Law relating to Partnership

- Partnership Act of 1890
- Frauds Prevention Ordinance(sec.18)
- Registration of Business Names Act(No.07 of 1987)
- Civil Procedure Code(sec.64,202,249,252)
- Companies Act(SEC.519)

partnership

- Partnership is the relation which subsists between persons carrying on a business in common with view of profit.
- (S.1.(1) of the Partnership Act of 1890)

- According to the definition 3 basic features of partnership can be identified.
- 1.A partnership is a business (every trade occupation or profession)
- 2.It must be carried on in common and
- 3.With a view of profit.
- 4.There must be a valid agreement.

Requirement of a valid agreement

- Name of the firm
- Names and addresses of the partners
- The nature of the business
- The place of the business
- Date of commencement and duration of business
- The amount of capital contributed by each partner and the manner of sharing profits and loss

Cont…

- Remuneration of partners
- Duties, powers and obligations of partners
- Admission of partner
- Retirement of partner, expulsion of partner
- Arbitration clause
- Dissolution
- Bank

- In the following instances, though sharing of profits can be seen those who gain a share of profit are not considered partners.
- A creditor receives a part payment of his credit.
- An employee who receives his salaries from the profit of the partnership
- A widow or child of a diseased partners
- The sale of a goodwill of a business.
- Grace v Smith/Cox v Hickman

Formation of Partnership

- There are no requirements as to the form of the agreement which have to be fulfilled. In general everyone is capable of being a partner. However certain categories may not have necessary capacity. (minors, persons of unsound mind…..)

- Partnership can be formed either,

by words of mouth or

In writing

- Absence of a written agreement is not a bar for the admission of parole evidence under the following instances,
- 1.For the third parties to sue partners,
- 2.To prove the existence of partnership
- **Partnership cannot be formed for illegal purposes.**

Joint ventures/syndicates

- Joint ventures are formed to share a product
- Partnerships are formed to share profits
- Any action by or against the joint venture or syndicate must be by or against the individuals involved.

Different kind of partners

- Active/actual partners or ostensible partners
- Sleeping or dormant partners

The relation of partners to one another

- General rule- The mutual rights and duties of the partners are to be determined by their mutual agreement.
- (How much investment or labor is to be put by whom or whether a partner will be entitled to any remuneration.. Or what will be the profit sharing ratio etc.)
- Terms of the Mutual Agreement is subject to the provisions of the partnership Act(right to file a suit for dissolution)
- TRUST &CONFIDENCE

Power of one partner to bind the firm

- The authority of each partner is based on law of agency.
- The successful working of a partnership depends 100% upon mutual trust and confidence
- So. Partner should be selected with extreme care

Marry in haste and repent at leisure.

Implied authority of partners

- Selling the goods of the firm
- Purchasing the goods on firm’s behalf
- Receiving payments
- Engaging servants

In Trading Firms Partners Have Implied Authority to-

- Accept, make and issue negotiable instruments,
- borrow money on the firms credit and pledge the firms goods to effect that purpose
- Instruct a attorney-at-law in an action regarding trade debt.

Act outside implied authority

- To bind the firm by deed.
- To give a guarantee in the name of the firm.
- When the partner has no authority
- If the third party does not know him as a partner or knows that he has no authority.

Higgins v Beauchamp(firm was not liable to pay borrowed money)

Rights of the partners

- Right to take part in the conduct of the business
- Right to Express opinion
- Right to Have access to books of the firm
- Right to Share profit
- Right to Interest on capital and advances
- Right to indemnity

Duties of the partners

- The duty to render true accounts and full information,
- The duty to account for any benefit derived from any transaction concerning the partnership,
- The duty to account for profit derived from a competing business,
- The duty to properly use the firm's property

Rights &Duties cont…

- A consent of all partners is necessary to introduce a new partner(Byrne v Reid)
- A consent of all partners is necessary to remove a partner
- Every partner must disclose any secret profit he makes in dealing with the firm, and account for that profit to the firm.*(Bently v Craven)*
- Duty to render true account
- Duty not to compete with the firm

Sec.18(Prevention of Frauds Ordinance)

- Where the capital of a partnership exceeds Rs.1000/= the partnership must be established in writing signed by all the partners.
- One partner could not sue another partner for an accounting if the capital exceeded Rs.1000/=and the partnership had not been established in writing(pate v pate)

Relations of partners to third parties

- Partner to be agent of the firm
- A partner virtually embraces the character of both a principal and agent.
- Liability of a partner is joint and several

Incoming and outgoing partners

- Introduction of a partner- Subject to contract between the partners and to the provision of ordinance, no person shall be introduced as a partner into a firm without the co sent of all partners.
- A person who is introduced as a partner into a firm **does not** thereby become liable for any act of the firm done before he became a partner.

Modes of introduction of a partner

- 1.with the consent of all the existing partners;
- 2.in accordance with a contract between the partners;
- 3.in accordance with the Partnership Ordinance.

Outgoing partners

- A partner may cease to be a partner in the following ways,
- 1.by retirement,(voluntary withdrawal)
- 2.by expulsion,
- 3.by insolvency,
- 4.by death.

Liability for acts done after retirement.

- Partners continue to be liable as partners to third parties for an act done by any f them which would have been an act of the firm if done before the retirement ,until public notice is given of the retirement.

Dissolution of a firm

- Dissolution of a partnership (between outgoing partners and remaining partners)
- Dissolution of the firm (when the dissolution of a partnership between all the partners of the firm occurs)

Modes of dissolution

- By the court.
- Without any court order

Dissolution by order of the court

- A partner may apply to court to dissolve the partnership in the following circumstances
- When a partner is incapable of managing the firm’s affairs due to a mental disorder.
- When a partner is permanently incapable of performing his duties
- When a partner breaches or breaks partnership agreement

- When a partner's conduct is prejudicial(harmful) to carrying on the business.(*Carmical v Evans*)
- When the partnership business can be carried out on only at a loss.
- If the courts thinks it is just and equitable to dissolve the partnership(*Re;Yenidje Tobacco Co.Ltd).*

Dissolution without court order

- Expiration or Notice
- Bankruptcy or death
- Charge
- Illegality

Compulsory dissolution

- When all the partners or all except one are adjudicated insolvent,
- If the business of the firm though lawful when the firm came into existence, subsequently becomes unlawful.

Rights of partners on dissolution

The rights of partners on a dissolution are usually contain in the partnership agreement. Where they are not provided for in this way following provisions will apply,

- The assets of the firm must be applied in paying off the creditors of the firm
- The assets remaining are to be applied in paying to the partners the amounts which are due to them as partners

The assets of the partnership, together with any amount contributed by partners to make up a deficiency, are to be distributed as follows;

- In paying off all creditors of the firm who are not partners
- In paying off ratably any loans made by partners to the firm(with 5%interest)
- In paying rateably to the partners the amounts due to them in respect of capital
- If any surplus to be shared among the partners in the proportions in which they share profit.(*Garner v Murray*)