



Business Law

By : Dr. Rajesh Singh

Asstt. Prof.(Contract)

Humanities and Management Science Department

UNIT One

- A business is defined as an organization or enterprising entity engaged in commercial, industrial, or professional activities.
Businesses can be for-profit entities or they can be non-profit organizations that operate to fulfill a charitable mission or further a social cause.

Business

- The term "business" also refers to the organized efforts and activities of individuals to produce and sell goods and services for profit. Businesses range in scale from a sole proprietorship to an international corporation. Several lines of theory are engaged with understanding business administration including organizational behavior, organization theory, and strategic management.
- A business is defined as an organization or enterprising entity engaged in commercial, industrial, or professional activities.

Business

- Businesses can be for-profit entities or non-profit organizations.
- There are various forms of a business, such as a limited liability company (LLC), a sole proprietorship, a corporation, and a partnership.
- Businesses can range from small operations operating in one industry to large operations operating in many industries around the world.

Understanding a Business

- Generally, a business begins with a business concept (the idea) and a name. Depending on the nature of the business, extensive market research may be necessary to determine whether turning the idea into a business is feasible and if the business can deliver value to consumers. The business name can be one of the most valuable assets of a firm; careful consideration should thus be given when choosing it. Businesses operating under fictitious names must be registered with the state.

Understanding a Business(Cont..)

- Businesses most often form after the development of a business plan, which is a formal document detailing a business's goals and objectives, and its strategies of how it will achieve the goals and objectives. Business plans are almost essential when borrowing capital to begin operations.

Understanding a Business(Cont..)

- It is also important to determine the legal structure of the business. Depending on the type of business, it may need to secure permits, adhere to registration requirements, and obtain licenses to legally operate. In many countries, corporations are considered to be juridical persons, meaning that the business can own property, take on debt, and be sued in court.

Law

- **Law**, the discipline and profession concerned with the customs, practices, and rules of conduct of a community that are recognized as binding by the community. Enforcement of the body of rules is through a controlling authority.

BUSINESS LAW

- **Business law** encompasses all of the laws that dictate how to form and run a business. This includes all of the laws that govern how to start, buy, manage and close or sell any type of business. Business laws establish the rules that all businesses should follow. A savvy businessperson will be generally familiar with business laws and know when to seek the advice of a licensed attorney. Business law includes state and federal laws, as well as administrative regulations. Let's take a look at some of the areas included under the umbrella of business law.

SCOPE of BUSINESS LAW

- The business law is a branch of law which deals with the set of governance rules related to certain business transactions and relations between *business representatives, dealers, customers, and suppliers*.
- **Nature of Business Law**
- The nature of business law depends on the location of the business and its area of activities. Apart from these two conditions governance authority also affects the nature of the law. The main areas included under the business law are:

Nature of Business Law(Cont..)

- Starting a business-
- The business laws are applicable to all types of business organizations. There are certain rules for each business entities including corporations, limited liability, partnership and more. For instance, let's assume you want to start a business but what type of business it would be? And what papers you need to file for it? After this what are the certain legal rules you need to follow or how to pay the taxes? To answer all this question you need to hire a business lawyer.

Starting a business(Cont..)

- The hire lawyer can help you with intellectual property law which includes patents, copyrights, trademarks and other intangible assets. Along with intangible assets the lawyer will look after the business like consumer protection law, licensing and permits.

Taking over/ buying a business

- Now, not everyone starts with buying a business some goes for taking over or buying an existing one. When it comes to buying or taking over an existing business the company need a lawyer to deal with contracts, employment laws, real estate laws and consequences after the breach of contract.

Managing a business

- Running a business is not an easy task as there are several aspects that are involved in managing a business. As you already read mention a business involves lots of contracts, joint-ventures and employment laws. The government of the country create and enforce the federal laws on the business. To deal with all of these aspects the company needs a business lawyer. Although it may sound appealing to become a business lawyer it is not as easy as it sounds.

Managing a business(Cont..)

- Students pursuing their degree need assignment help on business law to deal with their writing tasks as they are already juggling with practical tasks in the hand. Still, in the end, we could say the future of business law is very bright.

