CHAPTER III - RELATIONS OF PARTNERS TO ONE ANOTHER

9. General duties of partners.

10. Duty to indemnify for loss caused by fraud.

11. Determination of rights and duties of partners by contract between the partners.

12. The conduct of the business.

13. Mutual rights and liabilities.

14. The property of the firm.

15. Application of the property of the firm.

16. Personal profits earned by partners.

17. Rights and duties of partners

9. General duties of partners

Every partner shall carry on the business of the firm to the greatest common advantage, be just and faithful to the other partners, and render true accounts and full information of all things affecting the firm to any partner or his legal representative.

> Partners are bound to carry on the business of the firm to the 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 or his legal representative.

Section 9 of the Indian Partnership Act, 1932 sets out the basic duties partners owe each other. These duties come from the fiduciary relationship of mutual trust and confidence on which every partnership rests, and the section imposes three of them. First, each partner must conduct the business for the benefit of the firm as a whole and not for himself or for some of the partners only. Second, partners must deal with one another honestly and fairly, without deceiving each other, hiding material facts or taking unfair advantage. Third, a partner must keep and give correct accounts and disclose everything material to the firm’s affairs. This duty is owed not only to the other partners but also to the legal representative of a deceased partner, so that the estate can work out what is due to it. These are general duties, and other provisions of the Act apply them to particular situations. A partner must account for any personal profit made from firm transactions or from using the firm’s property, name or business connection (s. 16(a)). He must not carry on a competing business, and if he does, he must hand its

profits over to the firm (s. 16(b)). He must also indemnify the firm for any loss caused by his fraud (s. 10). The duties under s. 9 are not expressly made subject to a contrary contract, although s. 11 lets partners settle their other mutual rights and duties by agreement. For example, A, B and C are partners in a cloth-trading firm, and A is in charge of purchases. A supplier gives the firm a discount, but A tells his partners there was none and keeps the difference himself. A has broken his duty to be just and faithful and his duty to render true accounts, so he must account to the firm for the amount he kept. Likewise, if C dies, his legal heir can ask A and B for true accounts and full information about the firm's affairs so that C's share can be correctly worked out. A and B cannot refuse on the ground that the heir is not a partner.

10. 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 firm's business.

> Every partner shall indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm.

Section 10 of the Indian Partnership Act, 1932 sets out one of the mutual duties of partners. A partner who acts fraudulently while carrying on the firm's business must make good, from his own pocket, the whole of the loss that his fraud causes the firm. The duty is absolute: unlike a partner's general liability under s. 13(f) for wilful neglect, it cannot be excluded or reduced by agreement between the partners. It follows from the relationship of utmost good faith that partners owe one another (s. 9). The provision governs the position between the partners themselves. Toward outsiders, the firm remains liable for a partner's wrongful act done in the ordinary course of business (s. 26), and for his misapplication of money or property received from third parties (s. 27). Section 10 lets the firm, and through it the honest partners, recover that loss from the partner who caused it. The fraud must be committed "in the conduct of the business of the firm". A partner's fraud in his private affairs falls outside this section. For example, A, B and C are partners in a firm dealing in electronic goods. A is in charge of purchases. He fakes invoices showing purchases at inflated prices and pockets the difference of ₹5 lakh. A customer who was also misled by A's false representations sues the firm and recovers ₹2 lakh in damages. Under s. 10,

A must reimburse the firm for the entire loss of ₹7 lakh. B and C do not have to bear any share of it, and A cannot rely on any term of the partnership deed to escape this liability.

11. Determination of rights and duties of partners by contract between the partners

11.1 The mutual rights and duties of partners shall be determined by the contract between them, and may be varied only with the consent of all 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 expressed or may be implied by a course of dealing. Such contract may be varied by consent of all the partners, and such consent may be expressed or may be implied by a course of dealing.

Section 11(1) of the Indian Partnership Act, 1932 allows partners to settle their rights and duties towards one another by agreement among themselves. This agreement is usually written down as a partnership deed, but it does not have to be. It can be express, either written or oral, or it can be implied from a course of dealing, meaning the way the partners have actually conducted the business over time. The agreement can cover matters such as the capital each partner brings in, how profits and losses are shared, salaries or interest payable to partners, who manages the business, and how decisions are made. Once made, the agreement can be changed, but only with the consent of every partner. A majority cannot alter the terms against the will of even one partner, although that consent can itself be express or inferred from conduct. The provision opens with the words “subject to the provisions of this Act”, so the agreement works within the limits the Act sets. Some duties cannot be contracted away, such as the duty to act in good faith and render true accounts (s. 9), and a partner’s liability to outsiders for the acts of the firm (ss. 25 and 26) cannot be cut down by an internal agreement. Where the agreement says nothing on a point, the default rules in s. 13 apply. One example is the rule that partners share profits and losses equally. Section 11(2) adds that partners may validly agree that a partner shall not carry on any business other than that of the firm while he is a partner, even though such a term would otherwise be void as a restraint of trade under s. 27 of the Indian Contract Act, 1872. For example, A, B and C start a firm, and their

