Relation of Partners with Third Parties

Chapter IV (Ss 18-30), Partnership Act, 1932.

The relation between partners on the one hand and the third parties on the other is founded on the principle contained in s 18, which reads as under:

S. 18. Partner to be agent of the firm. - Subject to the provisions of this Act, a partner is the agent of the firm for the purposes of the business of the firm.

For the purposes of the business of the firm, a partner is an agent of the firm. It means that a firm, i.e., all the partners of the firm are bound by the act of a partner as any principal would be bound by the act of his agent. Mutual agency between the partners is one of the essentials to create partnership. Every partner having the capacity to act as firm's agent, the act done by any partner renders the whole firm liable towards a third party. Law of partnership is generally stated as a branch of the law of principal and agent. Relations of partners to third parties are thus founded on the principle of mutual agency between the partners.

According to Mr. Justice Story[1], "Every partner is an agent of the partnership, and his rights, powers, duties and obligations are in many respects governed by the same rules and principles as those of an agent; a partner virtually embraces the character of both a principal and agent."

It has been observed by Lord Wensleydale[2]:

> "A man who allows another to carryon trade, whether in his own name or not, to buy and sell, and to pay over all the profits to him, is undoubtedly the principal, and the person so employed is the agent, and the principal is liable for the agent's contracts in the course of his employment. So if two or more persons agree that they should carry on a trade and share the profits of it, each is a principal, and each is an agent for the other, and each is bound by the other contract in carrying on the trade, as much as a single principal would be by the act of an agent, who was to give the whole of the profits to his employer."

A partner is an agent of the firm. This agency is only for the purposes of the business of the firm. He can enter into contracts, purchase and sell goods, borrow money and do similar acts in so far as they are necessary for the carrying on of the business of the firm and the firm will be bound by every such act. If he, on the other hand, does an act unconnected with the business of the firm, e.g., purchases materials for the construction of his own building or borrows money for his daughter's marriage, the firm will not be bound by that a she is not firm's agent for that purpose.

Sections 18 to 30 of the Indian Partnership Act contain provisions concerning the 'Relations of partners to third parties.' These provisions have been classified and discussed under the following subheads:

I. Nature and extent of liability of the Firm for the acts of a partner (Ss 18-27);
II. Doctrine of Holding Out, creating the liability of a 'Non-partner'. (S 28);
III. Rights of transferee of a partner's interest (S 29); and

[1] Story on Partnership, S 1.
[2] Cox v Hickman (1860) 8 HLC 268.

IV. Position of a 'Minor' admitted to the benefits of partnership (S 30).

I. NATURE AND EXTENT OF LIABILITY OF THE FIRM FOR THE ACTS OF A PARTNER (Ss 18-27)

The question of liability of the firm for the acts of a partner is being discussed under the following sub-heads:

A. Nature of liability of the partners towards third parties, and
B. The kind of acts for which the partners are liable which are as follows:
   i. Liability for the acts done within the authority of a partner (Ss 18, 19, 20 and 22). Such authority may be either express or implied authority.
   ii. Liability when a partner acts in emergency (S 21).
   iii. Liability on ratification of a partner's act.
   iv. Liability for admission made by a partner (S 23).
   v. Liability on notice to an acting power (S 24).
   vi. Liability for torts and wrongful acts (S 26).
   vii. Liability for misapplication of money or property (S 27).

A. Nature of liability of the partners towards third parties (S 25)

S 25 contains the following provision to explain the nature of liability of the partners of a firm:

25. Liability of a partner for acts of the firm. – Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.

A principal is liable for the act of his agent done by him on his behalf. According to s 18, it has been noted above, a partner is an agent of the firm for the purpose of the business of the firm. Obviously, therefore, the whole of the firm, which means all the partners of the firm become liable for an act of the firm done by any partner. As regards the nature of liability of the partners, S 25 states that every partneris jointly and severally liable for all acts of the firm done while he is a partner.