ORIGIN OF BUSINESS LAW

- As a part of the discussion on the nature of business law it is useful to refer to its origin and evolution. Before coming to origin of business law, it is necessary to know when law in general, took its birth.
- While it is difficult to give precise date on which law was born, suffice it is to trace the broad period during which it came into being.

ORIGIN OF BUSINESS LAW(Cont..)

- The earliest law was the one available from Dharmasastras which were associated with such legendary names as Manu, Vishnu, Yajna-
valkya, and Narada. Of these, the Dhannasastra of Manu is the standard and most authoritative work on Hindu law. The name of Manu is of old antiquity, being that of the first progenitor of the human race, the first king, and the first law giver.

ORIGIN OF BUSINESS LAW(Cont..)

- The Dharmasastras covered such areas as civil rights, duties, wrongs, criminal law and the procedures connected therewith.
- Then came the Arthasastra of Kautilya which was compiled around 300 B.C. Kautilya's Arthasastra, unlike Dharmasastras, covered rights, duties and responsibility of the king in the administration of the state including judicial administration.

ORIGIN OF BUSINESS LAW(Cont..)

- It was probably the Arthashastra, which for the first time, contained provisions relating to business. The seeds of Contract Act were shown in the Arthashastra. All types, of contract — sale, purchase, marriage, etc. — were dealt with, reasonable precision and appealing logic. A contract was valid if made in the open with free consent by competent parties and if it were not against public policy and morals.

ORIGIN OF BUSINESS LAW(Cont..)

- Fraud and misrepresentation vitiated the contract. The invalid contracts could be rescinded by the party and the wrongdoer suffered the damages as well as penalty.
- Similarly, other areas of business like debts, deposits, pledges, masters and servants, labourers and cooperatives were also covered in the Arthasastra.

SOURCES OF BUSINESS LAW

- The important sources of business law are : (1) Legislation, (2) Custom, (3) Case law, (4) Natural law, and (5) English law
- **Legislation** Legislation is the common source of law. Both Parliament and State assemblies have enacted a number of legislations that cover various aspects of business.

Custom

- A substantial part of business law is customary, notwithstanding advances made in science and technology. This is true both in developed and developing countries. A custom, when accepted by courts and incorporated in judicial interpretations, becomes a law. Many of the business customs or usages have already been adopted and legalised. The Indian Contract Act provides that nothing therein contained, “shall affect any usage or custom of trade.” Similarly, the Negotiable Instruments Act provides that nothing there-in contained “shall affect any local usage relating to instruments in an oriental language.”

Case Law

- Case law, popularly called “precedent” by lawyers is a judgment of a superior court including a point of law or principle and which necessitates its adoption and adherence in a subsequent case involving the same point. Case law is useful in as much as it helps courts to render uniformity with regard to the interpretation of statutes or formulation of principles.

Natural Law

- Natural law or natural justice is another source of law. The natural justice that no man can be punished twice for the same crime is a guiding principle for any legislation. Similarly, natural justice demands that no individual can be dubbed guilty unless the charges are proved against him/her.

English Law

- Our business laws are largely based on English acts applicable in England. Our Sale of Goods Act, for instance, has been taken directly from the English Sale of Goods Act. Similarly, our Companies Act corresponds with the English Companies Act. Again in any discussion on the Indian Contract Act, reference is invariably made to the English law.

Dharma

- *Dharma*: What is unfortunately ignored is the fact that *Dharma* was the main source of law during ancient periods and we have no doubt in asserting that it continues to be the main spirit behind every law even today. To prove the role of *Dharma* in judiciary we quote A. H. Basham, “Though we know very little about the legal system of the Rigvedic period”, wrote he/she, “it is clear that the idea of a divine cosmic order already existed. *Rta*, the regulatory of the universal process, was perhaps the forerunner of the later concept of *Dharma*.”

Indian Contract Act

- This act prescribes the law relating to contracts in India and is the key act regulating **Indian contract law**. The Act is based on the principles of English Common Law. It is applicable to all the states of India. It determines the circumstances in which promises made by the parties to a contract shall be legally binding.
- Under Section 2(h), the Indian Contract Act defines a contract as an agreement which is enforceable by law.

Indian Contract Act

- **Offer 2(a):** When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.
- **Acceptance 2(b):** When the person to whom the proposal is made, signifies his assent there to, the proposal is said to be accepted.

