

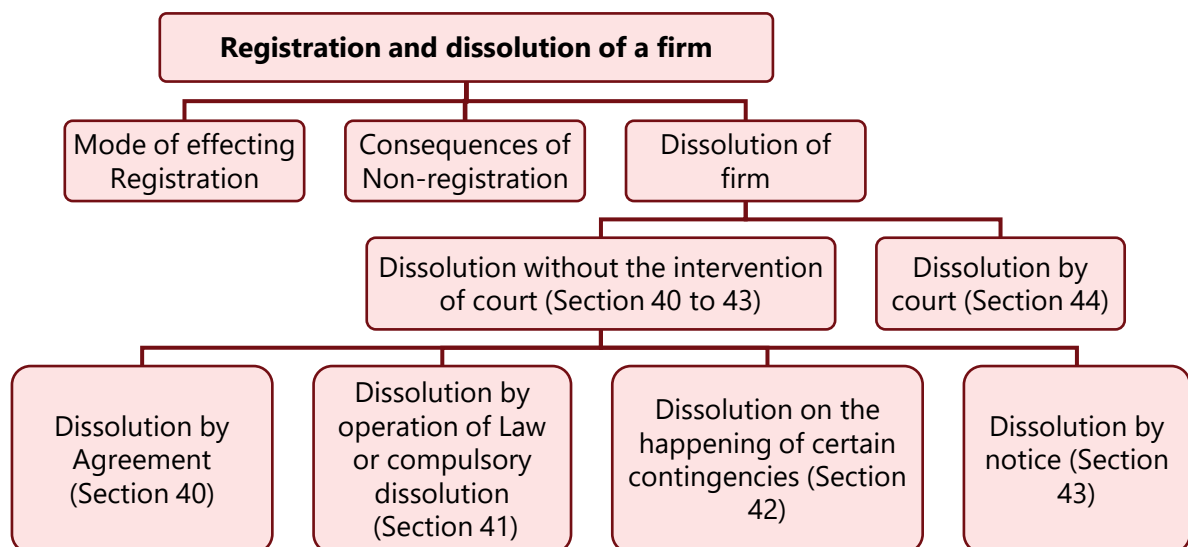
UNIT – 3: REGISTRATION AND DISSOLUTION OF A FIRM

LEARNING OUTCOMES

After studying this unit, you would be able to understand-

- ◆ About mode of getting a firm registered with the authorities.
- ◆ The effect of registration of a firm upon the rights of partners' inter-se and the rights of the third parties.
- ◆ The effect of non-registration on rights of partners and the third parties.
- ◆ The various circumstances when a firm is dissolved.
- ◆ The consequences and the effects of the dissolution upon rights and liabilities of various parties.

UNIT OVERVIEW





3.1 REGISTRATION OF FIRMS

APPLICATION FOR REGISTRATION (SECTION 58): (1) The registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form and accompanied by the prescribed fee, stating-

- (a) The firm's name
- (b) The place or principal place of business of the firm,
- (c) The names of any other places where the firm carries on business,
- (d) the date when each partner joined the firm,
- (e) the names in full and permanent addresses of the partners, and
- (f) the duration of the firm.

The statement shall be signed by all the partners, or by their agents specially authorised in this behalf.

- (1) Each person signing the statement shall also verify it in the manner prescribed.
- (2) A firm name shall not contain any of the following words, namely:-

Note: 'Crown', 'Emperor', 'Empress', 'Empire', 'Imperial', 'King', 'Queen', 'Royal', or words expressing or implying the sanction, approval or patronage of Government except when the State Government signifies its consent to the use of such words as part of the firm-name by order in writing.

REGISTRATION (SECTION 59): When the Registrar is satisfied that the provisions of Section 58 have been duly complied with, he shall record an entry of the statement in a Register called the Register of Firms and shall file the statement. Then he shall issue a certificate of Registration. However, registration is deemed to be completed as soon as an application in the prescribed form with the prescribed fee and necessary details concerning the particulars of partnership is delivered to the Registrar. The recording of an entry in the register of firms is a routine duty of Registrar.

Registration may also be effected even after a suit has been filed by the firm but in that case it is necessary to withdraw the suit first and get the firm registered and then file a fresh suit.



3.2 CONSEQUENCES OF NON-REGISTRATION (SECTION 69)

Under the English Law, the registration of firms is compulsory. Therefore, there is a penalty for non-registration of firms. But the Indian Partnership Act does not make the registration of firms compulsory nor does it impose any penalty for non-registration. However, **under Section 69**, non-registration of partnership gives rise to a number of disabilities which we shall presently discuss. Although registration of firms is not compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration. These disabilities briefly are as follows:

- (i) **No suit in a civil court by firm or other co-partners against third party:** The firm or any other person on its behalf cannot bring an action against the third party for breach of contract entered into by the firm, unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm. In other words, a registered firm can only file a suit against a third party and the persons suing have been in the register of firms as partners in the firm.
- (ii) **No relief to partners for set-off of claim:** If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off, if the suit be valued for more than ₹ 100 or pursue other proceedings to enforce the rights arising from any contract.
- (iii) **Aggrieved partner cannot bring legal action against other partner or the firm:** A partner of an unregistered firm (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm. But, such a person may sue for dissolution of the firm or for accounts and realization of his share in the firm's property where the firm is dissolved.
- (iv) **Third party can sue the firm:** In case of an unregistered firm, an action can be brought against the firm by a third party.

