

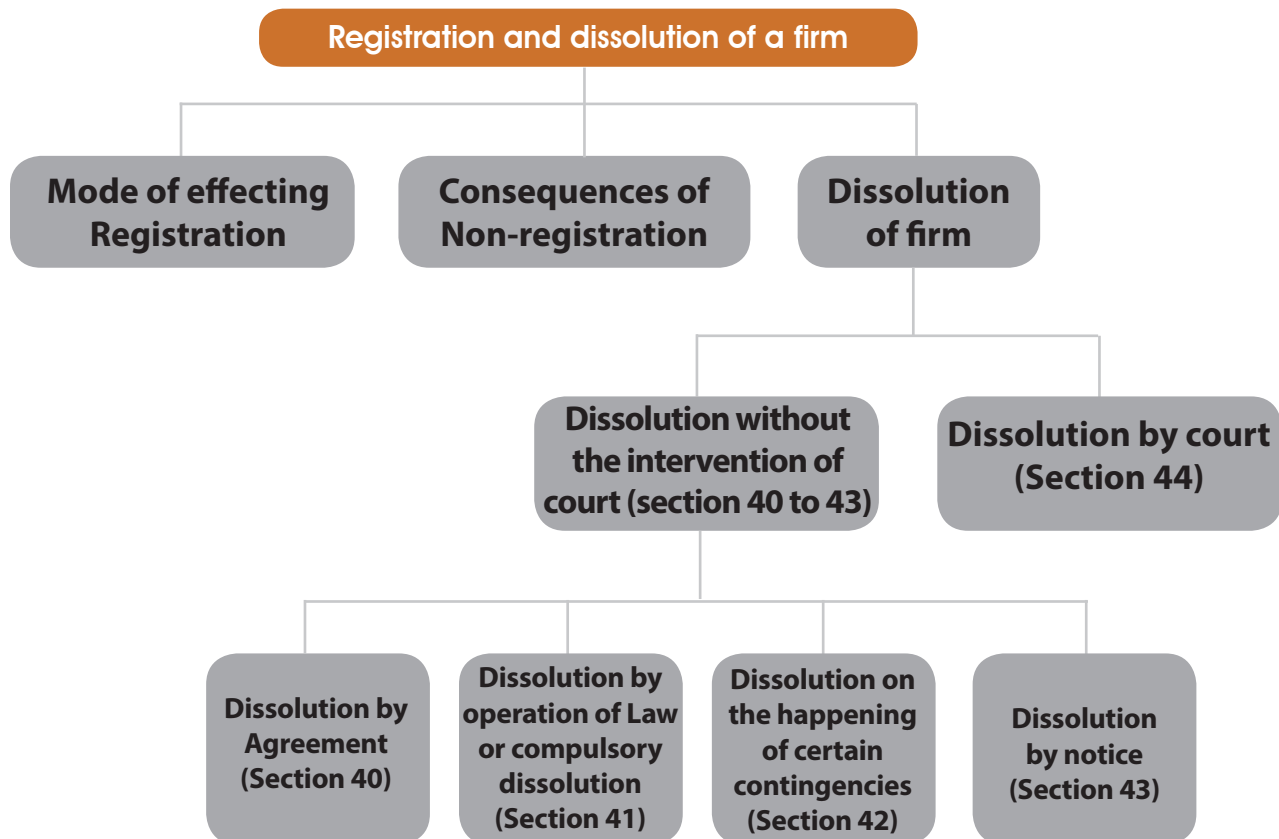
UNIT 3: REGISTRATION AND DISSOLUTION OF A FIRM

LEARNING OUTCOMES

After studying this unit, you would be able to:

- ◆ Be aware of mode of getting a firm registered with the authorities.
- ◆ Understand the effect of registration of a firm upon the rights of partners' inter-se and the rights of the third parties.
- ◆ Note the effect of non-registration on rights of partners and the third parties.
- ◆ Learn the various circumstances when a firm is dissolved.
- ◆ The consequences and the effects of the dissolution upon rights and liabilities of various parties.