Indian Contract Act

- **Promise 2(b):** A Proposal when accepted becomes a promise. In simple words, when an offer is accepted it becomes promise.
- **Promisor and promisee 2(c):** When the proposal is accepted, the person making the proposal is called as promisor and the person accepting the proposal is called as promisee.

Indian Contract Act

- **Consideration 2(d):** When at the desire of the promisor, the promisee or any other person has done or abstained from doing or does or abstains from doing or promises to do or to abstain from doing something such act or abstinence or promise is called a consideration for the promise.
- Price paid by one party for the promise of the other
Technical word meaning QUID-PRO-QUO i.e. something in return.

Indian Contract Act

- **Agreement 2(e)**: Every promise and set of promises forming the consideration for each other. In short,
- Agreement= Promise + consideration
- **Contract 2(h)**: An agreement enforceable by Law is a contract.
- Therefore, there must be an agreement and it should be enforceable by law.

Indian Contract Act

- **Reciprocal Promises 2(f):** Promises which form the consideration or part of the consideration for each other are called 'reciprocal promises'.
- **Void agreement 2(g):** An agreement not enforceable by law is void.
- **Voidable contract 2(i):** An agreement is a voidable contract if it is enforceable by Law at the option of one or more of the parties there to (i.e. the aggrieved party), and it is not enforceable by Law at the option of the other or others.

Indian Contract Act

- **Void contract 2(j):** A contract becomes void when it ceases to be enforceable by law.
- **Acceptance**
- According to Section 2(b), "When the person to whom the proposal is made, signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise."

Indian Contract Act

- Rules:-
- Acceptance should be absolute and unqualified.. If the parties are not concurred on all matters concerning the offer and acceptance, there is no valid contract. For example, "A" says to "B" "I offer to sell my car for Rs.50,000/-". "B" replies "I will purchase it for Rs.45,000/-". This is not acceptance and hence it amounts to a counter offer.

Indian Contract Act

- It should be Communicated to the offeror. To conclude a contract between parties, the acceptance must be communicated in some prescribed form. A mere mental determination on the part of offeree to accept an offer does not amount to valid acceptance.

Indian Contract Act

- It should be Communicated to the offeror. To conclude a contract between parties, the acceptance must be communicated in some prescribed form. A mere mental determination on the part of offeree to accept an offer does not amount to valid acceptance.

Indian Contract Act

- Acceptance must be in the mode prescribed. If the acceptance is not according to the mode prescribed or some usual and reasonable mode (where no mode is prescribed) the offeror may intimate to the offeree within a reasonable time that acceptance is not according to the mode prescribed and may insist that the offer be accepted in the prescribed mode only. If he does not inform the offeree, he is deemed to have accepted the offer. For example, "A" makes an offer to "B" says to "B" that "if you accept the offer, reply by voice." "B" sends reply by post. It will be a valid acceptance, unless "A" informs "B" that the acceptance is not according to the prescribed mode.

Indian Contract Act

- Acceptance must be given within a reasonable time before the offer lapses. If any time limit is specified, the acceptance must be given within the time, if no time limit is specified it must be given within a reasonable time.
- It cannot precede an offer. If the acceptance precedes an offer it is not a valid acceptance and does not result in contract. For example, in a company shares were allotted to a person who had not applied for them. Subsequently, when he applied for shares, he was unaware of the previous allotment. The allotment of share previous to the application is not valid.

Remedies for Breach of Contract

- When a promise or agreement is broken by any of the parties we call it a breach of contract. So when either of the parties does not keep their end of the agreement or does not fulfil their obligation as per the terms of the contract, it is a breach of contract. There are a few remedies for breach of contract available to the wronged party.

Remedies for Breach of Contract

- When one of the parties to a contract does not fulfil his obligations, then the other party can rescind the contract and refuse the performance of his obligations.
- As per section 65 of the Indian Contract Act, the party that rescinds the contract must restore any benefits he got under the said agreement. And section 75 states that the party that rescinds the contract is entitled to receive damages and/or compensation for such a recession.