Exceptions: Non-registration of a firm does not, however effect the following rights:

1. The right of third parties to sue the firm or any partner.
2. The right of partners to sue for the dissolution of the firm or for the settlement of the accounts of a dissolved firm, or for realization of the property of a dissolved firm.
3. The power of an Official Assignees, Receiver of Court to release the property of the insolvent partner and to bring an action.
4. The right to sue or claim a set-off if the value of suit does not exceed ₹ 100 in value.

5. The right to suit and proceeding instituted by legal representatives or heirs of the deceased partner of a firm for accounts of the firm or to realise the property of the firm.

Example 1: A & Co. is registered as a partnership firm in 2017 with A, B and C partners. In 2018, A dies. In 2019, B and C sue X in the name and on behalf of A & Co. without fresh registration. Now the first question for our consideration is whether the suit is maintainable.

As regards the question whether in the case of a registered firm (whose business was carried on after its dissolution by death of one of the partners), a suit can be filed by the remaining partners in respect of any subsequent dealings or transactions without notifying to the Registrar of Firms, the changes in the constitution of the firm, it was decided that the remaining partners should sue in respect of such subsequent dealings or transactions even though the firm was not registered again after such dissolution and no notice of the partner was given to the Registrar.

The test applied in these cases was whether the plaintiff satisfied the only two requirements of Section 69 (2) of the Act namely,

- (i) the suit must be instituted by or on behalf of the firm which had been registered;
- (ii) the person suing had been shown as partner in the register of firms. In view of this position of law, the suit is in the case by B and C against X in the name and on behalf of A & Co. is maintainable.

Now, in the above example, what difference would it make, if in 2019 B and C had taken a new partner, D, and then filed a suit against X without fresh registration?

Where a new partner is introduced, the fact is to be notified to Registrar who shall make a record of the notice in the entry relating to the firm in the Register of firms. Therefore, the firm cannot sue as D's (new partner's) name has not been entered in the register of firms. It was pointed out that in the second requirement, the phrase "person suing" means persons in the sense of individuals whose names appear in the register as partners and who must be all partners in the firm at the date of the suit.



3.3 DISSOLUTION OF FIRM (SECTIONS 39 - 47)

According to Section 39 of the Indian Partnership Act, 1932, the dissolution of partnership between all partners of a firm is called the 'dissolution of the firm'.

Thus, the dissolution of firm means the discontinuation of the legal relation existing between all the partners of the firm. But when only one or more partners retires or becomes incapacitated from acting as a partner due to death, insolvency or insanity, the partnership, i.e. the relationship between such a partner and other is dissolved, but the rest may decide to

continue. In such cases, there is in practice, no dissolution of the firm. The particular partner goes out, but the remaining partners carry on the business of the firm, it is called dissolution of partnership. In the case of dissolution of the firm, on the other hand, the whole firm is dissolved. The partnership terminates as between each and every partner of the firm.

Dissolution of Firm Vs. Dissolution of Partnership

S. No.	Basis of Difference	Dissolution of Firm	Dissolution of Partnership
1.	Continuation of business	It involves discontinuation of business in partnership.	It does not affect continuation of business. It involves only reconstitution of the firm.
2.	Winding up	It involves winding up of the firm and requires realization of assets and settlement of liabilities.	It involves only reconstitution and requires only revaluation of assets and liabilities of the firm.
3.	Order of court	A firm may be dissolved by the order of the court.	Dissolution of partnership is not ordered by the court.
4.	Scope	It necessarily involves dissolution of partnership.	It may or may not involve dissolution of firm.
5.	Final closure of books	It involves final closure of books of the firm.	It does not involve final closure of the books of the firm.

Modes of Dissolution of a firm (Sections 40-44)

The dissolution of partnership firm may be in any of the following ways:

1. DISSOLUTION WITHOUT THE ORDER OF THE COURT OR VOLUNTARY DISSOLUTION:

It consists of following four types:

(i) **Dissolution by Agreement (Section 40):**

Section 40 gives right to the partners to dissolve the partnership by agreement with the consent of all the partners or in accordance with a contract between the partners. 'Contract between the partners' means a contract already made.

(ii) **Compulsory dissolution (Section 41):**

A firm is compulsorily dissolved

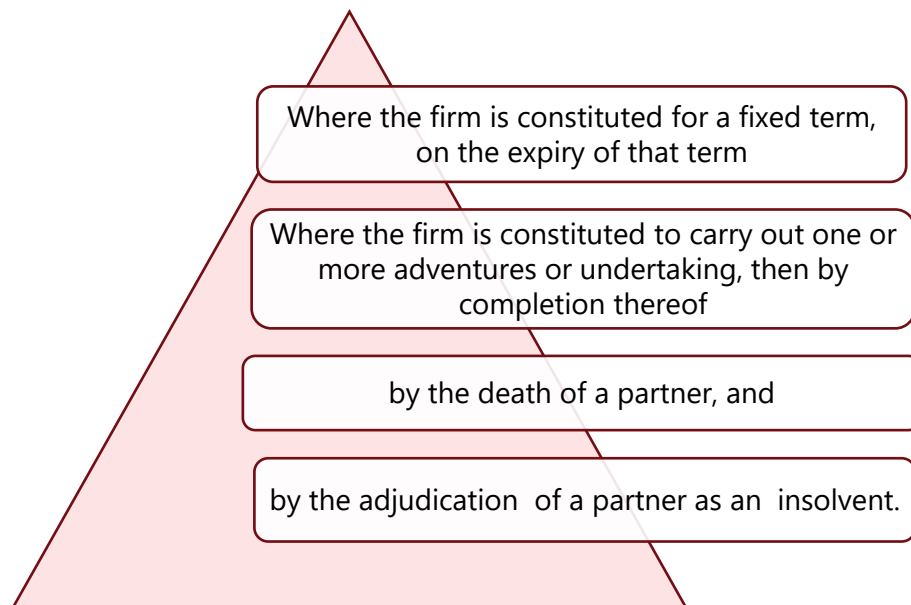
- by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership.

