D.N.R.COLLEGE, (AUTONOMOUS): BHIMAVARAM

DEPARTMENT OF MANAGEMENT STUDIES

CORPORATE LEGAL FRAMEWORK

III SEMESTER

Presented By

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CP - 303, CORPORATE LEGAL FRAMEWORK
MBA III SEMESTER eNOTES

UNIT-III: The Indian Partnership Act, 1932: Meaning and Essentials of partnership--Registration of partnership—Kinds of partners Rights and Liabilities of Partners—Relations partners to third parties—Dissolution.

Introduction:

A partnership is an arrangement in which two or more individuals share the profits and liabilities of a business venture. Various arrangements are possible: all partners might share liabilities and profits equally, or some partners may have limited liability. Not every partner is necessarily involved in the management and day-to-day operations of the venture. In some jurisdictions, partnerships enjoy favorable tax treatment relative tocorporations.

The essential characteristics of partnership are as follows:

1. Two or morepersons:

There must be at least two persons to form a partnership. A person cannot enter into partnership with himself. The maximum number of persons in a partnership should not exceed 10 in case of banking business and 20 in other types ofbusiness.

If the number of partners exceeds the prescribed maximum, it would become an illegal association of persons. A firm cannot become a partner of another firm though its partners can join any other firm aspartners.

2. Agreement:

Partnership is the outcome of an agreement between persons. The relation of partnership arises from the formation of a contract and not from status or birth.

If a proprietor gives a share in profits to his employee it will not be called a partnership unless there is an agreement of partnership between the two. The agreement may be oral or in writing but it must satisfy all the essentials of a

validcontract.

3. Lawfulbusiness:

A partnership can be formed only for the purpose of carrying on a business. An association of persons who jointly own a house without carrying on a business is not partnership. Moreover, the business carried on by the partners must be lawful. Illegal acts such as theft, dacoity, smuggling, etc., cannot be called partnership.

4. Sharing of profits:

The agreement between the partners must be to share the profits of business. There can be no partnership without the intention of mutual gain. The profits must be distributed among the partners in an agreed ratio.
Similarly, losses should be shared among the partners. However, sharing of profits is not a conclusive proof of partnership. For example, a manager may be given a share in profits of thefirm.

5. Mutualagency:

Partnership business can be carried on by all the partners or by any of them acting on behalf of the others. In other words, every partner is an implied agent of the other partners and of the firm. Each partner is liable for acts performed by other partners on behalf of the firm.
The above-mentioned features are the real tests of partnership. In addition, partnership has the following characteristics:

6. Utmost goodfaith:

The relations between partners are based upon mutual trust and confidence. Every partner is expected to act in the best interests of other partners and of the firm as a whole.

He must observe utmost good faith in all the dealings with his co-partners. He must

render true accounts and make no secret profits from the business.

7. Unlimited liability:

Every partner is jointly and severally liable to an unlimited extent for the debts of the partnership firm. In case the assets of the firm are insufficient to pay the debts in full, the personal property of each partner can be attached to pay the creditors of the firm.

8. Restriction on transfer of interest:

No partner can transfer his share in the partnership without the prior consent of all other partners. The registration of partnership is not compulsory under Indian Partnership Act. In England registration is, however, compulsory. In India there are certain privileges which are allowed to those firms which are registered. Unregistered firms are prejudiced in certain matters in comparison to registeredfirms.

Though directly the registration of firms is not compulsory but indirectly it is so. To avail of certain advantages under law the firm must be registered with the Registrar of Firms of the State. Registration of a firm does not provideseparate legal entity to the concern as in the case of Joint Stock Company.

Partnership does not need registration for coming into existence because it is created by an agreement among two or more persons. The registration of a firm merely certifies its existence and non-registration does not invalidate the transactions of thefirm.

Procedure for Registration:

(i) Filing anApplication:

The first thing to be done is to file an application with the Registrar of Firms on a prescribed form. A small amount of registration fees is also deposited along-with the application.

The application should contain the following information:

(a) The name of thefirm.

(b) The principal place of business of thefirm.

(c) The names and addresses of partners and the dates on which they joined thefirm.

(d) If the firm is started for a particular period then that period should bementioned.

(e) If the firm is started to achieve a specific object then it should also begiven.