In M/s Glorious Plastics Ltd v Laghate Enterprises,[3] it was held that if a partner retires on 1st April 1982 and the act of the firm is done on 1st March 1985, s 25 cannot be applied to make such retiring partner liable for an act done after he has retired.

The liability of all the partners is joint and several even though the act of the firm may have been done by one of them. Thus a third party, if he so likes, can bring an action against any one of them severally or against any two or more of them jointly.

Such liability is there for all acts of the firm. According to s 2 (a), an act of a firm means any act or omission by all the partners or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm. It, therefore, means that

[3] AIR 1993 Bom. 224.

any act or omission which creates a right enforceable is an act of the firm. It may be a contract or a wrongful act, for example, fraud, negligence, mis-application of money or any tort. All the partners are liable as much for the wrongful act of any partner as they would be liable for a contract entered into by one of them on behalf of the firm. In India, the liability of the partners for contracts as well as for torts is joint and several. In England, the partners are liable jointly in respect of contracts but they are liable jointly and severally in respect of torts.

The liability of the firm or all the partners of the firm is created while it is carrying on the business of the firm. The basis of the liability of the partners being mutual agency as between them, the liability of the partner, therefore, arises for such acts which are done while a person is a partner. A partner, therefore, cannot be made liable for an act of the firm which may have been done before he was introduced to partnership. Similarly, there can be no liability for the acts of the firm done after a person has ceased to be a partner. This rule, of course, is subject to the provisions mentioned in ss 32 (3) and 45, according to which in spite of the retirement of a partner or the dissolution of a firm, the liability of the partners may continue as before, until a public notice of retirement or dissolution of the firm is given. The liability as mentioned in this section is of all the partners whether they are active or dormant.

If a contract entered into by a partner with the third party is ratified by the firm, and the contract contains a clause for referring the dispute to arbitration, the firm becomes bound by that also. In Sanganer Dal and Flour Mill v FCI,[4]one of the partners signed a tender on behalf of the firm, none of the partners denied the validity of the contract, nor did they raise any objection that the said partner was not authorised to enter into the contract, it was held that they were bound by a clause in the agreement which stated that the dispute was to be referred to the arbitration, and the reference by the Court to arbitration under s 20 of the Arbitration Act was valid.

The liability of all the partners is not only joint and several but is also unlimited. It is the discretion of the third party to bring an action against some or all the partners.

Under s 25, the liability of the partners is joint and several. It is open to a creditor of the firm to recover the debt from anyone or more of the partners. Each partner shall be liable as if the ‘debt of the firm has been incurred on his personal liability. The judgment in the case of Dena Bank v Bhikhabhai Prabhudas Parekh and Co and others,[5] can be referred to in the present context. The question which arose for the consideration by this Court in this case was whether the property belonging to the partners can be proceeded against for recovery of dues on account of Sales Tax assessed against the partnership firm under the provisions of the Karnataka Sales Tax Act, 1957. It was observed as under:

> “The High Court has relied on s 25 of the Partnership Act, 1932 for the purpose of holding the partners as individuals liable to meet the tax liability of the firm. S 25 provides that every partner is liable, jointly with all the other

[4] AIR 1992 SC 481.
[5] 2000 (5) SCC 694.

> partners and also severally for all acts of the firm done while he is a partner. A firm is not a legal entity. It is only a collective or compendious name for all the partners. In other words, a firm does not have any existence away from its partners. A decree in favour of or against a firm in the name of the firm has the same effect as a decree in favour of or against the partners. While the firm is incurring a liability it can be assumed that all the partners were incurring that liability and so the partners remain liable jointly and severally for all the acts of the firm."