However, when more than one separate adventure or undertaking is carried on by the firm, the illegality of one or more shall not of itself cause the dissolution of the firm in respect of its lawful adventures and undertakings.

Example 2: A firm is carrying on the business of trading a particular chemical and a law is passed which bans on the trading of such a particular chemical. The business of the firm becomes unlawful and so the firm will have to be compulsorily dissolved.

(iii) Dissolution on the happening of certain contingencies (Section 42):

Subject to contract between the partners, a firm can be dissolved on the happening of any of the following contingencies-



(iv) Dissolution by notice of partnership at will (Section 43):

- (1) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.
- (2) In case date is mentioned in the Notice: The firm is dissolved as from the date mentioned in the notice as the date of dissolution, or in case no date is so mentioned, as from the date of the communication of the notice.

(2) DISSOLUTION BY THE COURT (SECTION 44):

Court may, at the suit of the partner, dissolve a firm on any of the following ground:

- (a) **Insanity/unsound mind:** Where a partner (not a sleeping partner) has become of unsound mind, the court may dissolve the firm on a suit of the other partners or by the next friend of the insane partner. Temporary sickness is no ground for dissolution of firm.

Example 3: A, B and C are partners in a firm. A has severe infection and got typhoid. Due to this, he was not able to conduct business for few weeks. This kind of illness cannot be treated as the ground for dissolution.

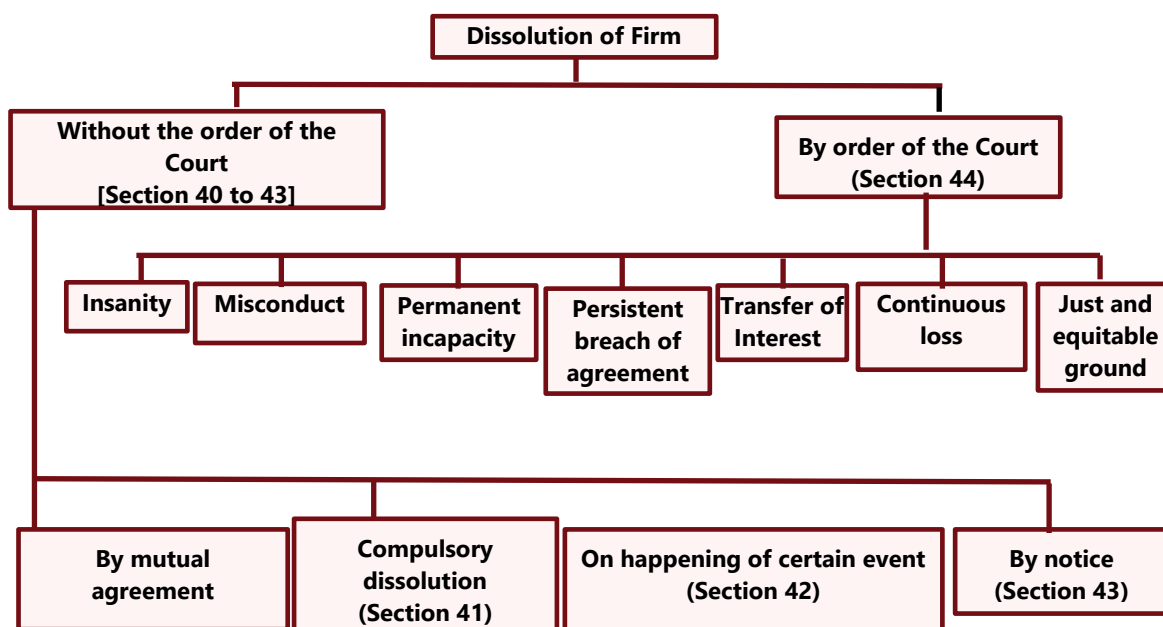
- (b) **Permanent incapacity:** When a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner, then the court may dissolve the firm. Such permanent incapacity may result from physical disability or illness etc.
- (c) **Misconduct:** Where a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of business, the court may order for dissolution of the firm, by giving regard to the nature of business. It is not necessary that misconduct must relate to the conduct of the business. The important point is the adverse effect of misconduct on the business. In each case nature of business will decide whether an act is misconduct or not.
- (d) **Persistent breach of agreement:** Where a partner other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conduct himself in matters relating to the business that it is not reasonably practicable for other partners to carry on the business in partnership with him, then the court may dissolve the firm at the instance of any of the partners. Following comes in to category of breach of contract:
- Embezzlement,
 - Keeping erroneous accounts
 - Holding more cash than allowed
 - Refusal to show accounts despite repeated request etc.

Example 4: If one of the partners keeps erroneous accounts and omits to enter receipts or if there is continued quarrels between the partners or there is such a state of things that destroys the mutual confidence of partners, the court may order for dissolution of the firm.

- (e) **Transfer of interest:** Where a partner other than the partner suing, has transferred the whole of his interest in the firm to a third party or has allowed

his share to be charged or sold by the court, in the recovery of arrears of land revenue due by the partner, the court may dissolve the firm at the instance of any other partner.

