

Partnership

PARTNERSHIP ACT 1932 · TEST OF PARTNERSHIP · TYPES · DUTIES & RIGHTS · PROPERTY · AUTHORITY · LIABILITY · MINOR

Comprehensive Exam Revision Handout

1 CORE CONCEPT & KEY DEFINITIONS

Governing law: **Partnership Act, 1932** **S.1** — in force from **1 October 1932**, applies to the whole of Pakistan. Contract Act provisions continue to apply where **not inconsistent** **S.3**.

Partnership **S.4** = 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**.

Partners / Firm

Individually **partners**;
collectively a **firm**;
business name = **firm name**.

Act of a firm

Any act/omission by all partners, or any partner or agent, giving rise to a right **enforceable by or against the firm**.

Business

Includes every **trade, occupation and profession**.

Third party

Any person who is **not a partner** in the firm.

No legal personality: Unlike a company, a partnership firm is **not a legal person** — partners act as agents for each other.

2 TEST OF PARTNERSHIP — 5 ELEMENTS **S.6**

Regard is had to the **real relationship** between the parties, shown by **all relevant facts taken together**.

1. Association of 2+ persons

All competent to contract; one person cannot be a partnership. **Max 20** (Companies Act, 2017) — may **exceed 20** for lawyers, accountants and professions not allowed to practise as limited companies.

28 MBA graduates → must form a company; 28 CAs → allowed.

2. Agreement

Express (written/oral) or implied. Written = **partnership deed**. Without a deed, the Act's **default rules** apply.

Cousins repair & sell furniture, share profit → implied partnership.

3. Carrying on business

Lawful trade/occupation/profession. Future business — only once commenced. **Charitable work ✗**.

Co-owners renting a shop → not partners.

4. Sharing of profits

Prima facie, not conclusive evidence. Sharing losses **not necessary**, but liability to outsiders is **unlimited**.

Sharing gross revenue/door money ≠ sharing profits.

5. Mutual agency

Each partner is both an **agent** (binds others) and a **principal** (bound by others).

Contract, not status **S.5**

Partnership arises from **contract**, not status — heirs inheriting a family business (e.g. Hindu undivided family) are **not partners**.

✗ Receiving a share of profits does NOT by itself make a partner:

• **Lender** of money to the business

• **Servant or agent** as remuneration

• **Widow/child** of deceased partner as annuity

• **Transferee** of a partner's interest

• **Minor** admitted to benefits

• **Previous owner** as price of goodwill

• **Co-owners** sharing returns from property

• Bank customer / loan from a **banking company**

• Publisher paying author half profits (royalty)

Basis	Partnership	Co-ownership
Formation	By agreement alone	Not necessarily by agreement
Business	Essential	Not necessary
Number	Min 2; max 20 (professionals may exceed)	No maximum
Profit / agency	Profit sharing & mutual agency essential	No profit sharing; not agents of each other
Transfer of interest	Needs consent of other partners	Freely transferable

3 TYPES OF PARTNERSHIP & PARTNERS

Partnership-at-will **S.7**

No provision for **duration** or determination. Any partner may dissolve by **written notice** to all others — from the date in the notice, or if none, date of communication. If deed requires **mutual consent** to dissolve → **not** at will.

Particular partnership **S.8**

For a **particular adventure/undertaking** or a **fixed period**; ends on completion/expiry. If continued afterwards → becomes **partnership-at-will**.

Actual / ostensible — actively conducts business; agent of others; binds firm.

Sleeping / dormant — **not known** to third parties; fully liable; **no public notice** needed on retirement and not liable for later acts.

Nominal — lends only his **name**; no capital/profit; **liable to outsiders**.

Partner in profits only — not liable to contribute to losses internally; liable to **third parties**.

Sub-partner — stranger sharing a partner's profit; **no rights against, nor liability for**, the firm.

Silent — **no voice** in management by agreement, but **known**; shares profit/loss; fully liable.

4 DUTIES & RIGHTS OF PARTNERS

General duties — mandatory (cannot be changed) **S.9–10**

1. Carry on business to the **greatest common advantage**
2. Be **just and faithful** to each other
3. Render **true accounts**
4. Provide **full information**
5. **Indemnify** firm for loss caused by his **fraud**

Buying sugar from cousin above market rate → breach of (1); secret profit on own sugar → breach of (2).

Conduct of business — default rules (subject to contract) **S.12**

- Right to **take part** in conduct; duty to attend **diligently**
- Right to be **consulted**; ordinary matters by **majority**; change in **nature of business** needs **all**
- Right to **access, inspect & copy** books
- **No remuneration** unless agreed
- Profits shared **equally**; losses contributed equally; profit ratio implies loss ratio
- **No interest on capital** unless agreed (payable only out of profits)
- Interest on **advances** beyond capital: **6% p.a.** or as agreed
- Right to **indemnify** for payments in ordinary conduct / emergency
- Duty to indemnify for **wilful neglect**

By contract **S.11**

Mutual rights/duties may be fixed by contract, **express or varied by course of dealing**; implied by consent of **all**. Partners may agree not to carry on **other business** while a partner (exception to restraint of trade).