In the case of Income Tax Officer (III), Circle-I, Salem v Arunagiri Chettiar,[6]Supreme Court considered the question as to whether an erstwhile partner is liable to pay the tax arrears due from the partnership firm pertaining to the period when he was a partner. The Madras High Court has held that he is not. Disputing the correctness of the said judgment, the Revenue came in appeal before this Court. This Court, while allowing the appeal and setting aside the judgment of the High Court, observed as follows:

> "S 25 of the Partnership Act does not make a distinction between a continuing partner and an erstwhile partner. Its principle is clear and specific, viz., that every partner is liable for all the acts of the firm done while he is a partner jointly along with other partners and also severally. Therefore, it cannot be held that the said liability ceases merely because a partner has ceased to be partner subsequent to the said period."

B. The kind of acts for which the partners are liable

1) Acts done within the authority of a partner (Ss 18, 19, 20 and 22)

A partner being an agent of the firm, his acts bind the firm provided that the partner is acting within the authorityvested in him. As in the contract of agency, the authority of the partner may also be either express or implied.

Express Authority

An authority is said to be express when it is given by words spoken or written.[7]

Implied Authority

An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.[8] For instance, A is authorised to recover Rs. 5,000 from B. In this case A has the implied authority to file a suit for the recovery of the amount.[9]

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[6] 1969 (9) SCC 33.
[7] S 187, Indian Contract Act.
[8] Ibid.
[9] Illustration (a) to S 188, Indian Contract Act.

In the context of partnership, the scope of implied authority has been explained by s 19 (1) as under:

> … 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 any business it may not be possible to expressly mention each and every thing which can be done by an agent or a partner. Depending on the nature of the business some of the authority may be deemed to be vested in a partner so that the business can be properly and efficiently run. Such an authority is known as 'implied' authority. In such a case, the firm will be bound to the third parties even though for such an act no specific express authority has been conferred on the partner. For an act to be covered within the implied authority, it is necessary that-

i. The act should be done in relation to the partnership business, and
ii. The act should be done in usual way, in relation to a business of the kind carried on by the firm.

The reason for making the firm liable towards the third parties for acts which fall within the implied authority of a partner is that the third party cannot always know what exact authority has been conferred on each partner, but the third party can always rely on the assumption that since a partner is an agent of the firm, he may be having an authority to do all what is necessary to carry on the business of the firm.

If it is a firm of sugar merchants, sale and purchase of sugar is within the implied authority of any of its partners. Similarly, a partner in a firm of bankers may accept deposits, grant loans, draw, endorse or accept a negotiable instrument and thereby bind the firm. But if a partner in a firm of sugar merchants accepts deposits, or a partner in a firm of bankers purchases sugar, the acts will be outside the authority of the partner and the firm will not be bound by such an act.

In Mercantile Credit Company Limited v Garrod,[10] a firm consisting of two partners Parkin and Garrod was carrying on garage business which was concerned with letting lock-up garage and repairing cars. Parkin was an active partner whereas Garrod was a sleeping partner. Sale of second-hand cars could be impliedly considered to be the business of the firm although no express authority had been given for the same. Parkin, without the authority of his co-partner Garrod, sold a car to the Mercantile Credit Company Ltd. Over which he had no title and received a sum of 700 pounds for the same. On knowing that the seller had no title to the car, the company brought an action against Garrod to claim 700 pounds from him. It was held that the sale of the car to the company by one of the partners was an act for carrying on, in the usual way, the business of the kind carried on by the firm and, therefore, for such an act, which was within his implied authority, the other partner of the firm could be made liable.

When a partner has implied authority to do something, the firm will be bound by such an act even though the partner may be acting in fraud of his co-partners. This is on the basis

[10] (1962) 3 All ER 1103.

of the well-established principle laid down in Lloyd v Grace, Smith & Co.,[11] that the principal is liable for the act of the agent if the act is within the scope of the agent's authority even though the agent may be acting for his personal gain and the principal may not be knowing about the transaction. Similarly, in Hamlyn v John Houston & Co.,[12] one of the partners committed a tort of inducing breach of contract by bribing the clerk of a rival business man in order to know the secrets of the rival business man. The other partner was not aware of this tort. It was held that it was within the authority of a partner and hence the other partner was also held liable for the tort.

