

## LECTURE V

### RELATIONS OF PARTNERS TO THIRD PARTIES

#### Agency of the partners

Each partner a principal and an agent of the firm—origin of the rule in *Cox. v. Hickman*. Difference between the English and Indian Acts—limit of the agency<sup>1</sup>.

#### A. Implied authority of the partners<sup>2</sup>.

*History of the growth of implied authority in the English and the Indian Law*—Extent of implied authority under the I. P. A. 1932. This authority may be extended or curtailed<sup>3</sup>—

(a) by agreement,

(b) by custom or usage of trade<sup>4</sup>—custom and usages if implied in the agreement<sup>5</sup>. Restriction on the implied authority to be made known to third party<sup>6</sup>. Publication, how to be made<sup>7</sup>. Onus<sup>8</sup> (s. 20).

#### I. Implied authority of a partner extends to

(i) Making payments and giving discharge of debt<sup>9</sup>. Right of the son of a deceased partner.

(ii) Acknowledgment of a debt by a partner to save limitation<sup>10</sup>.

(iii) Signing and endorsing pronotes and bills of exchange<sup>11</sup>.

(iv) Borrowing in case of trading partnerships<sup>12</sup>.

(v) Mortgaging partnership property by managing partner to carry on business<sup>13</sup>.

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(1) *In re Riches* (1864) 4 De. G. J and S. 581, 585.

(2) *Case of Breillat* 6 Moo. P. C 152.

(3) *Cox v. Hickman* (1860) 10 East 264.

(4) *Williamson v. Johnson* (1813) 1 B and C 146.

(5) *Saremal v. Kapurchand* 48 Bom 176.

(6) *Matilal v. Unao Commercial Bank*.

(7) *M. R. P. R. S. Sannugantha v. K. Srinivasa* 40 Mad 727.

(8) *Pandiri Veeranna v. Grandi Veerabhadra Swami* 41 Mad 427.

(9) *Dewanchand Parmanand v. Ram Das-Uttam Chand* 1931 Lah 136.

(10) *Charry v. Pohomal* 50 Bom 665,672.

(11) *Ram v. Kasem* 28 G. W. N. 824 and *Rala Singh v. Babu Bhagwan Singh* and ors I. L. R. 2 Rang 367.

(12) *Moti Lal Manucha v. Unao Commercial Bank Ltd.* 1930 P. c. 238.

(13) *Jaffer Ali Bhaloo Lakha and ors v. The Standard Bank of South Africa Ltd.* 47 C. L. J. 292 P. C.

(vi) Power of sale and other powers<sup>1</sup>.

## II. *Implied authority does not extend to*

(a) Reference to arbitration<sup>2</sup>—without special authority<sup>3</sup>—English law<sup>4</sup>. American view—general restriction not necessary.

Validation by subsequent notification<sup>5</sup>. Effect of reference signed by managing member<sup>6</sup>.

Arbitration under 2nd Sch. C. P. C. and under the Arbitration Act.

(b) Opening of banking in the name of one of the partners<sup>7</sup>—when in the name of the firm, if letter of one of the partners binds the firm<sup>8</sup>.

(c) Compromise of suit<sup>9</sup>.

(d) Relinquishment of claim—without payment—does not hold as Lord Lindley holds. In the absence of fraud one partner can bind and release or submit to arbitration or compromise with express authority<sup>10</sup>.

(e) Withdrawal of suit<sup>11</sup>—as also execution of power of attorney for employing lawyers and attorneys.

(f) Admission of liability in a suit<sup>12</sup>.

(g) Purchase<sup>13</sup> or sale of immoveable property<sup>14</sup>—entering into leases also.

(h) “Entering into partnership on behalf of the firm.<sup>15</sup>”

(i) Payment by or to a partner when payment by or to the firm—partner giving release.

(j) Various other cases—

These statutory limitations apply in the absence of contract to the contrary. Distinction between actual and ostensible authority<sup>16</sup>.