- (f) **Continuous/Perpetual losses:** Where the business of the firm cannot be carried on except at a loss in future also, the court may order for its dissolution.
- (g) **Just and equitable grounds:** Where the court considers any other ground to be just and equitable for the dissolution of the firm, it may dissolve a firm. The following are the cases for the just and equitable grounds-
- (i) Deadlock in the management.
 - (ii) Where the partners are not in talking terms between them.
 - (iii) Loss of substratum.
 - (iv) Gambling by a partner on a stock exchange.



3.4 CONSEQUENCES OF DISSOLUTION (SECTIONS 45 - 55)

Consequent to the dissolution of a partnership firm, the partners have certain rights and liabilities, as are discussed:

(a) **Liability for acts of partners done after dissolution (Section 45):**

- (1) Notwithstanding the dissolution of a firm, the partners continue to be liable as such to third parties for any act done by any of them which would have been

an act of the firm if done before the dissolution, until public notice is given of the dissolution.

Provided that the estate of a partner who dies, or who is adjudicated an insolvent, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable under this section for acts done after the date on which he ceases to be a partner.

- (2) Notices under sub-section (1) may be given by any partner.

Section 45 has two fold objectives-

1. It seeks to protect third parties dealing with the firm who had no notice of prior dissolution and
2. It also seeks to protect partners of a dissolved firm from liability towards third parties.

Example 5: X and Y who carried on business in partnership for several years, executed on December 1, a deed dissolving the partnership from the date, but failed to give a public notice of the dissolution. On December 20, X borrowed in the firm's name a certain sum of money from R, who was ignorant of the dissolution. In such a case, Y also would be liable for the amount because no public notice was given.

However, there are exceptions to the rule stated in above example i.e. even where notice of dissolution has not been given, there will be no liability for subsequent acts in the case of:

- (a) the estate of a deceased partner,
 - (b) an insolvent partner, or
 - (c) a dormant partner, i.e., a partner who was not known as a partner to the person dealing with the firm.
- (b) **Right of partners to have business wound up after dissolution (Section 46):** On the dissolution of a firm every partner or his representative is entitled, as against all the other partners or their representative, to have the property of the firm applied in payment of the debts and liabilities of the firm, and to have the surplus distributed among the partners or their representatives according to their rights.
- (c) **Continuing authority of partners for purposes of winding up (Section 47):** After the dissolution of a firm the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners, continue notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise:

Provided that the firm is in no case bound by the acts of a partner who has been adjudicated insolvent; but this proviso does not affect the liability of any person who has after the adjudication represented himself or knowingly permitted himself to be represented as a partner of the insolvent.

(d) Mode of Settlement of partnership accounts (Section 48): In settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed:-

- (i) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits;
- (ii) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, must be applied in the following manner and order:
 - (a) in paying the debts of the firm to third parties;
 - (b) in paying to each partner rateably what is due to him from the firm for advances as distinguished from capital;
 - (c) in paying to each partner rateably what is due to him on account of capital; and
 - (d) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

Example 6: X and Y were partners sharing profits and losses equally and X died. On taking partnership accounts, it transpired that he contributed ₹ 6,60,000 to the capital of the firm and Y only ₹ 40,000. The assets amounted to ₹ 2,00,000. In such situation, the deficiency (₹ 6,60,000 + ₹ 40,000 – ₹ 2,00,000 i.e. ₹ 5,00,000) would have to be shared equally by Y and X's estate.

If in the above example, the agreement provided that on dissolution the surplus assets would be divided between the partners according to their respective interests in the capital and on the dissolution of the firm a deficiency of capital was found, then the assets would be divided between the partners in proportion to their capital with the result that X's estate would be the main loser.

(e) Payment of firm debts and of separate debts (Section 49): Where there are joint debts due from the firm and also separate debts due from any partner:

- (i) the property of the firm shall be applied in the first instance in payment of the debts of the firm, and if there is any surplus, then the share of each partner shall be applied to the pay ment of his separate debts or paid to him;
- (ii) the separate property of any partner shall be applied first in the payment of his separate debts and surplus, if any, in the payment of debts of the firm.

SUMMARY

Registration of a firm is effected by the Registrar of Firms by recording in the Register of Firms an entry of the statement relating to registration furnished to him. The Act does not make registration of the firm compulsory, yet the effect of the rules relating to the consequences of non-registration is such as practically necessitates the registration of the firm at one time or other. Certain disabilities have been imposed on partners of an unregistered firm seeking to enforce certain claims in the Civil Courts. A firm which is not registered is not able to enforce its claim against third parties in the Civil Courts; and any partner who is not registered is not able to enforce his claim either against third parties or against the fellow partners. An unregistered partner may, however, sue for the dissolution of the firm or for accounts only if the firm is already dissolved.

Dissolution of a firm means the breaking up or extinction of the relationship which subsisted between all the partners of the firm under various circumstances contemplated by Act. A partnership can be dissolved only in accordance with the manner prescribed under the Act.

REGISTRATION OF FIRMS: SEC. 58 & 59

Meaning: Getting registered with the Registrar of Firm.

Procedure: Application in prescribed form with prescribed fees.

Contents of Application Form:

- Name of the firm.
- Principal & other places of business of the firm.
- Date when each partner joined the firm.
- Names & addresses of the partners.
- The duration of the firm.