UNIT OVERVIEW



3.1 REGISTRATION OF FIRMS

APPLICATION FOR REGISTRATION (SECTION 58): (1) The registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form and accompanied by the prescribed fee, stating-

- (a) The firm's name
- (b) The place or principal place of business of the firm,
- (c) The names of any other places where the firm carries on business,
- (d) the date when each partner joined the firm,
- (e) the names in full and permanent addresses of the partners, and
- (f) the duration of the firm.

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

(2) Each person signing the statement shall also verify it in the manner prescribed.

(3) A firm name shall not contain 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 except when the State Government signifies its consent to the use of such words as part of the firm-name by order in writing.

Analysis:

The registration of a partnership is optional and one partner cannot compel another partner to join in the registration of the firm. It is not essential that the firm should be registered from the very beginning. When the partners decide to get the firm registered as per the provisions of Section 58 of the Indian Partnership Act, 1932, they have to file the statement in the prescribed form.

When the Registrar is satisfied that the above mentioned provisions have been complied with, he shall record an entry of this statement in the register (called the Register of Firms) and shall file the statement.

Subsequent alterations in the name, place, constitution, etc., of the firm that may occur during its continuance should also be registered.

REGISTRATION (SECTION 59): When the Registrar is satisfied that the provisions of section 58 (above mentioned provisions) have been duly complied with, he shall record an entry of the statement in a register called the Register of Firms, and shall file the statement.

Analysis

When the Registrar is satisfied that the provisions of Section 58 have been duly complied with, he shall record an entry of the statement in a Register called the Register of Firms and shall file the statement. Then he shall issue a certificate of Registration. However, registration is deemed to be completed as soon as an application in the prescribed form with the prescribed fee and necessary details concerning the particulars of partnership is delivered to the Registrar. The recording of an entry in the register of firms is a routine duty of Registrar.

Registration may also be effected even after a suit has been filed by the firm but in that case it is necessary to withdraw the suit first and get the firm registered and then file a fresh suit.

3.2 CONSEQUENCES OF NON-REGISTRATION (SECTION 69)

Under the English Law, the registration of firms is compulsory. Therefore, there is a penalty for non-registration of firms. But the Indian Partnership Act does not make the registration of firms compulsory nor does it impose any penalty for non-registration. However, **under Section 69**, non-registration of partnership gives rise to a number of disabilities which we shall presently discuss. Although registration of firms is not compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration. These disabilities briefly are as follows:

- (i) **No suit in a civil court by firm or other co-partners against third party:** The firm or any other person on its behalf cannot bring an action against the third party for breach of contract entered into by the firm, unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm. In other words, a registered firm can only file a suit against a third party and the persons suing have been in the register of firms as partners in the firm.
- (ii) **No relief to partners for set-off of claim:** If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off, if the suit be valued for more than ₹ 100 or pursue other proceedings to enforce the rights arising from any contract.
- (iii) **Aggrieved partner cannot bring legal action against other partner or the firm:** A partner of an unregistered firm (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm. But, such a person may sue for dissolution of the firm or for accounts and realization of his share in the firm's property where the firm is dissolved.
- (iv) **Third party can sue the firm:** In case of an unregistered firm, an action can be brought against the firm by a third party.

Exceptions: Non-registration of a firm does not, however effect the following rights:

1. The right of third parties to sue the firm or any partner.
2. The right of partners to sue for the dissolution of the firm or for the settlement of the accounts of a dissolved firm, or for realization of the property of a dissolved firm.
3. The power of an Official Assignees, Receiver of Court to release the property of the insolvent partner and to bring an action.
4. The right to sue or claim a set-off if the value of suit does not exceed ₹ 100 in value.

Example: A & Co. is registered as a partnership firm in 2015 with A, B and C partners. In 2016, A dies. In 2017, B and C sue X in the name and on behalf of A & Co., without fresh registration. Now the first question for our consideration is whether the suit is maintainable.

