

LECTURE VII

DISSOLUTION AND WINDING UP OF THE AFFAIRS OF A FIRM

A. Modes of dissolution and winding up.

1. Voluntary dissolution and winding up of the business of the firm by the partners themselves known as voluntary dissolution.
2. Dissolution of a firm by arbitrators appointed to settle disputes between the partners
 - (i) in pursuance of partnership agreement,
 - (ii) by mutual consent.
3. Dissolution of partnership by Court known as compulsory dissolution⁴.

B. True Conception of dissolution.

1. Different kinds of dissolution--
 - (a) dissolution by agreement ;
 - (i) dissolution by consent of all partners.
Wayer of non-fulfilment of terms by mutual consent.
 - (ii) Dissolution in accordance with the contract between the partners.

(1) *Neel Comol v. Bipro* I. L. R. 28 Cal. 597.
 (2) *Pease v. Hewett* (1862) 31 Beav. 22.
 (3) *Bank of Scotland v. Christie* 54 R. R. 43.
 (4) *Anderson v. Anderson* 25 Beav. 190.

(b) Compulsory dissolution—

- (i) by adjudication of all the partners,
- (ii) by adjudication of all the partners, except one.
- (iii) by the happening of an event which makes it unlawful for the business of the firm to be carried on¹.
- (iv) When it becomes unlawful for the partners to carry it on with one or more of them.

Exceptions—

- (i) when a part of the business becomes illegal but the rest can be carried on lawfully ;
 - (ii) when one of the partners becomes an alien enemy² but the business can be carried on with the other members in partnership.
- (c) Dissolution on the happening of certain contingencies—
- (i) by efflux of time when partnership is constituted for a fixed term³.
 - (ii) by the completion of the adventures⁴ or undertakings when constituted to carry them out only,
 - (iii) by the death of a partner⁵—principle involved⁶,
 - (iv) by adjudication of a partner as an insolvent⁷.

Proviso—when there is an agreement between the partners to the contrary the firm will continue in each of the above cases⁸.

(d) Partnership at will dissolved by notice⁹
e.g. intimation of will to dissolve by filing plaint is enough¹⁰. Lunacy no bar to dissolution¹¹—notice cannot be withdrawn¹²—if may be prospective. Continuance after notice is for winding up only¹³.

-
- (1) *Esposito v. Bowden* (1857) 7 E. & B. 763.
 - (2) *Griswold v. Waddington* (1818) 15 Johns, 57.
 - (3) *Commissioner of Income Tax Madras v. Krishna Aiyar* 56 M. L. J. 151.
 - (4) *Mani Singh v. Dial Singh* 42 I. C. 459.
 - (5) *Abdul Huq v. Fumelari* 100 I. C. 616.
 - (6) *Maharaj Kishen v. Har Gobind* 101 P. R. 1914.
 - (7) *Crawsay v. Collins* 15 Vis 228.
 - (8) *Crawshay v. Maule* (1818) 1 Swan 395.
 - (9) *Pulin v. Mohendra* 34 C. L. J. 405.
 - (10) *Sathappa v. Subramanyan* 31 C. W. N. 857 P. C.
 - (11) *Mellersh v. Keen* 27 Beav. 236.
 - (12) *Jones v. Lloyd* 18 265.
 - (13) *Peacock v. Peacock* 16 Ves. 16.

C. Dissolution by the Court.

The Court may dissolve the firm on the following grounds :—

1. Insanity of the partners¹—temporary illness not sufficient².
2. Permanent³ incapacity of any of the partners—temporary insanity not sufficient⁴—question of incapacity of a dormant partner noticed.
3. Conduct prejudicial to partnership⁵.
4. Persistent and wilful breach of agreement and impracticability to carry on business together in partnership⁶—
 - (i) necessary conditions⁷,
 - (ii) where continuance of business is not advantageous and mutual confidence of partners is destroyed⁸,
 - (iii) continuance of business with advantage impracticable⁹,
 - (iv) falsification of accounts, constant wrangling, refusal of non-participation in matters of business and deep-rooted enmity¹⁰.

Exception - ill-temper and ordinary misconduct not enough¹¹.

