

LL. B. III Term

Paper – LB – 3031 - Business Association - I ***(Partnership and Agency)***

Objectives of the Study

The law recognizes two types of business associations, viz. (i) company and (ii) partnership. The law relating to partnership has gone a drastic change with the enactment of the Limited Liability Partnership Act, 2008. The limited liability partnerships are more akin to companies but not exactly the same. The traditional concept of partnerships with unlimited liability, joint ownership and flexibility in registration permissible under the Indian Partnership Act, 1932 has been drastically modified under the Limited Liability Partnership Act, 2008. The need to have two kinds of partnerships along with registered companies deserves to be studied by keeping in mind the rationale in retaining these three forms of business associations.

The present course is aimed at a study of the Limited Liability Partnership Act, 2008 and the Indian Partnership Act, 1932 in the light of judicial pronouncements. The provisions of the Indian Contract Act, 1872 dealing with agency particularly the provisions of sections 182-238 will also be covered in this course.

Prescribed Legislations:

1. The Indian Partnership Act, 1932
2. The Limited Liability Partnership Act, 2008 (6 of 2009)
3. The Indian Contract Act, 1872

Prescribed Books:

1. Sanjiv Agarwal and Rohini Agarwal, *Limited Liability Partnership : Law and Practice* (2009).
2. G.C ., Bharuka, *The Indian Partnership Act* (7th ed., 2007)
3. Avtar Singh, *Law of Partnership* (3rd ed., 2001 with supplement 2003)
4. V.P. Verma (Rev.), S. D. Singh and J.P. Gupta, *Law of Partnership in India* (5th ed., 1996)
5. R.G. Padia (ed.), Pollock & Mulla, *Indian Contract and Specific Relief Acts* (13th ed., 2006)

PART – I (Limited Liability Partnership Act, 2008)

Topic I - Limited Liability Partnerships (LLP)

Concept and nature of Unlimited Liability Partnerships; Distinction between a partnership, a limited liability partnership and a company; Incorporation of LLPs; Effect of registration; Partners and their relations; Liability of LLPs and its partners; Holding out; Protection to whistle blowers; Investigation.

PART – II (The Indian Partnership Act, 1932)

Topic 2 – The Nature of Partnership

Definition of “partnership”, “partner”, “firm” and “firm name” (section 4); partnership not created by status (section 5); Mode of determining existence of partnership (section 6); partnership at will (section 7); Particular partnership (section 8)

1. <i>Steel Bros. and Co. v. CIT</i> , AIR 1958 SC 315	1
2. <i>K.D. Kamath & Co. v. CIT</i> (1971) 2 SCC 873	7
3. <i>K. Jaggaiah v. K. Venkatasatyanarayana</i> , AIR 1984 AP 149	15
4. <i>Helper Girdharbhai v. Saiyed Mohmad Mirasaheb Kadri</i> , AIR 1987 SC 1782	17
5. <i>Commissioner of Sales Tax v. K. Kelukutty</i> (1985) 4 SCC 5	21
6. <i>Mahabir Cold Storage v. CIT</i> , AIR 1991 SC 1357	24
7. <i>Bhagwanji Morarji Goculdas v. Alembic Chemical Works</i> , AIR 1948 P.C. 100	27
8. <i>Nanchand Gangaram v. Mallappa Mahalingappa Sadalge</i> (1976) 2 SCC 429 : AIR 1976 SC 835	28
9. <i>Lachhman Das v. CIT</i> , AIR 1948P.C. 8	31
10. <i>Chandrakant Manilal Shah v. CIT</i> , AIR 1992 SC 197	34
11. <i>Champaran Cane Concern v. State of Bihar</i> , AIR 1963 SC 1737	40
12. <i>Laxmibai v. Roshanlal</i> , AIR 1972 Raj. 288	45
13. <i>Cox v. Hickman</i> (1860) 8 H.L.C. 268	50
14. <i>Mollwo, March & Co. v. The Court of Wards</i> (1872) L.R. 4 P.C. 419	56
15. <i>Abdul Latiff v. Gopeswar Chatteraj</i> , AIR 1933 Cal. 204 : 141 I.C. 225	61
16. <i>Holme v. Hammond</i> (1872) 7 Ex. 218 : 41 L.J. Ex. 157	
17. <i>Badri Prashad v. Nagarmal</i> , AIR 1959 SC 559	66
18. <i>Narayanlal Bansilal Pittie v. Tarabai Motilal</i> (1970) 3 SCC 293	70
19. <i>Uduman v. Ashum</i> , AIR 1991 SC 1020	78
20. <i>Chandrika Prasad Agarwal v. Vishnu Chandra</i> , 1981 All LJ 967	84
21. <i>Gherulal Parakh v. Mahadevdas Maiya</i> , AIR 1959 SC 781	89

