

TopYug Educations**CA FOUNDATION – BUSINESS LAWS****SUGGESTED ANS for TEST 6 – THE INDIAN PARTNERSHIP ACT, 1932****Answer any 5 questions. Each question carries 4 marks each. Duration – 50 Mins**

1. Is it possible for the partners in a firm having majority to expel a partner under the provisions of the Indian Partnership Act, 1932? Does the firm get dissolved if the expulsion of a partner is not valid?

Answer:

According to the provisions of Sec 33 of the Indian Partnership Act, 1932, a partner may be expelled from the partnership subject to the following three conditions:

1. The power of expulsion of a partner should be conferred by the contract between the partners.
2. The power should be exercised by a majority of the partners.
3. The power should be exercised in good faith which includes interest of partnership, notice to the partner to be expelled, and an opportunity of being heard.

Question involved here is about majority of partners expelling a partner and does the firm gets dissolved if expulsion is not valid.

Accordingly, we can say that it is possible for the majority of partners in a firm to expel a partner but it is subject to fulfillment of other conditions as stated above. Hence, mere majority is not enough.

It should be noted that the expulsion of partners does not necessarily result in dissolution of the firm. The invalid expulsion of a partner also does not put an end to the partnership even if the partnership is at will and it will be deemed to continue as before. (Jiwan Singh v. Lakshmi Chand).

2. Ram, Shyam and Gopal are partners in a firm. Ram retires. Shyam and Gopal continue to carry on firm's business in the same "firm name". Do you agree that in this situation change in the relationship between partners is involved, but this is not extinguishment of the existence of the firm itself? Give reasons.

Answer:**Effect of Retirement of Partner**

As per the provision of Section 39 of the Indian Partnership Act, 1932, "The dissolution of partnership between all the partners of a firm is called the dissolution of firm."

But when one or more partner cease to be a partner in a firm, but other continue the business of partnership, it is called dissolution of partnership.

In the given case, Ram, Shyam and Gopal are partners in a firm wherein Ram retires. However, Shyam and Gopal continue to carry on firm's business in the same "firm name".

Question involved is that in this situation change in the relationship between partners is involved and not extinguishment of the existence of the firm itself.

Applying the above provision in this case, when Ram retires and Shyam & Gopal continue to carry on firm's business in the old firm's name, the firm in such a case is called a reconstituted firm.

Re-constitution of a firm involves a change in the relation of partner and not the end/extinguishment of the firm.

3. A, B and C are partners in a firm. A introduces D to X as a partner in business. D, in fact, was not a partner in the firm's business. D did not deny this statement. X advanced a loan of Rs.20 lakhs to the firm. Firm's failure to repay the loan, X wants to hold D responsible for the repayment of the above loan. Referring to the provisions of the Indian Partnership Act, 1932 decide whether X would succeed in recovering the loan from D.

Answer:

Section 28(1) Indian Partnership Act, 1932 lays down this principle as follows: "Anyone who by words spoken or written or by conduct represents himself, or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to anyone who has on the faith of any such representation given credit to the firm, whether the person represented to be a partner does or does not know that representation has reached the person so giving credit."

In the given case, A, B and C are partners in a firm. D who was not a partner was introduced as one by A to X. And D did not deny this statement. X advanced a loan of Rs.20 lakhs to the firm. On Firm's failure to repay the loan, X wants to hold D responsible for the repayment of the above loan.

Question involved is whether X would succeed in recovering the loan from D.

Applying the above provisions in the given case, we understand that when a person is represented as a partner by someone else though he's not a partner then he's called as a Partner by estoppel or holding out and hence D becomes a partner by holding out as he did not deny the statement given by A. Hence D is liable to make repayment of loan.

Therefore we can conclude that X can hold D responsible for the repayment of loan.

4. A and B entered into an agreement to carry on a business of manufacturing and selling toys. Each one of them contributed Rs.35 lakhs as their capital with a condition that A and B will share the profits equally, but the loss, if any is to be borne by A alone. Referring to the provisions of the Indian Partnership Act, 1932 decide whether there exists a partnership between A and B.