Answer

As regards the question whether in the case of a registered firm (whose business was carried on after its dissolution by death of one of the partners), a suit can be filed by the remaining partners in respect of any subsequent dealings or transactions without notifying to the Registrar of Firms, the changes in the constitution of the firm, it was decided that the remaining partners should sue in respect of such subsequent dealings or transactions even though the firm was not registered again after such dissolution and no notice of the partner was given to the Registrar.

The test applied in these cases was whether the plaintiff satisfied the only two requirements of Section 69 (2) of the Act namely,

- (i) the suit must be instituted by or on behalf of the firm which had been registered;
- (ii) the person suing had been shown as partner in the register of firms. In view of this position of law, the suit is in the case by B and C against X in the name and on behalf of A & Co. is maintainable.

Now, in the above example, what difference would it make, if in 2017 B and C had taken a new partner, D, and then filed a suit against X without fresh registration?

Where a new partner is introduced, the fact is to be notified to Registrar who shall make a record of the notice in the entry relating to the firm in the Register of firms. Therefore, the firm cannot sue as D's (new partner's) name has not been entered in the register of firms. It was pointed out that in the second requirement, the phrase "person suing" means persons in the sense of individuals whose names appear in the register as partners and who must be all partners in the firm at the date of the suit.

3.3 DISSOLUTION OF FIRM (SECTIONS 39 - 47)

According to Section 39 of the Indian Partnership Act, 1932, the dissolution of partnership between all partners of a firm is called the 'dissolution of the firm'.

Analysis

Thus, the dissolution of firm means the discontinuation of the jural relation existing between all the partners of the firm. But when only one or more partners retires or becomes incapacitated from acting as a partner due to death, insolvency or insanity, the partnership, i.e. the relationship between such a partner and other is dissolved, but the rest may decide to continue. In such cases, there is in practice, no dissolution of the firm. The particular partner goes out, but the remaining partners carry on the business of the firm, it is called dissolution of partnership. In the case of dissolution of the firm, on the other hand, the whole firm is dissolved. The partnership terminates as between each and every partner of the firm.

Dissolution of Firm Vs. Dissolution of Partnership

S. No.	Basis of Difference	Dissolution of Firm	Dissolution of Partnership
1.	Continuation of business	It involves discontinuation of business in partnership.	It does not affect continuation of business. It involves only reconstitution of the firm.
2.	Winding up	It involves winding up of the firm and requires realization of assets and settlement of liabilities.	It involves only reconstitution and requires only revaluation of assets and liabilities of the firm.
3.	Order of court	A firm may be dissolved by the order of the court.	Dissolution of partnership is not ordered by the court.
4.	Scope	It necessarily involves dissolution of partnership.	It may or may not involve dissolution of firm.
5.	Final closure of books	It involves final closure of books of the firm.	It does not involve final closure of the books.

Modes of Dissolution of a firm (Sections 40-44)

The dissolution of partnership firm may be in any of the following ways:

1. DISSOLUTION WITHOUT THE ORDER OF THE COURT OR VOLUNTARY DISSOLUTION:

It consists of following four types:

(i) Dissolution by agreement (Section 40):

A firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners.

Analysis

Section 40 gives right to the partners to dissolve the partnership by agreement with the consent of all the partners or in accordance with a contract between the partners. 'Contract between the partners' means a contract already made.

(ii) Compulsory dissolution (Section 41):

A firm is compulsorily dissolved 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:

Provided that, when 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.

Example: A firm is carrying on the business of trading a particular chemical and a law is passed which bans on the trading of such a particular chemical. The business of the firm becomes unlawful and so the firm will have to be compulsorily dissolved.

(iii) Dissolution on the happening of certain contingencies (Section 42):

Subject to contract between the partners, a firm can be dissolved on the happening of any of the following contingencies-

where the firm is constituted for a fixed term, on the expiry of that term

where the firm is constituted to carry out one or more adventures or undertaking, then by completion thereof

by the death of a partner, and

by the adjudication of a partner as an insolvent.