- (1) *Bank of Australasia v. Breillat* (1847) 6 Moo. P. C. 193.
- (2) *Gopal Das v. Baij Nath* 48 All 239.
- (3) *Jaskaram v. Ramchand* 1934 Lah 434.
- (4) *Shead v. Salt* (1835) 3 Bing 101.
- (5) *Chandoorupunnayya v. Sri Venu Gopal Rice Factory Ltd.* 43 I. C. 508.
- (6) *Firm Bishambar Mal-Bala-mal v. The Firm Ganga Sahai-Nihal Chand* 71. I. C. 734.
- (7) *Alliance Bank v. Kearsby* 6 L. R. C. P. 433.
- (8) I. L. R. 56 Cal 556.—*Bengal National Bank Ltd. v. Jotindra Nath Mozumdar*.
- (9) *Crane v. Lewis* (1888) 36 W. R. 480.
- (10) *Halsbury* vol 22. p. 28.
- (11) *Furnival v. Western* 7 Moore (c. p. 356.
- (12) *Hambridge v. De La Croace* 3 C. B. 742.
- (13) *Bond v. Gibson* (1808) 1 Camp 185.
- (14) *Harrison v. Jackson* 7. T. R. 207.
- (15) *Singleton v. Knight* A. C. 788.
- (16) *Ahmedbhai v. Framji* 28 Bom. 226.

**III. Partner's authority in emergency<sup>1</sup>.****IV. Execution of instrument binding the firm<sup>2</sup>.**

Form of the signature to be made on behalf of the firm. If the law as stated in *Karmali v. Vora* (19 C.W.N. 337) and *Mohendra v. Labanya* (34 C.W.N. 796) and the Punjab Industrial Bank Ltd. *Lahore v. Mahomed Husain* (I. L. R. 15 Lah. 652) has been affected by the enactment of S. 22. I. P. A.

**V. Effect of notice to a partner.**

Effect of fraud committed by active partners upon other partners in the matter of notice<sup>3</sup>.

To whom notice should be given - effect of notice before partnership started—English and Indian Law.

**VI. Effect of admission or representation by a partner Concerning the affairs of the firm<sup>4</sup>.**

Whole statement and not a part can be used<sup>5</sup>.

An admission may be of small evidentiary value in view of the rest of the evidence<sup>6</sup>.

Admission, if conclusive proof<sup>7</sup>—of may be shown to be mistaken<sup>8</sup>.

**VII. Representation when operates as an estoppel<sup>9</sup>. liability of the firm for false and fraudulent representations of the partners<sup>10</sup>.****VIII. Admission when concerning the affairs of the firm in ordinary course of business<sup>11</sup>.****IX. Liability of the partners for the acts of the firm.**

Liability joint in England<sup>12</sup> while in India, Scotland and Continental Countries of Europe liability of partners is both joint and several. Effect

- (1) *Hawtayne v. Bourne* 56 R. R. 806.—principle if applicable to India. cf. S. 186 of Contract Act.
- (2) *Dutton v. Marsh* (1871) 6 Q. B. 361; *Emly v. Lye* 13 R. R. 347; *Bevan v. Lewis* 27 R. R. 205 and *Ram Chandra v. Kasem* 28 C.W.N. 824.
- (3) *Williamson v. Barbour* 9 Ch. D. 535; *Mara v. Brown* 1 Ch. 199 and *Rampal Sing v. Balvadra* 25 All. I. P. C.
- (4) *Brojo v. Akshoy* 30 C.W.N. 255 at p. 257-8; *Marsh v. Keating* 6 E. R. 1149.
- (5) *Bengal Coal Co. v. Prosanna* 54 C. L. J. 110 at p. 112.
- (6) *Sir C. C. Ghose v. Kumar Kamakhya* 35 C.W.N. 20 at p. 208.
- (7) S. 31 *Ind. Evidence Act*.
- (8) *Ridgway v. Phillip* 1 Cr. M. & R. 415.
- (9) *Re Coasters Ltd.* (1911) 1 Ch. 86.
- (10) *Hirst v. West Riding Union Banking Co.* (1901) 2 K. B. 560.
- (11) *Fergusson v. Elyfe* 54 R. R. 12.
- (12) *Kendal v. Horrilton* 41 L. T. 418.

of this rule if suit lies against one of the partners<sup>1</sup>. If suits in the firm name bind the partners.