Topic 3 - Relations of Partners to One Another

General duties of partners (section 9); duty to indemnify for loss caused by fraud (section 10); determination of rights and duties of partners by contract between the partners (section 11); the conduct of the business (section 12); Mutual rights and liabilities (section 13); The property of the firm (section 14); Application of the property of the firm (section 15); Personal profits earned by partners (section 16); Rights and duties of the partners (section 17).

22. <i>Chennuru Gavaraju Chetty v. Chennuru Sitaramurthy Chetty</i> , AIR 1959 SC 109	97
23. <i>Miles v. Clarke</i> (1953) 1 All ER 779	105
24. <i>Arjun Kanoji Tankar v. Santram Kanoji Tankar</i> (1969) 3 SCC 555	109
25. <i>ARM Group Enterprises Ltd. v. Waldorf Restaurant</i> (2003) 6 SCC 423	113
26. <i>Gattulal v. Gulab Singh</i> , AIR 1985 SC 547	120
27. <i>Lachhman Dass v. M.T. Gulab Devi</i> , AIR 1936 All. 271	
28. <i>Shashi Kapila v. R.P. Ashwin</i> (2002) 1 SCC 583	
29. <i>Trimble v. Goldberg</i> (1906) AC 494 (PC)	123
30. <i>Pulin Bihari Roy v. Mahendra Chandra Ghosal</i> , AIR 1921 Cal. 72	128

Topic 4 - Relations of Partners to Third Parties

Partners to be agent of the firm (section 18); Implied authority of partner as agent of the firm (section 19); Extension and restriction of partner's implied authority (section 20); Partner's authority in an emergency (section 21); Mode of doing act to bind firm (section 22); Effect of admissions by a partner (section 23); Effect of notice to acting partner (section 24); Liability of partner for acts of the firm (section 25); Liability of the firm for wrongful acts of a partner (Section 26); Liability of firm for misapplication by partners (section 27); Holding out (section 28) Rights of transferee or a partner's interest (section 29); Right of transferee or a partner's interest (section 30); Minors admitted to the benefits of partnership.

31. <i>Holme v. Hammond</i> (1872) L.R. 7 Ex. 218 : 41 L.J. Ex. 157	132
32. <i>Rhodes v. Moules</i> (1895) 1 Ch. 236 (CA)	136
33. <i>Hamlyn v. Houston & Co.</i> (1903) 1 K.B. 81	140
34. <i>Tower Cabinet Co., Ltd v. Ingram</i> (1949) 1 KBD 1032	142
35. <i>Snow White Food Products Ltd. v. Sohan Lal</i> , AIR 1964 Cal. 239	
36. <i>Scarf v. Jardine</i> (1882) 7 A.C. 345	
37. <i>Mathura Nath v. S. Bageshwari Rani</i> , AIR 1928 Cal. 57	
38. <i>CIT v. Dwarkadas Khetan & Co.</i> , AIR 1961 SC 680	147
39. <i>Shivgouda Ravji Patil v. Chandrakant Neelkanth Sadalge</i> , AIR 1965 SC 212	149
40. <i>C.I.T. v. Shah Mohandas Sadhuram</i> , AIR 1966 SC 15	152

Topic 5 - Incoming and Outgoing Partners

Introduction of a partner (section 31); Retirement of a partner (section 32); expulsion of partners (section 33); Insolvency of a partner liability of estate of deceased partner (section 35); rights of outgoing partner to carry on competing business (section 36); Rights of outgoing partner in certain cases to share subsequent profits (section 37); Revocation of continuing guarantee by change in firm (section 38).

