

Quadrant II – Transcript

Paper Code: CON0313

Module Name: Definition and essential features of Partnership

Module No: 13

Welcome students this is Pearl Montero from VM Salgaocar College of Law we are talking about Contract II, Indian Partnership Act. The module is 13 and the contents of the module are the introduction, the meaning and definition of partnership, the basic essentials of partnership, the mode of determining the existence of partnership, a comparison between partnership and Co ownership, comparison between partnership and joint Family business, comparison between partnership and company.

The outline of this module is the meaning and definition of partnership. the basic essentials of partnership, the mode of determining the existence of partnership, comparison between partnership and Co ownership, comparison between partnership and joint Family business, comparison between partnership and company.

After listening to this module, you will be able to define a partnership and numerate and describe the essentials of a partnership and distinguish a partnership from a joint family, a Co ownership and a company.

Firstly, the definition of partnership. Partnership is defined in section four of the Indian Partnership Act, as 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.

Thus, the definition talks about four essentials. First agreement, second the purpose that is carrying on business. Third, the motive that is profit and fourth, mutual agency.

The first essential is agreement. Agreement presupposes a voluntary contract. The provisions of this contract are governed by the Indian Contract Act and all the requisites are essential. An important requirement is that persons should be capable of becoming partners. Persons here refer to natural as well as artificial persons. In *Murlidhar v. The Commissioner of IT, MP*, it has been held that the members of a Hindu undivided family can form a partnership with the Kurta.

The next essential is the carrying on of business. Firstly, we should notice that it is carrying on of business, which means something more than a mere one-time activity. There should be a series of transactions which come under the concept of carrying on of business. Next, the business should be lawful. It should not be prohibited by law or against public policy. It has also been held in *Coope v. Eyre*, that purchasing goods for self-consumption is not partnership.

We see sometimes that persons combine together and purchase goods and then divide the goods among themselves. This is just done to lower the price, but it is not a partnership.

The third important essential is profit motive. People do business to make a profit. If the objective is not to make a profit, but it is merely social service or to have a good time like a club or a charity, it is not a partnership. In a partnership It is very important that the main object is to make a profit and to share the same. However, just because somebody is sharing profits, it does not mean that the relationship between them is partners. We should see what is the real relationship between the persons. Only then we can be sure whether they are partners or not. In other words, sharing of profit is not a conclusive test of partnership.

Now we will see some persons who are mentioned in Section 6. Here the position of moneylender sharing profits servant or agent sharing profits,

widow or child of deceased partners, sharing profits and seller of goodwill sharing profits have been held that they are not partners. For example, in *Cox v. Hickman*, the moneylender lent money to a group of people, and he retrieved the money by way of sharing the profits. The court held that they were not partners. Similarly, sometimes to give incentive servant or agent may also be given a share of profits, but that does not make them partners.

A widow or a child of a deceased partner might be given a share of profits, but in *Holme v. Hammond* it has been held that they are not partners. Similarly, a person who shares goodwill or sells the goodwill is not a partner.

The 4th essential is mutual agency. It means that business must be carried on by all or any of them, acting for all. Every partner can bind the other partners by his

act done on behalf of the firm. Every partner can be agent of the other partners. Every partner thus occupies the dual position of principal as well as agent.

Now we will see the difference between partnership and joint family. In partnership, the relationship is created by contract. In joint family, the relationship is created by status. In partnership before a person can become a partner, he should consent to the same, whereas in joint family to become a member of joint family you have to be born into the joint family or marry one of the members or be adopted to it. In partnership we have seen that there is the concept of mutual agency whereas in joint family, only the head of the family or the karta can bind the other members. In partnership, the liability is joint as well as several, which means that each and every partner individually, as well as all of them together, are liable for the acts of the firm. In joint family only, the Karta is personally liable. The joint family members are not personally liable, only their shares, are liable. Next the partnership is usually dissolved by death of any one of the

partners, whereas the joint family doesn't come to an end if one of the members dies, it has a continuous existence.

Now we will see the difference between partnership and company. Partnership is not a legal person. It does not have legal personality. The firm is merely a name given to the collection of partners, whereas a company has separate legal existence. It is a different person as compared to its shareholders. The partnership is dissolved by death of one of the partners, the death of one of the shareholders does not dissolve the company. The company has continuous existence beyond the lives of the shareholders. In a partnership a partner cannot transfer his share without the consent of the other partners. Whereas in a company a shareholder may transfer his share or sell it without the consent of any other shareholder. In a partnership, the members are between 2 to 10 for a banking partnership and between 2 to 20 in other partnerships, in a company the minimum numbers are between 2 and maximum 50 for a private limited company and a public limited company the minimum numbers are 7 and the maximum are unlimited.

We will now see the difference between partnership and Co ownership. Partnership is brought about by agreement or contract; Co Ownership is brought about by status. Co ownership is when two or more people jointly own a property. Partnership there is the purpose of making a profit. The Co ownership need not have any purpose, like when two people jointly inherit property. In partnership, there is a concept of mutual agency wherein each partner is an agent for all the others. And in co ownership there is no concept of mutual agency. Each co-owner stands for himself. In partnership. A partner may not transfer or sell his share without the consent of the other partners. In Co ownership, a person may transfer or sell or sell his share. Only thing is, the other co-owner may have a right of pre-emption that is the right of first purchase.

Thank You