written deed says profits will be shared in the ratio 2:1:1 and that A alone will manage the accounts. These terms bind the three of them. Over the next few years, with the knowledge and acceptance of all three, B starts receiving a monthly salary of ₹20,000 for running the shop floor, though the deed provides no such salary. This course of dealing shows that all the partners have impliedly agreed to vary the deed, so B is entitled to the salary. If, however, A and B alone vote to change the profit ratio to 3:2:1 and C objects, the change has no effect, because a variation needs the consent of all the partners. Further, even if the deed said that C would not be liable for the firm's debts, a creditor of the firm could still recover from C, since that clause binds only the partners among themselves.

11.2 A partnership contract may lawfully bar a partner from carrying on any business other than that of the firm while he remains a partner.

> (2) Notwithstanding anything contained in section 27 of the Indian Contract Act, 1872, (9 of 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 11(2) of the Indian Partnership Act, 1932 is an exception to Section 27 of the Indian Contract Act, 1872. Section 27 makes void every agreement that restrains a person from carrying on a lawful profession, trade or business. Without Section 11(2), a clause in a partnership deed stopping a partner from running another business could be struck down under that rule. Section 11(2) overrides it ("notwithstanding anything contained in section 27") and lets partners agree that none of them will carry on any other business during the partnership. The restraint can cover any business, not only a competing one, because the firm is entitled to a partner's full attention and loyalty and to protection from conflicts of interest. The restraint applies only "while he is a partner". Restraints that continue after a partner retires, or after the firm is dissolved, are governed separately by ss. 36(2) and 54, which allow them only within reasonable limits of time and area. Even where the deed has no such clause, a partner who carries on a business of the same nature that competes with the firm must account for and pay to the firm all profits he makes from it (s. 16(b)). For example, A, B and C run a garment export firm, and their partnership deed says that no partner shall carry on any other business while a partner. During the partnership, C opens a restaurant on his own. Although the restaurant does

not compete with the firm, C has breached a valid term of the deed. Section 27 of the Contract Act does not protect him, because Section 11(2) expressly allows the restraint. A and B may enforce the clause, for instance by seeking an injunction or damages, as the deed and the general law permit. If C instead opened a rival garment export business, he would also have to hand over its profits to the firm under s. 16(b). Once C retires from the firm, however, the clause stops binding him unless a separate restraint under s. 36(2) meets the reasonableness requirement.

12. The conduct of the business

Every partner shall take part in and diligently attend to the conduct of the firm's business; ordinary matters shall be decided by a majority, the nature of the business shall be changed only with the consent of all partners, and every partner may inspect and copy the books of the firm.

> 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; and
>
> (d) every partner has a right to have access to and to inspect and copy any of the books of the firm.

Section 12 of the Indian Partnership Act, 1932 sets the default rules on how partners run the firm's business. These rules apply only "subject to contract between the partners", so the partnership deed can change them, for example by making one partner a sleeping partner or by requiring a special majority (s. 11). Under clause (a), every partner has a right to take part in managing the business. This follows from the idea in s. 4 that the business is carried on by all the partners, or by any of them acting for all, so a partner cannot be shut out of management unless the agreement allows it. Under clause (b), that right comes with a duty to attend to the business diligently.

A partner is not ordinarily entitled to extra pay for this work (s. 13(a)), and must make good any loss the firm suffers through his wilful neglect (s. 13(f)). Under clause (c), day-to-day differences, such as hiring staff, buying stock or setting prices, are settled by a majority of the partners, and every partner has the right to be heard before the decision is taken. A change in the nature of the business, however, needs the consent of all partners, because no partner can be forced into a venture he never agreed to join. Under clause (d), every partner may access, inspect and copy any of the firm's books. This supports the partners' duty to render true accounts (s. 9) and lets each partner check how the business is being run. For example, A, B and C are partners in a garment business, and their deed says nothing about management. A and B cannot exclude C from running the shop, and C cannot leave all the work to the others. If he wilfully neglects the business and the firm loses money because of it, he must make good the loss. If the partners disagree on whether to buy summer or winter stock, A and B can outvote C, but only after giving him a chance to state his view. They cannot, however, turn the garment business into a restaurant without C's consent. And if C suspects the accounts are being mismanaged, he may inspect and copy the firm's books, and the others cannot refuse.

