the application and issue a certificate of registration stating limited liability partnership is, on and from the date specified in the certificate, registered under this Act.
- The LLP shall within **fifteen days** of the date of registration, inform, the concerned Registrar of Firms with which it was registered under the provisions of the Indian Partnership Act, 1932 (9 of 1932) about the conversion and of the particulars of the limited liability partnership in such form and manner as the Central Government may prescribe.

Procedure for incorporation of a LLP on conversion from firm:

Step 1	Deciding designated partners
Step 2	Obtaining DIN and Digital Signature
Step 3	Check name availability
Step 4	Filing Incorporation documents with Registrar
Step 5	Filing conversion application
Step 6	Certificate of Registration
Step 7	Information of conversion to Registrar of firms

The limited liability partnership shall ensure that for a period of **twelve months** commencing not later than **fourteen days** after the date of registration, every official correspondence of the limited liability partnership bears the following:

- (a) a statement that it was, as from the date of registration, converted from a firm into a limited liability partnership; and
- (b) the name and registration number, if applicable, of the firm from which it was converted.

Any limited liability partnership which contravenes the above requirement shall be punishable with fine which shall not be less than **ten thousand rupees** but which may extend to **one lakh rupees** and with a further fine which shall not be less than **fifty rupees** but which may extend to **five hundred rupees** for every day after the first day after which the default continues.

Where the Registrar refuses the firm to convert into a LLP, appeal shall lie to the Tribunal.

8.2 CONVERSION OF PRIVATE COMPANY TO LLP

A private company is a company whose number is restricted and cannot issue shares to the public. Conversion of a private company to a LLP is stated in Schedule III.

S.56: "A private company may convert into a limited liability partnership in accordance with the provisions of this Chapter and the Third Schedule."

Procedure for conversion to LLP:

- All the shareholders of the company should be willing to be partners in the LLP which is formed. Also there is no security interest in its assets subsisting or in force at the time of application. The LLP formed should have no one else as the partners.
- The company to file with the Registrar a statement by all its shareholders, the name and registration number of the company; the date on which the company was incorporated; and incorporation document together with the prescribed fee as prescribed by the Central Government.
- The Registrar shall scrutinise the application and issue a certificate of registration stating limited liability partnership is, on and from the date specified in the certificate, registered under this Act.
- The LLP shall within **fifteen days** of the date of registration, inform, the concerned Registrar of Companies with which it was registered under the provisions of the Companies Act, 1956 (Now Companies Act, 2013) about the conversion and of the particulars of the limited liability partnership in such form and manner as the Central Government may prescribe.

Steps for incorporation of LLP on conversion from private company:

Step 1	Deciding designated partners
Step 2	Obtaining DIN and Digital Signature
Step 3	Check name availability
Step 4	Filing Incorporation documents with Registrar
Step 5	Filing conversion application
Step 6	Certificate of Registration
Step 7	Information of conversion to the Registrar of companies with which registered

The limited liability partnership shall ensure that for a period of **twelve months** commencing not later than **fourteen days** after the date of registration, every official correspondence of the limited liability partnership bears the following:

(a) a statement that it was, as from the date of registration, converted from a company into a limited liability partnership; and

(b) the name and registration number, of the company from which it was converted.

Any limited liability partnership which contravenes the above requirement shall be punishable with fine which shall not be less than **ten thousand rupees** but which may extend to **one lakh rupees** and with a further fine which shall not be less than **fifty rupees** but which may extend to **five hundred rupees** for every day after the first day after which the default continues.

Where the Registrar refuses the firm to convert into a LLP, appeal shall lie to the Tribunal.

8.3 CONVERSION OF UNLISTED PUBLIC COMPANY TO LLP

An unlisted public company is a public company, that can have an unlimited number of shareholders to raise capital for any commercial venture, but which is not listed on any stock exchange. A company may apply to convert into a limited liability partnership in accordance with the provisions of this Schedule IV.

Procedure for conversion to LLP:

S.57: "An unlisted public company may convert into a limited liability partnership in accordance with the provisions of this Chapter and the Fourth Schedule."

- A company can convert to LLP provided all the shareholders are agreeing to the conversion and the partners of the limited liability partnership to which it converts comprise all the shareholders of the company and no one else and there is no security interest in its assets subsisting or in force at the time of application.
- The company to file with the Registrar a statement by all its shareholders, the name and registration number of the company, the date on which the company was incorporated; and incorporation document together with the prescribed fee as prescribed by the Central Government.
- The Registrar shall scrutinise the application and issue a certificate of registration stating limited liability partnership is, on and from the date specified in the certificate, registered under this Act.

The LLP shall within **fifteen days** of the date of registration, inform, the concerned Registrar of Companies with which it was registered under the provisions of the Companies Act, 1956 (Now Companies Act, 2013) about the conversion and of the particulars of the limited liability partnership in such form and manner as the Central Government may prescribe.

Steps for incorporation of LLP on conversion from unlisted public company:

Step 1	Deciding designated partners
Step 2	Obtaining DIN and Digital Signature

Step 3	Check name availability
Step 4	Filing Incorporation documents with Registrar
Step 5	Filing conversion application
Step 6	Certificate of Registration
Step 7	Information of conversion to the Registrar of companies with which registered

- The limited liability partnership shall ensure that for a period of **twelve months** commencing not later than **fourteen days** after the date of registration, every official correspondence of the limited liability partnership bears the following:
 - a statement that it was, as from the date of registration, converted from a company into a limited liability partnership; and
 - the name and registration number, of the company from which it was converted.

Any limited liability partnership which contravenes the above requirement shall be punishable with fine which shall not be less than **ten thousand rupees** but which may extend to **one lakh rupees** and with a further fine which shall not be less than **fifty rupees** but which may extend to **five hundred rupees** for every day after the first day after which the default continues.

Where the Registrar refuses the firm to convert into a LLP, appeal shall lie to the Tribunal.

8.4 REGISTRATION AND EFFECT OF REGISTRATION (S. 58)

- The Registrar, on satisfying that a firm, private company or an unlisted public company, as the case may be, has complied with the provisions of the Second Schedule, the Third Schedule or the Fourth Schedule, as the case may be, shall, subject to the provisions of this Act and the rules made thereunder, register the documents submitted under such Schedule and issue a certificate of registration in such form as the Registrar may determine stating that the limited liability partnership is, on and from the date specified in the certificate, registered under this Act:*

Provided that the limited liability partnership shall, within fifteen days of the date of registration, inform the concerned Registrar of Firms or Registrar of Companies, as the case may be, with which it was registered under the provisions of the Indian Partnership Act, 1932(9 of 1932) or the Companies Act, 1956(1 of 1956), as the case may be, about the conversion and of the particulars of the limited liability partnership in such form and manner as may be prescribed.

- Upon such conversion, the partners of the firm, the shareholders of private company or unlisted public company, as the case may be, the limited liability partnership to which such firm or such company has converted, and the partners of the limited liability partnership shall be bound by the provisions of the Second Schedule, the Third Schedule or the Fourth Schedule, as the case may be, applicable to them.*
- Upon such conversion, on and from the date of certificate of registration, the effects of the conversion shall be such as specified in the Second Schedule, the Third Schedule or the Fourth Schedule, as the case may be.*

- (4) Notwithstanding anything contained in any other law for the time being in force, on and from the date of registration specified in the certificate of registration issued under the Second Schedule, the Third Schedule or the Fourth Schedule, as the case may be,—
- (a) there shall be a limited liability partnership by the name specified in the certificate of registration registered under this Act;
 - (b) all tangible (movable or immovable) and intangible property vested in the firm or the company, as the case may be, all assets, interests, rights, privileges, liabilities, obligations relating to the firm or the company, as the case may be, and the whole of the undertaking of the firm or the company, as the case may be, shall be transferred to and shall vest in the limited liability partnership without further assurance, act or deed; and
 - (c) the firm or the company, as the case may be, shall be deemed to be dissolved and removed from the records of the Registrar of Firms or Registrar of Companies, as the case may be.

Any firm, private company or unlisted public company that has been converted to a LLP has the following consequences on conversion:

- **Transfer of property:**

All tangible (movable and immovable) property as well as intangible property vested in the firm, all assets, interests, rights, privileges, liabilities, obligations relating to the firm/ private company/unlisted public company and the whole of the undertaking of the firm/private company/ unlisted public company shall be transferred to and shall vest in the limited liability partnership without further assurance, act or deed.

- **Registration in relation to property:**

If any property is registered with any authority, the limited liability partnership shall, as soon as practicable after the date of registration, take all necessary steps as required by the relevant authority to notify the authority of the conversion and of the particulars of the limited liability partnership in such medium and form as the authority may specify.

- **Pending proceedings:**

All proceedings by or against the firm/private company/unlisted public company which are pending in any Court or Tribunal or before any authority on the date of registration may be continued, completed and enforced by or against the limited liability partnership.

- **Continuance of conviction ruling, order of judgment:**

Any conviction, ruling, order or judgment of any Court, Tribunal or other authority in favour of or against the firm/private company/unlisted public company may be enforced by or against the limited liability partnership.

- **Existing agreements:**

Every agreement to which the firm/private company/unlisted public company was a party immediately before the date of registration, will from the date of incorporation substitute the LLP as a party instead of the firm/private company/unlisted public company.

- **Existing contracts, etc.:**

All deeds, contracts, schemes, bonds, agreements, applications, instruments and arrangements subsisting immediately before the date of registration relating to the firm/private company/unlisted public company or to which the firm/private company/unlisted public company is a party, shall continue in force on and after that date as if they relate to the limited liability partnership and shall be enforceable by or against the limited liability partnership as if the limited liability partnership were named therein or were a party thereto instead of the firm.

- **Continuance of employment:**

Every contract of employment prior to conversion shall continue to be in force on or after the date of registration as if the limited liability partnership was the employer thereunder instead of the firm.

- **Existing appointment authority or power:**

Every appointment of the firm/private company/unlisted public company in any role or capacity which is in force immediately before the date of registration shall take effect and operate from that date as if the limited liability partnership were appointed.

- **Partner liable for liabilities and obligations of firm before conversion:**

This is only in case of a firm and not applicable to private and unlisted public company. The partner/s of the firm if where personally liable (jointly and severally with the limited liability partnership) for the liabilities and obligations of the firm which were incurred prior to the conversion or which arose from any contract entered into prior to the conversion.

POINTS TO REMEMBER

A firm, private company and an unlisted public company can convert to a LLP.

Conversion of firm to LLP: A firm may convert to LLP in accordance with Schedule II of the Act. All partners of the firm must be willing and on conversion, the LLP to have no other partners other than the partners of the firm. Registration to done by Registrar of Companies. Registrar of firms to be intimated regarding the conversion within 15 days of registration. All rights and liabilities of the firm now vests with the LLP.

Conversion of private company to LLP: A private company may convert to LLP in accordance with Schedule III of the Act. All shareholders of the company must be willing and on conversion, the LLP to have no other partners other than the existing shareholders. Registration to done by Registrar of Companies. Registrar of Companies with which registered to be intimated of conversion to LLP with 15 days of registration. All rights and liabilities of the company now vests with the LLP.

Conversion of unlisted public company to LLP: An unlisted public company may convert to LLP in accordance with Schedule IV of the Act. All shareholders of the company must be willing and on conversion, the LLP to have no other partners other than the existing shareholders. Registration to done by Registrar of Companies. Registrar of Companies with which registered to be intimated of conversion to LLP within 15 days of registration. All rights and liabilities of the company now vests with the LLP.

Any limited liability partnership which contravenes the above requirement in all three above circumstances shall be punishable with fine which shall not be less than **ten thousand rupees** but which may extend to **one lakh rupees** and with a further fine which shall not be less than **fifty rupees** but which may extend to **five hundred rupees** for every day after the first day after which the default continues.