Remedies for Breach of Contract

- Section 73 clearly states that the party who has suffered, since the other party has broken promises, can claim compensation for loss or damages caused to them in the normal course of business.
- Such damages will not be payable if the loss is abnormal in nature, i.e. not in the ordinary course of business. There are two types of damages according to the Act,

Remedies for Breach of Contract

- The Indian Contract Act lays out all the provisions for the performance of a contract. It also contains the provisions in case of breach of contract by either party.
- There are several remedies for breach of contract, such as award of damages, specific performance, rescission, and restitution. In courts of limited jurisdiction, the main remedy is an award of damages. Because specific performance and rescission are equitable remedies that do not fall within the jurisdiction of the magistrate courts.

Remedies for Breach of Contract(Cont..)

- There are two general categories of damages that may be awarded if a breach of contract claim is proved. They are:
- **Compensatory Damages.** Compensatory damages (also called “actual damages”) cover the loss the nonbreaching party incurred as a result of the breach of contract. The amount awarded is intended to make good or replace the loss caused by the breach.

Remedies for Breach of Contract(Cont..)

- B. Special Damages. Special damages (also called “consequential damages”) cover any loss incurred by the breach of contract because of special circumstances or conditions that are not ordinarily predictable. These are actual losses caused by the breach, but not in a direct and immediate way. To obtain damages for this type of loss, the nonbreaching party must prove that the breaching party knew of the special circumstances or requirements at the time the contract was made.

Remedies for Breach of Contract(Cont..)

- 2. Punitive Damages. Punitive damages (also called “exemplary damages”) are awarded to punish or make an example of a wrongdoer who has acted willfully, maliciously or fraudulently. Unlike compensatory damages that are intended to cover actual loss, punitive damages are intended to punish the wrongdoer for egregious behavior and to deter others from acting in a similar manner.

Remedies for Breach of Contract(Cont..)

- Punitive damages are awarded in addition to compensatory damages.
- Punitive damages are rarely awarded for breach of contract. They arise more often in tort cases, to punish deliberate or reckless misconduct that results in personal harm.

UNIT 2

- Indian Partnership Act

DEFINITIONS

- In the Act, unless there is anything repugnant in the subject or context,
- (a) an "act of a firm" means any act or omission by all the partners, or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm;
- (b) "business" includes every trade, occupation and profession;
- (c) "prescribed" means prescribed by rules made under this Act;

Definitions (Cont..)

- (c-1) "Registrar" means the Registrar of Firms appointed under sub-section (1) of section 57 and includes the Deputy Registrar of Firms and Assistant Registrar of Firms appointed under sub-section (2) of that section;
- (d) "third party" used in relation to a firm or to a partner therein means any person who is not a partner in the firm; and
- (e) expressions used but not defined in this Act and defined in the Indian Contract Act, 1872, shall have the meanings assigned to them in that Act.

(Section 3) APPLICATION OF PROVISIONS OF ACT IX OF 1872.

- The unrepealed provisions of the Indian Contract Act, 1872, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to firms
- **(Section 4) DEFINITION OF "PARTNERSHIP", "PARTNER", "FIRM" AND "FIRM-NAME".**
- "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.

(Section 4) DEFINITION OF "PARTNERSHIP",

"PARTNER", "FIRM" AND "FIRM-NAME"(Cont..)

- 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".
- **(Section 5) PARTNERSHIP NOT CREATED BY STATUS**
- The relation of partnership arises from contract and not from status; and, in particular, the members of a Hindu undivided family carrying on a family business as such, or a Burmese Buddhist husband and wife carrying on business as such are not partners in such business.

(Section6) MODE OF DETERMINING EXISTENCE OF PARTNERSHIP.

- In determining whether a group of persons is or is not a firm, or whether a person is or is not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.
- and, in particular, the receipt of such share or payment –
- (a) by a lender of money to persons engaged or about to engage in any business
- (b) by a servant or agent as remuneration,
- (c) by the widow or child of a deceased partner, as annuity, or

(Section6) MODE OF DETERMINING EXISTENCE OF PARTNERSHIP(Cont..)

- (d) by a previous owner or part-owner of the business, as consideration for the sale of the goodwill or share thereof,
does not of itself make the receiver a partner with the persons carrying on the business

(Section7) PARTNERSHIP-AT-WILL.

Where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is "partnership-at-will".

(Section8) PARTICULAR PARTNERSHIP.