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| 41. <i>Syndicate Bank v. R.S.R. Engg. Works</i> (2003) 6 SCC 265 | 156 |
| 42. <i>Pamuru Vishnu Vinodh Reddy v. Chhillakuru Chandrasekhara Reddy</i> (2003) 3 SCC 445 | 159 |
| 43. <i>Vishnu Chandra v. Chandrika Prasad Agarwal</i> , AIR 1983 SC 523 | 164 |

Topic 6 - Dissolution of a Firm

Dissolution of a firm (section 39); Dissolution by agreement (section 40); Compulsory dissolution (section 41); Dissolution on the happening of certain contingencies (section 42); Dissolution by notice of partnership at will (section 43); Dissolution by the Court (section 44); Liability for acts of partners done after dissolution (section 45); Right of partners to have business wound up after dissolution (section 46); Continuing authority of partners for purpose of winding up (section 47); Mode of settlement of accounts between partners (section 48); payment of firm debts and of separate debts (section 49); Personal profits earned after dissolution (section 50); Return of premium on premature dissolution (section 51); Rights were partnership contract is rescinded for fraud or misrepresentation (section 52); Rights for refrain from use of firm name or firm property (section 53); Agreements of restraint of trade (section 54); Sale of goodwill after dissolution (section 55).

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| 44. <i>Saligram Ruplal Khanna v. Kanwar Rajnath</i> , AIR 1974 SC 1094 | 167 |
| 45. <i>Santiranjan Das Gupta v. Dasuram Murzamull</i> , AIR 1973 SC 48 | 177 |
| 46. <i>M/s. Juggilal Kamlapat v. M/s. Sew Chand Bagree</i> , AIR 1960 Cal. 463 | 180 |
| 47. <i>Sharad Vasant Kotak v. Ramniklal Mohanlal Chawda</i> (1998) 2 SCC 171 | 183 |
| 48. <i>S.V. Chandra Pandian v. S.V. Sivalinga Nadar</i> (1993) 1 SCC 589 | 191 |
| 49. <i>CIT v. M/s. Pigot Champan and Co.</i> , AIR 1982 SC 1085 | |

Topic 7 - Registration of Firms

Power to exempt from application of this Chapter (section 56); Appointment of Registrars (section 57); Application for registration (section 58); Registration (section 59); Recording of alternations in firm name and principal place of business (section 60); Noting of closing and opening of branches (section 61); Noting of changes in names and addresses of partners (section 62); Recording of charges in and dissolution of a firm (section 63); Rectification of mistakes (section 64); Amendment of Register by order of Court (section 65); Inspection of Register and field documents (section 66); Grant of copies (section 67); Rules of evidence (section 68); Effect of non-registration (section 69); Penalty for furnishing false particulars (section 70); Power to make rules (section 71).

50. <i>CIT v. Jaylakshmi Rice & Oil Mills Contractor Co.</i> , AIR 1971 SC 1015	201
51. <i>Jagdish Chandra Gupta v. Kajaria Traders (India) Ltd.</i> , AIR 1964 SC 1882	204
52. <i>Mohatta Bros. v. Bharat Suryadaya Mills Co. Ltd.</i> , AIR 1976 SC 1703	208
53. <i>Seth Loonkaran Sethiya v. Ivan E. John</i> , AIR 1977 SC 336	214
54. <i>Delhi Development Authority v. Kochhar Construction Work</i> (1998) 8 SCC 559	226
55. <i>Gwalior Oil Mills v. Supreme Industries</i> (1999) 9 SCC 113	228
56. <i>Haldiram Bhujawala v. Anand Kumar Deepak Kumar</i> (2000) 3 SCC 250	230
57. <i>Kamal Pushp Enterprises v. D.R. Construction Co.</i> , AIR 2000 SC 2676 : (2000) 6 SCC 659	237

Topic 8 – Agency

‘Agent’ and ‘Principal’ defined; Who may employ an agent; who may be appointed as agent; Rights, duties and liabilities of principal and agent, scope and limitation, ratification and revocation of authority; appointment of sub-agent (The Indian Contract Act, 1872).