Note: *Registration of firm becomes effective from date of filing the form.*

Effects of Non-registration

(Sec. 69)

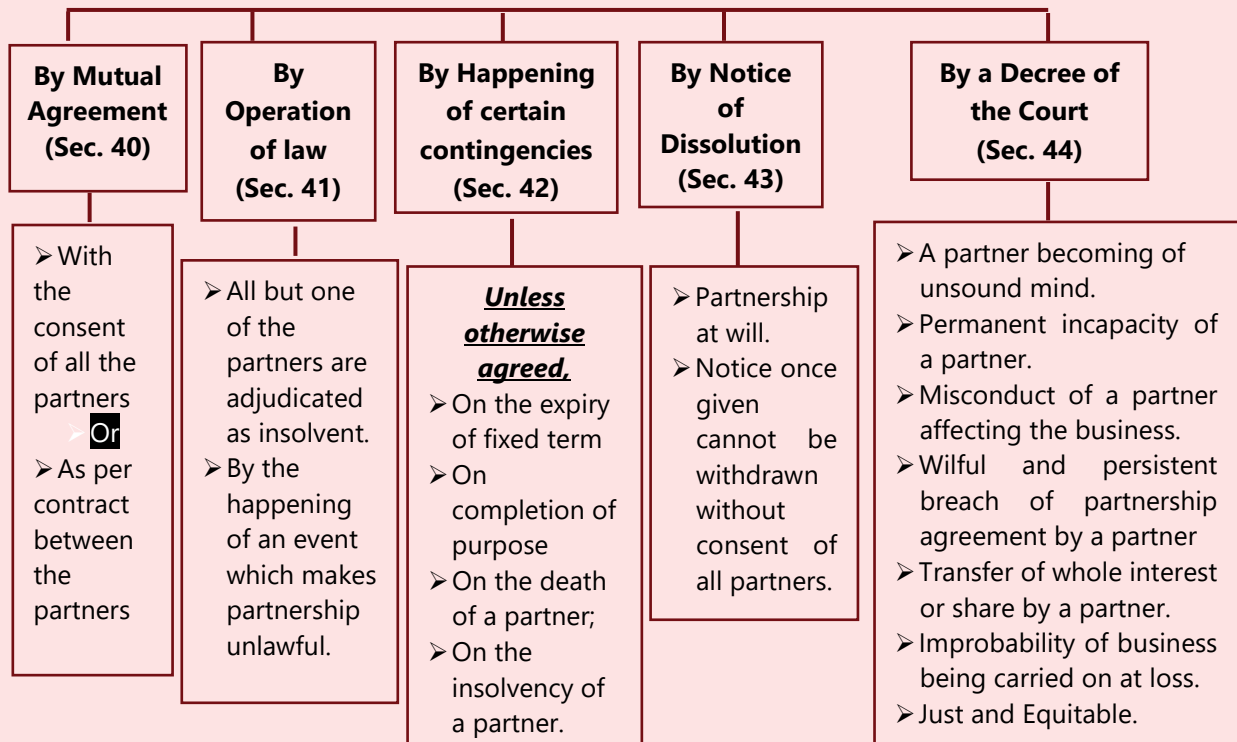
1. No suit in a civil court by a partner against the firm or other co-partners.
2. No suit in a civil court by the firm against third parties
3. The firm or its partners cannot make a claim of set-off or other proceeding based upon a contract

Rights not affected by non-registration (Sec. 69)

1. Right of third parties to sue the firm or any partner.
2. Power of an Official Assignee or Receiver or the Court.
3. Right of the partners to sue for the dissolution of the firm or for the accounts of a dissolved firm or for the realization of the property of a dissolved firm.
4. Rights of the firm or partners of firm having no place of business in India.
5. Right to sue or claim a set-off if the value of the suit upto Rs. 100.
6. Rights of partners to sue for the criminal proceedings against the other partners of the firm and against the third parties.

DISSOLUTION: SEC. 39 – 44

Discontinuance of the jural relation between all the partners of the firm.

MODE OF DISSOLUTION**Consequences of Dissolution**

- Continuing liability until public notice.
- Rights to enforce winding up.
- Extent of continuing authority of the partners after dissolution.
- Settlement of partnership accounts.
- Personal profits earned after dissolution must be accounted.

TEST YOUR KNOWLEDGE

Multiple Choice Questions

1. *Registration of a firm is:*
 - (a) *Compulsory*
 - (b) *Optional*
 - (c) *Occasional*
 - (d) *None of the above*
2. *An unregistered firm cannot claim:*
 - (a) *Set on*
 - (b) *Set off*
 - (c) *Set on and set off*
 - (d) *None of the above*
3. *As per the accepted view, the registration of the firm is considered complete when*
 - (a) *Complete application for registration is filed with the Registrar.*
 - (b) *Registrar files the statement and makes entries in the Register of Firms.*
 - (c) *Registrar gives notice of registration to all partners.*
 - (d) *Court records the statement and certifies the entries in Register of Firms.*
4. *A partnership firm is compulsorily dissolved where*
 - (a) *All partners have become insolvent*
 - (b) *Firm's business has become unlawful*
 - (c) *The fixed term has expired*
 - (d) *In cases (a) and (b) only*
5. *On which of the following grounds, a partner may apply to the court for dissolution of the firm?*
 - (a) *Insanity of a partner*
 - (b) *Misconduct of a partner*
 - (c) *Perpetual losses in business*
 - (d) *All of the above*