(iv) Dissolution by notice of partnership at will (Section 43):

- (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.
- (2) If the date is mentioned, 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.

(2) DISSOLUTION BY THE COURT (SECTION 44):

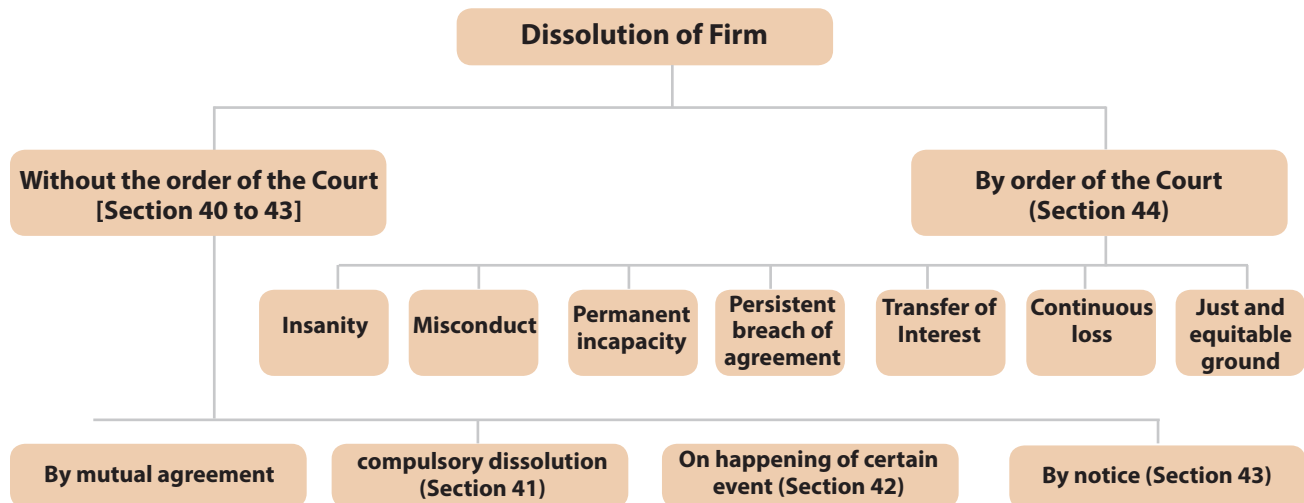
Court may, at the suit of the partner, dissolve a firm on any of the following ground:

- (a) *Insanity/unsound mind:* Where a partner (not a sleeping partner) has become of unsound mind, the court may dissolve the firm on a suit of the other partners or by the next friend of the insane partner. Temporary sickness is no ground for dissolution of firm.
- (b) *Permanent incapacity:* When a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner, then the court may dissolve the firm. Such permanent incapacity may result from physical disability or illness etc.
- (c) *Misconduct:* Where a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of business, the court may order for dissolution of the firm, by giving regard to the nature of business. It is not necessary that misconduct must relate to the conduct of the business. The important point is the adverse effect of misconduct on the business. In each case nature of business will decide whether an act is misconduct or not.
- (d) *Persistent breach of agreement:* Where 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 conduct himself in matters relating to the business that it is not reasonably practicable for other partners to carry on the business in partnership with him, then the court may dissolve the firm at the instance of any of the partners. Following comes in to category of breach of contract:
 - ◆ Embezzlement,
 - ◆ Keeping erroneous accounts
 - ◆ Holding more cash than allowed
 - ◆ Refusal to show accounts despite repeated request etc.

Example: If one of the partners keeps erroneous accounts and omits to enter receipts or if there is continued quarrels between the partners or there is such a state of things that destroys the mutual confidence of partners, the court may order for dissolution of the firm.