It is also necessary that the act done by a partner must be done to carry on, in the usual way, business of the kind carried on by the firm. What is usual for one kind of business may not be so for another kind of business. In a trading firm, every partner will have an implied authority to borrow money for the business and thus make the other partners also liable for the amount so borrowed. If the business is of a general commercial nature, the partner may pledge or sell partnership property, he may buy goods, borrow money, contract debts, and make payments on behalf of the firm; he may draw, make, sign, endorse, accept or transfer a negotiable instrument on behalf of the firm.[13]

In Porbandar Commercial Co-op Bank Ltd v Bhanji Lavji,[14] the petitioner, a co-operative bank advanced two separate loans to one P.V. Simaria. In respect of each loan, one of the partners of the two different firms executed instrument on behalf of his firm, guaranteeing the repayment of the loan. The principal debtor having failed to repay, the Bank brought an action against all the partners of each of the firms contending that the surety bond executed by only one of the partners of each firm could make all the partners of the concerned firm liable. It was held that to bind the rest of the partners of a firm, it has to be shown that the concerned act was done in a usual way to carry on the business of the kind carried on by the firm. It was observed that in this case the business of either of the firms was not to underwrite the loan transactions of the third parties by standing as sureties, and therefore, no partner of the firm had an implied authority to do such an act so as to bind the other partners of the firm.

Mode of exercising authority (S 22)

S 19 (1) which defines implied authority, is subject to the provisions of s 22. In order to bind the firm, the act of a partner must be done in a manner mentioned in s 22. The provision is as follows:

> **22. Mode of doing act to bind the firm.- 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.**

[11] (1912) AC 716.
[12] (1903) 1 KB 81.
[13] Bank of Australasia v Breillat (1847) 6 Moo. P.C. 152.
[14] AIR 1985 Guj 106.

According to the provision contained in s 22, for an act falling within the implied authority of a partner, the firm will be bound if the act or instrument done or executed by a partner has been done or executed-

i. in the name of the firm; or
ii. in a manner expressing or implying an intention to bind the firm.

When a partner does an act or executes an instrument in his own name only and not on behalf of the firm, and there appears to be no express or implied intention to bind the firm, the firm will not be bound by that. The third party, in such a case, is deemed to be acting only on the personal credit of the dealing partner, who alone will be liable for such a transaction.

It has been held in a number of cases that when a partner signs an instrument or executes a document without clearly indicating that he is acting as a partner on behalf of others although the name of the firm is mentioned on the letterhead or after his signatures,that does not create liability of the other partners. At best the use of the letter-head only helps to ascertain the address of the executant, but that cannot advance the case any further. In this connection the following observation of the Privy Council in Jankidas v Sri Kishen Pershad,[15] may be noted:

> "It is not sufficient that the principal's name should be in some way disclosed, it must be disclosed in such a way that on any fair interpretation of the instrument his name is the real name of the person liable upon the instrument."

In Johnstone v Jan Bibi,[16] one of the two partners signed a promissory note paper on which the name of the firm 'Lahore Cotton Bailing Press' was printed, without indicating that he was signing as a partner or on behalf of the firm. It was held that he alone was liable on the note and the other partner could not be made liable for the same. Similarly, in Punjab United Bank Ltd. V Muhammad Hussain,[17] one of the two partners of a firm signed a promissory note describing himself as 'Proprietor, Punjab Alliance Auction Rooms, Lahore', without indicating that it was a partnership firm and he was acting on its behalf. It was held that the other partner of the firm could not be made liable on this note. In Sitaram v Chimandas,[18]one of the partners of a firm signed hundies and below his signatures was written 'Managing Proprietor, G & B Friends, Sandhurst Road, Bombay.' The address of the partnership firm below the signatures was held to be mere descriptive of the persons signing. There being no indication of intention to bind the firm, no other partner could be made liable on these hundies.

The scope of the implied authority of a partner has been limited through statutory restrictions contained in s 19 (2). A limit on the implied authority of a partner could also be imposed through an agreement between the partners as permitted by s 20.