Registration and effect of conversion: Once a firm/private company/unlisted public company gets converted to LLP, all rights, liability, property etc. gets vested with the LLP.

[I] TEST YOUR KNOWLEDGE

(1) MULTIPLE CHOICE QUESTIONS

- (1) What entity can get converted to LLP:
(a) Firm (b) Private company (c) Unlisted public company (d) All
- (2) Once a firm gets converted to LLP, all rights and liabilities of the firm vests with LLP.
(a) True (b) False
- (3) Once a private company gets converted to a LLP, Intimation of the conversion to be intimated to the:
(a) Registrar of firms (b) Registrar of Companies (c) Registrar of companies with which registered (d) Not required
- (4) A LLP can get converted to firm.
(a) True (b) False
- (5) When a unlisted public company gets converted to LLP:
(a) All shareholders to agree (b) Some shareholders agreeing is sufficient (c) Company itself can apply as it is a separate entity
- (6) Once a firm/private company/ unlisted public company gets converted to LLP, all official correspondence must bear a statement regarding the conversion for a period of:
(a) 1 month (b) 6 months (c) 9 months (d) 12 months

Ans.: (1) d (2) a (3) c (4) b (5) a (6) d.

(2) FILL IN THE BLANKS

- (1) The newly formed LLP on conversion of firm, to comprise of only _____ existing partners.
- (2) Conversion of a private company to LLP, the Registrar of Companies with which registered to be intimated within _____ days of registration.
- (3) A LLP _____ convert to a firm.
- (4) A public listed company _____ convert to LLP.
- (5) A converted LLP if continues with informing the concerned authority regarding the conversion, penalty of Rs. _____ to Rs. _____ may be imposed.

Ans.: (1) existing (2) 15days (3) can (4) cannot (5) 10,000, 1 lakh.

[II] QUESTIONS

- (1) Explain the procedure and consequence of conversion of a firm to LLP.
- (2) Can a private company be converted to LLP? If so explain the procedure and impact of such conversion.
- (3) Discuss the rules regarding conversion of a unlisted public company to LLP together with the effect of the conversion.
- (4) Write briefly on effect of registration of firm/private company/unlisted public company as LLP.

[III] CASE LETS

- (1) A unlisted public company 'XYZ Ltd' dealing with precious stones comprising of 30 shareholders was to convert to a LLP to have flexible business.
(i) Can 30 members form a LLP?
(ii) What happens if only 20 shareholders agree to the change?
(iii) Give reasons.
Ans.: (i) Yes. (ii) Cannot convert.
- (2) A LLP comprising of 5 partners want to convert into a firm.
(i) Can it be done so or not?
(ii) Give reasons.
Ans.: (i) No.

Chapter 9

Winding Up and Dissolution (Limited Liability Partnership (Winding up and Dissolution) Rules, 2012)

DESIGN

- 9.1 DEFUNCT LLP
- 9.2 VOLUNTARY WINDING UP
- 9.3 WINDING UP BY TRIBUNAL

LLP is an artificial entity created by legal process. Thus dissolution of LLP also needs to be done through a legal process. Winding up is the beginning and dissolution is the end. In other word winding up is a process and the consequence is the dissolution. Thus, during winding up the LLP is still in existence and may sue and be sued while in the event of dissolution the LLP is no longer in existence. Chapter XII sections 63-65 and Limited Liability Partnership (Winding up and Dissolution) Rules, 2012 deal with winding up and dissolution of LLP.

Any LLP can close down its business by adopting any of the following two ways:

- (I) Declaring the LLP as Defunct
- (II) Winding up of LLP

9.1 DECLARING THE LLP AS DEFUNCT (Rule 37)

In case the LLP wants to close down its business or where it is not carrying on any business operations for the period of **one year** or more, it can make an application to the Registrar for declaring the LLP as defunct and removing the name of the LLP from its register of LLP's.

eForm 24 is required to be filed for striking off the name of LLP. Similarly, Registrar also has the power to strike off any defunct LLP after being satisfied that the LLP has not been carrying on business for a period of **two years**. However, in this case, the Registrar has to send a notice to the LLP of his intention and request the LLP to send their representation within **one month** from the date of the notice. The Registrar shall publish such notice or content of the application made by the LLP on its website for a period of **one month** for the information of the general public. In case no reply is received within the mentioned period, Registrar may strike off the name of LLP. Even if reply is received, after due consideration, Order may be passed accordingly.

Winding Up of LLP:

The winding up of an LLP may be either voluntary or by the Tribunal. Part III and Part IV of Rules 5-49 of Limited Liability (Winding up and Dissolution) Rules, 2012 deal with the procedure of winding up. Winding up under the LLP Act, 2008 can either be voluntary winding up of the LLP and winding up by the Tribunal which may be held to be involuntary.

9.2 VOLUNTARY WINDING UP OF LLP (RULES 5-24)

Voluntary winding up is a process of winding up where the Partners of the LLP themselves decide for the winding up of the LLP.

LLP can voluntarily wind up only on the fulfilment of the following two conditions:

- Consent of secured and/or unsecured creditors if any, agreeing to the winding up.
- A statement to the Registrar that the winding up of LLP is not on account of inability to pay off debts.

Procedure for voluntary winding up:

- (1) Passing of a resolution to wind up to be passed by not less 3/4th majority of the partners is necessary. A copy of the resolution passed by the LLP is to be filed with the Registrar in Form No. 1.
- (2) Voluntary winding up shall be deemed to commence on the date of passing of resolution.
- (3) Majority of its designated partners, being not less than two, shall make a declaration in Form No. 2 verified by an affidavit to that effect that the LLP has no debt or that it will be able to pay the debts in full within such period, as may be specified in the declaration, but not exceeding one year from the commencement of the winding up.
- (4) The declaration is to be delivered to the Registrar for registration in Form No. 3 within **15 days** immediately preceding the date of passing of the resolution of the winding up of LLP.
- (5) Since the consent of the creditors is to be secured, the LLP shall convene a meeting for creditors to take the approval of the creditors. Two thirds of the creditors should consent for the voluntary winding up.
- (6) The LLP shall within **14 days** of the receipt of creditors' consent, give notice of the resolution by advertisement in a newspaper circulating in the district where the registered office or the Principal Office of the LLP is situated.
- (7) Appointment of a liquidator with the consensus of both the LLP and creditors. If there is a conflict between the LLP and the creditors in the appointment of a liquidator, the liquidator appointed by the creditors shall be the LLP liquidator. If both LLP and creditor do not appoint a liquidator, Tribunal shall make appointment of liquidator.
- (8) Duties of LLP liquidator
 - ◆ The LLP liquidator shall perform such functions and discharge such duties as are determined from time to time by the LLP or its creditors, as the case may be;
 - ◆ The LLP liquidator shall settle the list of creditors or partners, which shall be *prima facie* evidence of the liability of the persons named to be creditors or partners;
 - ◆ The LLP liquidator shall obtain the approval of partners or creditors for any purpose he may consider necessary;
 - ◆ The LLP liquidator shall maintain regular and proper books of accounts in the form and manner specified and the partners or the creditors or any officer authorized by the Central government may inspect such books of account;
 - ◆ The LLP liquidator shall pay the debts of the LLP and shall adjust the rights of the partners among themselves;
 - ◆ The LLP liquidator shall observe due care and diligence in the discharge of his duties.

- (9) The partners or the creditors, as the case may be, may appoint such committee as they consider appropriate to supervise the voluntary winding up and assist the LLP liquidator in discharging his functions.
- (10) The LLP liquidator shall report quarterly on the progress of winding up of the LLP in Form No. 8 to the partners or creditors which shall be made before the end of the following quarters:
Quarters ending 31st March, 30th June, 30th September, 31st December.
- (11) On winding up, the LLP liquidator shall prepare a report stating the manner in which the winding up has been conducted and property has been disposed off, final winding up accounts and explanations in Form No. 9 showing that the property and assets of the LLP have been disposed of and its debts fully discharged to the satisfaction of the creditors and thereafter seek the approval of the partners or creditors of the LLP, as the case may be, on the said report and the final winding up accounts and explanation in the meeting of the partners and creditors.
- (12) If two thirds or more of the partners/creditors, after considering the report, accounts and explanations of the LLP liquidator, are satisfied that the LLP shall be wound up, they shall pass a resolution, within 30 days of the receipt of such report. If there is no sufficient number of partners/creditors the LLP liquidator may make an application before the Tribunal to determine the issue. The order of the Tribunal, in this regard, is binding on the parties.
- (13) Within 30 days of the resolution, the LLP liquidator shall send to the Registrar a copy of the final winding up of accounts, explanation and report in Form No. 10 and file an application before the Tribunal for passing an order of dissolution of the LLP.
- (14) If the Tribunal is satisfied after considering the application, final winding up accounts, reports of the LLP liquidator, that the process of winding up has been duly followed, the Tribunal may pass an order, within 60 days of the receipt of such application, that the LLP shall stand dissolved.
- (15) The LLP liquidator shall file a copy of the order with the Registrar in Form No. 11. The Registrar, on receiving the copy of the order passed by the Tribunal shall forthwith publish a notice in the Official Gazette that the LLP stands dissolved.
- (16) In the event of the LLP not being fully wound up within a period of one year from the date of commencement of voluntary winding up, LLP liquidator shall file an application before the Tribunal explaining the reasons and seek appropriate orders of the Tribunal.
- (17) The assets of an LLP shall, on its winding up, be applied in satisfaction of its liabilities *pari passu* and subject to such application, shall, unless the LLP agreement otherwise provides, be distributed among the partners according to their rights and interest in the LLP.
- (18) All costs, charges and expenses properly incurred in the winding up, including the fee of the LLP Liquidator, shall, subject to the rights of the secured creditors, if any, and workmen, be payable out of assets of the LLP first.

9.3 WINDING UP BY THE TRIBUNAL (S. 4, RULES 25-49)

Following are the grounds for winding up of the LLP by the Tribunal:

- (a) On the application of the LLP itself that it is to be wound up by the Tribunal;
- (b) Where the number of partners of the limited liability partnership for a period of more than six months partnership is reduced below two;
- (c) Limited liability partnership is unable to pay its debts;
- (d) Limited liability partnership has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;
- (e) Limited liability partnership has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any five consecutive financial years; or
- (f) Tribunal is of the opinion that it is just and equitable that the limited liability partnership be wound up.

Following are the steps involved in the winding up of the LLP by the Tribunal:

- (1) The Tribunal is satisfied that the LLP has been unable to pay debts for an amount exceeding INR 1 lakh.
- (2) An application to the Tribunal for the winding up of an LLP shall be by a petition presented:
 - (a) by the LLP or any of its partner or partners, or
 - (b) by any secured creditor or creditors, including any contingent or prospective creditor or creditors, or
 - (c) by the Registrar, or
 - (d) by any person authorised by the Central Government in that behalf,
 - (e) by the Central Government, in a case falling under section 51 of the Act, or
 - (f) by the Central Government or a State Government, in a case falling under clause (d) of section 64.
- (3) The Tribunal shall pass appropriate order of dismissal or interim order or order of revival or rehabilitation or order of winding up. Where order of winding up is passed, provisional liquidator may be appointed.
- (4) The liquidator to be appointed from the panel of liquidators established by the Central Government. The liquidator appointed has to file Form No 6 disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the Tribunal and such obligation shall continue throughout the term of his or its appointment.
- (5) Where the Tribunal makes an order for the winding up of a LLP, it shall, within a period not exceeding **fifteen days** from the date of passing of the order, cause intimation thereof to be sent to the Liquidator and the Registrar in Form No. 12.
- (6) On the making of a winding up order, it shall be the duty of the petitioner in the winding up proceedings and of the LLP to file with the Registrar a certified copy of the order within fifteen days of the making of the order.

