

Quadrant II – Transcript

Paper Code: CON0313

Module Name: Rights and duties of the partners to third parties

Module No: 15

Welcome students this is Pearl Monteiro from VM Salgaocar College of Law. Today we're talking about relations of partners to 3rd persons, liability of firm for acts of partners, liability of the partners towards third parties, implied authority of a partner, scope of such implied authority. This is module 15 of Unit 2 Indian Partnership Act which comes under the subject Contract 2.

The outline of this module is the rights and duties of partners to third parties, the relation of partners to 3rd persons, the liability of firm for acts of partners, liability of partners towards third parties, implied authority of a partner, and scope of such implied authority.

After listening to this module, you will be able to understand the acts for which a partner is liable to third parties, the nature and extent of liability of the firm for the acts of partners.

The nature of the liability of the partners towards third parties is joint and several liability. Joint liability means all the partners together are liable to the third person and several liability means each partner is individually liable for the whole to the third person. It means that the third person can proceed in a suit either against the firm or against one of the partners or against some of the partners. It depends on the third person.

Now, this liability is for all acts of the firm. 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. It should be done while he is a partner. However, this is subject to the liability of a retired partner or a partner of a dissolved firm. They are liable until and unless public notice of their retirement or dissolution is given. Again, that is the exception to the exception, wherein if there was a dominant partner who is retired, then he is not liable as the public are not aware of his existence.

The kinds of acts for which a partner is liable. The partner is liable when the acts are done with the authority of a partner. Now, this authority may be expressed or implied. Express authority is when it is directly given or conferred on a partner and implied is when it can be understood from the circumstances of the case or the ordinary course of dealing of the particular business. For an act to be conferred within the implied authority, it is necessary that the act should be done in relation to the partnership business and that should be done in the usual way in relation to a business of the kind carried or done by the firm, for example. In *Mercantile Credit Co Ltd v. Garrod* there was a garage and what the public could see where that cars were coming and going. So, when one of the partners sold a car, the court held that it could be said to have been done by implied authority. That is, when third parties only see cars coming and going, they don't know whether it's a garage just to house the cars or whether it's a dealership of second-hand cars. Similarly, in *Lloyd v. Grace Smith and Company* when there was a firm of solicitors and a clerk made a gift deed instead of a sale deed and gifted the properties of an old lady to himself, the court held that it was within the implied authority and the firm was liable.

Now, even if an act is done without authority, the act may subsequently be ratified by the firm. Ratification basically means condonation or agreement of such act. Next, if any partner makes any admission in the normal course of business, such admission is evidence against the firm and it is not conclusive proof that means it may be rebutted in the court. The effect of notice to an acting partner is that it operates as a notice to the firm, except in the case of fraud committed by or with the consent of the partner to

whom the notice is given. Search notice binds the firm, however, notice to a dominant partner is not notice to the firm in *Bignold v. Waterhouse* a partner carried a parcel without insuring it. And the parcel was lost. Now the firm was not held liable because the partner did it without informing the firm that he was doing the same. And it was like a fraud and therefore the firm was not liable.

Liability for torts and other wrongful acts. The firm is vicariously liable for torts and other wrongful acts committed in the ordinary course of the business or with the authority of the other partners. These wrongful acts may be torts, negligence, fraud, misappropriation of money or property. Liability for misapplication of money or property by a partner. If money or property is received by a partner and he misapplies the same without accounting to it to the firm or the firm receives money from a third partner and the same is misapplied by any partner. In both cases the firm is liable. Now, in order to make the firm liable, it is important that the partner received the money or property from a third party by acting within his apparent authority, it is also important that he received the money in his capacity as a partner, but not in his personal capacity. In *British Homes Corporation Limited v. Paterson*, where the partner received money not as a partner but in his personal capacity, it was held that the firm was not liable. Similarly, if money or property is received by the firm from a third party, and the same is misapplied by any partner here also, the firm will be liable.

Now the mode of doing an act to bind the firm is very important. The act should be executed in the firm name or in any other manner expressing or implying an intention to bind the firm. For example, in *Johnstone v. Janbibi* when the contract was executed on the letterhead of the firm and was signed by an on behalf of the firm, it was held that it was an act which bound the firm.

There are certain statutory restrictions on implied authority that is, there cannot be implied authority in the following cases. Firstly, a partner cannot submit a dispute relating to the business of the firm to arbitration. Next, he cannot open a banking account on behalf of the firm in his own name. He

cannot compromise or relinquish any claim or portion of a claim by the firm. He could not withdraw a suit or proceeding filed on behalf of the firm. He cannot admit any liability in a suit or proceeding against the firm. He cannot acquire immovable property on behalf of the firm. He cannot transfer immovable property on behalf of the firm, and he cannot enter into partnership on behalf of the firm in case any of these acts are to be done, express authority is required.

Thank you.