S 19 (2) which imposes restrictions on the implied authority of a partner is as follows:

[15] AIR 1918 P.C. 146.
[16] AIR 1928 Lah. 722.
[17] AIR 1934 Lahore 358.
[18] (1928) 52 Bom. 640.

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

a) **Submit a dispute relating to the business of the firm to arbitration,**
b) **Open a banking account on behalf of the firm in his own name,**
c) **Compromise or relinquish any claim or portion of a claim by the firm,**
d) **Withdraw a suit or proceeding filed on behalf of the firm,**
e) **Admit any liability in a suit or proceeding against the firm,**
f) **acquire immovable property on behalf of the firm,**
g) **transfer immovable property belonging to the firm,**
h) **enter into partnership on behalf of the firm.**

S 19 (2) gives the list of light acts regarding which a partner does not have an implied authority unless there is a usage or custom of trade to the contrary. For example, a partner does not have any implied authority to acquire immovable property on behalf of the firm or to transfer immovable property belonging to the firm. Such an act can be done by a partner only if either he has been expressly authorised by the other co-partners to do that act on behalf of the firm, or there is usage or custom of trade permitting him to do the same.

It has been held by the Supreme Court in Bina Murlidhar v Kanhaiyalal[19] that in view of the provision contained in s 19 (2) the power to transfer immovable property of the firm must be expressly given to the transferring partner.

S 20 enables the partners to extend or restrict the implied authority of a partner. The provision is as follows:

Extension and restriction of partner's implied authority. - The partners in a firm may, by contract between the partners, extend or restrict the implied authority of any partner.

Notwithstanding any such restriction, any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner.

The partners may agree to extend the implied authority of a partner, i.e., authorise him to do something for which he does not have implied authority. The firm will be bound by such an act of a partner.

The implied authority may be restricted by an agreement between the partners. When a restriction has been imposed on the implied authority of a partner, such a restriction is not binding on the third party unless the third party has knowledge of the restriction. There is a difference between the statutory restrictions which have been imposed by s 19 (2) on the implied authority of a partner and the restrictions on the implied authority which may be imposed under s 20 by a contract between the partners. The statutory restrictions are effective against all the third parties as they are deemed to be having the knowledge of the restrictions.

[19] AIR 1999 SC 2171.

The third parties, however, cannot be presumed to be having the knowledge of the restrictions which the partners may impose by a contract between themselves, and, therefore, a third party can be bound by a restriction imposed under s 20 if he had the knowledge of such a restriction.

In Motilal v Unnao Commercial Bank,[20] a restriction was placed by a partnership deed on the authority of the partners to borrow money. One of the partners borrowed money and accepted a bill of exchange, without any third party knowing about the same. It was held that since the third party did not know of the restriction, the firm was liable towards such third party. In Prembhai v Brown,[21] the fact of restriction on implied authority was known to third party. In that case one of the partners of a firm of carriers was authorised to draw bills on the firm only to the extent of Rs. 200 each. This fact was known to a third party in whose favour a partner made two promissory notes for Rs. 1,000 each. It was held that the firm could not be bound for the amount of the notes drawn as the restriction on the implied authority was within the knowledge of the third party.

2) **Partner's authority in an emergency (S 21)**
Sometimes even if a partner does not have either express or implied authority to act on behalf of the firm, his act can bind the firm if the same has been done in a situation of emergency as described in s 21. The section reads as under:

> **21. Partner's authority in an emergency.- A partner has authority in an emergency to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, acting under similar circumstances, and such acts bind the frim.**

S 21 confers an authority on a partner in emergency for doing all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence in his own case. For such an act the firm would be bound towards the third party. The authority conferred by this section is similar to the authority conferred upon an agent under s 189 of the Indian Contract Act. S13 (e) (ii) says that if a partner makes some payments or incurs liability in doing an act in an emergency, for the purpose of protecting the firm from loss, and he has acted as a prudent man in like circumstances would have acted in his own case, the firm shall indemnify the partner for the same.