- (7) On receipt of the intimation, the Registrar shall make an endorsement to that effect in his records relating to the LLP and notify in the Official Gazette that such an order has been made.
- (8) On receipt of the intimation, a notice shall be sent by Liquidator to the registered office of the LLP by registered post and Liquidator shall serve notice to the partners, designated partners, officers, employees including Chief Executive Officer, Chief Finance Officer and auditors and secured creditors, if any, within **fifteen days** of the receipt of the intimation, for the purpose of custody of the property, assets, effects, actionable claims, books of accounts or other documents.
- (9) The winding up order shall be deemed to be a notice of discharge to the officers, employees and workmen of the LLP, except when the business of the LLP is continued. Winding up to operate in favour of all creditors and partners.
- (10) Where the Tribunal has made a winding up Order, the Liquidator shall, within **sixty days** from the date of winding up order, submit to the Tribunal, a report containing a detail report of all assets and liabilities.
- (11) The Tribunal shall, on consideration of report of Liquidator under rule 34, subject to these rules, fix a time limit within which the entire proceedings shall be completed and the LLP dissolved.
- (12) Committee of inspection may be ordered to be set by the Tribunal to assist the Liquidator.
- (13) All necessary support needs to be given to the liquidator and the committee to carry on its duties.

The Central Government may authorize any person to inspect or investigate the books of accounts and records of the Liquidator appointed from the panel maintained by the Central Government in respect of affairs of any such LLP under Liquidation. (Refer Rule 25-50 of LLP (Winding And Dissolution) rules, 2012.

The Tribunal may after due consideration, may pass order of winding up if necessary.

POINTS TO REMEMBER

Any LLP can close down its business by adopting any of the following two ways:

- (I) **Declaring the LLP as Defunct**
- (II) **Winding up of LLP**

Declaring the LLP as Defunct: In case the LLP wants to close down its business or is not carrying on any business operations for the period of one year or more or the Registrar also that the LLP has not been carrying on business for a period of two years.

Winding up: There are two modes (1) Voluntary winding up (2) Winding up by the Tribunal

Voluntary winding up: LLP can voluntarily wind up only on the fulfilment of the following two conditions:
Consent of secured and/or unsecured creditors if any, agreeing to the winding up.

A statement to the Registrar that the winding up of LLP is not on account of inability to pay off debt.

Resolution → Declaration by majority of designated partners → Creditors consent → appointment of liquidator → Quarterly reports by liquidator → Report by Liquidator → winding up by 1 year.

Winding up by Tribunal: Tribunal can order for winding up on 6 grounds listed.

Petition to Tribunal → Order of Tribunal → Appointment of Liquidator → hearing of parties and inspection of records → appointment of committee to assist liquidator → order of winding up.

[I] TEST YOUR KNOWLEDGE**(1) MULTIPLE CHOICE QUESTIONS**

- (1) LLP cannot be wound up.
(a) True (b) False
- (2) Voluntary winding up requires:
(a) Ordinary resolution (b) Special resolution (c) No resolution (d) (a) or (b)
- (3) Defunct LLP means:
(a) LLP is not making enough profit (b) Temporary shut down (c) Permanent shut down (d) Not making profit
- (4) Voluntary winding up is on account of inability to pay off debts.
(a) True (b) False
- (5) In case of voluntary winding up, the LLP is to be wound up within what period of the Liquidator submitting the report?
(a) 3 months (b) 6 months (c) 1 year (d) 2 years
- (6) Which is not a ground for Tribunal to order winding up of LLP?
(a) Number of partners falls below 2 (b) Unable to pay off the debts (c) Annual returns not submitted for 1 year (d) LLP acting against the interest of the sovereignty

Ans.: (1) b (2) b (3) c (4) b (5) c (6) c.

(2) FILL IN THE BLANKS

- (1) There are _____ modes of winding up and dissolution.
- (2) Voluntary winding up of LLP requires _____ resolution.
- (3) If the tribunal is of the opinion that the LLP is to be wound up, intimation to ROC is to be given within _____ days.
- (4) During the winding up LLP is still in _____.
- (5) Winding up of LLP is a _____, while _____ is the _____.
- (6) Registrar can declare a LLP as defunct if no business is being carried on for _____ years.
- (7) _____ is appointed by the Tribunal to carry on the procedure of winding up.
- (8) If LLP is unable to pay off the debt, it can be wound up by the _____.

Ans.: (1) 2 (2) special (3) 30 (4) existence (5) process, consequence (6) 2 years (7) Liquidator (8) Tribunal.

[II] QUESTIONS

- (1) What is the meaning of winding up of a LLP and dissolution of a LLP? Explain when a LLP can be declared defunct?
- (2) Explain the procedure for voluntary winding up of LLP?
- (3) Under what circumstances can the Tribunal order for winding up of a LLP? Discuss the procedure to be followed.
- (4) Short note on winding up of LLP. (MU. March 18)

[III] CASE LETS

- (1) A LLP has not been carrying on business for 6 months due to demonetisation.
(i) Can the partners decide to apply for winding up?
(ii) Can the Tribunal deem the LLP is defunct?
(iii) If wound up, what about the liabilities of the LLP.

Ans.: (i) Yes. (ii) No. (iii) LLP liable.

MATCH THE COLUMNS

A	B
(a) Limited Liability Act	(1) Transferable
(b) LLP	(2) 2 modes
(c) Maximum number for LLP	(3) Agent of LLP
(d) DPIN	(4) Defunct
(e) Contribution (<i>MU. Nov. 17</i>)	(5) Winding up by Tribunal
(f) Firm/Private company/Unlisted public company	(6) Body corporate
(g) Winding up	(7) Cannot be a designated partner
(h) Partner	(8) Registrar of Companies
(i) LLP not operational for 1 year	(9) Unlimited
(j) LLP with less than 2 members for over 6 months	(10) Designated partner
(k) Entity	(11) Cannot be demoted
(l) Registration of LLP	(12) Convert to LLP
(m) Whistle blower	(13) Unlimited
(n) Liability of partner for fraud	(14) 2008
(o) Rights of partner to share profits/losses	(15) Tangible/intangible

Ans.: (a) 14 (b) 6 (c) 13 (d) 10 (e) 15 (f) 12 (g) 2 (h) 3 (i) 4 (j) 5 (k) 7 (l) 8 (m) 11 (n) 9 (o) 1.

iD Fresh Food (India) Pvt. Ltd. produces ready to cook packaged food products.

Does Factories Act, 1948 Apply????

To know

Refer:

The Factories Act, 1948

The Factories Act, 1948

Industrial revolution in any part of the world led to the formation of two classes of people namely the 'capitalist class' and the 'working class'. Also the capitalist class was exploiting the working class due to the vulnerable position of the latter. India was no exception. The establishment of the Cotton Mills in 1851 in Bombay and Jute Mill in 1855 at Bengal marked the beginning of factory system in India. At the same time the commissioning of the railways also facilitated the transportation of labour and materials. The exploitation of labour was at its peak. Philanthropists Sri. Sorabjee Shahpurjee, Bengalee, led a movement in 1875 in Bombay for legislative measures against the miserable plight of workers in factories. The movement is said to be the basis of labour movement in India. Subsequently a Commission was set up in 1879, on the basis of which the first Factories Act, 1881 was passed. This Act was applicable to factory employing 100 or more workers. However, this Act proved inadequate as women labour and child labour conditions did not improve. At the same time Shri. Sasipad Banerjee a reformist was responsible for the education and welfare of the workers in jute mills at Bengal. This led to workers unrest. In Maharashtra Shri Narayan Meghaji Lokhandhey was promulgating for the welfare of the workers. All these led to the setting up of Commissions in 1884 and 1890 which resulted in enacting the 'Factories Act, 1891'. This Act was made applicable to a factory where 50 or more employees were employed. The highlight of the Act being the regulation of the hours of work for women to be 11 hours/day with a rest of 1 Hr 30 Mins and raising the minimum and maximum age of child between 9 years and 14 years.

With the turn of the century, trade unions were formed claiming for the protection from exploitation of workers. New 'Factories Act, 1911' was formed. At the international level International Labour Organisation was set up in 1919 for the working class. In India, in 1928 Royal Commission on labour was appointed under the chairmanship of Mr. H. H. Whitley to enquire into and report on the existing of labour in industry undertaking and plantation in British India on the health and efficiency and standard of living of workers and on the relations between employers and to make recommendations. Following which 'Factories Act, 1931' was formed which was amended in 1934. This Act was found to be unsatisfactory as regards the health and welfare of workers. In the meantime the World War II in 1939 changed the scenario world over. In 1942 tripartite machinery on the lines of ILO was set up in

India to study the labour matters in India. The outcome of the tripartite machinery study being the 'Factories Act, 1948'. This welfare Act is based on the ILO conventions and recommendations and the Constitution of India. The Act envisages 120 Sections spread across 11 Chapters and 3 Schedules thus covering all aspects of workers. This Act came into force on 1st April 1949. The Act extends to the whole of India. The Act has been amended in 1949, 1950, 1954, 1956, 1976 and 1987.

The 1987 Factories (Amendment) Act was a result of Bhopal gas tragedy thus providing for better safeguards in the use and handling of hazardous substances in factories time bound investigations of fatal accident.

In *Ravi Shankar Sharma v. State of Rajasthan* [AIR 1993 Raj. 117] the court held that Factories Act is a social legislation and it provides for the health, safety, welfare and other aspects of the workers in the factories.

Only relevant provisions are covered.

Chapter 10

The Factories Act, 1948

DESIGN

- 10.1** OBJECTIVES OF THE ACT
- 10.2** SALIENT FEATURES OF THE ACT
- 10.3** APPLICABILITY
- 10.4** DEFINITIONS
- 10.5** HEALTH
- 10.6** SAFETY
- 10.7** WELFARE
- 10.8** WORKING HOURS FOR ADULTS
- 10.9** EMPLOYMENT OF YOUNG CHILDREN
- 10.10** ANNUAL LEAVE WITH WAGES
- 10.11** PENALTIES

10.1 OBJECTIVES OF THE ACT

The objectives of the Indian Factories Act, 1948 are:

- (1) To regulate working conditions in the factories.
- (2) To ensure that the basic minimum requirements for health, safety and welfare of the workers are provided.
- (3) To regulate the working hours, leave, holidays, overtime, employment of children, women and young persons.
- (4) To impose penalties for violations of the provisions laid down by law.

There the Act deals with:

- (1) **Working conditions:** The Act regulates the working hours per day and also per week for man; woman and child, duration of rest, weekly holidays, compensatory holidays, annual leave with wages.
- (2) **Health:** The Act for protecting the health of the workers, lays down the specifications to be adhered to with regard to availability of drinking water, temperature, lighting, ventilation etc. and also the precautions that needs to be taken while working.
- (3) **Safety:** The Act prescribes what safety measures needs to be taken with regards to dangerous machinery, installation of fire-fighting equipment, training to the workers to handle emergency situations and also monitoring mechanism by the State Government concerned.
- (4) **Welfare:** The Act ensures welfare of the workers by providing for lunch rooms, rest rooms, washing facilities, first-aid appliances and crèches, etc.
- (5) **Inspection:** The State Government may appoint inspecting staff to inspect the factory premises for compliance of the Factories Act.
- (6) **Penalties:** In case of violation of the provisions of the Act either by the employer or the worker jeopardising the safety of workers, punishment in the form of imprisonment or fine or both are provided in the Act.