The test for ascertaining liability and non-liability of the firm :

- (a) *Effect of decree against some of the partners—* if another suit for the balance maintainable against other partners<sup>2</sup>.

Distinction between joint and several liability and mere joint liability.

## X. "Acts of the Firm".

Introduced for the first time in I. P. A.

*Act includes*

- (a) Positive act.  
(b) Negative omission.  
General Clauses Act<sup>3</sup>.

*An act of the firm*

includes acts and omissions

- (i) by all partners,  
(ii) by one partner and  
(iii) by an agent of the firm having authority to do so.

Act giving rise to a right enforceable.

*Acts include*

- (1) Contracts,  
(2) Civil wrong or torts, and  
(3) Crimes.

*Rights include*

- (a) Civil and  
(b) Criminal

*Rights may arise out of*

- (i) Contract  
(ii) Tort.

Wrongful act or omission of a partner acting in the ordinary course of business of the firm, if an act of the firm within the definition.

Application of the money by a partner within his apparent authority if an act of the firm.

Misapplication of money by a partner, if so included.

Misapplication

bonafide and  
malafide,  
if included in the act of the firm.

- (1) *Narayana v. Lakshana* I. L. R. 21 Mad. 256 and *Id. Ismail v. Saidnada* (1927) Lah 819.  
(2) *Id. Askari v. Radha Ram* I. L. R. 22 All. 307, *Hemendra v. Rajendra* I. L. R. 3 Cal. 353, and *M/s. Mossele Solomon v. Martin & Co.* 39 C.W.N. 454.  
(3) General Clauses Act. X of 1897 S. 3 (2)

**XI. Contractual rights of the firm**

to be governed by the unrepealed provisions of I. C. A.

when not inconsistent with the express provisions of I. P. A.

*Rights include*

obligations and are unenforceable by and against a firm.

*Rights include inter-alia*

- (1) Lending and borrowing—
  - (a) release of debt<sup>1</sup>
  - (b) keeping alive of a debt under the Indian Limitation Act<sup>2</sup>.
- (2) Purchase and Sale of goods and other properties.
- (3) Mortgage, lease, exchange, pledge, hire and hire-purchase.
- (4) Payment and realisation of debts.
- (5) Payment and discharge of officers, servants, labourers and experts, sub-agents, factors etc.
- (6) Contracts of bailment.
- (7) Contracts for carriage of goods.
- (8) Other contracts.

*These rights are enforceable by*

- (i) specific performance
- (ii) rescission of contract
- (iii) compensation for breach of contracts
- (iv) repayment of money lent and payment of rent or hire agreed upon and price of things sold etc.

**XII. Liability of a firm for the acts of its agent.****XIII. Liability of the Firm for the acts of a Partner**

- (i) within implied authority
- (ii) and outside it.

**XIV. Liability of a Firm for the wrongful acts of a Partner.**

Liability of the partner for such acts whether joint or several.

Underhill's view on the liability of a firm for the torts of a partner. Similar law.

Extent of liability<sup>3</sup>.

- (a) *Things necessary to be proved for fastening liability on the other partners—*
  - (i) acting by the partner in the ordinary course of business of the firm<sup>4</sup> or

(1) *Krishna v. Tarak* 38 C.W.N. 545

(2) SS 19 and 20 of the Ind. Limit. Act.

(3) *Blyth v. Fladgate* 7 Ch. 337 and *Sherjan v. Alimuddy*

I. L. R. 43 Cal. 511.

(4) *Lloyd v. Grace, Smith & Co.* (1912) A. C. 716.

- (ii) with the authority of the other partners  
i.e. authority either express, or implied.

**XV. Loss or injury caused to the third party.**

(a) *Third party*—definition in I. P. A. Agents of the firm, if third party.

(b) *Injury if includes*

injury to person.

Compensation for injury under

- (i) The Fatal Accidents Act
- (ii) Workmen's Compensation Act and
- (iii) Ordinary Law
  - (a) Civil
  - (b) Criminal.

(c) *Loss or injury to property.*

Liability for the

- (i) torts of a partner<sup>1</sup>
- (ii) torts of an agent of the firm.