6. Which of the following do not constitute a ground for dissolution by Court?
 - (a) Misconduct by partner
 - (b) Transfer of interest by partner
 - (c) Just and equitable grounds
 - (d) Insolvency of a partner
7. Upon dissolution of firm, losses, including deficiencies of capital, shall be paid first-
 - (a) Out of Profits
 - (b) Out of Capital
 - (c) By the partners in their profit sharing ratio
 - (d) By the partners equally
8. Public notice in case of a firm is not required in case of:
 - (a) Admission of a partner
 - (b) Retirement of a partner
 - (c) Expulsion of a partner
 - (d) Dissolution of the firm.
9. Which of the following do not constitute ground for dissolution by Court?
 - (a) Insanity of the partner
 - (b) Business carried on at a loss
 - (c) Wilful misconduct of a partner
 - (d) Expulsion of a partner
10. Dissolution of partnership between all the partners of a firm is called-
 - (a) Dissolution of partnership
 - (b) Dissolution of partners
 - (c) Dissolution of the firm
 - (d) Reconstitution of firm
11. A partnership firm has to be registered with:
 - (a) Director of firms
 - (b) Registrar of firms

- (c) Registrar of companies
 - (d) Competent Court
12. In settling the account after dissolution, the firm's assets shall be first applied in-
- (a) Losses including deficiencies of capital.
 - (b) Payment of partner's loan.
 - (c) Payment of partner's goodwill share.
 - (d) Distribution to partners in their profit sharing ratio.
13. X, Y and Z are partners in a firm. Due to differences amongst the partners, there is deadlock in the management. X applies to the court for the dissolution of the firm. Will he succeed?
- (a) Yes, on just and equitable ground
 - (b) No, because it is not a valid ground for dissolution
 - (c) No, it will require consent of all the partners
 - (d) Yes, if the Registrar of Firm agrees.
14. A firm is compulsorily dissolved on the:
- (a) Death of a partner
 - (b) Adjudication of a partner as an insolvent
 - (c) Expiry of a fixed period for which the firm was constituted
 - (d) Business of the firm becoming illegal due to happening of an event.
15. The partnership deed does not include:
- (a) The nature of the business of the firm.
 - (b) The duration of the firm.
 - (c) The date when each partner joined the firm.
 - (d) The date when each partner exit the firm.
16. Mr. A, partner of ABC Associates give notice in writing to all other partners i.e. Mr. B and Mr. C of his intention to dissolve the firm on 01.09.2020. Such notice was dated 30.08.2020. In the given case, the firm stands dissolved with effect from_____.
- (a) 30.08.2020.
 - (b) 01.09.2020.

- (c) Neither 30.08.2020 nor 01.09.2020 but as per the date mentioned in partnership deed as last date of existence of the firm.
 - (d) Either 30.08.2020 or 01.09.2020 as mutually agreed by all three partners.
17. A firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners. Such dissolution is known as _____.
- (a) Dissolution by contract.
 - (b) Dissolution by agreement.
 - (c) Dissolution by will.
 - (d) Dissolution of Partnership.
18. The statement for the purpose of registration under Section 58(1) of Indian Partnership Act, 1932 can be signed by:
- (a) Any one partner of the Firm
 - (b) Legal heirs of all partners of the Firm
 - (c) All the partners or by their agents specially authorised in this behalf
 - (d) Agents of all partners of the Firm.

Descriptive Questions

1. What is the procedure of registration of a partnership firm under the Indian Partnership Act, 1932?
2. When does dissolution of a partnership firm take place under the provisions of the Indian Partnership Act, 1932? Explain.
3. "Indian Partnership Act does not make the registration of firms compulsory nor does it impose any penalty for non-registration." In light of the given statement, discuss the consequences of non-registration of the partnership firms in India?
4. A, B and C are partners in an unregistered partnership firm named M/s ABC & Associates. Is the suit maintainable in the following cases as per the provisions of the Indian Partnership Act, 1932? Give justification also.
 - (i) A filed a suit against B who had stolen the goods of the firm.
 - (ii) A filed a suit against M/s ABC & Associates for claiming shares of the assets on its dissolution.
 - (iii) M filed a suit against the firm M/s ABC & Associates for the recovery of ₹ 10,000/- dues from the firm. M also owed ₹ 4,000/- to the firm. The firm claimed a set off of ₹ 4,000/-.

ANSWERS/HINTS

Answer to MCQs

1.	(b)	2.	(b)	3.	(a)	4.	(d)	5.	(d)	6.	(d)
7.	(a)	8.	(a)	9.	(d)	10.	(c)	11.	(b)	12.	(a)
13.	(a)	14.	(d)	15.	(d)	16.	(b)	17.	(b)	18.	(c)

Answer to Descriptive Questions

1. APPLICATION FOR REGISTRATION (SECTION 58):

- (1) The registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form and accompanied by the prescribed fee, stating-

- (a) The firm's name
- (b) The place or principal place of business of the firm,
- (c) The names of any other places where the firm carries on business,
- (d) the date when each partner joined the firm,
- (e) the names in full and permanent addresses of the partners, and
- (f) the duration of the firm.

The statement shall be signed by all the partners, or by their agents specially authorised in this behalf.

- (2) Each person signing the statement shall also verify it in the manner prescribed.
- (3) A firm name shall not contain any of the following words, namely:-

'Crown', 'Emperor', 'Empress', 'Empire', 'Imperial', 'King', 'Queen', 'Royal', or words expressing or implying the sanction, approval or patronage of Government except when the State Government signifies its consent to the use of such words as part of the firm-name by order in writing.