13. Mutual rights and liabilities

Unless the partners agree otherwise, a partner shall work without remuneration, share profits and losses equally, receive agreed interest on capital only out of profits, receive interest at six per cent on advances beyond his agreed capital, be indemnified by the firm for proper and emergency acts, and indemnify the firm for losses caused by his wilful neglect.

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;

(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

(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 13 of the Indian Partnership Act, 1932 lays down default rules on the partners' rights and liabilities among themselves. Every clause is "subject to contract between the partners", so it applies only where the partnership deed or agreement is silent (s. 11). Under clause (a), a partner who takes part in running the business is not entitled to a salary or other pay for it, since managing the business is part of his role as co-owner. Under clause (b), the partners share profits equally and bear losses equally, even if they contributed unequal capital or effort. Clause (c) does not create a right to interest on capital. It only provides that where such a right exists, usually by agreement, the interest is payable out of profits alone, so none is payable when there are no profits. Under clause (d), money a partner advances to the firm beyond his agreed capital is treated as a loan, not capital, and carries interest at six per cent a year. That interest is not limited to profits. Under clause (e), the firm must reimburse a partner for payments made and liabilities incurred in the ordinary and proper conduct of the business. It must also reimburse him for acts done in an emergency to protect the firm from loss, if a person of ordinary prudence would have acted the same way in his own case. Section 21 gives a partner authority to act in such an emergency. Finally, under clause (f), a partner must make good any loss he causes the firm by wilful neglect, meaning deliberate or conscious disregard of his duty, as opposed to an honest mistake or an error of judgment. For example, A, B and C start a trading firm with capital of ₹5 lakh, ₹3 lakh and ₹2 lakh, and their deed covers only interest on capital, at 10%. A manages the business full-time but cannot claim a salary. When the firm earns ₹3 lakh in its first year, each partner takes ₹1 lakh despite the unequal capital,

because the deed does not fix profit shares. In the second year the firm makes a loss, so no interest on capital is payable. B lends the firm an extra ₹1 lakh to pay a supplier, and he is entitled to ₹6,000 a year in interest even in that loss-making year. C pays freight charges from his own pocket in the ordinary course of business, and the firm must reimburse him. C also hires a truck at his own cost to move stock out of a godown about to flood, and the firm must reimburse that too, because a prudent person would do the same for his own goods. A, however, is repeatedly reminded to renew the firm's fire insurance and deliberately fails to do so. When fire destroys the uninsured stock, A must compensate the firm for the loss.

14. The property of the firm

All property brought into or acquired for the firm, including its goodwill, shall belong to the firm, and property bought with the firm's money shall be presumed to be the firm's property.

> Subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm, or 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 interests in property acquired with money belonging to the firm are deemed to have been acquired for the firm.

Section 14 of the Indian Partnership Act, 1932 defines what counts as partnership property, as distinct from the separate property of individual partners. Subject to any contract between the partners, the firm's property covers three things. The first is property, and rights and interests in property, that the partners originally brought into the common stock of the firm. The second is property acquired by or for the firm, by purchase or otherwise, or acquired for the purposes and in the course of the firm's business. The third is the goodwill of the business. The second sentence adds a presumption: property bought with the firm's money is deemed to have been acquired for the firm, unless a contrary intention appears. This presumption is rebuttable, for instance where the partners agreed that a partner could buy something for himself out of the firm's funds and have it debited to his account. Because the section is "subject to contract between the partners", the partners may agree that an asset used in the business stays the separate

property of one partner, or that a partner's separate property becomes the firm's. The distinction matters because partnership property must be held and used exclusively for the firm's business (s. 15). On dissolution it is applied first to pay the firm's debts, and only the surplus is shared among the partners (s. 48). Separate property, by contrast, belongs to the individual partner alone. For example, A and B start a printing business. A contributes a printing machine to the firm's stock, and B lets the firm use his shop premises under an agreement that the shop remains his own. The firm then buys a delivery van with money from its bank account, and over time the business builds a good reputation among customers. The machine is firm property because A brought it into the stock of the firm. The van is presumed to be firm property because it was bought with the firm's money. The goodwill also belongs to the firm. The shop remains B's separate property, because the partners' contract says so. If A later claims the van as his own, he must prove a contrary intention, such as an agreement that the van was bought for him and charged to his capital account.

15. Application of the property of the firm

The partners shall hold and use the property of the firm exclusively for the purposes of the business.