In *M/s. Bhikusa Yamasa Kshatriya (P)Ltd. v. UOI (1963 AIR 1591)* the court observed that the Act has been enacted primarily with the object of protecting workers employed in factories against industrial and occupational hazards. For that purpose it seeks to impose upon the owner or occupier certain obligations to protect the workers and to secure to them employment in conditions conducive to their health and safety.

The court in *Ravi Shankar Sharma v. State of Rajasthan, (AIR 1993 Raj 117)* held, Factories Act is a social legislation and it provides for health, safety, welfare and other aspects of the workers in the factories.

The Act extends to the whole of India to all factories belonging to Central or any State Government unless specifically excluded. As regards factories; the Act is applicable where 10 or more workers are employed using power or where 20 or more employees are employed where power is not used.

10.2 SALIENT FEATURES OF THE ACT

- (1) The Act extends to the whole of India.
- (2) The Act deals with the approval of plans for setting up a factory by the competent authority.
- (3) The Act deals with licensing and renewal of licence for running a factory.
- (4) The Act sets standards for maintaining health, safety, welfare of the workers, rules for employment of women and young persons, and provisions for annual leave with wages to be complied with by the employers.
- (5) The Act imposes punishment and penalties for noncompliance of the provisions.

10.3 APPLICABILITY

The Act applies to all factories including factories belonging to Central or any State Government unless specifically excluded.

The Act is applicable to the premises or precincts wherein:

- (i) 10 or more workers are employed with use of power
- (ii) 20 or more workers are employed without the use of power
- (iii) Less than 10 workers, if activity is notified by the State Government and engaged in manufacturing activities.

[Note: State legislations have the power to change the minimum and maximum number of workers.]

10.4 DEFINITIONS

2. (a) "adult" means a person who has completed his eighteenth year of age.

2.(b) "adolescent" means a person who has completed his fifteenth year of age but has not completed his eighteenth year.

2.(bb) "calendar year" means the period of twelve months beginning with the first day of January in any year.

2.(c) "child" means a person who has not completed his fifteenth year of age.

2.(ca) "competent person" in relation to any provision of this Act, means a person or an institution recognized as such by the Chief Inspector for the purposes of carrying out tests, examinations and inspections required to be done in a factory under the provisions of this Act having regard to:

- (i) the qualifications and experience of the person and facilities available at his disposal; or
- (ii) the qualifications and experience of the person employed in such institution and facilitates available therein, with regard to the conduct of such test, examinations and inspections, and more than one person or institution can be recognized as a competent person in relation to a factory.

Explanation: Is a person or institution, recognized as the competent authority by the Chief Inspector to test, examine and inspection in a factory.

2.(cb) "hazardous process" means any process or activity in relation to an industry specified in the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye-products, wastes or effluents thereof would—

- (i) cause material impairment to the health of the persons engaged in or connected therewith, or
- (ii) result in the pollution of the general environment.

Provided that the State Government may, by notification in the official Gazette amend the First Schedule by way of addition, omission or variation of any industry specified in said schedule.

Explanation: Chapter IV-A deals with provisions relating to hazardous process. Any process or activity of the listed industry in Schedule I wherein the raw material used or the intermediate or finished product or the by product or the waste product produced causes harm to the health of the person connected or engaged with the process or pollutes the environment.

As per Schedule I, 29 industries have been listed as hazardous industries. It is the responsibility of the occupier in relation to hazardous process.

Where hazardous process takes place, a 'Safety Committee' comprising of equal number of representatives of management and workers to be appointed, to promote cooperation in maintaining proper safety and health at the work and to review periodically the measures taken.

The occupier must make disclosure of information and also appoint persons who have qualification and experience in handling hazardous substance and proof.

For hazardous processes under S. 41A a 'Site Appraisal Committee' shall be set up by the State Government to examine an application for the establishment of a factory involving hazardous process and make recommendations to the State Government concerned. In cases of factories owned or controlled by the Central Government or by a corporation the State Government shall co-opt a representative nominated by the Central Government as a member of the site appraisal committee.

In addition Central Government can appoint 'Inquiry Committee'.

2.(d) "young person" means a person who is either a child or an adolescent;

2.(e) "day" means a period of twenty-four hours beginning at midnight;

2.(f) "week" means a period of seven days beginning at midnight on Saturday night or such other night as may be approved in writing for a particular area by the Chief Inspector of factories;

2.(g) "power" means electrical energy or any other form of energy which is mechanically transmitted and is not generated by human or animal agency.

2.(h) "prime mover" means any engine, motor or other appliance which generates or otherwise provides power;

2.(i) "transmission machinery" means any shaft, wheel drum, pulley, system of pulleys, coupling, clutch, driving belt or other appliance or device by which the motion of a prime mover is transmitted to or received by any machinery or appliance;

2.(j) "machinery" includes prime movers, transmission machinery and all other appliances whereby power is generated, transformed, transmitted or applied.

2.(k) "manufacturing process" means any process for –

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal,

(ii) pumping oil, water, sewage or any other substance; or

(iii) generating, transforming or transmitting power; or

(iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; or

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or

(vi) preserving or storing any article in cold storage.

Explanation: The definition is very wide as word has been given independent meaning.

The general meaning of manufacturing process means the use of labour which may either be manually or through machinery on the raw material and transforming it, which shall have a commercially different name. But under this Act the definition has a wide ambit. Each word is given an independent meaning which itself constitutes a manufacturing process. Further, no definite or precise test can be prescribed for determining whether a particular process is a manufacturing process or not. Each case, needs to be looked into on its own factors, by considering the nature of the process employed, the result and the prevailing business, and commercial notions of the people.

An activity is not covered by the words used in the definition the Legislature has in its wisdom intended to cover any other activities by extending the definition by the use of the words 'otherwise treating or adapting any article or substance with a view to use, sale, transfer, deliver or disposal. [Gateway Auto Service v/s ESI Corporation (1981 Lab 1 C 49 (53) Bom.)]

Thus the definition has been looked beyond its natural meaning and covers a wide range of activities.

Held, to constitute a manufacture it is not essential that some kind of transformation of substance is required and that the article should become commercially as a different article. [Sushadrinatha Sama, 1966(2) CC J 235]

Following processes have been held to be manufacturing processes by the courts from time to time:

- Sun-cured tobacco leaves subjected to various processes like moistening, stripping, breaking up, adaptation, packing with a view to transport to company's main factory for their use in manufacture of cigarettes.
- Peeling, washing of prawns and putting in cold storage.

- Stitching of old gunny bags for re-use.
- Grabbling of pepper.
- Curing ginger.
- Pumping water.
- Bidi rolling.
- Preparation of soap.
- Preparation of food and beverages for sale to the members of the club.
- Converting sea water into salt.
- Transformation of raw cinematography films into finished product.
- Preparation of food with the aid of various electrical appliances in the kitchen of a hotel.
- Ginning and pressing of cotton.
- Composition in a printing press.
- Pasturisation of milk processes of transmitting electrical energy from a high to low.
- Potential activities of a neutral pump, etc.

However, the courts have held the following are not manufacturing processes:

- Industrial school or institute imparting training.
- Producing cloth not with a view to its sale.
- Receiving of news from various sources.
- Preliminary packing of raw material for delivering it to the factory.
- Finished goods and packing thereof.
- Transportation of goods from one place to another by road with assistance of transport carriers.
- Use of power for treating effluent water before its discharge into river by a cooperative society which brings water without the use of power etc.

To constitute manufacture there must be a transformation meaning thereby that the article becomes commercially known as another from which it began its existence. The word is given a wide meaning. Thus, it includes acts which bring in not only some change in the article but also the acts done for the protection and maintenance of such article by packing, oiling, washing, cleaning etc. [P. Natarajan v. ESI v. ESI Corp. (1973) 26 FLR 19]

Daily wage workers for the purpose of measurements of wood, projection of timber at the logging site and depots of the corporation held to be a manufacturing process. [Uttaranchal Forest Development Corporation & Another v. Jabar Singh & Others (2007) 2 SCC 112]

2(l) "worker" means a person employed, directly or by or through any agency including a contractor with or without the knowledge of the principal employer, whether for remuneration or not, in any manufacturing process, or in cleaning any part

of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process but does not include any member of the armed forces of the Union.

Explanation: Worker has the following essentials:

(a) **Worker is an employed person:** There has to be an employer, employee and a contract of employment. Employer is the person who employs the employee. The employee is the person who works under the control and supervision of the employer. Contract of employment indicates that the employment is by the management of through some kind of employment agency. Thus, there has to be privity of contract between the employee and the management (employer). Worker is understood as a person who is employed and that there is supervision and control of the work done. In *Shankar Balaji Wage v. State of Maharashtra* [AIR 1963 Bom. 236] the court held that bidi roller is not a worker as there was no control by the management except for the bidis to be produced in a certain from.

Partners of a concern and independent contractors are not workers while piece rate workers can be workers provided they are regular and not workers who come and go according to their whims and family.

(b) **Remuneration:** Wages shall not be a criterion for determining whether a person is a worker or not. Thus, even an apprentice learning work or an honorary worker will be covered under the definition of worker. Even where a person gets remuneration paid piece rate, he has been regarded as a worker.

(c) **Employed in a manufacturing process:** The person to be a worker must be employed in a manufacturing process or is cleaning of the manufacturing process. A worker employed in the incidental work to the manufacturing process is also a worker as he is a person employed in the premises or precincts of a factory. Any kind of work connected with the manufacturing process will be considered as employed in the manufacturing process. *Rohtas Industries Limited v. Ramlakhan Singh* [(1978) 2SCC 140]

Time keepers employed to maintain attendance of staff, workmen in canteen attached to a factory, coolie of a gas manufacturing work for excavating trenches, employees in a kitchen of a restaurant are workers. While, courts have held persons employed for cleaning tables, waiters and servers at restaurants are not workers.

Exception: Members of the armed forces are not workers.

2.(m) "factory" means any premises including the precincts thereof—

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,—
but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952)], or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.

Explanation I: For computing the number of workers for the purposes of this clause all the workers in different groups and relays] in a day shall be taken into account;

Explanation II: For the purposes of this clause, the mere fact that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed to make it a factory if no manufacturing process is being carried on in such premises or part thereof;

Explanation: The definition of factory involves:

- (i) **There must be a premises or precincts:** 'Premise' means open land or land with a building or building alone. The word 'precinct' ordinarily means a 'enclosed space'. In this definition, factory can be a building or an open space or a building with an enclosed space.

The expression 'premises including precincts' does not necessarily mean that the premises must always have precincts. The building can be without precincts.

The legislature had no intention to discriminate between workers engaged in a manufacturing process in a building and those engaged in such a process on an open land. Thereby work of conversion of sea water into crystals of salt fall within the word premises. [*Ardeshir H. Bhiwandiwalla v. State of Bombay* (AIR 1962 S. C.29)]

Thus, any premises may be held as a factory, if a manufacturing process is carried on in any part of the premise by 10 or more workers with the aid of power and by 20 or more workers without the aid of power. For what constitutes manufacturing process, s.2(k) to be referred to.

- (ii) **Manufacturing process is being carried on or ordinarily so carried on:** Manufacturing process as defined in the Act needs to be satisfied. Even seasonal factories come under the ambit of factory.

Sugar factory where no manufacturing process was carried during off-season will not cease to be a factory merely on the ground of carrying on intermittent manufacturing process. [*Employers Association of Northern India v. Secretary of Labour U. P. Government* (AIR 1952 All 109)]

Conversion of high voltage into low voltage and distribution of electricity would not amount to manufacturing process as envisaged under S.2(k) of the Factories Act because these activities do not involve generation of power. Therefore any sub-station engaged in conversion or distribution of electricity is not a factory. [*Gujrat Electricity Board v. State of Gujarat and Another.*(1984) II L.L.J.370(Guj)]

- (iii) **Number of persons engaged:** There has got to be 10 or more persons employed in the premises where power is used and 20 or more persons employed in the

premises where no power used. In computing the number of persons working permanently, temporarily or in relay shall be taken into account.