2. **Dissolution of Firm:** The Dissolution of Firm means the discontinuation of the jural relation existing between all the partners of the Firm. But when only one of the partners retires or becomes incapacitated from acting as a partner due to death, insolvency or insanity, the partnership, i.e., the relationship between such a partner and other is

dissolved, but the rest may decide to continue. In such cases, there is in practice, no dissolution of the firm. The particular partner goes out, but the remaining partners carry on the business of the Firm. In the case of dissolution of the firm, on the other hand, the whole firm is dissolved. The partnership terminates as between each and every partner of the firm.

Dissolution of a Firm may take place (Section 39 - 44)

- (a) as a result of any agreement between all the partners (i.e., dissolution by agreement);
 - (b) by the adjudication of all the partners, or of all the partners but one, as insolvent (i.e., compulsory dissolution);
 - (c) by the business of the firm becoming unlawful (i.e., compulsory dissolution);
 - (d) subject to agreement between the parties, on the happening of certain contingencies, such as: (i) effluence of time; (ii) completion of the venture for which it was entered into; (iii) death of a partner; (iv) insolvency of a partner.
 - (e) by a partner giving notice of his intention to dissolve the firm, in case of partnership at will and the firm being dissolved as from the date mentioned in the notice, or if no date is mentioned, as from the date of the communication of the notice; and
 - (f) by intervention of court in case of: (i) a partner becoming the unsound mind; (ii) permanent incapacity of a partner to perform his duties as such; (iii) Misconduct of a partner affecting the business; (iv) wilful or persistent breach of agreement by a partner; (v) transfer or sale of the whole interest of a partner; (vi) improbability of the business being carried on save at a loss; (vii) the court being satisfied on other equitable grounds that the firm should be dissolved.
3. It is true to say that Indian Partnership Act, 1932 does not make the registration of firms compulsory nor does it impose any penalty for non-registration.

Following are consequences of Non-registration of Partnership Firms in India:

The Indian Partnership Act, 1932 does not make the registration of firms compulsory nor does it impose any penalty for non-registration. However, under Section 69, non-registration of partnership gives rise to a number of disabilities which we shall presently discuss. Although registration of firms is not compulsory, yet the consequences or disabilities of non-registration have a persuasive pressure for their registration. These disabilities briefly are as follows:

- (i) **No suit in a civil court by firm or other co-partners against third party:** The firm or any other person on its behalf cannot bring an action against the third

party for breach of contract entered into by the firm, unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm. In other words, a registered firm can only file a suit against a third party and the persons suing have been in the register of firms as partners in the firm

- (ii) **No relief to partners for set-off of claim:** If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off, if the suit be valued for more than ` 100 or pursue other proceedings to enforce the rights arising from any contract.
- (iii) **Aggrieved partner cannot bring legal action against other partner or the firm:** A partner of an unregistered firm (or any other person on his behalf) is precluded from bringing legal action against the firm or any person alleged to be or to have been a partner in the firm. But, such a person may sue for dissolution of the firm or for accounts and realization of his share in the firm's property where the firm is dissolved.
- (iv) **Third party can sue the firm:** In case of an unregistered firm, an action can be brought against the firm by a third party.

4. (i) **A filed a suit against B who had stolen the goods of the firm:**

The said suit by A is Maintainable.

Justification: According to Section 69(1) of the Indian Partnership Act, 1932, a partner of an unregistered firm cannot file a suit in any court against the firm or any partner to enforce a right arising from a contract, unless the firm is registered. Section 69 only bars civil suits to enforce contractual rights. It does not prevent criminal action. But, in this case, A had filed a suit against B for stealing the goods of the firm which is a criminal offense.

Hence the suit filed against B for the theft of the goods of the firm, is maintainable.

(ii) **A filed a suit against M/s. ABC & Associates for claiming share of the assets on its dissolution**

The said suit by A is Maintainable.

Justification: According to Section 69(3) of the Indian Partnership Act, 1932, a partner of an unregistered firm is precluded from bringing legal action against the firm. But such a person may sue for realization of his share in the firm's property where the firm is dissolved. Here, A's claim is valid as the shares are

the assets of the dissolved firm and A can claim it even if the firm is unregistered.

- (iii) **M filed a suit against the firm for recovery of ₹10,000/- dues. M also owed ₹4,000/-. The firm claimed a set-off.**

The said suit by M is Maintainable

Justification: According to Section 69(2) of the Indian Partnership Act, 1932, in case of an unregistered firm, an action can be brought against the firm by a third party. If an action is brought against the firm by a third party, then neither the firm nor the partner can claim any set-off, if the suit be valued for more than ₹ 100 or pursue other proceedings to enforce the rights arising from any contract.

Here, M filed a suit against the firm for the recovery of ₹10,000 dues from the firm. M also owed ₹4,000/- to the firm.

The firm cannot set-off the claim of ₹4,000/- as it is more than ₹100/. – Nevertheless, M is entitled for recovery of ₹ 10,000 from firm.

Case Scenarios for Practice

1. M/s Star Traders consisted of partners Amit, Bharat and Charan. On 1st April 2026, Charan retired from the firm by mutual consent. However, no public notice of his retirement was given and his name continued to appear on the firm's signboard and invoices. Believing Charan to be a continuing partner, Zenith Suppliers supplied goods worth ₹ 10 lakh on credit to the firm. The firm failed to pay the amount, and Zenith sought to recover the dues from Charan. On the basis of above facts and taking into account the applicable provisions of the Indian Partnership Act, 1932, answer the following Multiple-Choice Questions:

Multiple Choice Questions

- 1.1 Which of the following is the strongest legal basis on which Zenith Suppliers can hold Charan liable?
- (a) Retirement is ineffective unless the partnership deed is amended.
 - (b) Charan's retirement is invalid as his name continued on the firm's signboard.
 - (c) No public notice of retirement was given and Zenith had no knowledge of the retirement.
 - (d) Every retired partner remains liable for all future debts of the firm.
- 1.2 Assume that before supplying the goods, Zenith Suppliers had received an e-mail from Charan informing them about his retirement, although no public notice was issued. In such a case:
- (a) Charan would still be liable because public notice is mandatory.
 - (b) Charan would not be liable as Zenith had actual knowledge of his retirement.
 - (c) Charan would be liable only to the extent of his capital contribution.
 - (d) The transaction would become void.
- 1.3 The requirement of public notice on retirement primarily protects the interests of:
- (a) The retiring partner only.
 - (b) Existing partners only.