3) **Ratification of a partner's act**
When an agent does an act on behalf of a principal but without the principal's prior authority, the principal may grant subsequent approval to such an act i.e., ratify the same. If the principal ratifies the act, the same effects follow as if the act had been performed with his prior authority.[22] The relation between various partners being that of principal and agent, the rules of the law of agency are applicable in such a case

[20] (1930) 32 Bom. LR 1571.
[21] (1873) 10 Bom HC Rep. 319.
[22] S 196, Indian Contract Act.

also.[23] Even if a partner has acted without any authority, if the act is subsequently ratified by the other partners, the act will become binding on them. For instance, a partner A, without any authority, borrows Rs. 10,000 from B. A's act is ratified by the other partners. Thereafter, they become bound to pay that sum to B.

4) Admission made by a partner (S 23)

According to s 23, an admission or representation made by a partner concerning the affairs of the firm is an evidence against the firm, if it is made in the ordinary course of business. This is so because every partner is the agent of the firm for the firm's business. For example, admission by one partner regarding making of a contract, execution of a document, payment of money, supply of goods or financial condition of the firm, will be evidence against all the other partners. It is, of course, necessary that such admission or representation must have been made in the ordinary course of business. Similarly, representations made by a partner also have the same effect. However, evidence can begiven to disprove such admissions or representations made by a partner as they do not constitute conclusive proof of the matters admitted or represented.

5) Effect of notice to an acting partner (S 24)

According to s 24:

> "Notice to a partner who habitually acts in the business of the firm of any matters relating to the affairs of the firm operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of the partner."

S 24 also embodies another general principle of the law of agency. Notice to the agent concerning the matters of agency is deemed to be a notice to the principal. S 24 provides that notice to a partner who habitually acts in the business of the firm of any matters relating to the affairs of the firm operates as a notice to the firm.

Such a notice binds only such partners who are there at the time when the notice was given. Therefore, if some notice had been given earlier, it will not bind a partner who is introduced as apartner after such notice. Similarly, an outgoing partner cannot ordinarily be bound by a notice relating to subsequent matters. In order that notice to one partner operates as notice to the whole firm, it is necessary that the notice must be given to a partner who habitually acts in the business of the firm. Notice to a dormant or a sleeping partner would, therefore, not be considered to be a notice to others. If a fraud has been committed on the firm by or with the consent of a particular partner, notice to such a partner regarding that matter is not deemed to be a notice to the firm. If in any particular matter an agent is himself party to the fraud, he cannot be presumed to be passing on such information to his principal. In such matters, therefore, notice to the agent does not serve as notice to the principal. In Bignold v Waterhouse,[24]the defendants, a firm of carriers, according to the rules, were accountable for parcels above the value of 5 pounds only if such parcels had been

[23] Ss. 196-200, Indian Contract Act, rules of ratification.
[24] (1813) 1 M&S 259.

specifically entered and paid for. One of the working partners allowed one parcel of a personal friend to be carried without any consideration and he did not bring this fact to the notice of his other co-partners. In an action for the loss of the parcel against the firm, it was held that the firm was not liable as notice to one of the partners about the carrying of the parcel was not deemed to be notice to others because the particular partner who had the knowledge of the carrying of the parcel was a party to the fraud as no payment had been made for the transportation of the parcel.

Notice- One partner is agent of other partner. -S 24 deals with the effect of notice to a partner. Such notice may be binding if the following conditions are satisfied:

a) The notice must be given to a partner;
b) The notice must be a notice of any matter relating to the affairs of the firm;
c) Fraud should not have been committed with the consent of such partner of the firm;

S 24 is based on the principle that as a partner stands as an agent in relation to the firm, a notice to the agent is tantamount to the principles and vice versa.