One may conclude that in order to ascertain whether a premise is a factory or not, intention and purpose has to be looked into.

Following have been held to be factory:

- ✓ Converting wood into planks essential for manufacturing activity.
- ✓ Salt work.
- ✓ A shed for ginning and pressing of cotton.
- ✓ Bidi making.
- ✓ Place for preparing food stuff and other eatables.
- ✓ Laying of railway line.

However, following are not factory:

- ✓ Mine.
- ✓ Electronic Data Processing Unit.
- ✓ Mobile unit belonging to the armed forces of the Union.
- ✓ Railway running shed.
- ✓ Hotel, restaurant or eating place.
- ✓ Establishment solely engaged in electronic data processing or computer unit.
- ✓ Sub stations and zonal stations.

While manufacturing process is being undertaken, following are the duties of the manufacturer as regards articles and substances for use in the factories (S.7B):

- Care has to be taken that the articles used in the factory are safe and without health risk when used. Articles refer to both plant and machinery
- Proper information is handed out to the workers regarding the use of article
- Proper research and tests have been undertaken before the use of the article/s in the factory.
- If articles are imported, the manufacturer has to ascertain that the articles conform to the standards prescribed

[Under the Maharashtra Rules, 1969 poly-house or green house engaged in the activity of floriculture or high value crop shall not fall under the definition of factory.

Also by an amendment in 2015, The Factories (Maharashtra Amendment) Act, 2015, the number of persons under this definition has been raised to 20 where aid of power is being used and 40 where power is not being used.]

2.(n) "occupier" of a factory means the person who has ultimate control over the affairs of the factory;

Provided that:

- (i) in the case of a firm or other association of individuals, any one of the individuals, any one of the individual partners or members thereof shall be deemed to be the occupier;

- (ii) in the case of a company, any one of the directors shall be deemed to be the occupier;
- (iii) in the case of a factory owned or controlled by a Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case may be, shall be deemed to be the occupier;

Provided further that: In the case of a ship which is being repaired, or on which maintenance work is being carried out, in a dry dock which is available for hire (1) the owner of the dock shall be deemed to be the occupier for the purposes of any matter provided for by or under:

- (a) section 6, section 7, section 7A, section 7B, section 11 or section 12;
- (b) section 17, in so far as it relates to the providing and maintenance of sufficient and suitable lighting in or around the dock;
- (c) section 18, section 19, section 42, section 46, section 47 and section 49, in relation to the workers employed on such repair or maintenance;
- (d) the owner of the ship or his agent or master or other officer-in-charge of the ship or any person who contracts with such owner, agent or master or other officer-in-charge to carry out the repair or maintenance work shall be deemed to be the occupier for the purposes of any matter provided for by or under section 13, section 14, section 16 or section 17 (save as otherwise provided in this proviso) or Chapter IV (except section 27) or section 43, section 44 or section 45, Chapter VI, Chapter VII, Chapter VIII or Chapter IX or section 108, section 109 or section 110, in relation to – (a) the workers employed directly by him, or by or through any agency; and (b) the machinery, plant or premises in use for the purpose of carrying out such repair or maintenance work by such owner, agent, master or other officer-in-charge or person.

Explanation: Occupier refers to the person who has ultimate control over the affairs of the factory. The control may even be remote. Thus occupier is a person who is either a proprietor or owner or otherwise entitled to be in possession of the factory and control its working. Occupier may occupy the factory himself or through his agent. However, in case of lease of the factory, the lessee will be the occupier.

Its following have been held to be the occupier:

- In case of firm or association: any one of the individual partners
- In case of company: any one directors
- In case of company owned by Central or State Government or local authority: person/s appointment to manage the affairs of the factory.
- In case of ship being repaired in dock: owner of the dock.

However an employee of a company or factory cannot be occupier.

Duties of the Occupier (SS. 7&7A):

- Before work starts in the factory, at least fifteen days prior notice shall be given by the Occupier to the Chief Inspector. Details of the work and workers.
- The Occupier shall ensure as far as reasonable and practical the health, safety and welfare of all workers while they are in the factory.
- Enable the plant to be safe for work by the workers.
- Periodic maintenance and monitoring of work environment shall be undertaken.

10.5 HEALTH (Ss. 11-20)

Chapter III deals with health of workers.

S. 11 – Cleanliness

S. 12 – Disposal of wastes and effluents

S. 13 – Ventilation and temperature

S. 14 – Dust and fume

S. 15 – Artificial humidification

S. 16 – Overcrowding

S. 17 – Lighting

S. 18 – Drinking water

S. 19 – Latrines and urinals

S. 20 – Spittoons

The following requirements need to be taken care of by the employer at the factory premises:

(1) Cleanliness:

- Every factory shall be kept clean and free from effluvia arising from any drain, privy or other nuisance, and in particular-
- Floor of every workroom shall be cleaned at least once in every week by washing, using disinfectant, where necessary, or by some other effective method;
- Where a floor is liable to become wet in the course of any manufacturing process to such extent as is capable of being drained, effective means of drainage shall be provided and maintained;
- Painting of the walls, partitions, ceilings etc. shall be undertaken at least once in 3 years where the painting is a washable one. Cleaning by washing shall be undertaken once in 6 months. In other cases painting shall be undertaken once in 5 years.
- Proper and periodic cleaning of doors, windows, knobs, handles shall be undertaken. Painting/varnishing shall be done once in 5 years.
- Proper recordings of the work done shall be maintained

- (2) **Disposal of wastes and effluents:** Occupier shall ensure that in the factory proper treatment of waste and effluents are made so as to make them harmless before disposal.
- (3) **Ventilation and Temperature:** Effective arrangement for proper ventilation and maintenance of proper temperature to be made, so that the workers can work in conditions of comfort and prevent injury to health. The State Government is empowered to lay down the standards.
- (4) **Dust and fumes:** Whenever there is emission of dust or fumes, which are injurious to the health of workers employed in the manufacturing process, effective measures shall be taken to ensure workers do not inhale, the dust and fumes. Also to ensure there is no accumulation of dust and fumes.
- (5) **Artificial humidification:** In all factories in which humidity of air is artificially regulated, the State Government shall prescribe the standards of humidification. The water used for artificial humidification should be either purified before use or obtained from a public supply or other source of drinking water.
- (6) **Overcrowding:** No room in the factory shall be overcrowded to an extent that it is injurious to the health or safety of the workers. There shall be atleast 500 cubic feet of space for every worker employed therein after the commencement of the Act. For calculating the work area, the space more than 4.2 metres above the level of the floor, will not be taken into consideration.
- (7) **Lighting:** In every part of the factory sufficient and suitable lighting to be there, State Government can lay down the standards. Care has to be taken that in every factory, all glazed windows and skylights used for the lighting of the workroom shall be kept clean on both the inner and outer surfaces. Also provision to be made as far as practical, to prevent glare by reflection and or shadows, thus risking the workers health or safety.
- (8) **Drinking water:** There shall be proper and sufficient arrangement for wholesome drinking water with legible markings. Whenever there are 250 or more workers employed, coolers for drinking water to be provided. Drinking water facilities shall be at least 6 metre away from washing places, latrines, urinals and spittoons.
- (9) **Latrines & Urinals:** Separate and sufficient numbers of latrines and urinals of specified type shall be provided for male and females workers. These shall be well lighted, ventilated and maintained in a clean and sanitary condition. Where more than 250 workers are ordinarily employed the specification of the type of sanitary ware shall be prescribed.

All latrines, urinals including the walls, shall be thoroughly washed and cleaned at least once in every 7 days with suitable detergents or disinfectants or with both.

- (10) **Spittoons:** Spittoons shall be provided in sufficient numbers and at proper locations. Spittoons shall be maintained in a clean and hygienic condition. Anyone who contravenes the provision shall be punishable with a fine not exceeding five rupees.

The State Government shall prescribe the rules. The fact that the State Government has neither approved nor disapproved by the Government is no excuse for non-compliance. [*Narendra Lal v. State of U.P., (1981) 43 FLR 233(All)*].

10.6 SAFETY (Ss. 21-41)

Chapter IV of the Act contains provisions relating to safety of the workers while in the factory.

- S 21 – Fencing of machinery
- S 22 – Work on or near machinery in motion
- S 23 – Employment of young people on dangerous machines
- S 24 – Striking gear and devices for cutting off power
- S 25 – Self-acting machines
- S 26 – Casing of new machinery
- S 27 – Prohibition of employment of women and children near cotton-openers
- S 28 – Hoists and lifts
- S 29 – Lifting machines, chains, ropes and lifting tackles
- S 30 – Revolving machinery
- S 31 – Pressure plant
- S 32 – Floors, stairs and means of access
- S 33 – Pits, sumps openings in floors, etc.
- S 34 – Excessive weights
- S 35 – Protection of eyes
- S 36 – Precautions against dangerous fumes, gases
- S 36 A – Precautions regarding the use of portable light
- S 37 – Explosive or inflammable dust, gas, etc.
- S 38 – Precautions in case of fire
- S 39 – Power to require specifications of defective parts or tests of stability
- S 40 – Safety of buildings and machinery
- S 40 A – Maintenance of buildings
- S 40 B – Safety Officers
- S 41 – Power to make rules to supplement this Chapter

- (1) **Fencing of machinery:** There shall be proper fencing of machinery or parts of the machinery which is likely to injure workers. For safeguard of the workers, the State Government shall prescribe the norms for safeguard of the workers.
- (2) **Work on or near moving machinery:** Any worker who is required to work near or on machinery in motion, proper care and instruction shall be given.

Any person required to work on or near machinery in motion shall be a person who has been specially trained adult male worker. The worker shall wear tight

fitting clothing. The name of the worker is shown in the record prescribed for carrying on the work and has to furnish a certificate of his appointment. However, no worker shall be allowed to handle a moving pulley which is more than 15 cms. in width.

Women and children are refrained from cleaning, lubricating any machine in motion if it is likely to expose them to injury.

- (3) **Employment of young persons near dangerous machines:** No young person shall be permitted to operate dangerous machinery unless sufficiently trained and there is sufficient supervision by a trained person.
- (4) **Striking gear and devices for cutting off power:** Every factory shall have provision for suitable striking gears or other efficient mechanical appliances. These shall be used to move driving belts to and from fast and loose pulleys, which form part of the transmission machinery. Also suitable devices for cutting off power when required shall be provided.
- (5) **Self-acting machines and casing of new machinery:** Proper care has to be taken in installing self-acting machines and devices for cutting power off to be provided. New machines that are dangerous shall be cased.
- (6) **Prohibition of employment of women and children near cotton openers:** Generally, no woman or children shall be employed near cotton openers.
- (7) **Hoists, Lifts etc.:** Every hoist and lift shall be of good mechanical construction, sound material and adequate strength. Proper and well protected hoist, lifts, lifting machines, ropes, chains and lifting tackles to be provided. Hoists and lifts shall be well maintained and examined at least once in every period of 12 months and at such intervals as the Chief Inspector may specify. Proper register shall be maintained for recording of every such examination. In case of revolving machinery, proper notices to be displayed.
- (8) **Revolving machinery:** All revolving machinery shall be fixed and proper indication shall be displayed. Speed shall not be exceeded. Effective measures for the safe working by the workers shall be provided for.
- (9) **In case of pressure plants:** Effecting measures shall be taken to ensure the safe working of the pressure plants. State government shall make rules for examination and testing.
- (10) **Floor, Stairs and means of access:** All floors, stairs and means of access shall be of sound construction and properly maintained. If it appears to the Inspector that the building/machinery/premise is in a condition dangerous to human life and safety, he may require the occupier or manager or both to get it repaired, altered and prohibit using till the needful is done.