5. Transfer of an entire interest by a partner to a third party.
6. Charging order on the share of a partner under order 21. r. 49 of the C. P. Code.
7. Sale of the share of a partner for land revenue or other dues recoverable as land revenue.
8. Inevitability of loss in business due to
 - (a) business working at a loss,
 - (b) refusal to supply capital by a partner¹²—stoppage of business if enough¹³,

- (1) *Williams v. Rowlands* 10 W. R. 186.
- (2) *Whitwell v. Arthur* 35 Beav. 150.
- (3) *Jones v. Noy* (1833) 2 My & K. 125, 129.
- (4) *Whitwell v. Arthur* (1865) 35 Beav. 140.
- (5) *Essell v. Hayward* (1860) 30 Beav. 158 ; *Charlton v. Poulter* (1753) 19 Ves. 148n
- (6) *Krishnamachariar v. Sankara Sah* 25 C. W. N. 314 P. C.
- (7) *Ram Singh v. Ram Chand* 57 I. C. 185.
- (8) *G. A. Mackenzie v. Himalaya Assurance Co.* 30 C. W. N. 440 ; *W. Krishnamachariar v. A Sankara Sah* 25 C. W. N. 314 P. C.
- (9) *Bailey v. Ford* (1843) 13 Sim. 495.
- (10) *Harrison v. Tennant* 21 Beav. 482 and *Afwood v. Maude* (1864) L. R. 3 Ch. 373.
- (11) *Goodman v. Whitecomb* 37 E. R. 492.
- (12) *Haramohah Poddar v. Sudarson Poddar* 25 C.W.N. 847.
- (13) *Sathappa Chetti v. Subramania* 3i C. W. N. 857 P. C.

- (c) refusal of the partners to advance requisite funds¹,
 - (d) other causes.
9. On other just and equitable grounds *e.g.*
- (a) marriage of a female partner,
 - (b) assignment of a share of a partner,
 - (c) other causes.

Nature of such grounds, if *ejusdem generis*. Remedy of a partner unfairly treated².

D. Persons who can sue for dissolution by Court³.

E. Courts which have jurisdiction to grant dissolution.

F. Date of dissolution⁴.

G. Notice of dissolution how to be given or published.

H. Liability to third parties—

- (i) when ceases after dissolution⁵,
 - (ii) when continues after dissolution⁶.
- (a) Change in the law by the new Act ;
 - (b) rule of estoppel if applicable⁷;
 - (c) when presumption of notice arises⁸.
 - (d) Notice not necessary in case of⁹
 - (i) the estate of a deceased partner,
 - (ii) the estate of a partner adjudicated insolvent,
 - (iii) the estate of an undisclosed partner retiring from business.
 - (e) Liability ceases in case of death, adjudication and retirement.

I. Winding up of business after dissolution—

- (i) implied authority of the partners how far and when continues after dissolution,
- (ii) continuing partner's right of dealing with and disposing of the assets—
 - (a) observance of good faith in exercise of the right¹⁰;

- (1) Jennings v. Beddeby 112 R. R. 42 and National Bolivian Navigation Co. v. Wilson 5 A. C. 176.
- (2) Bhut Nath v. Girish Chandra 11 C. W. N. 311.
- (3) Cowasjee v. Lallbhoy 1 Bom. 468, 474 P. C.
- (4) Abdullali Badriddin v. Ranchodlal Trikamlal 19 Bom. L. R. 86.
- (5) S. 63 and S. 72 I. P. A. 1932.
- (6) Bhaishankar Motiram v. Lakshmi Dyeing Works 129 I. C. 588.
- (7) Jagat Chandra v. Gunny Hajee 53 Cal. 214.
- (8) Kalaram v. The Punjab National Bank Ltd. 39 C. W. N. 412 at p. 415 P. C.
- (9) Vulliamy v. Noble 1 Mer. 529.
- (10) Govinda Das Krishna Das v. Official Assignee of Madras 38 C. W. N. 1018 P. C.

- (b) mortgages by continuing partner when not valid¹;
- (iii) appointment of receiver when necessary in course of winding up—
 - (a) grounds of appointment,
 - (b) a partner can be appointed receiver for winding up²,
 - (c) if receiver can be appointed when defendant opposes dissolution on the ground of illegality of partnership³.
- (iv) Injunction upon partners in course of dissolution when necessary—
 - (a) temporary injunction under or. 39. r. 1 & 2. C. P. Code.
 - (v) Liability of a firm for the acts of an insolvent partner.
 - (a) estoppel of partners by representation from disputing their liability for such acts.
 - (vi) Authority of solvent partners in the matter of disposal of partnership assets after adjudication of a partner⁴—
 - (a) rights of official assignee and receiver to the assets of an insolvent partner how to be exercised⁵.
 - (vii) Partner's right to give valid discharge of a debt due to partnership after dissolution.
 - (viii) Disposition of partnership property in course of dissolution—
 - (a) disposition in fraud of creditors ineffective,
 - (b) partner's lien subject to right of *bonafide* purchaser⁶.
 - (ix) Sale of partnership assets in course of dissolution—
 - (a) Good will and the firm name part of partnership assets⁷.

