

LECTURE IV

RELATIONS OF PARTNERS TO ONE ANOTHER

A. **General duties of the partners.**I. *The partners to be 'just and faithful' to each other.*

Good faith amongst partners necessary. Duties of the partners under the Roman Law, under the *Smritis* and under the Mahomedan law. The rule in the Partnership Act if directory or mandatory - relevant rules of interpretation. Rules if applicable to choice, retirement and expulsion of partners and enforceable by dissolution of partnership or otherwise.

Fraud and misrepresentation in the partnership contract.

Effect of fraud on a contract of partnership¹—procedure for avoiding a contract of partnership on the grounds of fraud and misrepresentation—partnership contract if to be rescinded *in toto* or in part². Contract of partnership induced by fraud voidable or null and void³.

Effect of acquiescence on a partnership⁴. Contract induced by fraud and misrepresentation.

Necessity of perfect good faith and bonafides for continuance of partnership.

Expulsion of a partner on ground of bad faith,—observance of good faith even in expulsion.⁵

(1) *Bagot v. Easton* (1877) 7 Ch. 1.

(2) *Urquhart v. Mc Pherson* 3 A. C. 831.

(3) *United Shoe Machinery Co. of Canada v. Brunah* (1909) A. C. 339.

(4) *Rawlins v. Wickham* 1 Giff. 355.

(5) *Blisset v. Daniel* 10 Hare 493.

Good faith in the matter of retirement of partners—necessity of this rule. If same rule applicable to English and Indian partnership¹.

Remedy for fraud by a partner in the conduct of business—remedy for unjust treatment and breach of trust by a partner.

II. *Full information and true accounts to be given—*

*Full disclosure to be made when demanded.*² Right of other partners to surcharge and falsify in case of non-production or concealment of accounts³.

III. *Proper and necessary accounts are to be kept regularly.*

- (a) System of book-keeping in business firms. Form of ledger—cash-book—purchase and sale books and P. L. account.

Entry of receipts and payments—interest on drawings, capital and advances—salaries of partners—apportionment of capital, drawings of partners, remuneration of partners and division of profits. Balance sheet—“Rest in partnership account”—opening and closing of the account books of a firm in case of purchase of an existing business—purchase of good will, admission of a new partner with premium or without it. How to be entered.

IV. *Business of the firm to be carried on to the greatest common advantage*⁴.

- (a) Greatest common advantage—distribution of business, co-ordination of the works discussing and settling of schemes and lines of action.

Advantage, if material gain—“Common to all partners”—greater advantage of one if to be discarded.

- (b) Diligence of partners to attend to the conduct of business with diligence and use skill and care expected—measure of diligence—exception in favour of dormant partners⁵. Liability of partners for wilful neglect⁶.

(1) *Law v. Law* (1905) 1 Ch. 140 ; *Blisset v. Daniel* 10 Hare 522 ; *Tribble v. Goldberg* (1906) A. C. 494 and *Kurundalammal v. Kunhi* 1930 Mad. 141.
 (2) *Imperial Mercantile Credit Association v. Coleman* 29 L. T. 1 and *Brunson v. Brunson* 1925 Mad. 360.
 (3) *Dwarka v. Haji* 18 C.W.N. 1025.
 (4) *Abdul Latif v. Gopeswar* 56 C. L. J. 172 at p. 180.
 (5) *Cragg v. Ford* (1842) IV. & C. 280 ; *Sasti v. Manglevinda* 1919 Pat. 419 at p. 422.
 (6) *Ex parte Letts and Steer* 26. L. T. Ch. 455.

B. Rights of partners.

I (a) *Partner's right to take part in the business*¹.

If this right may be waived—Lindley's views—difference between dormant and active partners—Limited Partnership Act 1907 (English)—distinction between the position of a dormant partner under the Indian Act and English Limited Partnership Act and partnership laws of other countries.

II. *Right of partners to have access to account books.*

Inspection of account books². Inspection by agents if allowable—improper use of information from a/c books, how to be prevented³.

Mutual rights and duties of partners how determined—(a) by agreement—(b) by law—precedence of law over contract—the principle of no estoppel against statute—statutory right if and when can be given up by agreement⁴.

Difference between express agreement and that implied by a course of dealing—practice of the firm if evidence of consent or agreement.

Variation of contract with the consent of all the partners—course of dealing when proof of variation in the absence of a written consent.

Agreement in restraint of trade between partners when valid⁵.