- (e) *Transfer of interest:* Where a partner other than the partner suing, has transferred the whole of his interest in the firm to a third party or has allowed his share to be charged or sold by the court, in the recovery of arrears of land revenue, the court may dissolve the firm at the instance of any other partner.
- (f) *Continuous/Perpetual losses:* Where the business of the firm cannot be carried on except at a loss in future also, the court may order for its dissolution.
- (g) *Just and equitable grounds:* Where the court considers any other ground to be just and equitable for the dissolution of the firm, it may dissolve a firm. The following are the cases for the just and equitable grounds-

- (i) Deadlock in the management.
- (ii) Where the partners are not in talking terms between them.
- (iii) Loss of substratum.
- (iv) Gambling by a partner on a stock exchange.



3.4 CONSEQUENCES OF DISSOLUTION (SECTIONS 45 - 55)

Consequent to the dissolution of a partnership firm, the partners have certain rights and liabilities, as are discussed:

- (a) **Liability for acts of partners done after dissolution (Section 45):** (1) Notwithstanding the dissolution of a firm, the partners continue to be liable as such to third parties for any act done by any of them which would have been an act of the firm if done before the dissolution, until public notice is given of the dissolution:

Provided that the estate of a partner who dies, or who is adjudicated an insolvent, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable under this section for acts done after the date on which he ceases to be a partner.

- (2) Notices under sub-section (1) may be given by any partner.

Analysis

Section 45 has two fold objectives-

1. It seeks to protect third parties dealing with the firm who had no notice of prior dissolution and
2. It also seeks to protect partners of a dissolved firm from liability towards third parties.

Example: X and Y who carried on business in partnership for several years, executed on December 1, a deed dissolving the partnership from the date, but failed to give a public notice of the dissolution. On December 20, X borrowed in the firm's name a certain sum of money from R, who was ignorant of the dissolution. In such a case, Y also would be liable for the amount because no public notice was given.

However, there are exceptions to the rule stated in above example i.e even where notice of dissolution has not been given, there will be no liability for subsequent acts in the case of:

- (a) the estate of a deceased partner,
- (b) an insolvent partner, or
- (c) a dormant partner, i.e., a partner, who was not known as a partner to the person dealing with the firm.

(b) Right of partners to have business wound up after dissolution (Section 46): On the dissolution of a firm every partner or his representative is entitled, as against all the other partners or their representative, to have the property of the firm applied in payment of the debts and liabilities of the firm, and to have the surplus distributed among the partners or their representatives according to their rights.

(c) Continuing authority of partners for purposes of winding up (Section 47): After the dissolution of a firm the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners, continue notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise:

Provided that the firm is in no case bound by the acts of a partner who has been adjudicated insolvent; but this proviso does not affect the liability of any person who has after the adjudication represented himself or knowingly permitted himself to be represented as a partner of the insolvent.

(d) Settlement of partnership accounts (Section 48): In settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed:-

- (i) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits.
- (ii) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, must be applied in the following manner and order:
 - (a) in paying the debts of the firm to third parties;
 - (b) in paying to each partner rateably what is due to him from capital;
 - (c) in paying to each partner rateably what is due to him on account of capital; and
 - (d) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

Analysis of Section 48

It may be noted that *prima facie*, accounts between the partners shall be settled in the manner prescribed by partnership agreement. The above-mentioned rules apply subject to any agreement between partners. The rules laid down in Section 48, just specified, as to what will be the mode of settlement of accounts in the usual course of business. But if the partners, by their agreement, express any different intention as to the mode in which losses will have to be borne eventually or the manner in which capital or advances will have to be paid to any partner, such an intention must be given effect to. However, any such agreement cannot affect the rights of the creditors of the firm.

The significance of the foregoing provisions is that if the assets of the firm are not sufficient to pay off the liabilities of the firm including the amount due to each partner on account of capital, each partner would individually be liable to contribute towards the losses, including deficiencies of capital, in the proportion in which he is entitled to share profits.

