



**J.K. SHAH**<sup>®</sup>  
**TEST SERIES**  
Evaluate Learn Succeed

**SUGGESTED SOLUTION**

**CA FOUNDATION N'19 EXAM**

**SUBJECT- LAW**

**Test Code – CFN 9112**

**BRANCH - () (Date :)**

**Head Office : Shraddha, 3<sup>rd</sup> Floor, Near Chinai College, Andheri (E), Mumbai – 69.**

**Tel : (022) 26836666**

## ANSWER-1

### ANSWER-A

1. **Definition – Sec. 4 : Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. (1 MARK)**
2. Persons competent to be Partners :
  - (a) Every Person **competent to enter in to a Valid Contract** can enter into Partnership for carrying on a business.
  - (b) **A Minor cannot be become a Partner, but with the consent of all others, he can be admitted** into the benefits of Partnership.
  - (c) A Company can become a Partner by itself, (since Company is an independent person competent to contract in its own name) but not as a group of individuals representing it.
  - (d) **Partnership between Indian nationals and alien friends is possible**, but no partnership can be entered into with alien enemies.
  - (e) Two Partnership Firms cannot enter into Partnership, though all the Partners of the two Firms may form a Partnership.

(5\*1 = 5 MARKS)

### ANSWER-B

Before attaining majority	Position on attaining majority
a) Liability is confined only to the extent of his share in profits and property of Firm.	a) <b>Decision</b> : Within 6 months of his attaining majority or his obtaining knowledge that he had been admitted to the benefits of the Firm, whichever date is later, the minor Partner has to decide whether he shall remain a Partner or leave the Firm.
b) He is neither personally liable nor is his private estate liable.	b) <b>Notice</b> : He shall give a public notice of his intention, i.e. whether opting to become or not becoming a partner.
c) He cannot be declared insolvent, but if the Firm is declared insolvent, his share in the Firm vests in the Official receiver or Official Assignee.	c) <b>Deemed Partner</b> : Where he fails to give notice, he becomes a Partner in the Firm on the expiry of such period.

(4 MARKS)

## ANSWER-2

## ANSWER-A

### Exception i.e. Non – registration not to affect the following – [Sec.69]

1. Right of third parties to **sue the Firm or any Partner.**
2. Right of Partners to sue for – (a) Dissolution of the Firm, or (b) Settlement of accounts of a dissolved Firm, or (c) Realizing the property of a dissolved Firm.
3. Power of an Official Assignee, Receiver or Court to **realize the property of an Insolvent Partner and to bring an action on behalf of the Insolvent Partner.**
4. Rights of the Firm or the Partners of the Firm which has (a) no place of business in the territories to which the Act applies, or (b) whose places of business are in such territories to which the Chapter does not apply.
5. Right of the Firm to **institute a suit or claim of set – off not exceeding Rs. 100.**
6. Right of an Unregistered Firm to bring a suit against third parties to enforce a right arising otherwise than out of a contract, e.g., for enforcing a trademark.

**(6\*1 = 6 MARKS)**

## ANSWER-B

**Partnership by holding out is also known as partnership by estoppels.** Where a man holds himself out as a partner, or allows others to do it, he is then stopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted.

A person may himself, by his words or conduct have induced others to believe that he is a partner or he may have allowed others to represent him as a partner. The result in both the cases is identical.

**Example :** X and Y are partners in a partnership firm. X introduced A, a manager, as his partner to Z. A remained silent. Z, a trader believing A as partner supplied 100. TV sets to the firm on credit. After expiry of credit period, Z did not get amount of T.V. sets sold to the partnership firm. Z filed a suit against X and A for the recovery of price. Here, in the given case, A, the Manager is also liable for the price because he becomes a partner by holding out (Section 28, Indian Partnership Act, 1932).

It is only the person to whom the representation has been made and who has acted thereon that has right to enforce liability arising out of 'holding out'.