Partners accepting a different ratio for years → implied variation.

Personal profits **S.16**

Must **account** for secret profits from firm transactions, property, name or connection; and for profits of a **competing business** run without consent.

Equipment bought Rs. 18,000, resold to firm Rs. 30,000 → hand over Rs. 12,000.

After a change in firm **S.17**

Rights/duties stay **the same** on: change in constitution; continuing after fixed term; carrying out additional adventures.

Property of the firm **S.14**

Property brought into **common stock** and rights in it; property **acquired** by/for the firm; **goodwill**; property bought with **firm money** (unless contrary intention).

Shares bought in own name with firm money → firm property. Land bought for self, partner debits himself → not firm property.

Use of property **S.15**

Use firm property **exclusively for the business** — not for personal benefit.

Firm's laptop/printer used at home till worn out → compensate firm.

5 AUTHORITY OF A PARTNER

A partner is the **agent of the firm** for the purpose of its business **S.18**. To bind the firm, the act must be done **in the firm name** or in a manner implying intention to bind it **S.22**.

✓ Implied authority **S.19**

— **acts done in the usual way of the firm's business**

- Buy/sell goods; give receipts
- Receive payments; give discharge
- Contract and pay debts; settle accounts
- Employ servants
- Draw cheques; accept/endorse bills & notes
- Pledge **movable** property
- Sue / defend suits in firm name

CA firm partner issuing a promissory note / receiving money to invest → outside ordinary business; firm not liable.

✗ No implied authority (unless usage/custom) **S.19**

- Submit dispute to **arbitration**
- Open **bank account in his own name** for firm
- **Compromise** or relinquish a claim
- **Withdraw** a suit
- **Admit liability** in a suit
- **Acquire** immovable property
- **Transfer** immovable property
- Enter into **partnership** on firm's behalf

Restriction by contract **S.20**

Effective against a third party **only if he knows** of it (or doesn't know/believe the person is a partner).

Borrowing banned in deed; bank unaware → firm liable.

Exceeding authority

Partner must compensate the firm; other partners may **ratify**, and then the firm bears the loss.

Emergency **S.21**

Acts to protect firm from loss as a person of **ordinary care** would in his own case.

Selling all stock in a price crash → binds firm.

6 LIABILITY OF PARTNERS & FIRM

Admissions **S.23**

Evidence against the firm if (i) relates to **firm's affairs** and (ii) made in **ordinary course** of business.

Notice **S.24**

Notice to a partner = notice to firm if: relates to firm affairs; given to an **acting** (not sleeping) partner; no **fraud** by the receiving partner.

Joint & several **S.25**

Liable for acts of firm done **while he was a partner**; creditor may sue **one or more** for the **whole** debt — liability is **unlimited**.

Wrongful acts **S.26**

Loss to third party by a partner's wrongful act in the **ordinary course** → firm liable to same extent. Internally, loss from **fraud** is borne by the fraudulent partner.

Trading stolen goods → all partners (even sleeping) liable for conversion.

Misapplication **S.27**

Firm must make good the loss where a partner, within **apparent authority**, receives third-party money/property and misapplies it; or the firm receives it in the course of business and a partner misapplies it while in the firm's custody.

Security deposit taken by partner and absconded → all partners liable. Lawyer-partner misuses client's advance → firm liable; he must indemnify the others.

7 MINOR ADMITTED TO BENEFITS **S.30**

A minor **cannot be a partner**, but with the **consent of all partners** may be admitted to the **benefits of an existing partnership**.

Rights (as minor)

- Agreed share of property & profits
- Access, inspect, copy **accounts** (not other books)

Liability

Not personally liable; only his **share** is liable (limited liability).

Disabilities

- No status of partner
- Can't sue partners for share unless he **severs connection**
- No access to books other than accounts

🏆 On attaining majority — Roadmap



Burden to prove late knowledge lies on the minor. Other partners cannot refuse a minor who elects to join. D learned 16 Aug 2007 → partner from 16 Feb 2008 → shares later losses.

8 COMMON EXAM TRAPS

! Partnership for one project = **particular partnership**; continued after → **at will**.

! Transfer of firm's land by a partner → **no implied authority**.

! Nature of business changed by **majority** → needs **all partners**.

! Internal restriction binds only third parties **who know of it**.

! Interest on **capital** @6% automatically → **only if agreed**; 6% is for **advances/loans**.

! Minor electing to join is liable from **date of admission**, **not date of majority**.

! Profit share agreed 3:2, losses silent → losses also **3:2**; nothing agreed → **equal** (not capital ratio).

! Notice served on a **sleeping partner** or the **fraudulent partner** → not notice to firm.

9 QUICK REVISION BOX

5

Elements of partnership (S.6)

20

Max partners (professionals may exceed)

6%

Interest on partner's advance (default)

6 months

Minor's election window after majority/knowledge

• **S.4** Definitions · **S.5** Not by status · **S.6** Test · **S.7–8** At will / particular

• **S.9–10** Mandatory duties · **S.11–12** Contract & conduct · **S.14–17** Property, profits, change

• **S.18–22** Agency & authority · **S.23–27** Admissions, notice, liability

• **S.30** Minor admitted to benefits