When a person has to work at a height from where he is likely to fall, provision shall be made, so far as reasonably practicable, by fencing or otherwise, to ensure the safety of the person so working.

- (11) **Pits, sumps, openings in the floors etc.:** Shall be securely covered or securely fenced. However, State Government may exempt any factory from the compliance.
- (12) **Carrying of excessive weights:** No worker shall be required to carry any load so heavy that it is likely to injure him.
- (13) **Protection to the eyes, against dangerous fumes etc.:** In processes involving risk to the eyes, or are subject to dangerous fumes and gases or using portable electric light or working with explosive or inflammable dust, gas etc. are to be properly instructed and suitable protective equipment to be provided.

In Finch v. Telegraph Construction & Maintenance Co. Ltd., (1949) All E R 452, it was held that it is not enough if the goggles were hung in the office room, the workers must be informed of their whereabouts.

- (14) **Precaution in case of fire:** Proper precautions to be provided in case of fire including proper maintenance of the building.

In every factory wherein **one thousand or more workers** are ordinarily employed or wherein the State Government is of the opinion that there a hazard to the health of the persons employed in the factory due to the manufacturing process or operations carried on, '**Safety Officers**' shall be employed. The State Government shall prescribe the qualifications, duties and conditions. Also the State Government is empowered to make rules that supplement the rules laid down in this chapter for securing the safety of the persons employed in any factory.

- (15) **Safety of building, machinery and maintenance of building:** The occupier shall ensure that the building is safe for the workers to work. The machinery is maintained in good and safe working condition. Inspectors can have periodic checks and specify additional requirement.
- (16) **Safety Officers:** The Occupier shall appoint such number of '**Safety Officers**' as may be prescribed by the State Government where 1000 or more workers are ordinarily employed or where the manufacturing process or operation involves risk of bodily injury, poisoning or disease or any other hazard to the health of the persons employed therein. The qualifications and conditions of service may be prescribed by the State Government.

The power to make rules to supplement the above requirements vests with the State Government.

10.7 WELFARE (Ss. 42-50)

Chapter V of the Act relates to welfare measures to be undertaken for the welfare of the workers.

S.42 – Washing facilities

S.43 – Facilities for storing and drying clothing

S. 44 – Facilities for sitting

S.45 – First-aid appliances

S. 46 - Canteens

S. 47 - Shelters, rest-rooms and lunch rooms

S. 48 - Crèches

S. 49 - Welfare Officers

S. 50 - Power to make rules to supplement

- (1) **Washing and storing facilities:** Proper and adequate washing, drying and storing facilities to be provided for the workers. The law requires separate and adequately screened facilities shall be provided for the use of male and female workers. Such facilities shall be easily accessible and shall be kept clean. The State Government may prescribe standards where required.

The State Government may in respect of any factory or class or description of factories, make rules requiring the provision therein of suitable places for keeping clothing not worn during working hours and for drying of wet clothing.

- (2) **Facilities for sitting:** In every factory suitable arrangement for sitting during the rest hours shall be provided for the workers. Also, if the State Government is of the opinion that the workers can work better in a sitting position, if such facility is not provided by the employer, the government may order the same to be provided.
- (3) **First-aid Kit:** One first aid kit with prescribed contents for every 150 employees ordinarily employed at any one time shall be kept accessible under the custody of a qualified person who shall be readily available during the working hours. Further, where 500 or more employees are ordinarily employed, there shall be an ambulance room handled by qualified medical or nursing staff.
- (4) **Canteen:** The State Government is empowered to make rules requiring factories employing more than 250 persons, to set up canteens in conformity with prescribed standards and conditions as regards construction, accommodation, equipment, foodstuffs to be served and the prices that is to be charged and representation of workmen in the management of the canteen.
- (5) **Shelters, Rest Rooms and Lunch Rooms:** Whenever more than 150 workers are ordinarily employed, adequate and suitable rest rooms and lunch rooms to be made available with required facilities like drinking water, furnitures, etc. The State Government may prescribe standards in respect of construction, accommodation, furniture and other equipment of shelters, rest rooms and lunch rooms to be provided.
- (6) **Crèches:** In factories where more than 30 women workers are employed there shall be provision for room/s for the use of children under the age of 6 years of such women workers. These crèches shall managed by women trained in the care of children and infants. The State Government may prescribes the following:
- Prescribing the location and the standards in respect of construction, accommodation, furniture and other equipment of rooms to be provided.
 - Provision for facilities for washing and changing their clothing.
 - Provision in any factory for free milk or refreshment or both for such children.

- Provision shall be made for in any factory for the mothers of such children to feed them at the necessary intervals.
- (7) **Welfare Officers:** In every factory wherein **500 of more workers** are ordinarily employed the occupier shall employ in the factory such number of welfare officers as may be prescribed. Also the State Government by notification shall prescribe the duties, qualifications and conditions of service for these welfare officers.
- The State Government is vested with the power to make further rules necessary.

10.8 WORKING HOURS FOR ADULTS (Ss. 51-77)

These provisions are dealt in Chapter VI of the Act.

- S. 51 – Weekly hours
 - S. 52 – Weekly holidays
 - S. 53 – Compensatory holidays
 - S. 54 – Daily hours
 - S. 55 – Intervals for rest
 - S. 56 – Spreadover
 - S. 57 – Night shifts
 - S. 58 – Prohibition of overlapping shifts
 - S. 59 – Extra wages for overtime
 - S. 60 – Restriction on double employment
 - S. 61 – Notice of periods of work for adults
 - S. 62 – Register of adult workers
 - S. 63 – Hours of work to correspond with notice under section 61 and register under section 62
 - S. 64 – Power to make exempting rules
 - S. 65 – Power to make exempting orders
 - S. 66 – Further restrictions on employment of women
- (1) **Daily and weekly Hours including spread over:** No person shall be required or allowed to work for more than **nine hours** in any day and not more than **ten and a half hours** in a day inclusive of the rest intervals. The Chief Inspector may for reasons to be specified in writing, increase the spread over upto twelve hours. Every worker shall be entitled to **half an hour** of rest for every **five hours** of work. The State Government or the Chief Inspector may if required may require the worker to work at a stretch beyond **five hours** but not to exceed **six hours** without the interval.
- No adult worker shall be required or allowed to work in a factory for more than **forty-eight hours** in any week. For violation of the provision, the occupier or the manager is answerable.

- (2) **Weekly holidays and compensatory holidays:** The act provides for weekly rest day. This ordinarily falls on a Sunday but can be substituted for any of the three days preceding or following it, subject to the condition that a worker must not be made to work for a continuous period of more than ten days.

Where the employer by giving notice that the workers shall be required to work on a weekly off day instead of working on a given day was held to be valid. [Hartex Tubes Pvt. Ltd v. Asst. Comm. of Labour, 1998 LLR 742(Bom)]

Where a worker is required to work on a weekly holiday/s, specific permission is required. He shall be entitled to compensatory holiday equal to the number of day/s lost in the month in which the holiday/s was due or within two months following that month.

- (3) **Night shifts:** Where a worker in a factory works in the night shift (i.e. shift extending beyond mid-night) the weekly or compensatory holiday shall be a period of 24 consecutive hours beginning from when the shift ends.
- (4) **Prohibition of overlapping shifts:** Work shall not be carried on in any factory by means of a system of shifts so arranged that more than one relay of workers engaged in work of the same kind at the same time. **Extra wages for overtime:** where a worker is required to work beyond the number of hours specified for a day or week, he shall be entitled to wages twice his ordinary wage for that overtime work.
- (5) **Restriction on double employment:** No adult worker shall be required or allowed to work in any factory on any day on which he has already been working in any other factory, save in such circumstances as may be prescribed.
- (6) **Extra wages for overtime:** Where a worker works in a factory for more than nine hours in any day or for more than forty-eight hours in any week, he shall, in respect to overtime work, be entitled to wages at the rate of twice his ordinary rate of wages. Ordinary rate of wages means the basic wages plus such allowances, including the cash equivalent of the advantage accruing through the concessional sale to workers of food grains and other articles, as the worker is for the time being entitled to, but does not include a bonus and wages for overtime work.

Ordinary rate of wages = Basic wage + Allowances + Cash equivalent of the advantages.

Where any worker in a factory is paid on a piece-rate basis, the time rate shall be deemed to be equivalent to the daily average of their full-time earnings for the days on which they actually worked on the same or identical job during the month immediately preceding the calendar month during which the overtime work was done, and such time rates shall be deemed to be the ordinary rates of wages of those workers.

Provided that in the case of a worker who has not worked in the immediately preceding calendar month on the same or identical job, the time rate shall be deemed to be equivalent to the daily average of the earning of the worker for the

days on which he actually worked in the week in which the overtime work was done.

- (7) **Restrictions on employment of women:** The act stipulates that women to be allowed to work between 6 a.m. and 7 p.m. However there may be variation in the timings but no employment of women between 10 p.m. and 5 a.m. However, in *K.S.Triveni v. UOI, Ministry of Labour, (2002) 3 LLJ 320* it was held the provision was discriminatory on the basis of sex and is therefore *ultravires*.

Where women are required to work between 6 a.m. and 7 p.m., adequate security and safeguards are required to be undertaken.

- (8) **Notice of periods of work:** There shall be displayed notice of periods of work for every worker which shall ordinarily be adhered to.
- (9) **Register of adult workers:** Proper register detailing the names of the persons, group if any, hours of work, nature of work, any other particular required to be maintained.

The State Government is empowered to make rules defining certain persons as holding supervisory or managerial positions and also regarding granting of exemption from application of any section of this chapter.

The State Government is empowered to make rules exempting any factory from adhering to the rules stipulated for valid reasons.

10.9 EMPLOYMENT OF YOUNG CHILDREN (Ss. 67-77):

Chapter VII deals with the provisions:

- S. 67 – Prohibition of employment of young children
- S. 68 – Non-adult workers to carry tokens
- S. 69 – Certificates of fitness
- S. 70 – Effect of certificate of fitness granted to adolescent
- S. 71 – Working hours for children
- S. 72 – Notice of period of work for children
- S. 73 – Register of child workers
- S. 74 – Hours of work to correspond with notice under section 72 and register under section 73
- S. 75 – Power to require medical examination
- S. 76 – Power to make rules
- S. 77 – Certain other provisions of law not barred

S.2(d) defines 'Young persons' as "a person who is either a child or an adolescent".

- (1) **Prohibition of employment of young children:** No child who has not completed his fourteenth year shall be required or allowed to work in any factory.
- (2) **Non-adult workers to carry tokens:** A child who has completed his fourteenth year or an adolescent shall not be required or allowed to work in any factory unless-

- (a) a certificate of fitness granted with reference to him under section 69 is in the custody of the manager of the factory, and (b) such child or adolescent carries while he is at work a token giving a reference to such certificate.
- (3) **Certificates of fitness:** A certifying surgeon shall, on the application of any young person or his parent or guardian accompanied by a document signed by a manager of a factory that such person will be employed therein if certified to be fit for work in a factory, or on the application by the manager of the factory in which any young person wishes to work, examine such person and ascertain his fitness for work in a factory.

The certifying surgeon, after examination, may grant to such young person, in the prescribed form, or may renew a certificate of fitness to work in a factory as a child, if he is satisfied that the young person has completed his fourteenth year, that he has attained the prescribed physical standards and that he is fit for such work.

A certificate of fitness granted or renewed shall be valid only for a period of **twelve months** from the date of issue.

Any fee payable for a certificate under this section shall be paid by the Occupier and shall not be recoverable from the young person, his parents or guardian.