Answer:

Section 13(b) of the Indian Partnership act 1932 provides that subject to the contract between the partners, the partners are entitled to share equally the profits earned and the losses sustained by the firm."

In the given case each one of the partners contributed equal capital with a condition that A and B will share the profits equally, but the loss, if any is to be borne by A alone.

Question involved is whether there exists a partnership between A and B.

Applying the above provisions in the given case, we understand that the partners can make a contract contrary to this provision where A agrees to bear all the losses of the business.

Therefore we can conclude that it is a case of partnership between A and B as sharing losses is not an essential condition to create a partnership.

5. "Sharing of profits is only a prima facie not a conclusive evidence of the existence of partnership." Examine the validity of the statement in the light of the provisions of the Indian Partnership Act, 1932 and state as to how would you determine whether a group of persons does or does not constitute partnership.

Answer:

It is true that sharing of profits of business is an essential element to constitute a partnership. But it is only a prima facie evidence but not a conclusive evidence of the existence of partnership.

It is also true that the partners agree to share the profits of a business which is carried on by all or by one of them acting for all. However, the sharing of profits would not by itself make such person partner with the persons carrying on a business.

Sharing of profits by the following person will not make them partners in the partnership firm:

- (i) by a lender of money to persons engaged or about to engage in any business;
- (ii) by a servant or agent as remuneration.
- (iii) by widow or child or a deceased partner as annuity, or
- (iv) by a previous owner or part owner of the business as consideration for the sale of goodwill or share thereof.

To determine whether a group of persons running a business does or does not constitute partnership, Section 6 of the India Partnership Act, 1932 has to be referred. According to Section 6 "In determining whether a group of persons is or is not firm, regard shall be had to the real relation between the parties as shown by all relevant facts taken together. It is very clear from this that in determining relationship between parties and ascertaining the existence of partnership all relevant facts such as follows are to be considered –

- (i) There must be an agreement between two or more persons
- (ii) There must be a business of partnership
- (iii) The partners must have agreed to share the profits of business
- (iv) The business must be carried on by all or any one of them acting for all. In other words there must be mutual agency between the partners. Existence of mutual agency which is the cardinal principle of partnership law, is very much helpful in reaching a conclusion in this regard. In this situation each partner is the principal as well as agent of the other partners.

Hence, in order to determine whether the relation of partnership exists between two or more persons or not, one should examine all the facts and circumstances as cited above.

6. Ram, Mohan and Gopal were partners in a firm. During the course of partnership, the firm ordered Sunrise Ltd. to supply a machine to the firm. Before the machine was delivered, Ram expired. The machine, however, was later delivered to the firm. Thereafter, the remaining partners became insolvent and the firm failed to pay the price of machine to Sunrise Ltd.

Explain with reasons:

- i. Whether Ram's private estate is liable for the price of the machine purchased by the firm?
- ii. Against whom can the creditor obtain a decree for the recovery of the price?

Answer:

According to Sec 35 of the Indian Partnership Act, 1932, 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.

In the given case Ram, Mohan and Gopal were partners in a firm. During the course of partnership, the firm ordered Sunrise Ltd. to supply a machine to the firm. Before the machine was delivered, Ram expired. The machine, however, was later delivered to the firm. Thereafter, the remaining

partners became insolvent and the firm failed to pay the price of machine to Sunrise Ltd.

Question involved is about the recovery of the price.

Considering the above provisions, the question may be answered as follows:

- (i) Ram's estate in this case will not be liable for the price of the Machinery purchased. A suit for goods sold and delivered would not lie against the representative of the deceased partner. This is because there was not debt due in respect of the goods in Ram's life time. [Bagel vs. Willer].
- (ii) The creditors in this case can have only a personal decree against the surviving partners and decree against the partnership assets in the hands of those partners. However, since the surviving partners are already insolvent, no suit for recovery of the debt would lie against them as well.

GOOD LUCK !