58. *Narandas Morardas Gajiwala v. SPAM Papammal*, AIR 1967 SC 333
59. *Kuchwar Lime and Stone Co. v. Dehri Rohtas Light Rly. & Co. Ltd.*,
AIR 1969 SC 193
60. *Lakshminarayan Ram Gopal v. Govt. of Hyderabad*, AIR 1954 SC 367
61. *Snow White Indl. Corpn. v. Collector of Central Excise*,
AIR 1989 SC 1555

IMPORTANT NOTE:

1. The cases/topics mentioned above are not exhaustive. The teachers teaching the course shall be at liberty to add new cases/topics.
2. The students are required to study the legislations as amended from time to time and consult the latest editions of books.
3. The question paper shall include one compulsory question. The question papers set for the examinations held during 2010-11 and 2011-12 are printed below for guidance of the students.

LL.B. III Term Examinations, December, 2010

Note: Answer *five* questions including Question No. 1, which is compulsory.
All questions carry *equal* marks.

1. Attempt briefly any four of the following and discuss case law wherever necessary:
 - (a) Distinguish between a company and a limited liability partnership.
 - (b) 'Act of the firm' as defined in section 2(a) of the Indian Partnership Act, 1932.
 - (c) A and B agree to carry on business of speculation.
 - (d) Contingent dissolution
 - (e) Illegal associations.
2. "Sharing of profits was a strong test for existence of partnership. The presumption lost its rigid character it was supposed to possess after the full exposition of law on the subject contained in Cox vs. Hickman (1860) 8 HLC 268, and in the subsequent cases following it." In the light of the above statement discuss precisely the main requisites of partnership in the post Cox vs. Hickman period.
3.
 - (a) Briefly enumerate the duties of a partner referring to decided cases.
 - (b) A, B and C agree for refining sugar in partnership. A, an expert in the job, was authorized to purchase sugar for the firm for refining. Instead of purchasing sugar from the market, he supplied sugar from his own stock which sugar he had purchased earlier at much lower price and thus made considerable profits without the knowledge of B and C. Advise B and C.
4.
 - (a) Discuss the 'Implied Authority' of a partner. How far is the firm liable for the wrongful acts of a partner which resulted in loss to the third parties?
 - (b) A partner carrying on business of banking was convicted for travelling without ticket. Whether the firm is liable to be dissolved?
5.
 - (a) M, a minor was admitted to the benefits of partnership. The firm was dissolved before M attained majority. C, a creditor files a recovery suit against the firm as well as M, after M attained majority. Will he succeed against M? Discuss.
 - (b) X and Y carry on the business of running a travel agency in the personal house belonging to Y. Subsequently, they purchase some furniture jointly for the said purpose. Should the house and the furniture be deemed to be partnership property?
6.
 - (a) Under what circumstances a firm is deemed to be automatically dissolved under the Indian Partnership Act? Discuss.
 - (b) X and Y agree to carry on partnership business. The agreement provided that the partnership business should be terminated by mutual agreement. After the expiry of six months X wants to dissolve the firm. Can X ask for dissolution? Discuss.

7. (a) Why should a partnership firm be registered? Whether a suit filed by an unregistered firm gets validity on registration during pendency of the suit? Give reasons.
- (b) A lets out his premises to a firm at a monthly rent of Rs. 5,000 p.m. Subsequently the firm files a suit for fixation of standard rent. During trial it is found that the firm is unregistered. Whether the petition is liable to be dismissed? Give reasons.
8. (a) Who may be an agent? What are his rights, duties and liabilities?
- (b) A without authority of B lends money to C. Afterwards B accepts interest on the money from C. Can B later disown the lending of money by A to B? Discuss.

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LL.B. III Term Supplementary Examinations, June-July, 2011

Note: Answer *five* questions including Question No. 1, which is compulsory.
All questions carry *equal* marks.