> Subject to 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 15 of the Indian Partnership Act, 1932 sets out how partners must deal with the firm's property. Under s. 14, firm property includes all property and rights originally brought into the partnership stock, or acquired by the firm or for its business, including the goodwill of the business. Section 15 provides that partners hold this property not as individual owners but on behalf of the firm. Each partner therefore has an interest in it as a member of the firm, but no partner may treat any item of it as his own or use it for private purposes. Its use is limited to carrying on the partnership business. The rule follows from the partners' duty of good faith toward one another (s. 9) and their duty to account for any personal benefit gained from the firm's property (s. 16). It applies "subject to contract between the partners", so the partners may agree otherwise, for example by allowing a partner to use a firm vehicle for personal travel. Without such an agreement, a partner who uses firm property for personal ends must account to the firm

for any profit made and compensate it for any loss caused. For example, A, B and C run a transport business, and the firm owns a truck. If A, without the consent of B and C, uses the truck on weekends to carry goods for his own private trade, he breaches s. 15. He must account to the firm for the earnings from those trips and make good any damage to the truck. If the partnership deed allows each partner to use the truck for personal purposes on Sundays, A's Sunday use is permitted because the partners have contracted out of the general rule.

16. Personal profits extended by partners

A partner shall account for and pay to the firm every profit he makes from the firm's transactions, property, business connection or name, or from a competing business.

> Subject to contract between the partners,
>
> (a) if a partner derives any profit 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;
>
> (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.

Section 16 of the Indian Partnership Act, 1932 applies the duty of good faith that partners owe one another (s. 9) to profits. A partner acts as an agent of the firm (s. 18) and stands in a fiduciary position towards his co-partners, so he must not use his position for private gain at the firm's expense. The section names two situations. Under clause (a), a partner who earns a personal profit from any transaction of the firm, or from the use of the firm's property (s. 14), its business connection or its name, must disclose that profit and hand it over to the firm. He keeps only his ordinary share of it as a partner, and it makes no difference that the firm suffered no loss or could not have earned the profit itself. Under clause (b), a partner who carries on a business of the same nature as the firm's, and in competition with it, must account for and pay to the firm all the profits of that business. This reinforces the general duty in s. 12(b) to carry on the firm's business diligently. Two limits follow from the text. Clause (b) applies only to a business that is both of the same nature and competing, so a partner may keep the profits of an unrelated business. And the opening words "subject to

contract between the partners" mean that the partners may agree otherwise, for instance by expressly allowing a partner to run a similar business on his own account. Section 16 is enforced by the firm claiming an account of the secret profit or of the competing business's profits. For example, A, B and C are partners in a firm dealing in building materials. While buying cement for the firm, A secretly accepts a commission of ₹50,000 from the supplier. Under clause (a) this is a profit from a transaction of the firm, so A must account for the ₹50,000 and pay it to the firm, where it is shared among all three partners. Similarly, if B uses the firm's delivery trucks for private hauling jobs and earns ₹30,000, he must account for that sum, since it came from the use of the firm's property. If C quietly opens his own shop selling building materials in the same town and earns ₹2 lakh, clause (b) obliges him to pay the whole ₹2 lakh to the firm, because the business is of the same nature and competes with it. But if C instead ran a restaurant, or if the partnership deed expressly allowed him to run his own shop, he could keep the profits.

17. Rights and duties of partners

Unless the partners agree otherwise, their mutual rights and duties shall continue unchanged when the firm is reconstituted, when it carries on after its fixed term expires, and when it takes up undertakings beyond those it was formed for.

Subject to contract between the partners,

(a) after a change in the firm.-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 expiry of the term of the firm, and.- 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, so far as they may be consistent with the incidents of partnership at will; and

(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 17 of the Indian Partnership Act, 1932 carries the partners' existing rights and duties forward when the firm's situation changes, so that they do not need a fresh agreement each time. These are the rights and duties they owe one another under their contract and under ss. 9 to 16, such as profit-sharing ratios, interest on capital, management rights and the duty to account. The section applies in three situations, and in each the partners may agree something different. Under clause (a), where the constitution of the firm changes because a partner joins, retires, dies or is expelled and the firm carries on, the reconstituted firm runs on the same terms as before "as far as may be". Terms that no longer fit are adjusted; for example, profit shares change to make room for a new partner. Under clause (b), where a firm formed for a fixed term continues business after the term expires, it becomes a partnership at will (s. 7). The old terms continue only so far as they are consistent with a partnership at will, so any term tied to the fixed period lapses, and any partner may dissolve the firm by notice in writing (s. 43). Under clause (c), where a firm formed for particular ventures (s. 8) takes on other ventures, the partners' rights and duties in the new ventures are the same as in the original ones. For example, A, B and C form a firm for five years to run a textile shop. They share profits equally, and each is paid ₹20,000 a month for working in the business. If D is admitted in the third year and nothing else is agreed, the monthly payment continues on the same terms and only the profit shares are adjusted to include D. If the five years pass and they simply keep running the shop, they still share profits equally and draw ₹20,000 a month, but the firm is now a partnership at will, so any one of them can end it by written notice. If the firm later opens a garment-export business alongside the shop, the partners share its profits and losses equally and owe the same duties there as in the textile shop, unless they agree otherwise.