- (4) **Effect of certificate of fitness granted to adolescent:** No female adolescent or male adolescent who has attained the age of seventeen years but who has been granted a certificate of fitness to work in a factory as an adult, shall be required or allowed to work in any factory except between 6 a.m. and 7 p.m.
- (5) **Working hours for children:** No child shall be employed or permitted to work, in any factory for more than **four and a half hours** in any day, during the night. The period of work of all children employed in a factory shall be limited to two shifts which shall not overlap or spread over more than five hours each; and each child shall be employed in only one of the relays which shall not except with the previous permission in writing of the Chief Inspector, be changed more frequently than once in a period of thirty days. No child shall be required or allowed to work in any factory on any day on which he has already been working in another factory. No female child shall be required or allowed to work in any factory except between 8 a.m. and 7 p.m.
- (6) **Notice of periods of work for children:** There shall be displayed and correctly maintained in every factory in which children are employed a notice of periods of work for children, showing clearly for every day the periods during which children may be required or allowed to work.
- (7) **Register of child workers:** The manager of every factory in which children are employed shall maintain a register of child workers, to be available to the Inspector at all times during working hours or when any work is being carried on in a factory showing-
- the name of each child worker in the factory;
 - the nature of his work;

- (c) the group, if any, in which he is included;
 - (d) where his group works on shifts, the relay to which he is allotted, and
 - (e) the number of his certificate of fitness granted .
- (8) **Power to require medical examination:** Where an Inspector is of the opinion-
 (a) that any person working in a factory without a certificate of fitness is a young person, or (b) that a young person working in a factory with a certificate of fitness is no longer fit to work in the capacity stated therein, he may serve on the manager of the factory a notice requiring that such person or young person, as the case may be, shall be, examined by a certifying surgeon, and such person or young person shall not, if the Inspector so directs, be employed, or permitted to work, in any factory until he has been so examined and has been granted a certificate of fitness or a fresh certificate of fitness, as the case may be, under section 69, or has been certified by the certifying surgeon examining him not to be a young person.
- (9) **Power to make rules:** The State Government may make rules for fees, physical standards to be attained by the children and adolescent, procedure for certifying surgeons to follow.

The State Government is empowered to make rules however, it cannot be in derogation of the provisions of the 'Employment of Children Act, 1938'.

10.10 ANNUAL LEAVE WITH WAGES (Ss. 78-84)

Chapter VIII deals with the provision:

- S. 78 – Application of Chapter
 - S. 79 – Annual leave with wages
 - S. 80 – Wages during leave period
 - S. 81 – Payment in advance in certain cases
 - S. 82 – Mode of recovery of unpaid wages
 - S. 83 – Power to make rules
 - S. 84 – Power to exempt factories
- (1) **Annual leave with wages:** Every worker who has worked for **240 days** or more in a factory during a calendar year shall be allowed during the subsequent calendar year, leave with wages. The number of days of leave entitled shall be for an adult **one day** for every **twenty days** of work performed, for a child it shall be **one day** for every **fifteen days** of work performed. However, in calculating the 240 days of work, days on which there has been lay off, maternity leave availed in accordance with the law and the leave earned in the year prior to that in which leave is enjoyed shall be deemed to be the days on which the worker has worked but he shall not earn leave for those days.

A worker who is discharged or dismissed from service or quits his employment or is superannuated or dies while in service, during the course of the calendar year, he or his heir or nominee as the case may be shall be entitled to wages in lieu of the

- quantum of leave he is entitled immediately preceding the discharge, dismissal, quitting, super annotating or death.
- (2) **Wages during leave period:** For the leave allowed to the worker, he shall be entitled to wages at a rate equal to the daily average of his total full time earnings for the days on which he actually worked during the month immediately preceding his leave, exclusive of any overtime and bonus but inclusive of dearness allowance and the cash equivalent of the advantage accruing through the concessional sale to the worker of food grains and other articles.

Wages during leave: Daily average wage + DA + Cash equivalent of advantage [Overtime wages and bonus not included].

In the case of a worker who has not worked on any day during the calendar month immediately preceding his leave, he shall be paid at a rate equal to the daily average of his total full time earnings for the days on which he actually worked during the last calendar month proceeding his leave, in which he actually worked, exclusive of any overtime and bonus but inclusive of dearness allowance and the cash equivalent of the advantage accruing through the concessional sale to the workers of foodgrains and other articles.

- (3) **Payment in advance in certain cases:** A worker who has been allowed leave for not less than four days in the case of adult, and five days in the case of a child shall before his leave begins, be paid the wages due for the period of the leave allowed.
- (4) **Mode of recovery of unpaid wages:** Any sum required to be paid by an employer under this Chapter but not paid by him shall be recoverable as delayed wages under the provisions of the Payment of Wages Act, 1936.

It has been specifically provided that the law laid down in this Act shall not operate to the prejudice of any right to which the worker might be entitled under any other law or terms of any award, agreement, contract of service.

10.11 PENALTIES

Chapter X deals with the provisions of penalty.

S. 92 – General penalty for offences

S. 93 – Liability for owner of premises in certain circumstances

S. 94 – Enhanced penalty after previous conviction

S. 95 – Penalty for obstructing inspector

S. 96 – Penalty for wrongfully disclosing results of analysis under section 91

S. 96A – Penalty for contravention of the provisions of sections 41B, 41C and 41H

S. 97 – Offences by workers

S. 98 – Penalty for using false certificate of fitness

S. 99 – Penalty for permitting double employment of child

S. 101 – Exemption of occupier or manager from liability in certain cases

S. 102 – Power of Court to make orders

- S. 103 – Presumption as to employment
- S. 104 – Onus as to age
- S. 104A – Onus of providing limits of what is practicable, etc
- S. 105 – Cognizance of offences
- S. 106 – Limitation of prosecutions
- S. 106A – Jurisdiction of a court for entertaining proceedings, etc., for offence

Offence	Penalties
Any contravention of any provisions of this act or of any rules or any order	<p>The manager or the occupier shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to one lakh rupees or with both.</p> <p>If the offence continue after conviction a further fine which may extend up to of one thousand rupees for every day on which the contravention continues.</p> <p>In case of repeat offence after conviction, the punishment shall be increased to imprisonment for a term which may extend up to 3 years or with fine which shall not be less than ten thousand rupees but may extend to two lakhs rupees or both.</p>
Contravention of safety rules contravention of rules regarding dangerous operation resulting in an accident causing death or serious bodily injury	Fine of not less than twenty-five thousand rupees in case of death and five thousand rupees in case of serious bodily injury, on account of accident.
Obstructing wilfully an Inspector from exercising any power conferred.	Imprisonment for a term which may extend up to six months or fine which may extend up to ten thousand rupees or both.
Failing to comply with provisions relating to hazardous operation.	Imprisonment for a term which may extend up to seven years and with fine which may extend upto two lakhs rupees and if the contravention continues, additional fine which may extend to five thousand rupees for every day during which the contravention continues.
Any worker contravening any provision of law.	Fine which may extend upto five hundred rupees .
Use of false certificate of fitness	Imprisonment which may extend to two months or with fine which may extend up to one thousand rupees or with both.

In case of double employment of a child where the parent or a person having custody of the minor knowingly permits such employment.

Parent shall be punishable with fine which may extend to one thousand rupees.

In all the above mentioned circumstances, no Court shall take cognizance of any offence under this Act except on complaint by or with the previous sanction in writing of, an Inspector. Also, the complaint thereof is made within three months of the date on which the alleged commission of the offence comes to the knowledge of an Inspector.

POINTS TO REMEMBER

Objectives: The Act regulates working condition, protects health, prescribes safety, ensures welfare of workers and imposes penalties for contraventions of the provisions of law.

Applicability: To a manufacturing process with power and employing 10 or more workers or to a manufacturing process without power and employing 20 or more workers.

2(cb) Hazardous process: Schedule 1 list 29 industries as hazardous to worker's health or environment.

2(k) Manufacture: There must be a transformation meaning thereby that the article becomes commercially known as another from which it began its existence. Includes acts done for the protection and maintenance of such article by packing, oiling, washing, cleaning etc.

2(l) Worker: Worker is a person employed in the premises or precincts of the factory in any kind of work connected with the manufacturing process and depends on the terms of the contract.

2(m) Factory: Where 10 or more workers are employed on any day in the last 12 months in a manufacturing process with the aid of power or where 20 or more persons are employed on any day in the last 12 months in a manufacturing process where power is not being used.

2(n) Occupier: A person who has ultimate control over factory affairs.

Health (11-20): includes provisions for cleanliness, disposal of wastes and effluents, ventilation and temperature, dust and fumes, artificial humidification, overcrowding, lighting, drinking water, latrines & urinals & spittoons.

Safety (Ss. 21-41): In every factory wherein one thousand or more workers are ordinarily employed or wherein the State Government is of the opinion that there a hazard to the health of the persons employed in the factory due to the manufacturing process or operations carried on, safety officers shall be employed. Protection to the workers, proper precaution to be taken like proper fencing, maintenance of building, equipment etc. to be taken.

Welfare (Ss. 42-50): In every factory wherein 500 or more workers are ordinarily employed the occupier shall employ in the factory such number of welfare officers as may be prescribed. Provisions for washing, sitting, first-aid Kit, canteen, shelters, rest rooms and lunch rooms and crèches shall be provided.

Working hours for adults (Ss. 51-77): No worker shall be asked to work for more than 9 hours a day and 48 hours a week with a weekly off. For overtime work, wages at twice the rate shall be paid.

Annual leave with wages (Ss. 78-84): A worker who has worked for 240 days in the preceding year is entitled to leave at the rate of 1 day for every 20 days worked by an adult and 1 day for every 15 days worked by a child.

[I] TEST YOUR KNOWLEDGE

(1) MULTIPLE CHOICE QUESTIONS

- (1) The first factories act was framed in:
 (a) 1881 (b) 1891 (c) 1911 (d) 1931

- (2) Adolescent is a person:
 (a) who has completed 14 years of age but not 18 years of age (b) Who has completed 15 years of age but not 18 years of age (c) Who has completed 16 years of age but not 18 years of age (d) Who has completed 17 years of age but not 18 years of age
- (3) S.2(K) defines:
 (a) Worker (b) Factory (c) Manufacture (d) Adult
- (4) Factory means:
 (a) Where 10 or more people employed in a manufacturing process (b) Where 20 or more people employed in a manufacturing process (c) Where 10 or more people employed in a manufacturing process with the use of power (d) (b) & (c)
- (5) Factory premises should be cleaned at least:
 (a) Daily (b) Weekly (c) Fortnightly (d) Monthly
- (6) Provision for coolers to be provided whenever the number of workers are:
 (a) Between 100-150 (b) Between 151-200 (c) Between 201-250 (d) More than 250
- (7) Fine imposed for spitting at a place other than in the spittoon:
 (a) Rs. 5 (b) Rs. 10 (c) Rs. 15 (d) Rs. 20
- (8) No young person can operate a dangerous machine:
 (a) True (b) False
- (9) Merely placing the protective goggles for the eye in the rack is sufficient complying of the rules:
 (a) True (b) False
- (10) Generally a Safety Officer is appointed wherein:
 (a) 500 workers are employed (b) 750 workers are employed (c) 1000 workers are employed (d) No provision for appointment
- (11) Canteen facility is to be provided when:
 (a) 100 worker employed (b) More than 250 workers employed (c) Optional (d) To be provided in all cases
- (12) Crèches to be provided when:
 (a) 20 or more workers employed (b) 30 or more workers employed (c) Women workers employed (d) 30 or more women workers employed
- (13) Provision for welfare officer:
 (a) 100 workers employed (b) 200 workers employed (c) 300 workers employed (d) 500 or more workers employed
- (14) According to the factories Act, definition of week is a period starting at midnight of:
 (a) Friday (b) Saturday (c) Sunday (d) Monday
- (15) If any article is stored in cold storage, is it considered as a manufacturing process under the Act?
 (a) Yes (b) No
- (16) A mobile unit that belongs to the armed forces of the Union is not a 'factory' under the definition of 'manufacturing process'.
 (a) True (b) False
- (17) Penalty for using false certificate of fitness:
 (a) Up to 1 month imprisonment or Rs 100 fine or both (b) Up to 2 months imprisonment or Rs 100 fine or both (c) Up to 2 months imprisonment or Rs 1000 fine or both (d) Up to 6 months imprisonment or Rs 1000 fine or both
- (18) Obstructing wilfully an Inspector from exercising any power conferred:
 (a) Imprisonment up to six months or fine up to ten thousand rupees or both (b) Imprisonment up to five months or fine up to six thousand rupees or both (c) Imprisonment up to three months or fine up to three thousand rupees or both (d) Imprisonment up to one month or fine up to one thousand rupees or both