Principle of liability of joint tortfeasors, if applicable to the firm or partners.

Liability, if

- (i) joint and
- (ii) several.

Contribution amongst partners, if allowable. Two kinds of misapplication of property by a partner—

- (i) while not in the custody of the firm
- (ii) while in the custody of the firm.

**1. Liability for Misapplication of Property by a Partner while not in the Custody of the Firm.**

Liability of the firm for misapplication by partners<sup>2</sup>. Four elements need be proved to fix liability on other partners—

- (i) receiving the money or goods by a partner of the firm,
- (ii) receiving from a third party,
- (iii) receiving to be within his apparent authority, and
- (iv) misapplication by him.

(e) *Acting within his apparent authority.*

Apparent authority, if includes the authority exercised by

- (i) nominal partners,
- (ii) retired partners,
- (iii) expelled partners,
- (iv) insolvent partners,
- (v) dormant partners,

(3) *Kendall v. Hamilton* 41 L. T. 418.

(1) *Cleather v. Twisden* 28 Ch. D. 340.

**2. Liability for misapplication of money or goods while in the custody of the Firm.**

Things to be proved for such liability—

- (i) money or goods received in the ordinary course of business of the firm,
- (ii) receiving it from a third party,
- (iii) misapplication by any of the partners,
- (iv) while in the custody of the firm.

Liability of the firm for the money stolen or robbed from the car when sent to the banks for deposit.

**XVI. Holding out as a Partner<sup>1</sup>.**

Application of general principle by conduct<sup>2</sup>.

Principle of holding out—

(a) *Elements necessary for fastening liability on the Defendant—*

- (i) express declaration or indirect representation
- (ii) plaintiff to know of it, and
- (iii) believe in its truth, and
- (iv) to give credit upon the faith of that representation<sup>3</sup>.

(b) *Things necessary to be proved in case of holding out—*

- (1) representation that the defendant is a partner in a firm,
- (2) representation made
  - (i) by the defendant himself, or
  - (ii) by any other person
    - (a) within his knowledge or
    - (b) within his information, and in either case he does not contradict it, but allows the representation to go current and spread itself ;
- (3) representation reached the plaintiff,
- (4) he believed in the same,
- (5) he gave credit on that faith.

(c) *Representation how made.*

Representation may be made

- (i) by spoken words
- (ii) by written words, appearing in letters, advertisements, leaflets etc. (written in hand, printed, lithographed, typed etc.) or
- (iii) by conduct.

(1) *Sarat Chandra De v. Gopal Ch. Laha* 20 Cal. 296.

(2) *Furquarson Bros. & Co. v. King & Co.* (1902) A. C. 325  
and S. 115 Evidence Act.

(3) *Dickinson v. Walpy* 34 R. R. 348.

(d) *Non-liability when creditor is not misled*, that is  
 (i) when representation does not reach creditor<sup>1</sup>

(ii) if the creditor himself knew the representation to be false.

What facts constitute holding out is a question of fact and not a question of law—each case depends upon its own peculiar facts. Lindley's views.

(e) *Distinction between a case when others declare a person to be an undisclosed partner while himself denying it*<sup>2</sup>.

(f) *Representation to be made before credit given*<sup>3</sup>.

(g) *No liability in the absence of the knowledge of the representation*<sup>4</sup>.

Applicability of the doctrine enunciated in *Scraf v. Jardine*<sup>5</sup> in India—how to prove knowledge<sup>6</sup>.

(h) *Knowingly permitting himself to be represented as a partner*<sup>7</sup>.

(i) *Steps to be taken by a party to escape liability when he is falsely held out as a partner.*

Repudiation, if enough—  
 public advertisement or injunction  
 from court, if necessary<sup>8</sup>.

In such a case, if injunction may be granted<sup>9</sup>.

(j) *The principle of holding out is based upon the principle of agency*<sup>10</sup>.

Representation of an intention to be a partner not enough<sup>11</sup>.

(k) *Judgment against the firm in the firm-name if enforceable against nominal partners*<sup>12</sup>.

~~This~~ doctrine, if has application in case of not giving credit *e. g.* in case of Tort. Sir F. Pollock's view.