- (c) Third parties dealing with the firm.
- (d) Registrar of Firms.

Answers to Multiple Choice Questions

Question No	Correct Option	Reasoning
1.1	(c)	Under Section 32(3), a retired partner continues to be liable to third parties who deal with the firm without notice of his retirement until a public notice is given.
1.2	(b)	The object of public notice is to protect persons unaware of the retirement. Where the third party has actual knowledge, the retired partner is not liable.
1.3	(c)	The statutory requirement is intended to protect third parties who may otherwise continue to deal with the firm under a mistaken belief.

2. M/s Orbit Technologies was a partnership firm consisting of Aman, Bhavesh and Chirag. While negotiating a supply contract on behalf of the firm, Aman secretly accepted a commission of ₹ 3 lakh from the supplier without informing the other partners. To secure quicker delivery, Aman also entered into an unauthorized arrangement that resulted in a penalty of ₹ 5 lakh being imposed on the firm by a statutory authority. The remaining partners demanded that Aman hand over the commission received and reimburse the firm for the penalty. On the basis of above facts and taking into account the applicable provisions of the Indian Partnership Act, 1932, answer the following Multiple-Choice Questions:

Multiple Choice Questions

- 2.1 Aman contends that the commission was paid by the supplier from its own funds and did not reduce the firm's profits. Which of the following is the most appropriate legal position?
- (a) Aman may retain the commission as the firm suffered no direct financial loss.
 - (b) Aman must account for the commission only if the partnership deed prohibits such payments.

- (c) Aman must account for the commission because it arose from a transaction of the firm.
- (d) Aman is required to share only one-third of the commission with the firm.
- 2.2 The penalty imposed on the firm resulted from Aman's deliberate concealment of mandatory regulatory requirements while negotiating the arrangement. Which remedy is available to the firm?
- (a) Recover only the penalty amount from Aman.
- (b) Recover only the secret commission.
- (c) Recover both the secret commission and the loss caused to the firm.
- (d) No remedy is available because Aman acted for the firm's benefit.
- 2.3 Suppose the ₹5 lakh penalty was imposed due to an inadvertent clerical error by Aman without any fraudulent intention. Which of the following is the correct legal position?
- (a) Aman must always reimburse the firm.
- (b) Aman is liable because every partner is responsible for all losses.
- (c) Aman may not be liable to reimburse the firm, as the loss was not caused by fraud.
- (d) Aman can retain the secret commission.

Answers to Multiple Choice Questions

Question No	Correct Option	Reasoning
2.1	(c)	A partner cannot retain any personal benefit obtained from a transaction of the firm without the consent of the other partners. Whether or not the firm suffered an immediate loss is immaterial.
2.2	(c)	Aman must account for the secret profit under Section 16 and indemnify the firm for losses caused by his fraudulent conduct under Section 10.
2.3	(c)	A partner is required to indemnify the firm only for losses caused by fraud, and not merely for an honest mistake.

3. M/s Apex Chemicals, a partnership firm consisting of Anil, Bharat and Chirag, decided to dissolve the firm due to continuous losses. On dissolution, all the firm's assets were realised and the sale proceeds, together with the available cash, amounted to ₹48 lakh. The firm owed ₹35 lakh to outside creditors, had a loan of ₹5 lakh from Bharat, and the partners' capital balances remained unpaid. During settlement, a dispute arose regarding the order in which the available funds should be applied. On the basis of above facts and taking into account the applicable provisions of the Indian Partnership Act, 1932, answer the following Multiple-Choice Questions:

Multiple Choice Questions

- 3.1 After meeting the expenses of realisation, the available funds should first be applied towards:
- (a) Repayment of partners' capital.
 - (b) Repayment of loans advanced by partners.
 - (c) Payment of outside creditors.
 - (d) Distribution among partners in their profit-sharing ratio.
- 3.2 After paying the outside creditors, the next claim to be satisfied out of the remaining amount is:
- (a) Partners' capital contributions.
 - (b) Partners' loans to the firm.
 - (c) Distribution of profits.
 - (d) Goodwill of the firm.
- 3.3 If the realised amount is insufficient to repay the partners' capital in full, the deficiency will generally be borne by the partners:
- (a) Equally.
 - (b) In their capital ratio.
 - (c) In their profit-sharing ratio.
 - (d) By the managing partner alone.

Answers to Multiple Choice Questions

Question No	Correct Option	Reasoning
3.1	(c)	(Section 48): On dissolution, after payment of realisation expenses, outside creditors are paid first, before repayment of partners' loans or capital.
3.2	(b)	(Section 48): After outside creditors are paid, loans or advances made by partners to the firm are repaid before returning capital.
3.3	(c)	(Section 48): Losses, including deficiencies of capital, are ultimately borne by the partners in the agreed profit-sharing ratio, unless otherwise agreed