III. *Remuneration for partners for special services*⁶—active partners if entitled to remuneration.

IV. *Equality of shares of the partners in the profits and losses*⁷.

Shares if may be varied by agreement⁸. Shares in case of inequality of capital contributed—Underhill's view.

If losses can be borne by one partner only⁹—if shares in losses may be different from the shares in the profits¹⁰. Variation by agreement if legal¹¹.

(1) *Peacock v. Peacock* 16 Ves. 51.

(2) *Bevan v. Webb* (1901) 2 Ch. 59.

(3) *Dodd v. Amalgamated Marine & Co. Union* (1924) 1 Ch. 116.

(4) *Khagendra v. Soshi* 47 C. L. J. 464.

(5) *Oakes & Co. v. Jackson & anr* I. L. R. 1 Mad. 134 and *Atwood v. Lamont* (1920) 3. K. B. 571.

(6) *Hassanand Jethanand v. Bassarmal* 108 I. C. 724.

(7) *Jadob v. Balaram* I. L. R. 26 Cal; *Re Albion Life Assurance Society* (1880) 16 Ch. D. 83.

(8) *Beejan v. Yotin* 8 I. C. 431.

(9) *Mair v. Glenzie* 4 M. and S 240.

(10) *Sutton v. Grey* 1 Q. B. 285.

(11) *Bond v. Pittard* 3 M. N. W. 357.

Common stock, joint capital or joint stock, if essential for partnership¹. Partnership in profits, if partnership in assets².

What are profits and gross returns—if partners can agree as to what should be considered as profits³.—how actual calculation of profits made⁴.

V. *Partner's right to interest*

- (a) on the capital subscribed,
- (b) on advances made.

Preference between a creditor and a partner regarding interest.

Rate of interest. Difference between rate of interest in India and U. K.—statutory rate if may be varied by agreement. Agreement to pay different rate if inferrable from trade custom and course of dealing.

VI. *Partner's right to indemnity against the firm—*

For payments and liabilities incurred for the conduct of business⁵. Items chargeable—measure of liability when limited by agreement⁶.

Right to indemnity to be lost

- (a) by fraud or culpable negligence⁷,
- (b) by latches⁸,
- (c) in case of bankruptcy of the partner entitled thereto⁹.

Re-imburement for payments made for protection of the firm. Power of the partner for provision in emergency¹⁰. Cases.

Assignment of the right of indemnity.

VIII. *Rights of partners to meet and discuss matters connected with the business—opinion of majority when to prevail—the minority—their remedy¹¹—demand for closure¹²—difficulty in case of a firm of two partners. Change in the nature of business—unanimity of all partners when necessary.*

C. Partnership property.

Property of the firm.

- (i) Property of firm includes
 - (a) original stock of the firm,

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- (1) *Fromont v. Complana* (1824) 2 Bing 170.
 - (2) *Abdul Latif v. Gopeswar* 56 C. L. J. 172 at p. 180.
 - (3) *Watson v. Haggit* (1928) A. C. 127.
 - (4) *Re Spanish Prospecting Co.* (1910) 1 Ch. 92, 98.
 - (5) *Burdon v. Barkus* 8 Jar 656.
 - (6) *British Dominions General Ins. Co. v. Duder* (1915) 2 K. B. 394.
 - (7) *Re Webb* (1818) 20 R. R. 520.
 - (8) *West v. Skip* (1849) 1 Ves. Sen. 239.
 - (9) *Ex parte the Governor of St. Thomas's Hospital* (1911) 2 K. B. 705.
 - (10) *Ex parte Chippendale* 102. R. R. 7.
 - (11) *Const. v. Harris* (1824) Turn & R. 496, 525.
 - (12) *Wall v. London & N. A Corporation* (1898) 2 Ch.

(b) Subsequent acquisition¹.

(c) Good-will².

As to meaning of property³.

(ii) *Benami in case of partnership property*—purchase of a property in the name of one partner when partnership property.⁴ A ship or a taxicab registered in the name of the partner—position of the firm in respect of the taxi-cab and the ship⁵.

(iii) *Effect of conversion of partnership property into separate property of partners and vice-versa*

(a) by agreement⁶

(b) in the ordinary course of business⁷.

Evidence of conversion.⁸ Improvement of partnership property by a partner or *vice-versa* if could be charged⁹.

Presumption in case of partnership property—rebuttal of the presumption. Test of partnership property¹⁰.