- A person may become a partner with another person in particular adventures or undertakings.
- **(Section9) GENERAL DUTIES OF PARTNERS**
- Partners are bound to carry on the business of the firm to greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the firm to any partner, his heir or legal representative.

(Section10) DUTY TO INDEMNIFY FOR LOSS CAUSED BY FRAUD.

- Every partner shall indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm.
- **(Section11) DETERMINATION OF RIGHTS AND DUTIES OF PARTNERS BY CONTRACT BETWEEN THE PARTNERS**
- (1) Subject to the provisions of this Act, the mutual rights and duties of the partners of a firm may be determined by contract between the partners, and such contract may be express or may be implied by a course of dealing.

(Section11) DETERMINATION OF RIGHTS AND DUTIES OF PARTNERS BY CONTRACT BETWEEN THE PARTNERS(Cont..)

Such contract may be varied by consent of all the partners, and such consent may be express or may be implied by a course of dealing.

(2) AGREEMENTS IN RESTRAINT OF TRADE.

Notwithstanding anything contained in section 27 of the Indian Contract Act, 1872, such contracts may provide that a partner shall not carry on any business other than that of the firm while he is a partner.

(Section 12) THE CONDUCT OF THE BUSINESS

- Subject to contract between the partners –
- (a) every partner has a right to take part in the conduct of the business;
- (b) every partner is bound to attend diligently to his duties in the conduct of the business;
- (c) any difference arising as to ordinary matters connected with the business may be decided by a majority of the partners, and every partner shall have the right to express his opinion before the matter is decided, but no change may be made in the nature of the business without the consent of all the partners;

(Section 12) THE CONDUCT OF THE BUSINESS (Contt..)

- (d) every partner has a right to have access to and to inspect and copy any of the books of the firm;
- (e) in the event of the death of a partner, his heirs or legal representatives or their duly authorised agents shall have a right of access to and to inspect and copy any of the books of the firm.

(Section13) MUTUAL RIGHT AND LIABILITIES.

- Subject to contract between the partners –
- (a) a partner is not entitled to receive remuneration for taking part in the conduct of the business;
- (b) the partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm;
- (c) where a partner is entitled to interest on the capital subscribed by him, such interest shall be payable only out of profits;

(Section13) MUTUAL RIGHT AND LIABILITIES (Cont..)

- (d) a partner making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at the rate of six per cent. per annum;
- (e) the firm shall indemnify a partner in respect of payments made and liabilities incurred by him
- (i) in the ordinary and proper conduct of the business; and

(Section13) MUTUAL RIGHT AND LIABILITIES (Cont..)

- (ii) in doing such act, in an emergency, for the purpose of protecting the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances; and
- (f) a partner shall indemnify the firm for any loss caused to it by his willful neglect in the conduct of the business of the firm.

(Section 14) THE PROPERTY OF THE FIRM.

- Subject to contract between the partners, the property of the firm includes all property and rights and interest in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm for the purposes and in the course of the business of the firm, and includes also the goodwill of the business.

Unless the contrary intention appears, property and rights and interest in property acquired with money belonging to the firm are deemed to have been acquired for the firm

(Section 15) APPLICATION OF THE PROPERTY OF THE FIRM.

- Subject to the contract between the partners, the property of the firm shall be held and used by the partners exclusively for the purposes of the business.

(Section 16) PERSONAL PROFITS EARNED BY PARTNERS-

- Subject to the contract between the partners, - (a) if a partner derives any profits for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm-name, he shall account for that profit and pay it to the firm;

(Section 16) PERSONAL PROFITS EARNED BY PARTNERS(Cont..)

- (b) if a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

(Section17)RIGHTS AND DUTIES OF PARTNERS AFTER A CHANGE IN THE FIRM

- Subject to contract between the partners, -
- (a) where a change occurs in the constitution of a firm, the mutual rights and duties of the partners in the reconstituted firm remain the same as they were immediately before the change, as far as may be;
- (b) AFTER THE EXPIRY OF THE TERM OF THE FIRM.
- where a firm constituted for a fixed term continues to carry on business after the expiry of that term, the mutual rights and duties of the partners remain the same as they were before the expiry, and so far as they may be consistent with the incidents of partnership-at-will; and

(Section 17) RIGHTS AND DUTIES OF PARTNERS AFTER A CHANGE IN THE FIRM (Cont..)