(m) *Effect of registration of firms upon the doctrine of holding out.*

Intimation to the Registrar under S. 63 I. P. A. of a retirement or expulsion of a partner

- (1) *Pott v. Eyton* 74 R. R. 271 and *Thomson v. First National Bank of Toledo* 4 Davis Sup. Cp. Rep. 531.
- (2) *Martyn v. Gray* 14 C. B. N. S. 824.
- (3) *Fox v. Clifton* 6 Bing. 776.
- (4) *Quarman v. Burnett* 55 R. R. 717.
- (5) *In re National Benefit Assurance Co. Ltd.* (1932) 2 Ch. 184.
- (6) *Scraf v. Jardine* (1882) 7 A. C. 345, 353, 364, 365.
- (7) *Collingwood v. Berkeley* 15 C. B. N. S. 145.
- (8) *Atkin v. Rose* (1923) 1 Ch. 522.
- (9) *Walter v. Ashton* (1902) 2 Ch. 282.
- (10) *Greenwood v. Martins Bank* 1932 W. N. 178 and *Maurice v. Morley* 29 C. W. N. 496.
- (11) *Bourne v. Freeth* 33 R. R. 275.
- (12) *Davis v. Hayman & Co.* (1903) 1 K. B. 854.



or of a dissolved partnership, or election of a minor partner not enough to escape liability.

Public notice under S. 72 necessary, exception in case of death of a partner.

Non-liability of his estate and legal representative.

(n) *Sub-partnership.*

Assignment made, mortgage or charge created by a partner is under certain disability but assignment not void<sup>1</sup>.

*Right of transferee*

- (a) to receive profits in the share of his transferor,
- (b) to sue for accounts after dissolution,
- (c) to receive his transferor's share of assets after dissolution.

*Disability of his assignee—*

- (i) He cannot inspect accounts,
- (ii) nor take part in the conduct of business,
- (iii) nor challenge accounts of profits settled by the partners,
- (iv) nor can sue for dissolution, except in America<sup>2</sup>.
- (d) *No partnership between assignee and other partners of the assignor except with the latter's consent<sup>3</sup>.*
- (e) *Assignment, if gives right to the other partners to sue for dissolution.*

Difference in the views of the different High Courts in India.

Effect of the new Act upon old decisions.

- (f) *Liability of assignee not permitted to act as a partner—*

Effect of Bankruptcy of the assignor after the transfer.

Right of the official Assignee or receiver in Bankruptcy against the assignee of a partner.

- (g) *Assignee of a partner admitted to partnership.*

Intimation to the Registrar of firms under section 63, if necessary.

Effect of a clause for assignment in the partnership articles.

- (1) *Juggat v. Radhanath* I. L. R. 10 Cal. 699 and *Marshal v. Maclure* 10 A. C. 325.
- (2) *Dhanji v. Golab Chand* 1925 Bom. 347 and *Emanuel v. Symon* (1907) 1 K. B. 241 and *Margrand v. New York Mfg. Co.* 17 Johns 525 (Amer.)
- (3) *Domaty v. Ramen* I. L. R. 27 Cal. 93.

## XVII. Minors admitted to the benefits of partnership.

- (a) *Minors under the Indian Majority Act IX of 1875.*

Wards under the Court of Wards if governed by S. 30 I. P. A.—boys between 18 and 21 for whose person and property a guardian was appointed but subsequently discharged, if governed by S. 30 I. P. A.

- (b) *Provisions of the Indian Contract Act how far applicable to partnership*<sup>1</sup>.

- (c) If a minor can be a partner of a firm by agreement with the guardian<sup>2</sup> under the Indian Law.

An infant, if can be a partner under the English Law<sup>3</sup>.

### I. Position of a minor partner.

- (i) A minor partner is at liberty to affirm or disaffirm past transactions before he comes of age or after it<sup>4</sup>.

#### *Exception—*

If a minor incurs liability by fraudulent representations as to age, creditors may be paid out of his estate<sup>5</sup>;

- (ii) an infant not liable for the *tort* of his co-partners ;  
 (iii) not liable for holding out except after he comes of age.

Change in the law since before 1890.