D. Rights and liabilities of partners in respect of partnership property.

(i) *Partnership property to be employed for private purpose of a partner with the consent of all partners.* Liability of partners in case of such user without their consent.

(ii) *Personal profits earned by a partner from any transaction of the firm to be accounted for*¹¹.

(iii) *Profits derived by a partner from the use of partnership property when payable to the firm*¹².

(iv) *Profits derived by a partner by the use of any information obtained by him from the business connection with firm if accountable*¹³.

Difference between the position of a partner and a mere agent¹⁴. Exception to the rule¹⁵. Information used for a business of a really different nature—if the rule applies.

(1) *Amirchand & ors. v. Jawahermal & ors* 32. I. C. 853.

(2) *Ramkrishna v. Mathuswami* 52 Mad. 672.

Suleman v. Hazi 34 C. W. N. 737 P. C.

(3) *Tussar Kanti Ghose & Tarit Kanti Ghose* LXVII C. L. J. 397.

(4) *Helmore v. Smith* 35 Ch. D. 436.

Exparte Connell 3 Deac. 201.

(5) *Hughes v. Sutherland* 7 Q. B. D. 160.

(6) *Exparte Rowlandson v. Rose* 416.

(7) *Bolton v. Puller* 1 Bos & P. 539.

(8) *Peacock v. Carter* (1912) 1 Ch. 663.

(9) *Re Streatfield, Lawrence & Company* 4 L. T. 601.

(10) *Steward v. Blakeway* L. R. 6 Eq. 479.

(11) *Bentley v. Craven* 104 R. R. 373.

(12) *Burton v. Woekey* 6 Madd. 367 and *Clegg v. Fishwick* 84 R. R. 61.

(13) *Aas v. Benham* (1891) 2 Ch. 244.

(14) *Trego v. Hunt* (1895) 1 Ch. 462 at p. 466 and (1896) A. C. 26.

(15) *Pulin v. Mohendra* 34 C. L. J. 405.

(v) *One partner using the firm name in his private trade—remedy of other partners*¹.

(vi) *A partner carrying on business in rivalry with that of the firm—remedy*². Accountability—exceptions

- (a) in case of consent of all partners,
- (b) in case of a business of a *different* nature³,
- (c) in case of business of the *same* nature but not competing⁴.

(vii) *Whole-time partner starting another business*⁵—remedy⁶,

- (a) damage,
- (b) injunction.

E. Rights and duties of the partners after a change in the constitution of the firm⁷—

How to be determined ; in the absence of a change in the articles of partnership or a new covenant if the old terms continue.

Position of the firm in case of change under the Contract Act and the English Partnership Act. Change in the original agreement—onus of proof and mode of proof⁸.

F. Business Continued after the expiry of the term of partnership.

Rights and duties of partners how determined⁹ Presumption¹⁰—how rebutted.

G. Partnership Constituted for one or more adventures but Continued after completion thereof.

Terms of continuance. Presumption—mode of rebutting the same. Continuity of the firm under the new Act. Analogous law.

H. Lien of the heirs of a deceased partner on the partnership assets¹¹.

Nature of the lien¹²—when enforceable against transferees—*bonafide* transferees protected¹³—right of the surviving partners for disposal of partnership assets—lien how may be lost.

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- (1) *England v. Carling* 68 R. R. 39.
 - (2) *Muntas v. Kasimahi* 11 A. L. J. 423.
 - (3) *Putni v. Mohendra* 34 C. L. J. 405.
 - (4) *Aas v. Benham* (1891) 2 Ch. 244.
 - (5) *Kirchner & Co. v. Grubau* (1909) 1 Ch. 413.
 - (6) *Whitewood Chemical Co. v. Hardman* (1891) 2 Ch. 417.
 - (7) *Braham v. Beachim* (1878) 7 Ch. D. 848.
 - (8) *King v. Chuck* 17 Beav. 325.
 - (9) *Cox v. Willoughby* (1880) 13 Ch. D. 863.
 - (10) *Watson v. Haggit* 47 C. L. J. 295 P. C. ; *Neilson v. Mossend Iron Co.* (1886) 11 A. C. 298
 - (11) *Babu alias Gobindoss v. Official Assignee of Madras* 60 C. L. J. 50 P.C.
 - (12) *Bourne v. Bourne* (1906) 2 Ch. 427, 432 and applicability of the principle in *re Langmead's Trust* (1855) 20 Beav. 20.
 - (13) *Hugh Stevenson and Sons v. Aktiengesellschaft* (1918) A. C. 239 245.