1. Attempt briefly any four of the following and discuss case law wherever necessary:
 - (a) Distinguish between Partnership and Company
 - (b) Majority rights.
 - (c) Particular Partnership
 - (d) Doctrine of Holding out.
 - (e) Position of minor in a firm
2. “Sharing of Profits is only a prima facie evidence of the existence of Partnership. The conclusive test is that of mutual agency.” Comment.
3. (a) A firm consisting of four partners, three of them became insolvent, but the remaining partner still carried on the business of the firm. A suit was filed for the dissolution of the firm, whether the suit is maintainable or not. Decide.
- (b) ‘A’ advanced a sum of Rs. 30,000 to the firm of X and Y. Both X and Y agreed to carry on business subject to control of ‘A’ on payment of commission of 10% out of profits. Is ‘A’ a partner in the firm. State with reasons.
4. (a) Analyse the term, “Implied Authority” of a partner in the firm.
- (b) A and B are partners in a firm dealing in Cotton Fabrics. ‘A’ without the knowledge and consent of ‘B’ secretly bribes the clerk of a rival firm of C and D to obtain some secret information pertaining to the business of the said rival firm. Is B liable for the acts of ‘A’? Discuss.
5. What are the effects of non-registration of a partnership firm? Whether a suit filed by an unregistered firm gets validity on registration during the pending of the suit? Discuss.
6. (a) What is meant by “agency by artificial”? Can it be express or Implied?

- (b) 'A' holds a lease from 'B' terminable on three months notice. C, an unauthorized person gives notice of termination to 'A'. Can the notice be ratified by 'B' so as to be binding on 'A'?
7. (a) Four persons purchased a piece of land jointly. Subsequently a cinema hall was constructed with their joint money. They then formed a firm to exhibit films. Determine whether the above two properties:
- (i) piece of land
 - (ii) cinema hall
- are the properties of the firm.
- (b) A partner purchasing the property with the friends of the firm did not obtain the consent of the other partners as required by the Partnership deed. Will it be the property of the firm? Comment.
8. "Partners are bound to carry on business of the firm, to the greatest common advantage, advantage, to be just and faithful to each other and to venter time accounts and full information if all things affecting the firm to any partner or his legal representative."

Discuss the above duties vis-à-vis the rights in a partnership firm?

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LL.B. III Term Supplementary Examinations, June-July, 2012

Note: Answer any five questions. All questions carry *equal* marks.

1. Attempt any two of the following:
 - (a) Distinguish between Partnership firm and Hindu Joint Family
 - (b) Effect of non registration of a partnership firm
 - (c) Retirement of a partner
 2. (a) Post *Cox v. Hickman* (1860) 8 HLC 268 has added a new dimension of the concept of partnership by agreeing that "sharing of profits is only a prima-facie evidence of existence of partnership while conclusive test is that of mutual agency." Comment.
 - (b) X advanced Rs. 30,000/- to the firm of A&B. Both A & B agreed to carry on business subject to control of X in any respects including the payment of commission of 10% out of profit.
- State with reasons whether X 'X' is a partner in the said situation.
3. (a) "Partners are bound to carry on business of the firm to the greatest common advantage, to be first and faithful to each other and to render true accounts and full

information of all things affecting the firm or any partner or his legal representative.”

- (b) A, B & C are partners in a firm. A with consent of B only transferred his interest in the firm to X. What are rights of ‘X’ against C?
4. (a) Generally a person who is not a partner in the firm can not be made liable for an act of the firm.
Discuss with case law where the liability of a non partner can arise as a partner.
5. What are grounds on which a court can order for dissolution of a partnership firm. Does dissolution result in winding up of partnership.
6. Who may be an agent? What are his rights, duties and liabilities? How the agency can be terminated?
7. What are the need of Passing limited liability Partnership Act, 2008.
Distinguish between a company and limited liability partnership?
8. Write notes on any two of the following:
- (a) Position of Minor Under the Partnership Act, 1932.
 - (b) Implied Authority of a partner in the firm
 - (c) Partnership firm at will



LL.B. III Term

Business Association – I

Cases Selected and edited By

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