- (d) *Conditions necessary for admission of a minor to the benefits of partnership.*

- (i) A firm to be in existence before a minor can be admitted to the benefits of partnership<sup>6</sup>.  
 (ii) Consent of all partners necessary<sup>7</sup>.  
 (iii) Consent implied by a course of dealing by the partners<sup>8</sup>.

- (e) *Effect of admission of a minor to the benefits of partnership—*

- (i) so admitted he will not be a partner until he affirms after coming to age ;  
 (ii) his other properties will not be liable<sup>9</sup>;

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(1) *Nawab v. Jai Kishori* 32 C. W. N. 874 and *Mohori Bibi v. Dharmadas Ghose*.  
 (2) *A. Khorasany v. C. Acha* I. L. R. 6 Rang. 198.  
 (3) *Lovell & Christmas v. Beauchamp* (1894) A. C. 607.  
 (4) *Goode v. Harrison* 24 R. R. 307.  
 (5) *Md. Rafiq v. K. Qunar* 1922 Lah. 441.  
 (6) *R. Leslie Ltd. v. Sheill* (1914) 3 K. B. 607.  
 (7) *Lutchman v. Shibo Prokash* I. L. R. 26 Cal. 349.  
 (8) S. 11 I. P. A.  
 (9) *Inspector Sing v. Kharak Sing* (1928) All. 403.

- (iii) he will not be personally liable for any obligation of the firm<sup>1</sup>
  - (iv) change in the position of surviving partners when the minor's representatives of deceased partner is admitted to partnership<sup>2</sup>;
  - (v) if a minor so admitted can demand account before coming of age ;
  - (vi) minor, if can sever connection before coming of age ;
  - (vii) if there can be dissolution at the option of other partners during his minority.
- (f) *Onus of proof regarding admission of an infant to the benefits of partnership—*
- (i) evidence necessary to prove this point<sup>3</sup>
  - (ii) right of repudiation by such minor after coming of age<sup>4</sup>.

**XVIII. Election by a person admitted to the benefits of Partnership after coming of age—**

- (a) *time-limit—six months, to run from the date of his*
  - (i) attainment of majority
  - (ii) from the date of his knowledge, if he came to know of his rights afterwards.
- (b) *Notice to be given of his election—*
  - (i) notice to the Registrar of firms under Section 63 I. P. A.
  - (ii) public notice under S. 72 I. P. A.
- (c) *Effect of failure to give notice.*
- (d) *Onus of proving the date of knowledge of admission of the minor to the benefits of partnership.*
- (e) *His rights and liabilities on electing to become a partner.*
- (f) *His rights and liabilities on his not electing to be a partner.*
- (g) *Effect of holding out by a minor admitted to the benefits of partnership.*
- (h) *Obligation of other members of the firm by the borrowings of the minors admitted to the benefits of partnership for the purposes of the firm<sup>5</sup>.*
  - (i) **Right of the creditors supplying such loans against the firm and other partners,**

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- (1) *Harmohan v. Sudarsan* 25 C. W. N. 847 at P. 850.  
*Jaffer Ali Bhaloo Lakha v. Standard Bank of South Africa Ltd.* 47 C. L. J. 292 P. C.
  - (2) *Babu alias Govindoss v. Official Assignee Madras* 60 C. L. J. 50 P. C.
  - (3) *Sannyasi v. Krishna* I. L. R. 49 Cal 560 and *Govinda v. Official Assignee of Madras* I. L. R. 57 Mad. 931-39 C. W. N. 1018 P. C.
  - (4) *Inspector Sing v. Kharak Sing* (1928) All. 403.
  - (5) *Maung Aung Gyaw v. Haji Dada Shariff & Co.* 42 I. C. 98.

- (ii) rights of major partners making advances to such minors for the firm under Section 30 I. P. A.
- (i) *If a minor can be adjudged insolvent—*
  - (i) his interest in the firm how far bound when the firm is adjudged insolvent<sup>1</sup>.
- (j) *If the principle is applicable to minor members of joint-family trade inherited by the members or started by the manager for the time being<sup>2</sup>.*
- (k) In suits against partnership firm if personal decree is allowed against a minor<sup>3</sup>.