(ii) Certificate:

The particulars submitted to the Registrar are examined. It is also seen whether all legal formalities required have been observed or not. If everything is in order, then the Registrar shall record an entry in the register of firms. The firm is considered registered thereon.

Alteration of Particulars:

Whenever a change or alteration is made in any of the following particulars then it should be communicated to the Registrar of firms and a suitable change is made in the register. The change to be made is sent in a prescribed form and with the prescribed fees

Following changes or alterations are to be sent to the Registrar:

(i) Any change in the name of thefirm.

(ii) Any change in the principal place of business. The change in name or principal place of business almost requires a new registration. These changes should be sent in a prescribed form and should be signed by all thepartners.

(ii) When constitution of the firm is changed i.e., an old partner may retire or a new partner may be added

iv) Any change in the name of a partneror his address.

(v) When a minor partner attains the age of majority and he elects to become or not to become apartner.

(vi) When the firm isdissolved

Kinds of partners

1. Active or managingpartner:

A person who takes active interest in the conduct and management of the business of the firm is known as active or managing partner. He carries on business on behalf of the other partners. If he wants to retire, he has to give a public notice of his retirement; otherwise he will continue to be liable for the acts of thefirm.

2. Sleeping or dormant partner:

A sleeping partner is a partner who 'sleeps', that is, he does not take active part in the management of the business. Such a partner only contributes to the share capital of the firm, is bound by the activities of other partners, and shares the profits and losses of the business. A sleeping partner, unlike an active partner, is not required to give a public notice of his retirement. As such, he will not be liable to third parties for the acts done after hisretirement

3. Nominal or ostensiblepartner:

A nominal partner is one who does not have any real interest in the business but lends his name to the firm, without any capital contributions, and doesn't share the profits of the business. He also does not usually have a voice in the management of the business of the firm, but he is liable to outsiders as an actualpartner.

4. Partner by estoppel or holdingout:

If a person, by his words or conduct, holds out to another that he is a partner, he will be stopped from denying that he is not a partner. The person who thus becomes liable to third parties to pay the debts of the firm is known as a holding out partner.

There are two essential conditions for the principle of holding out: (a) the person to be held out must have made the representation, by words written or spoken or by conduct, that he was a partner; and (6) the other party must prove that he had knowledge of the representation and acted on it, for instance, gave the credit

5.Partner in profitsonly:

When a partner agrees with the others that he would only share the profits of the firm and would not be liable for its losses, he is in own as partner in profits only.

6. Minor as apartner:

A partnership is created by an agreement. And if a partner is incapable of entering into a contract, he cannot become a partner. Thus, at the time of creation of a firm a minor (i.e., a person who has not attained the age of 18 years) cannot be one of the parties to the contract. But under section 30 of the Indian Partnership Act, 1932, a minor 'can be admitted to the benefits of partnership', with the consent of all partners. A minor partner is entitled to his share of profits and to have access to the accounts of the firm for purposes of inspection andcopy.

Liabilities of a Partner to Third Parties:

The following are the liabilities of a partner to third parties:

i. Liability of a partner for acts of thefirm:

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.

ii. Liability of the firm for wrongful act of apartner:

If any loss or injury is caused to any third party or any penalty is imposed because of wrongful act or omission of a partner, the firm is liable to the same extent as the partner. However, the partner must act in the ordinary course of business of the firm or with authority of hispartners.

iii. Liability of the firm for misutilisation bypartners:

Where a partner acting within his apparent authority receives money or property from a third party and misuses it or a firm receives money or property from a third party in the course of its business and any of the partners misuses such money or property, then the firm is liable to make good theloss.

iv. Liability of an incomingpartner:

An incoming partner is liable for the debts and acts of the firm from the date of his admission into the firm. However, the incoming partner may agree to be liable for debts prior to his admission. Such agreeing will not empower the prior creditor to sue the incoming partner. He will be liable only to the other co-partners.

v.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. After retirement the retiring partner shall be liable unless a public notice of his retirement is given. No such notice is required in case of retirement of a sleeping or dormant partner.

Model Questions from UNIT -III

I. Short Notes

1. Define Partnership
2. Mutual Agency
3. Sleeping Partner
4. Liabilities of a Partner to Third Parties

II. Essays

1. Explain the essentials and types of Partnership.
2. Discuss the rights and duties of Partners.
3. Explain the advantages and disadvantages of Partnership.
4. Explain the modes of dissolution of Partnership Firm.