Example: X and Y were partners sharing profits and losses equally and X died. On taking partnership accounts, it transpired that he contributed ₹ 6,60,000 to the capital of the firm and Y only ₹40,000. The assets amounted to ₹ 2,00,000. The deficiency ($₹ 6,60,000 + ₹ 40,000 - ₹ 2,00,000$ i.e. ₹ 5,00,000) would have to be shared equally by Y and X's estate.

If in the above example, the agreement provided that on dissolution the surplus assets would be divided between the partners according to their respective interests in the capital and on the dissolution of the firm a deficiency of capital was found, then the assets would be divided between the partners in proportion to their capital with the result that X's estate would be the main loser.

(e) Payment of firm debts and of separate debts (Section 49): Where there are joint debts due from the firm and also separate debts due from any partner:

- (i) the property of the firm shall be applied in the first instance in payment of the debts of the firm, and if there is any surplus, then the share of each partner shall be applied to the payment of his separate debts or paid to him;
- (ii) the separate property of any partner shall be applied first in the payment of his separate debts and surplus, if any, in the payment of debts of the firm.

(f) Personal profits earned after dissolution (Section 50): Where a firm is dissolved by the death of a partner and the surviving partners or the surviving partners along with the representatives of the deceased partner carry on business of the firm, any personal profits by them, before the firm is fully wound up, must be accounted for by them to other partners. Thus, a lease expiring on the death of a partner, which is renewed by the surviving partners, before final winding up, belongs to the partnership.

This section has to be read with Section 53 which provides that in the absence of an agreement to the contrary, each partner or his representative is entitled to restrain (by injunction) other partners from carrying on a similar business in the name of the firm or from using the property of the firm for their own benefit till the affairs of the firm are completely wound up.

(g) Return of premium on premature dissolution (Section 51): According to Section 51, in the case of dissolution of partnership earlier than the period fixed for it, the partner paying the premium is entitled to the return of the premium of such part thereof as may be reasonable, regard being had to the terms of agreement and to the length of time during which he was a partner, except when the partnership is dissolved:

- (1) by the death of one of the partners;
- (2) mainly due to the misconduct of the partner paying the premium;
- (3) pursuant to an agreement containing no provisions for the return of the premium or any part thereof.

The partner paying the premium gets a proportionate part of the premium where the partnership is dissolved:

- (1) Without the fault of either party; or
- (2) owing to the fault of both; or
- (3) on account of the fault of the partner receiving the premium; or
- (4) due to the insolvency of the partner receiving the premium, where the partner paying the premium was unaware of the others embarrassing circumstances at the time of entering into the partnership.

- (h) **Rights where partnership contract is rescinded for fraud or misrepresentation (Section 52):** Where a contract creating partnership is rescinded on the ground of fraud or misrepresentation of any of the parties thereto, the party entitled to rescind is entitled;
- (1) to a lien on the surplus or the assets of the firm remaining after the debts of the firm have been paid, for any sum paid by him for the purchase of a share in the firm and for any capital contributed by him ;
 - (2) to rank as a creditor of the firm in respect of any payment made by him towards the debts of the firm; and
 - (3) to an indemnity from the partners guilty of fraud or misrepresentation against all the debts of the firm.
- (i) **Sale of Goodwill after dissolution (Section 55):** (1) In settling the accounts of a firm after dissolution, the goodwill shall, subject to contract between the partners, be included in the assets, and it may be sold either separately or along with other property of the firm.

Rights of buyer and seller of goodwill: (2) Where the goodwill of a firm is sold after dissolution, a partner may carry on a business competing with that of the buyer and he may advertise such business, but subject to agreement between him and the buyer, he may not,-

- (a) use the firm name,
- (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 its dissolution.

Agreement in restraint of trade: (3) Any partner may, upon the sale of the goodwill of a firm, make an agreement with the buyer that such partner 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.

Analysis:

Goodwill is a part of the assets of the firm and section 55(1) enacts that in settling the accounts of a firm after dissolution, the goodwill shall, subject to contract between the partners, be included in the assets and it may be sold either separately or along with other property of the firm. The *prima facie* rule therefore is that the goodwill of the firm being a part of the assets has to be sold just like other assets before the accounts between the partners can be settled and the partnership wound up.