- (c) WHERE ADDITIONAL UNDERTAKINGS ARE CARRIED OUT.
- where a firm constituted to carry out one or more adventures or undertakings carries out other adventures or undertakings, the mutual rights and duties of the partners in respect of the other adventures or undertakings are the same as those in respect of the original adventures or undertakings.

(Section 18) PARTNER TO BE AGENT OF THE FIRM.

- Subject to the provisions of this Act, a partner is the agent of the firm for the purposes of the business of the firm.
- **Section 19**
- **IMPLIED AUTHORITY OF PARTNER AS AGENT OF THE FIRM**
- (1) Subject to the provisions of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.
- The authority of a partner to bind the firm conferred by this section is called his "implied authority".

(Section 19) IMPLIED AUTHORITY OF PARTNER AS AGENT OF THE FIRM(Cont..)

- (2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to –
 - (a) submit a dispute relating to the business of the firm to arbitration,
 - (b) open a banking account on behalf of the firm in his own name,
 - (c) compromise or relinquish any claim or portion of a claim by the firm,
 - (d) withdraw a suit or proceeding filed on behalf of the firm,

(Section 19) IMPLIED AUTHORITY OF PARTNER AS AGENT OF THE FIRM(Cont..)

- (e) admit any liability in a suit or proceeding against the firm,
- (f) acquire immovable property on behalf of the firm,
- (g) transfer immovable property belonging to the firm, or
- (h) enter into partnership on behalf of the firm.

(Section 20) EXTENSION AND RESTRICTION OF PARTNER'S IMPLIED AUTHORITY.

- The partners in a firm may, by contract between the partners, 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.

(Section21) PARTNER'S

AUTHORITY IN AN EMERGENCY.

- A partner has authority, in an emergency, to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, acting under similar circumstances, and such acts bind the firm.
- **(Section22) MODE OF DOING ACT TO BIND FIRM**
- 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.

(Section23) EFFECT OF ADMISSION BY A PARTNER.

- An admission or representation made by a partner concerning the affairs of the firm is evidence against the firm, if it is made in the ordinary course of business.
- **(Section24) EFFECT OF NOTICE TO ACTING PARTNER**
- Notice to a partner who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

(Section 25) LIABILITY OF A PARTNER FOR ACTS OF THE FIRM.

- Every partner is liable jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.
- **(Section 26) LIABILITY OF THE FIRM FOR WRONGFUL ACTS OF A PARTNER**
- Where, by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefore to the same extent as the partner.

(Section 27) LIABILITY OF FIRM FOR MISAPPLICATION BY PARTNERS.

- Where –
- (a) a partner acting within his apparent authority receives money or property from a third party and misapplies it, or
- (b) a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss.

(Section 28) HOLDING OUT

- (1) Anyone who by words spoken or written or by conduct represent 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 representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

(Section28) HOLDINGOUT(Cont..)

- (2) Where after partner's death the business continued in the old firm-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 firm done after his death.

(Section 29) RIGHTS OF TRANSFEREE OF A PARTNER'S INTEREST.

- (1) A transfer by a partner of his interest in the firm, either absolute or by mortgage, or, by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of the business or to require accounts or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.

(Section 29) **RIGHTS OF TRANSFEREE OF A PARTNER'S INTEREST(Cont..)**

- (2) If the firm is dissolved or if the transferring partner ceases to be a partner, the transferee is entitled as against the remaining partners, to receive the share of the assets of the firm to which the transferring partner is entitled and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

(Section 30) **MINORS ADMITTED TO THE BENEFITS OF PARTNERSHIP**

- (1) A person who is a minor according to the law to which he is subject may not be a partner in a firm, but, with the consent of all the partners for the time being, he may be admitted to the benefits of partnership.
- (2) Such minor has a right to such share of the property and of the profits of the firm as may be agreed upon, and he may have access to and inspect and copy any of the accounts of the firm.

(Section 30) MINORS ADMITTED TO THE BENEFITS OF PARTNERSHIP(Cont..)

