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| Course Name | LL.B 2nd sem |
| Subject | Special Contract Law |
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| Concept | Rights and Duties of Partners |

Rights and Duties of Partners in Partnership Act 1932

Meaning of partnership – Partnership is an association of persons with the object of jointly doing something to make a profit. In other words, when two or more persons, with the object of making a profit, agree to do business jointly it is deemed that a partnership has come into existence.

Definitions of Partnership

- “Partnership is an agreement between persons having contractual capacity to carry on a business in common with a view to private gain.” – **L.H. Haney**
- According to **John A. Shubin**, “Two or more individuals may form a partnership by making a written or oral agreement that they will jointly assume full responsibility for the conduct of a business.”
- The US Partnership Act defines partnership as “an association of two or more persons to carry on, as co-owners, a business for profit.”
- According to Section 4 of the Indian Partnership Act, “Partnership is a relation between persons who have agreed to share the profits of a business carried on by all, or any of them acting for all.”

On the basis of the above definitions, it can be said that a partnership is a group of two or more persons who make a contract among themselves to do some activity, invest money and provide personal services and share the profit or loss resulting from such activity.

Rights of Partners

- (1) **Right to take part in the conduct of business:** Each partner has the right to participate in the conduct of the business of partnership. It is also possible that a partner might only invest money in the business and give the right to conduct the business to other partners. It does not, in this case, imply that, once the partner gives the right to conduct the business to other partners, he cannot later take part in the conduct of business himself. It is essential that a partner has the right to participate in the conduct of his business, whether or not he exercises such right. -**Section 12(a)**
- (2) **Right to express opinion :**
In case there is a disagreement on a business-related issue in the normal course of business, it is settled by a consensus among the partners. But, before a consensus is reached, each partner has the right to express his opinion. If the matter is important and is likely to affect the policy or profitability of the business, a consensus amongst partners assumes added importance, and their agreement. -**Section 12(c)**
- (3) **Right of access to accounts:** Every partner has the right to access the books of account of the firm, examine the books and take a copy of any account.
- (4) **Right to share in profit:** Every partner is entitled to share in the profit of the firm equally. Different proportions can be stipulated in the partnership deed. -**Section 13(b)**
- (5) **Interest on capital:** No partner has the right to get interest on the capital invested by him in the firm. But if any interest is paid to the partners by agreement, it is only payable out of the profits of the firm -**Section 13(c)**
- (6) **Right to interest on additional capital or loan:** If a partner has invested more than his share of the capital, or has advanced any money as a loan to the firm, he has the right to get interest on the additional capital or loan to the firm at the rate agreed upon. If no rate of interest has

been agreed upon, the partner has a right to receive interest at the rate of six percent. **-Section 13(d)**

- (7) **Right to indemnity:** If a partner, in the normal course of business, or in an emergency with the intention of protecting the firm from any loss, has done some act that a person of normal intelligence would do to protect his interest, and has incurred some expense or taken on some obligation, he has the right to be indemnified by the firm for such act. **Section 13(e)**
- (8) **Right in the firm's property:** As a rule, each partner is a joint owner of the firm's property and, unless there is an agreement to the contrary, each partner is presumed to have an equal share. Such property includes all property purchased with firm's money, and is used exclusively for the conduct of the firm's business.
- (9) **Right to leave the firm:** Every partner has the right to leave the firm with the consent of other partners. In a partnership at will, a partner has only to give a notice of his intention and leave the firm.
- (10) **Right not to be expelled:** Every partner has the right to continue to be in the partnership and not to be expelled from it by the consensus of other partners unless there is no charge of his having committed a breach of good faith.
- (11) **Right to do competitive business:** Except in circumstance listed in Section 36(1), an outgoing partner has the right to carry on a competing business. **-Section (36)**
- (12) **Right to share in profits after retirement:** If the outgoing partner's account with the firm has not been cleared and the firm owes him money or is using his assets in its business, the outgoing partner or his legal representative is entitled to a share in the profit earned with the aid of such assets, or interest at the rate of six percent. **-Section (37)**

Duties of Partners

- (1) **To work for maximum common interest:** Mutual interest is the cornerstone of a partnership. It, therefore, becomes the duty of a partner to conduct the business of partnership for the maximum common interest of the partners. **-Section 9**
- (2) **To be faithful to other partners:** Every partner owes it to himself to be just and faithful to other partners. **-Section 9**
- (3) **To give correct accounts:** It is the duty of partners to render true or correct account to the partnership firm. It is also his duty to let the other partners inspect such accounts and take copies, if they so desire. **-Section 9**
- (4) **To give correct information:** Each partner is an agent of the other, and as such, is obliged to give correct and full information to the other partners about the conduct of the firm's business. **-Section 9**
- (5) **To indemnify for fraud:** If the firm or any partner thereof is put to a loss on account of fraud by a partner in the conduct of the firm's business, the liability of the partner who has committed such fraud is absolute, and he is bound by law to compensate the firm or the partner for such loss. **-Section 10**

Besides Sections 9 and 10, according to Section 11, all the partners of a firm are free to sort out their relations by mutual agreement. The Partnership Act also defines some additional obligations of a partner which are briefly discussed in what follows.

- **To work diligently:** Each partner is expected to work diligently in the conduct of the firm's business. **-Section 12**

- **To work without remuneration:** Unless there is an agreement to the contrary, a partner is duty-bound to work without remuneration in conducting the business of the partnership firm. –**Section 13(a)**
- **To share the loss:** Just as the partners have a right to share the profit of a business they also have an obligation to share the loss equally or as defined in the partnership agreement. – **Section 13(b)**
- **To compensate for wilful negligence:** If a partner has been wilfully or deliberately negligent in the conduct of the firm’s business as a result of which the firm has been put to loss, it is the duty of the partner to compensate the firm for such loss. **Section 13(f)**
- **To use firm’s property for the firm:** It is duty of every partner to use the firm’s property only for such acts that he performs on behalf of the firm, and not make use of the firm, the property for his personal benefit. . -**Section 15**
- **To give account of personal profit:** If a partner has earned any secret profit by using the name of the firm, it is his duty to return such profit to the firm. **Section 16**
- **To give an account of profit from a competing business:** According to the Indian Contract Act, all contracts that aim to disrupt a business are void, and the partners are committed not to enter into a competing business so long as they are in the firm as partners. But a partner has the right to do such business on the termination or expiry of the partnership. If a partner does competing business while being a partner, it is his duty to give an account of the profit from such business to the firm. -**Section 16(b)**
- **Not to transfer rights and interests:** Partnership is based on trust and good faith and a partner is selected on that criterion. A partner, therefore, does not have the right to transfer his rights and interests to another person without the consent of other partners. -**Section 29(b)**
- **To work within his authority:** Every partner must do such acts that are within his authority. He must not go beyond his authority to do any act.
- **To maintain secrecy:** It is the duty of the partner to keep the trade secrets of the firm intact so that the competitors do not take advantage of the firm’s potential capacity to do business.
- **To act in an emergency:** It is the duty of a partner to act in an emergency to protect the interest of the firm as a person of normal intelligence would act to protect his interests.