

LAW CAPSULE

For Law Competitive Exams



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Essentials of Partnership & Rights and Duties of Partners

INTRODUCTION

Partnership is one of the most basic and popular entity to conduct business, not only in India but world over. According to Section 4 of the Partnership Act, the four essentials of a Partnership are:—

- An agreement
- Carrying on of business
- Sharing of profits
- Carried on by all of them or any of them acting for all — that is in mutual agency

Persons who have entered into partnership with one another are individually called partners and collectively a firm. By virtue of Section 5 a Partnership arises from contract and not from status. Some of the salient aspects are:—

- Co-ownership is not the same thing as a Partnership
- Two or more persons
- Competent to contract
- Minor to be admitted only for benefits and he shall not be personally liable for any such act
- Partnership – not a legal person and can not enter into another partnership [Section 34]; insolvent ceases to be a partner

The carrying on of business —

- For sharing its profits
- Business must be lawful [Section 23 of the Contract Act]
- Business should be carried on
- Single isolated transaction can not be a partnership
- Partnership
 - General Partnership
 - Particular Partnership [Section 8]

On the aspect of sharing of profits in the case of *Cox v. Hickman* – House of Lords laid down that the persons sharing the profit of the business do not always incur the liabilities of partners unless the real relation between them is that of a partner.

According to Section 6, *Explanation 2* – receipt of share or payment itself does not make the following partners: —

- Money lenders
- The servant or agent
- Widow or child of deceased partner
- The seller of goodwill

Mutual agency

- Partner occupies dual position – Agent as well as Principal

Landmark Judgments – Nature of partnership
K. Jaggaiah v. Y.K. Venkatasatya Narayan, AIR 1984 AP 149
Mollwo March and Co. v. The Court of Wards, 1872 LR 4 PC 419
Abdul Latiff v. Gopeswar Chatteraj, AIR 1933 Calcutta 204
Cox v. Hickman, (1860) 8 HLC 268; 9 CB (NS) 47, 30
Laxmibai v. Roshan Lal, AIR 1972 Raj 288
Ram Laxman Sugar Mills v. Commissioner of Income Tax, U.P., (1967) 66 ITR 613 (SC)