- (3) Such minor's share is liable for the acts of the firm but the minor is not personally liable for any such act.
- (4) Such minor may not sue the partners for an account or payment of his share of the property or profits of the firm, save when severing his connection with the firm, and in such case the amount of his share shall be determined by a valuation made as far as possible in accordance with the rules contained in section 48 :

**(Section 30) MINORS ADMITTED TO THE
BENEFITS OF PARTNERSHIP(Cont..)**

- Provided that all the partners acting together or any partner entitled to dissolve the firm upon notice to other partners may elect in such suit to dissolve the firm, and thereupon the Court shall proceed with the suit as one for dissolution and for settling accounts between the partners and the amount of the share of the minor shall be determined along with the shares of the partners.

(Section 30) **MINORS ADMITTED TO THE BENEFITS OF PARTNERSHIP(Cont..)**

- (5) At any time within six months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, such person may give public notice that he has elected to become or that he has elected not to become a partner in the firm, and such notice shall determine his position as regards the firm :
- Provided that, if he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.

(Section 30) **MINORS ADMITTED TO THE BENEFITS OF PARTNERSHIP(Cont..)**

- (6) Where any person has been admitted as a minor to the benefits of partnership in a firm, the burden of proving the fact that such person had no knowledge of such admission until a particular date after the expiry of six months of his attaining majority shall lie on the person asserting that fact.
- (7) Where such person becomes a partner –
- (a) his rights and liabilities as a minor continue upto the date on which he becomes a partner, but he also becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership, and

(Section 30) **MINORS ADMITTED TO THE BENEFITS OF PARTNERSHIP(Cont..)**

- (b) his share in the property and profits of the firm shall be the share to which he was entitled as a minor.
- (8) Where such person elects not to become a partner, -
 - (a) his rights and liabilities shall continue to be those of a minor under the section upto the date on which he gives public notice;
 - (b) his share shall not be liable for any acts for the firm done after the date of the notice; and
 - (c) he shall be entitled to sue the partners for his share of the property and profits in accordance with sub-section (4).
- (9) Nothing in sub-sections (7) and (8) shall affect the provisions of section 28.

(Section 31) INTRODUCTION OF A PARTNER.

- (1) Subject to contract between the partners and to the provisions of section 30, no person shall be introduced as a partner into a firm without the consent of all the existing partners.
- (2) Subject to the provisions of section 80, a person who is introduced as a partner into a firm does not thereby become liable for any act of the firm done before he became a partner.

(Section 32) RETIREMENT OF A PARTNER

- (1) A partner may retire - (a) with the consent of all the other partners,
- (b) in accordance with an express agreement by the partners, or
- (c) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.
- (2) 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, and such agreement may be implied by a course of dealing between such third party and the reconstituted firm after he had knowledge of the retirement.

(Section 32) RETIREMENT OF A PARTNER

(Cont..)

- (3) Notwithstanding the retirement of a partner from a firm, he and the partners 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
- Provided that a retired partner is not liable to any third party who deals with the firm without knowing that he was a party.
- (4) Notices under sub-section (3) may be given by the retired partner or by any partner of the reconstituted firm.

(Section 33) EXPULSION OF A PARTNER.

- (1) A partner may not be expelled from a firm by any majority of the partners, save in the exercise in good faith or powers conferred by contract between the partners.
- (2) The provisions of sub-sections (2), (3) and (4) of section 32 shall apply to an expelled partner as if he were a retired partner.

(Section 34)INSOLVENCY OF A PARTNER.

- (1) Where a partner in a firm is adjudicated an insolvent, he ceases to be a partner on the date on which the order of adjudication is made, whether or not the firm is thereby dissolved.
- (2) Where under a contract between the partners the firm is not dissolved by the adjudication of a partner as an insolvent, the estate of a partner so adjudicated is not liable for any act of the firm and the firm is not liable for any act of the insolvent, done after the date on which the order of adjudication is made.

(Section 35) 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.
- **(Section 36) 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,

(Section 36) RIGHTS OF OUTGOING PARTNER TO CARRY ON COMPETING BUSINESS(Cont..)

- (b) represent himself as carrying on the business of the firm, or (c) solicit the custom of persons who were dealing with the firm before he ceased to be a partner.
- (2) AGREEMENT IN RESTRAINT OF TRADE
- A partner may make an agreement with his 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 section 27 of the Indian Contract Act, 1872, such agreement shall be valid if the restrictions imposed are reasonable.