3.5 MODE OF GIVING PUBLIC NOTICE (SECTION 72)

Mode of giving public notice (Section 72): A public notice under this Act is given-

- (a) Where it relates to the retirement or expulsion of a partner from a registered firm, or to the dissolution of a registered firm, or to the election to become or not to become a partner in a registered firm by a person attaining majority who was admitted as a minor to the benefits of partnership, by notice to the Registrar of Firms under section 63, and by publication in the Official Gazette and in at least one vernacular newspaper circulation in the district where the firm to which it relates has its place or principal place of business, and
- (b) in any other case, by publication in the Official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business.



SUMMARY

Registration of a firm is effected by the Registrar of Firms by recording in the Register of Firms an entry of the statement relating to registration furnished to him. The Act does not make registration of the firm compulsory, yet the effect of the rules relating to the consequences of non-registration is such as practically necessitates the registration of the firm at one time or other. Certain disabilities have been imposed on partners of an unregistered firm seeking to enforce certain claims in the Civil Courts. A firm which is not registered is not able to enforce its claim against third parties in the Civil Courts; and any partner who is not registered is not able to enforce his claim either against third parties or against the fellow partners. An unregistered partner may, however, sue for the dissolution of the firm or for accounts only if the firm is already dissolved.

Dissolution of a firm means the breaking up or extinction of the relationship which subsisted between all the partners of the firm under various circumstances contemplated by Act. A partnership can be dissolved only in accordance with the manner prescribed under the Act.



TEST YOUR KNOWLEDGE

Multiple Choice Questions

- Registration of a firm is:
 - Compulsory
 - Optional
 - Occasional
 - None of the above
- An unregistered firm cannot claim:
 - Set on
 - Set off
 - Set on and set off
 - None of the above
- On dissolution the partners remain liable to till:
 - Accounts are settled
 - Partners dues are paid off
 - Public notice is given
 - The registrar strikes off the name
- As per the accepted view, the registration of the firm is considered complete when
 - Complete application for registration is filed with the Registrar.
 - Registrar files the statement and makes entries in the Register of Firms.
 - Registrar gives notice of registration to all partners.
 - Court records the statement and certifies the entries in Register of Firms.
- A partnership firm is compulsorily dissolved where
 - All partners have become insolvent
 - Firm's business has become unlawful
 - The fixed term has expired
 - In cases (a) and (b) only

6. On which of the following grounds, a partner may apply to the court for dissolution of the firm?
- (a) Insanity of a partner (b) Misconduct of a partner
(c) Perpetual losses in business (d) All of the above
7. Which of the following do not constitute a ground for dissolution by Court?
- (a) Misconduct by partner (b) Transfer of interest by partner
(c) Just and equitable grounds (d) Insolvency of a partner
8. Upon dissolution of firm, losses, including deficiencies of capital, shall be paid first-
- (a) Out of Profits (b) Out of Capital
(c) By the partners in their profit sharing ratio (d) By the partners equally
9. In settling the accounts of a firm after dissolution, the goodwill of the firm-
- (a) Must be included in the assets
(b) May be sold separately
(c) May be sold along with the assets of the firm
(d) All of the above
10. Public notice in case of a firm is not required in case of:
- (a) Admission of a partner (b) Retirement of a partner
(c) Expulsion of a partner (d) Dissolution of the firm.
11. Which of the following do not constitute ground for dissolution by Court?
- (a) Insanity of the partner (b) Business carried on at a loss
(c) Wilful misconduct of a partner (d) Expulsion of a partner
12. Dissolution of partnership between all the partners of a firm is called-
- (a) Dissolution of partnership (b) Dissolution of partners
(c) Dissolution of the firm (d) Reconstitution of firm

Answer to MCQs

1(b), 2(b), 3(c), 4(b), 5(d), 6(d), 7(b), 8(a), 9(d), 10(a), 11(d), 12(c)

Theoretical Questions

Question 1: What is the procedure of registration of a partnership firm under the Indian Partnership Act, 1932? What are the consequences of non-registration?