**(4 MARKS)**

### ANSWER-3

### ANSWER-A

1. **For Failure of General Duties** : A Partner shall be liable when he fails in his general duty, i.e.  
–
  - (a) Does not carry on the business of the Firm to the greatest common advantage of the Firm,
  - (b) Is not just and faithful to other Partners, and
  - (c) Fails to render the accounts and full information of all things affecting the Firm to any Partner or his legal representative.
2. **To indemnify the Firm** : Every Partner shall be **liable to indemnify the Firm for any loss** caused to it by his fraud in the conduct of the business of the Firm. **[Sec.10]**
3. **To contribute to losses equally** : In the absence of contract to the contrary, every Partner is **liable to contribute equally to the losses** of the Firm. **[Sec. 13(b)]**
4. **To indemnify for wilful neglect** : A partner is liable to indemnify the Firm for any loss caused to it by his **wilful neglect in the conduct** of the Firm's business. **[Sec. 13(f)]**
5. **To surrender personal profits** : A Partner is **liable to account for and pay to the Firm**, Profits which he derives for himself from – (a) any transaction of the Firm, or (b) use of Firm's property or business connection, (c) use of Firm's name, etc. **[Sec 16(a)]**
6. **To account for profits from competing business** : Where a Partner carries on any business which is of similar nature to that of the Firm or competing to the Firm, he shall **account for the same and pay all such profits** to the Firm. **[Sec. 16(a)]**
7. **Joint & Several liabilities** : Every Partner is liable, jointly with all the other Partners and also severally for all acts of the Firm done when he was a Partner. **[Sec.25]**
8. **Liability towards third parties** : All Partners are liable to third parties for acts of the Firm. In this respect, there is no difference between active Partners and dormant/ nominal Partners, all are equally liable.
9. **Rights and liabilities after change in Firm [Sec.17]:** Rights, duties and liabilities of Partners of a Firm, unless otherwise agreed upon, shall remain the same as they were in the beginning, even after –
  - (a) a change in the constitution of Firm, or
  - (b) on the expiry of the term of Firm, or
  - (c) even when the Firm has taken up additional ventures after the completion of the work for which the Firm was constituted.

**(6\*1 = 6 MARKS)**

## ANSWER-B

As per provisions of Indian Partnership Act, 1932, on **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.**

In the given question, 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.

**Therefore, X & Y both shall be liable for the amount because no public notice was given.**

(4 MARKS)

## ANSWER-4

## ANSWER-A

As per **section 28 of Indian Partnership act, 1932, partnership by holding out/ estoppels is where a man holds himself out as a partner, or allows others to do it, he is then stopped from denying the character he has assumed and upon the faith of which creditors may be presumed to have acted.** A person may himself, by his words or conduct might have induced others to believe that he is a partner or he may have allowed others to represent him as a partner. The result in both the cases is identical.

In the given question, X and Y are partners in a partnership firm. X introduced A, a manager, as his partner to Z. A remained silent. Z, a trader believing A as partner supplied 100 T.V. sets to the firm on credit. The Manager is also liable for the price because he becomes a partner by holding out.

**Therefore, Z will succeed.**

(3 MARKS)

## ANSWER-B

**Implied Authority Of Partner As Agent Of The Firm (Section 19) :** Subject to the provisions of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.

The authority of a partner to bind the firm conferred by this section is called his "implied authority".

In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to –

- i. **Submit a dispute** relating to the business of the firm to arbitration;
- ii. **Open a banking account** on behalf of the firm in his own name;
- iii. **Compromise or relinquish any claim** or portion of a claim by the firm;
- iv. **Withdraw a suit or proceedings** filed on behalf of the firm;
- v. **Admit any liability** in a suit or proceedings against the firm;
- vi. **Acquire immovable property** on behalf of the firm;
- vii. **Transfer immovable property** belonging to the firm; and
- viii. Enter into partnership on behalf of the firm.

**Mode of Doing Act To Bind Firm (Section 22) :** In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm.

(7 MARKS)

**ANSWER-5**

**ANSWER-A**

**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 action 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 breaches** 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.

(7 MARKS)

## **ANSWER-B**

According to section 37 of Indian Partnership Act, 1932, where any member of a firm was has died or otherwise ceased to be partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, then, in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six per cent per annum on the amount of his share in the property of the firm.

In the given question, A is entitled to three – eighths of the partnership property and profits. A becomes bankrupt whereas B and C continue the business without paying out A's share of the partnership assets or setting accounts with his estate.

Therefore, A's official receiver is entitled to three – eighths of the profits made in the business, from the date of his bankruptcy until the final liquidation of the partnership affairs.

**(3 MARKS)**