- (19) A person who has ultimate control over the affairs of the factory is the:
 (a) Occupier (b) Manager (c) Chairman (d) Employer
- (20) Under Factories Act, the maximum number of hours a worker can be asked to work in a day is:
 (a) 8 Hrs (b) 9 Hrs (c) 12 Hrs (d) 15 Hrs
- (21) Each worker to be provided:
 (a) 4.2 cubic metre space (b) 5.2 cubic metre space (c) 8.2 cubic metre space (d) 14.2 cubic metre space
- (22) Which of the following do not come under the welfare provision of S. 42-49 of the Act:
 (a) washing facilities (b) Drinking water (c) Facilities for sitting (d) First aid appliances
- (23) Who is liable to pay the fee for a certificate of fitness?
 (a) Occupier (b) Young person himself (c) Parent/guardian (d) State Government
- (24) What is the maximum number of hours that a child can be employed in a day:
 (a) 3½ hours (b) 4½ hours (c) 6 hours (d) 8 hours
- (25) What is the maximum number of hours in a week that an adult worker is allowed to work for:
 (a) 30 hrs (b) 40 hrs (c) 48 hrs (d) 60 hrs
- (26) Devices for cutting off power are for permanently closing such machinery. (MU. Nov. 17)
 (a) True (b) False
- (27) The Chief Inspector of the State shall be the Chairman of the Site Appraisal Committee. (MU. Nov. 17)
 (a) True (b) False
- (28) Safety officer is appointed where 100 workers are employed in a factory. (MU. Nov. 17)
 (a) True (b) False

Ans.: (1) a (2) b (3) c (4) d (5) b (6) d (7) a (8) a (9) b (10) a (11) b (12) d (13) d (14) c (15) b (16) a (17) c (18) a (19) a (20) b (21) d (22) a (23) a (24) b (25) c (26) b (27) a (28) b.

(2) **FILL IN THE BLANKS**

- (1) In a factory _____ process must be carried out.
- (2) Child is a person who has not completed _____ years of age.
- (3) In a manufacturing process where 10 or more workers are employed, aid of _____ is necessary.
- (4) Floors shall be cleaned by washing at least _____ in every week.
- (5) Shelter, rest rooms are to be provided where more than _____ are ordinarily employed.
- (6) Women and children are not to be employed between _____ p.m. and _____ a.m.
- (7) The periods of work for an adult shall not be spread over beyond _____ hrs. in a day.
- (8) The wages to be _____ in case of a worker being asked to work beyond stipulated hours.
- (9) A adult worker is entitled to 1 day leave for every _____ days of work in the previous calendar year.
- (10) An adult should have worked for _____ days in the previous year to avail of annual leave with wages.
- (11) A child worker is entitled to 1 day leave for every _____ days of work in the previous calendar year.
- (12) The _____ Government has the power to make rules for the state.
- (13) Provision of crèches in factories employing more than _____ workers. (MU. Oct. 18)
- (14) There should be a shelter room for _____ workers in a factory. (MU. Oct. 18)
- (15) When there are _____ or more workers Ambulance room to be provided.
- (16) _____ is responsible for the affairs of a factory.
- (17) A young person is permitted to work for _____ hours in a day.
- (18) Where _____ workers are ordinarily, employed, provision for cooling drinking waters to be provided.
- (19) Provision for welfare officers are necessary when _____ or more workers are employed.
- (20) _____ issue a certificate of fitness to a young person stating a young person may be employed in a factory.
- (21) A women is generally permitted to work between _____ am to _____ pm.
- (22) Occupier means a person who has ultimate _____ over the factory. (MU. Nov. 17)

- (23) Ambulance room is necessary in factory employing more than _____ workers. (MU. Nov. 17; March 18)
- (24) There should be atleast one first aid box for every _____ workers. (MU. March 18)
- (25) Child means a person who has not completed his _____ years of age. (MU. March 18)
- (26) Factory means any premises including the _____ thereof. (MU. March 18)
- (27) Preserving or storing any article in cold storage is a _____. (MU. Nov. 17)
- (28) In a factory, the occupier may appoint a welfare officer where there are _____ workers. (MU. Nov. 17)
- (29) _____ is a space enclosed by wall or fences. (MU. Oct. 18)
- Ans.: (1) manufacturing (2) 15 (3) power (4) once (5) 150 (6) 10 p.m., 5 a.m. (7) 10½ (8) double (9) 20 (10) 240 (11) 15 (12) State (13) 30 women (14) 150 (15) 500 (16) Occupier (17) 4 1/2 hrs (18) 250 (19) 500 (20) Certifying surgeon (21) 6 am to 7 pm (22) control (23) 500 (24) 150 (25) 14 (26) precincts (27) manufacturing process (28) 500 (29) precinct.

[II] QUESTIONS

(I) SHORT QUESTIONS

- (1) An establishment to be called a factory what needs to be carried out?
- (2) What is the minimum number of persons necessary in a factory where power is not used in the manufacturing process?
- (3) Who is an adolescent?
- (4) Who is a child under the factories Act, 1948?
- (5) Is it necessary for all states to have the same rules governing factories?
- (6) Who is responsible to ensure health, safety and welfare of the workers in the factory?
- (7) What is the period of rest intervals for a worker?
- (8) When is a worker entitled to annual leave with wages?
- (9) Is the period of maternity leave availed by a female worker included in calculating 240 days of work?
- (10) Can a worker be asked to forgo his weekly holiday?
- (11) What are the restrictions on young workers and women workers? (MU. March 18; Oct. 18)
- (12) Short note on measures for prevention of dust and fumes.
- (13) Short note on provision for drinking water.
- (14) Who is a worker? Discuss its rights and obligations? (MU. Nov. 17)
- (15) Discuss the provisions of maintenance of adequate ventilation under Factories Act. (MU. Nov. 17)
- (16) What are provisions regarding cleanliness of the factory premises? (MU. March 18)
- (17) Explain the term manufacturing process under Factories Act? (MU. Oct. 18)
- (18) Write short notes on:
 - (a) Precincts. (MU. Nov. 17)
 - (b) Precautions in case of fire under Factories Act. (MU. Nov. 17)
 - (c) Safety officer. (MU. Oct. 18)
 - (d) Measures for prevention of dust and fume. (MU. March 18)
 - (e) Provisions as to drinking water. (MU. March 18; Oct. 18)

(II) ESSAY TYPE QUESTIONS

- (1) What are the salient features of the Factories Act, 1948?
- (2) Explain the objectives of the Factories Act, 1948?
- (3) Who can be called a worker under the Factories Act, 1948? Explain.
- (4) Explain the provision of Factories Act regarding health of workers? (MU. Oct. 18)
- (5) Write on provisions regarding safety of workers in the factory?
- (6) Explain welfare measure provided under the Factories Act, 1948.

- (7) What are the provisions regarding hours of work, periodic rest and over time of a worker under the Factories Act, 1948?
- (8) Explain the various provisions regarding employment of women under the Act.
- (9) Write on the various penalties prescribed under the Factories Act.
- (10) What are the provisions regarding cleanliness of the factory premises?
- (11) Explain the provisions of Factories Act regarding safety of workers? (MU. Nov. 17)
- (12) Explain the provision under Factories Act regarding washing facilities, storing and drying of wet clothing, first aid appliance and sitting facilities? (MU. Oct. 18)
- (13) What are the provisions with regard to welfare of the workers under Factories Act? (MU. March 18)
- (14) Explain the following terms:
- Hazardous process. (MU. Nov. 17)
 - Occupier. (MU. Nov. 17; March 18)
 - Factory. (MU. Nov. 17; March 18)
 - Worker. (MU. March 18)

[III] CASE LETS

- (1) A person employs 50 persons for the purpose of moistening, stripping and packing of sun-cured tobacco leaves. Is this a manufacturing process or not? Justify.
Ans.: Yes. (V.P. Gopal Rao v. Public Prosecutor).
- (2) Transportation of goods from one place to another by road with the help of transport carriers on contract basis. Would it amount to a manufacturing process or not?
Ans.: No. (ESI Corp. Jaihind Roadways Bangalore).
- (3) Would a group of women occasionally brought to clean and wash prawn workers under the Factories Act?
Ans.: No. (State of Kerala v. R.E.D. Souza).
- (4) Persons engaged in an electronic data processing or computer unit claim the premises to be a factory? What would be your advice and why?
Ans.: No. Falls within exception.
- (5) A person working at a height was not given any safety instructions nor was any fencing provided for his safety? The person working falls and injures himself? The employer claims that the worker should take care as he was working at a height? Will the employer succeed?
Ans.: Yes. Safety norms not followed.
- (6) In a factory premises, a canteen is located. The canteen is run by a contractor. Monthly rent is paid by the contractor. An employee in the canteen is injured while working. Is the occupier liable?
Ans.: No.
- (7) Kamal Engineering works has a canteen in the industrial establishment run by the Managing Committee. Are the employees workers?
Ans.: Yes. Refer Kanpur Suraksha Karmachari Union v. Union of India.
- (8) A person was employed in a paper factory. He was engaged in supervising and checking quality and weightment of waste papers and rags which are the basic raw material for the manufacture of paper. He would prepare receipts. His work was both in the precincts of the factory and in cases of necessities had to work inside the factory. Is he a worker?
Ans.: Yes. Refer Rohtar Industries Ltd. v. Ramalkhan Singh and others.
- (9) In a soap-works, a carpenter preparing the packaging cases. Is he a worker?
Ans.: Yes. (Incidental)

MATCH THE COLUMNS:

A	B
(a) Calendar year (MU. March 18)	(1) Child or adolescent
(b) Occupier (MU. Oct. 18)	(2) Space enclosed by wall
(c) Adult	(3) Impairment to health
(d) Power (MU. March 18)	(4) Altering, repairing
(e) Water coolers	(5) Occupier shall employ
(f) Hazardous process (MU. Oct. 18)	(6) 500 or more workers
(g) Welfare Officer (MU. March 18)	(7) Controls the factory
(h) Crèche facility	(8) Maximum 4 hrs. 30 mins
(i) Worker (MU. Oct. 18)	(9) Completed 18 years
(j) Ambulance	(10) 150 workers in a factory
(k) Young person (MU. March 18)	(11) 30 Or more women workers
(l) Manufacturing process (MU. Oct. 18)	(12) Injurious to health
(m) Working hours for children	(13) Engine
(n) Shelter rooms (MU. March 18)	(14) 1 st January
(o) Precincts (MU. Oct. 18)	(15) Person employed
(p) Overcrowding	(16) 250 or more workers

Ans.: (a) 14 (b) 7 (c) 9 (d) 13 (e) 16 (f) 3 (g) 6 (h) 11 (i) 15 (j) 6 (k) 1 (l) 4 (m) 8 (n) 10 (o) (p) 12

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