-
- (1) Hugh Stevenson and Sons Ltd. v. Atkiengesellschaft fur Cartonnagen Industrie (1918) A. C. 239.
 - (2) Radhakanta Pal v. Benode Behari Pal A. I. R. 1934 Cal. 444.
 - (3) Shephard v. Oxenford (1855) 103. R. R. 203.
 - (4) Fox v. Hanbury (1776) Cowp. ; Smith v. Oriell 1 East 368 ; also Babu Alias Gobindoo v. Gokuldas Govordhan Das 126 I. C. 97.
 - (5) *Exparte Mac Gae* 19 Ves. 606.
 - (6) *Re Langmead's Trusts*, 20 Beav. 20 ; *Babu v. Gokuldas* 57 M. L. J. 404.
 - (7) *Levy v. Walker* (1879) 10 Ch. D. 436, 445.

- (b) Unsaleable and valuable assets.
 - (i) Principle of dealing thereof¹.
 - (ii) Contracts for services when valuable assets².
- (c) Good will, book-debts and business if to be sold separately or in one lot.
- (d) Partners i^r allowed to bid³.
- (e) If a receiver can bid for himself without the permission of Court,
 - (i) legal consequence of such a purchase.
- (f) If valuation can be fixed by Court⁴—procedure in case of difference amongst partners.
- (x) Mode of settlement of account between partners⁵ in course of winding up.
 - (a) Profits and losses to be ascertained first of all—
 - (i) three modes of ascertainment according to Lord Lindley.
 - (ii) Mode of ascertainment of losses as followed by auditors and accountants.
 - (iii) Method to be followed in case of equality of loss but inequality of capital.
 - (iv) An express agreement as to the mode of periodical accounting if to be followed in case of final dissolution of business⁶.
 - (v) Deficiency of capital if to be treated as losses.
 - (vi) Losses how to be made up.
 - (vii) When partners to contribute.
 - (viii) Liability of solvent partners to the creditors for the share of the insolvent partner⁷.
- (xi) Mode of distribution of assets
 - (1) order of payment
 - (a) Creditors to be paid first of all.
 - (b) Order of priority amongst joint creditors of the firm and separate creditors of partner—
 - (i) debts of the firm to third parties,
 - (ii) dues of each partner for advances made over and above the capital supplied,
 - (a) payable rateably in case of deficiency of assets,
 - (b) interest on such advances.
 - (iii) Dues of each partner on account of capital
 - (a) rateably in case of deficiency
 - (iv) division of residue, if any, amongst the partners according to their agreed share,
 - (a) if the statutory rule can be varied by agreement.

(1) *Ambler v. Bolton* 14 Eq. 427 and *Wild v. Milner* 26 Beav. 504.

(2) *Bachubai v. Shamiji* (1885) 9 Bom. 536.

(3) *Dean v. Wilson* (1878) 10 Ch. D. 136.

(4) *Wood v. Scoles* L. R. I Ch. 369.

(5) *Shivagnanathamal v. Nallaparumal* 67 M. L. J. 880.

(6) *Bridgewater Navigated Co.* 2 Ch. 328.

(7) *Garner v. Murray* (1904) 1 Ch. 57, 60.

- (x) prior to dissolution.
 - (y) posterior to dissolution,
 - (v) right of a defrauded partner
 - (a) non-liability for the debts,
 - (b) lien for the premium and capital¹,
 - (c) if such partners stand in the shoes of creditors
 - (d) if entitled to all monies paid by him,
 - (e) profits received by him if to be credited,
 - (f) interest if allowable in either case,
 - (g) defrauded partner's right if lost when dissolution brought about
 1. by his misconduct²,
 2. by death of any of the partners,
 3. by disagreement between the partners³;
 - (h) right of refund if lost by agreement ;
 - (i) Court's discretion on the matter of refund and in the matter of settling the amount.
- VI. Return of premium on premature dissolution—
- (a) If a partner creditor can claim lien for the supply of premium to another partner as a loan⁴.
 - (b) Right of refund when lost.
- VII. Partners's lien upon the residue.
- (a) Partner's right of retention of such residue in his hands.
- VIII. Priority of joint creditor of the firm over the creditors of the individual partners in respect of partnership assets⁵.
- (a) If this distinction will apply to attaching creditors of a dissolved firm.
 - (b) If the rule is limited to bankruptcy only.
 - (c) If it extends to payments obtained in execution.
 - (d) If it extends to payments made out of court.
 - (e) If section 25 I. P. A controlled by section 49 I. P. A in all cases.
 - (f) Consolidation of both joint debts of the firm and separate debts of the partners for purposes of administration by consent of all creditors if legal.
 - (g) Consequence of mistake in the payment of one kind of debt to a creditor of another category⁶.
 - (i) If refund can be ordered.