(Section 37) RIGHT OF OUTGOING PARTNER IN CERTAIN CASES TO SHARE SUBSEQUENT PROFITS.

- Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, then, in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest

(Section 37) RIGHT OF OUTGOING PARTNER IN CERTAIN CASES TO SHARE SUBSEQUENT PROFITS(Cont..)

- at the rate of six per cent. per annum on the amount of his share in the property of the firm :

Provided that where by contract between the partners an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing and that option is duly exercised, the estate of the deceased partner, or the outgoing partner of his estate, as the case may be, is not

**(Section 37) RIGHT OF OUTGOING PARTNER IN
CERTAIN CASES TO SHARE SUBSEQUENT
PROFITS(Cont..)**

- entitled to any further or other share of profits, but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section.

(Section 38) REVOCATION OF CONTINUING GUARANTEE BY CHANGE IN FIRM

- A continuing guarantee given to a firm, or to a third party in respect of the transactions of a firm, is in the absence of agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm.
- **(Section 39) DISSOLUTION OF A FIRM**
- The dissolution of a partnership between all the partners of a firm is called the "dissolution of the firm".

(Section 40) **DISSOLUTION BY AGREEMENT**

- A firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners.
- **(Section 41) COMPULSORY DISSOLUTION**
- A firm is dissolved
- (a) by the adjudication of all the partners or of all the partners but one as insolvent, or
- (b) by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership :

(Section 41) COMPULSORY DISSOLUTION(Cont..)

- Provided that, where more than one separate adventure or undertaking is carried on by the firm, the illegality of one or more shall not of itself cause the dissolution of the firm in respect of its lawful adventures and undertakings.
- **(Section 42) DISSOLUTION ON THE HAPPENING OF CERTAIN CONTINGENCIES**
- Subject to contract between the partners a firm is dissolved
- (a) if constituted for a fixed term, by the expiry of that term;

(Section 42) DISSOLUTION ON THE HAPPENING OF CERTAIN CONTINGENCIES(Cont..)

- (b) if constituted to carry out one or more adventures or undertakings, by the completion thereof:
- (c) by the death of a partner; and
- (d) by the adjudication of a partner as an insolvent.
- **(Section 43) DISSOLUTION BY NOTICE OF PARTNERSHIP AT WILL**
- (1) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.

(Section 43) **DISSOLUTION BY NOTICE OF PARTNERSHIP AT WILL(Cont..)**

- (2) The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.
- **(Section44) DISSOLUTION BY THE COURT**
- At the suit of a partner, the Court may dissolve a firm on any of the following grounds, namely :-
- (a) that a partner has become of unsound mind, in which case the suit may be brought as well by the next friend of the partner who has become of unsound mind as by any other partner;

(Section 44) DISSOLUTION BY THE COURT (Cont..)

- (b) that a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner;
- (c) that a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of the business regard being had to the nature of the business;
- (d) that a partner, other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business; or otherwise so conducts himself in matters relating to the business that is not reasonably

(Section44) DISSOLUTION BY THE COURT(Cont..)

practicable for the other partners to carry on the business in partnership with him;

(e) that a partner, other than the partner suing, has in any way transferred the whole of his interest in the firm to a third party, or has allowed his share to be charged under the provisions of rule 49 of Order XXI of the First Schedule to the Code of Civil Procedure, 1908, or has allowed it to be sold in the recovery of arrears of land revenue or of any dues recoverable as arrears of land revenue due by the partner;

(Section44) DISSOLUTION BY THE COURT(Cont..)

- (f) that the business of the firm cannot be carried on save at a loss; or
- (g) on any other ground which renders it just and equitable that the firm should be dissolved.

Disclaimer

- All the information summarized in the previous slides have been taken from trusted sources- government orders, prescribed text books, government websites, online articles and blogs etc. and with the intent of fair use and for educational purposes only.
- The views, statements and opinions produced in the above power point slides have been collected from trusted and standard sources and no one shall be held responsible for errors or omissions, if any, in the above slides.
- No one shall be held responsible for plagiarism issues, copyright issues etc. whatsoever.
- Taken from judicial education centre, the university of new mexico and toppr.com
- I am thankful from the bottom of my heart