



CAIIB PAPER-4

Module-D Unit-11

BANKING REGULATIONS AND BUSINESS LAWS (BRBL)



CAIIB Paper 4 (BRBL) Module D Unit 11-Relations of Partners to One Another

General Duties of Partners

- Partners are bound to carry on the business of the firm to the greatest common advantage. The partners are responsible to each other for the conduct of the business of the firm.
- A partnership is primarily a contract of 'uberrimae fidei' and Section 9 of the **Indian Partnership Act, 1932** deals with the duty of a partner in this connection, as '**general duties**'.
- In terms of Section 9 "Partners are bound to carry on the business of the firm to greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the firm to any partner, his heir or legal representative."

Duty To Indemnify The Loss Caused By Fraud

- According to Section 10 of the Act "Every partner shall indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm." This duty to indemnify is an absolute one and no partner can contract himself out of it in the agreement.
- The innocent partners while being liable to third parties for the fraud of one of the partners can claim damages from that partner who committed the fraud.
- For example, if a partner commits a fraud upon a customer of the partnership firm for which the firm is held liable then the partnership firm, is entitled to recover from the partner the damages that the firm is required to pay.

Determination Of Rights And Duties Of Partners

- Subject to the provisions of this Act Sec. (11), the mutual rights, and duties of the partners of a firm may be determined by contract between the partners, and such contract may be expressed or may be implied by a course of dealing.
- Notwithstanding anything contained in section 27 of the Indian Contract Act, 1872, contracts between partners may provide that a partner shall not carry on any business other than that of the firm while he is a partner, the agreement becomes an agreement in '**restraint of trade**'.

The Conduct Of The Business

Section 12 of the Indian Partnership Act sets the rules for conduct of business by partners in a partnership firm.

- Every partner has a right to take part in the conduct of the business (unless he or she is a sleeping partner)
- Every partner is bound to attend diligently to his duties in the conduct of the business

- Any difference arising as to ordinary matters connected with the business can be decided by a majority of the partners and every partner has a right to express his opinion before the matter is decided. However, no change can be made in the nature of the business without the consent of all the partner.
- Every partner has a right to have access to and to inspect and copy any of the books of the firm.

Mutual Rights And Liabilities

As per Section 13 of the Indian Partnership Act 1932 dealing with mutual rights and liabilities of partners “Subject to a contract between the partners-

- A partner is not entitled to receive remuneration for taking part in the conduct of the business.
- The partners are entitled to share equally in the profits earned and liable to contribute equally to the losses made by the firm.
- Where a partner is entitled to interest on the capital subscribed by him such interest is to be paid only out of profits of the firm.
- Interest at 6 per cent on extra amount paid by the partner.
- The firm has to indemnify a partner in respect of payments made and liabilities incurred by him
- In the ordinary and proper conduct of the business, and
- In doing such act in an emergency, for the purpose of protecting the firm from loss
- A partner has to indemnify the firm for any loss caused to it by his willful neglect in the conduct of the business of the firm.

However, the partners are free to have an understanding/ agreement amongst themselves, e.g. all or some of the partners may be allowed remuneration by way of salary in addition to share profits.

The Property Of The Firm

- The property of the firm includes all rights in property originally brought into the firm or later on acquired by the firm for the purpose of business of the firm and includes also the goodwill of the business.
- Unless the contrary intention appears, the property acquired by the partners from the funds of the partnership business is deemed to be the property of the firm (e.g. the partners had decided to purchase a particular property from the partnership funds and give it to a partner towards his long due remuneration).
- The property of the firm has to be held and used by the partners exclusively for the purposes of the business. However, the partners can decide the use of the property by mutual consent. (Section 14/15)

Profits Earned By Partners

- If a partner derives any profit for himself from any transaction of the firm or from the use of the property/ business connection of the firm/ the firm name, he is bound to pay it to the firm.
- Also, if a partner carries on any business competing with the firm he is bound to pay to the firm all profits made by him in that business. The reason for this is that a partnership is a fiduciary relationship and no partner is entitled to make any personal profit.
- However on the matters stated hereinbefore, the partners are free to have an understanding other than in the manner stated above. However, if they have no specific understanding on these matters, the above applies to them. (Section 16)

Rights And Duties Of Partners (SEC. 17)

- After a change in the partners of a firm the mutual rights and duties of the partners in the reconstituted firm remain the same as they were immediately before the change.
- Similarly, after the expiry of the term of the firm, if a firm constituted for a fixed term, continues to carry on business, the mutual rights and duties of the partners remain the same as they were before the expiry. Where additional undertakings are carried out where a firm constituted to carry out one or more adventures or undertakings, the mutual rights and duties of the partners in respect of the other adventures or undertakings are the same as those in respect of the original adventures or undertakings.
- On the matters stated above, the partners are free to have an understanding other than in the manner stated above. However, if they have no specific understanding on these matters, the above applies to them.

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