(1) Adam v. Newbeggings 13 A. C. 308.

(2) Bluck v. Capstick 12 Ch. D 863.

(3) Atwood v. Maude 3 Ch. 369.

(4) Basheshar v. Shibba I. L. R 15 Lah 474.

(5) Dwaraka Das Marwari v. Jadab Chandra Ganguly 28 C. W. N. 704 at p 709.

(6) Re Hinds and Sons I. L. R (Ir.) 23 Ch. D 217.

- (ii) If the creditor concerned is to be recouped from another fund.
- (h) Administration of the separate property of a partner for the purpose of winding up of the firm in case of deficiency of partnership assets.

I. Distribution of profits acquired after dissolution.

1. Property acquired and profits earned in the business before final decree if to be deemed partnership assets¹.
2. Profits made by sale of goods ordered before dissolution but received after it².
3. Applicability of section 16(a) I. P. A to the profits up to the complete winding up.
Exception—(a) Partners not liable to account if the profits made be not attributable to the share of the assets of the deceased³.
4. Use of the firm-name and partnership property by a partner during pendency of dissolution proceedings
 - (a) with consent of other partners,
 - (b) without the consent of other partners ;
 - (i) right of other partners to restrain user by injunction,
 - (ii) their right to claim account of such profits,
 - (iii) utility of such restraint.

Exception in case of a purchase of good will.

K. Rights of the partner injured by fraud to rescission of partnership.

Right when lost—

- (a) by acquiescence,
 - (b) by estoppel by conduct,
 - (c) by misconduct.
1. Mutual rights of partners on rescission.
 2. Mutual rights of a rescinding partner and creditors of the firm.

L. Agreements in restraint of trade made by partners upon or in anticipation of dissolution of firm—

1. when binding,
2. when not binding,
3. applicability of sec. 27 I.C.A. to such agreements,
4. restraint in respect of area and time if to be definitely settled⁴,
5. reasonableness of the agreement determinable by the court.

(1) Haji Hedayetulla v. Mahomed Kamil and ors 1924 P. C. 93
 (2) Janki Pershad v. Someshar Pershad. 74 I. C. 324.
 (3) Simpson v. Chapman 102 R. R. 61 and Pulin Behari Ray & ors v. Mohendra Chandra Ghose & ors. 34 C. L. J. 405.
 (4) Vernon v. Hallam (1886) 34 Ch. D 748, 751.

M. Rights of buyer and seller of good will¹.

1. Good will if included in the assets².
 - (a) if the right can be varied by agreement between the partners.
2. If good will can be sold separately or with other property.
3. If sale of good will prevents a partner from
 - (a) carrying on rival business,
 - (b) use of the firm name.
4. Representation as carrying on the same business and soliciting customers of the old firm to buy from the new business if can be restrained by injunction,
 - (a) rule of law on the subject if can be varied by agreement³.
5. Agreement in restraint of trade between a partner of the firm and buyer of good-will how far binding⁴.

LECTURE VIII**REGISTRATION OF FIRM****1. Appointment of Registrar of firm.**

- (a) Number of Registrars for each province and their jurisdiction.
- (b) Duties to be performed by Registrars.
- (c) Position of Registrars as public servants.
- (d) Exception from registration under order of the Governor-General-in-Council.
 - (i) order of the Governor-General-in-Council to be published in the Gazette of India.

-
- (1) Every affirmative advantage of a business is good-will *Cutwell v. Lye* 17 Ves 335 ; How good-will is generally valued *Von An vs. Magenhurimer* 115 App. Div. 84 ; *Page v. Ratcliffe* (1896) 75 L. T. R 371 ; when value of good-will is enhanced *Cooper v. Watson* (1784) 3 Doug. K. B. 413 *Kennedy v. Lee* 3 Mer. 441, 445 ; when good-will passes without express mention *Kingston, Miller & Co. v. Thomas Kingston and Co.* (1912) 1 Ch. 575 ; when good-will is not to be valued *Horden v. Horden* (1910) A. C. 465 P. C.
 - (2) *Trego v. Hunt* (1896) A. C. 7 ; *Dawson v. Beeson* (1882) 22 Ch. D 504 and *Boorne v. Wicker* (1927) 1Ch. 667.
 - (3) *Hall v. Barrows* (1863) 4 De. G. J. & Sm. 150 ; *Smith v. Nelson* (1905) 92 L. T. 313.
 - (4) *Chandra Kanta Das v. Parasullah Mullick* I. L. R. 48 Cal. 1030 P. C.