Question 2: When does dissolution of a partnership firm take place under the provisions of the Indian Partnership Act, 1932? Explain.

Answer to Theoretical Questions

1. APPLICATION FOR REGISTRATION (SECTION 58): (1) The registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is

situated or proposed to be situated, a statement in the prescribed form and accompanied by the prescribed fee, stating-

- (a) The firm's name
- (b) The place or principal place of business of the firm,
- (c) The names of any other places where the firm carries on business,
- (d) the date when each partner joined the firm,
- (e) the names in full and permanent addresses of the partners, and
- (f) the duration of the firm.

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

(2) Each person signing the statement shall also verify it in the manner prescribed.

(3) A firm name shall not contain 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 except when the State Government signifies its consent to the use of such words as part of the firm-name by order in writing.

Non consequences of non-registration: Under the English Law, the registration of firms is compulsory. Therefore, there is a penalty for non-registration of firms. But the Indian Partnership Act does not make the registration of firms compulsory nor does it impose any penalty for non-registration. However, under Section 69, non-registration of partnership gives rise to a number of disabilities which we shall presently discuss. Although registration of firms is not compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration. These disabilities briefly are as follows:

- (i) **No suit in a civil court by firm or other co-partners against third party:** The firm or any other person on its behalf cannot bring an action against the third party for breach of contract entered into by the firm, unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm. In other words, a registered firm can only file a suit against a third party and the persons suing have been in the register of firms as partners in the firm.
- (ii) **No relief to partners for set-off of claim:** If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off, if the suit be valued for more than ` 100 or pursue other proceedings to enforce the rights arising from any contract.
- (iii) **Aggrieved partner cannot bring legal action against other partner or the firm:** A partner of an unregistered firm (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm. But, such a person may sue for dissolution of the firm or for accounts and realization of his share in the firm's property where the firm is dissolved.
- (iv) **Third party can sue the firm:** In case of an unregistered firm, an action can be brought against the firm by a third party.

2. **Dissolution of Firm:** The Dissolution of Firm means the discontinuation of the jural relation existing between all the partners of the Firm. But when only one of the partners retires or becomes incapacitated from acting as a partner due to death, insolvency or insanity, the partnership, i.e., the relationship between such a partner and other is dissolved, but the rest may decide to continue. In such cases, there is in practice, no dissolution of the firm. The particular partner goes out, but the remaining partners

carry on the business of the Firm. In the case of dissolution of the firm, on the other hand, the whole firm is dissolved. The partnership terminates as between each and every partner of the firm.

Dissolution of a Firm may take place (Section 39 - 44)

- (a) as a result of any agreement between all the partners (i.e., dissolution by agreement);
- (b) by the adjudication of all the partners, or of all the partners but one, as insolvent (i.e., compulsory dissolution);
- (c) by the business of the Firm becoming unlawful (i.e., compulsory dissolution);
- (d) subject to agreement between the parties, on the happening of certain contingencies, such as: (i) effluence of time; (ii) completion of the venture for which it was entered into; (iii) death of a partner; (iv) insolvency of a partner.
- (e) by a partner giving notice of his intention to dissolve the firm, in case of partnership at will and the firm being dissolved as from the date mentioned in the notice, or if no date is mentioned, as from the date of the communication of the notice; and
- (f) by intervention of court in case of: (i) a partner becoming the unsound mind; (ii) permanent incapacity of a partner to perform his duties as such; (iii) Misconduct of a partner affecting the business; (iv) willful or persistent breaches of agreement by a partner; (v) transfer or sale of the whole interest of a partner; (vi) improbability of the business being carried on save at a loss; (vii) the court being satisfied on other equitable grounds that the firm should be dissolved.