

Quadrant II - Notes

Paper Code: CON0313

Module Name: DISSOLUTION OF A FIRM

Module No: 13

DISSOLUTION OF A FIRM

1. Dissolution of partnership between some of the partners only.
2. Dissolution of the firm – S. 39 – dissolution of partnership between all the partners of the firm.

Modes of dissolution S. 40 – 44

1. By agreement.
2. Compulsory dissolution.
3. On the happening of certain contingencies.
4. By notice.
5. By court.

❓ Mt. Sughra v. Babu

❓ Commissioner of Income Tax v. Seth Govindram

4. Insolvency of a partner.

Dissolution by notice in partnership at will – S. 43

Harish Kumar v. Bachan Lal

Dissolution by the court

Grounds:

1. Unsoundness of mind
2. Permanent incapacity to perform his duties

Whitwell v. Arthur

3. Conduct injurious to the partnership business

Snow v. Milford

Abbot v. Crump

4. Persistent breach of partnership agreement

Harrison v. Tennant

5. Transfer of the whole of a partner's interest

6. When the business can be carried on only at a loss

7. When dissolution is just and equitable

Abbot v. Crump

Accounts of the dissolved firm

Budh Prakash v. Santosh Pal Dubish

Liability for acts done after dissolution S. 45

Cases in which liability does not arise after the date of dissolution, even though no public notice has been given

1. When a partner dies – estate not liable.
2. Adjudicated insolvent
3. Retired partner if the 3rd party did not know that he was a partner.

Juggilal Kamlapat v. Sew Chand Bagree

Continuing authority of partners for the purposes of winding up S. 47

Butchart v. Dresser

Right to have business wound up S. 46

Mode of settlement of accounts S 48

The rules are applicable when the partners have not made any agreements on these points.

1. Losses are to be shared equally

.Nowel v. Nowel

2. Order of payments

1. Debts of the firm to 3rd parties.
2. Partner's advance over and above capital.
3. Capital
4. Remainder = Profit – distributed among partners.

Payment of firm debts and separate debts S. 49

Personal profits earned after dissolution S 50

Return of premium on premature dissolution

Non-refund in the following cases:

1. When dissolution occurs by death of a partner, there is no refund of premium unless there is an express stipulation in a contract between the partners.

But if a person knowing himself to be in a dangerous state of health and suffering from a fatal disease conceals the fact and receives the premium it is a case of fraud and the premium has to be refunded if there is premature dissolution due to the death of such a partner.

2. When the dissolution of the firm is mainly due to the misconduct of the partner who paid the premium he is not entitled to any refund the reason is that a guilty partner should not take advantage of his own wrong.

But if the person receiving the premium is guilty or both are guilty or none are guilty the court will order refund of the premium.

3. When the dissolution is by an agreement but the agreement does not contain any provision for the return of premium, the inference is that the partners while agreeing to the dissolution are silent about the return of premium; they do not intend any return.

S. 52 Right on rescission of partnership contract

When a partner rescinds the contract of partnership and leaves the firm on the ground of fraud or misrepresentation of the other partners, his rights are protected u/s. 52:

1. He can rescind the contract under S. 19 of the Indian Contract Act.
2. He can claim damages for fraud under the law of Torts.
3. He has a right of lien or a right of retention of the surplus assets so far as it may be necessary to return the capital contributed by him and also for any other sum which he may have paid for the purchase of share in the firm i.e. payment of premium made by him.
4. He is to rank as creditor of the firm in respect of any payment made by him towards the debts of the firm. Being treated as a creditor means priority in the payment of that amount as is stated in S. 48(2)(1).
5. He also has a right to claim indemnity from the partners guilty of fraud or misrepresentation against all the debts of the firm.

S. 53 Right to restrain from use of firm name or firm property.

Rajendra Kumar Sharma v. B. K. Sharma

It has been held that in the absence of a contract between the partners, after the dissolution of the firm and before it's winding up, no partner can sue the property of the firm for his own benefit without the consent of the other partners.

S. 54 Agreement in restraint of trade on dissolution

On the dissolution of the firm one of the partners may purchase the business or the business may be sold to a 3rd party. The partners may make an agreement that some or all of them will not carry on a business similar to that of the firm within specified period or within specified local limits.

Notwithstanding S. 27 of the Indian Contract Act, such restriction is valid if it is reasonable.

S. 55 Sale of Goodwill after dissolution

Goodwill being an asset of the firm, on dissolution, may be sold either separately or along with other property of the firm.

After sale of goodwill, a partner is entitled to carry on a business competing with that of the buyer of goodwill and he may also advertise such business. This is subject to the following restrictions:

1. He cannot use the name of the firm.
2. He cannot represent himself to be carrying on the business of the firm

Hookham v. Pottage

On the dissolution of the firm "Hookham & Pottage" by a decree of court it was decided that the goodwill should belong to Hookham. Hookham now continued the business under the name "Hookham & Co". Pottage also started a business in the same area and named it as "Hookham From Pottage & Hookham".

Held: use of the firm name like that would create an impression that he was connected with the old firm, therefore restrained from using the firm name like that.

3. He cannot solicit the custom of persons who had been dealing with the firm before dissolution.

Trego v. Hunt

Trego took Hunt into partnership on the condition that the goodwill of the business will be the sole property of Trego. Trego died and Hunt made an agreement with Mrs. Trego that he would continue as partner for 7 years and the goodwill will remain the sole property of Mrs. Trego.

When approximately one year of partnership was left, Mrs Trego discovered that Hunt had employed a clerk to prepare a list of the firm's customers, after office hours – object obviously was to approach them after retirement to canvass them for becoming his customers.

Held: He could be restrained from making copies of the list of the firm's customers.

Agreement Restraining Similar Business

Hukmi Chand v. Jaipur Ice & Oil Mills

The retiring partner sold his share of goodwill in favour of other partners and agreed with them that he would not carry on the same kind of business within the area of land in his possession and adjoining the factory of the firm.

He sold the land to his father, who carried on the same business on the land.

Held: Father could be restrained from carrying on the business on the adjoining premises.