6) Liability for torts and wrongful acts (S 26)

A principal is vicariously liable for the torts and other wrongful acts committed by his agent in the course of the business of agency.[25] Every partner being an agent of the firm for the business of the firm, the same principle has been recognised by the Indian Partnership Act also. S 26 contains the following provision in this regard:

> **26. Liability of the firm for wrongful acts of a partner. - Where, by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party or any penalty is incurred, the firm is liable therefor to the same extent as the partner.**

Ithas been noticed above that for an act of the firm, every partner is liable and that includes liability for wrongful acts also. S 26 specifically provides regarding such liability. It states that where by the wrongful act or omission of a partner, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefor to the same extent as the guilty partner. The wrongful acts may be tort, fraud, negligence or misapplication of money or misappropriation of property. S 27 explains such liability separately in case of misapplication of money or property.

According to well-settled rule of Law of Torts, a master is vicariously liable for the wrongs of his servant done in the course of employment. Similar rule is applicable in the case of principal and agent also. Since the relationship between the partners is that of principal and agent, the same kind of liability for partners has been incorporated in s 26. The case of Lloyd v Grace, Smith & Co.,[26] which recognized such liability for the principal, would explain the position. In that case one Mrs. Lloyd, a widow, who

[25] S 238, Indian Contract Act.
[26] (1912) AC 716.

owned two cottages called at the office of Grace, Smith & Co., a firm of solicitors. She wanted to consult this firm as she was not satisfied with the income which she was having from these two cottages. She was attended by the managing clerk of the Company. The managing clerk advised her to sell the cottages and for the purpose asked her to sign two documents which were supposed to be sale deeds. The managing clerk had fraudulently prepared the two documents as gift deeds in his own name. He then disposed of the said property and misappropriated the money. The House of Lords unanimously held that Grace, Smith & Co. were liable for the fraud of their agent even though the agent had been acting for his personal gain and without knowledge of his principal.

In Hamlyn v John Houston & Co.,[27] for the tort committed by one partner, the other partner was also held liable. There, one of the two partners of the defendant's firm acting within the general scope of his authority as a partner, bribed the plaintiffs clerk and induced him to make a breach of contract with his employer, that is, the plaintiff, by divulging some secrets relating to his employer's business. It was held that although the wrong of inducing breach of contract had been committed by only one of the partners and the other partner had no notice of the same but since the wrong was done in the scope of the authority of the wrongdoing partner, the other partner was also held liable.

In Hurruck Chand v Gobind Lal,[28] one of the partners, who was an active partner in a firm, knowing that the goods were stolen ones, purchasedand sold them without the knowledge of the other partner who was a sleeping partner. It was held that both the partners were liable for the tort of conversion to the owner of the goods.

In R.S. Exports v State of Karnataka,[29] it was held that all partners of a firm are equally responsible for any act performed by any of them, the said responsibility is of sink and swim together.

7) Liability for misapplication of money or property by a partner (S 27)

S 27 recognises the liability of the firm for a particular kind of wrong done by a partner, i.e., misapplication of money or property. The provision is as follows:

> **27. Liability of the firm for misapplication by partners.-**
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> **Where-**
>
> **(a) a partner acting within his apparent authority receives money or property fromathird party and misapplies it; or**
>
> **(b) a firm in the course of its business receives money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss.**

In this section, two kinds of cases of misapplication of money or property have been mentioned-

[27] (1903) 1 K.B. 81.
[28] (1906) 10 CWN 1053.
[29] AIR 2000 Kant. 332.

a) when the money or property has been received by a partner and he misapplies the same without accounting for it to the firm; and
b) when the money or property has been received by the firm from third party and the same is misapplied by any of the partners.

In either case, the firm is liable to make good the loss to the third party.

a) Liability for money or property received by a partner who misapplies the same

According to s 27 (a), when a partner acting within his apparent authority receives money or property from a third party and misapplies the same, the firm is liable for that. In Willett v Chambers,[30] one of the partners of a firm of solicitors and conveyancers received money from a client for being invested on a mortgage and misapplied the same. The other partner who was ignorant of this fraud was also held liable alongwith the guilty partner. Similarly, in Rhodes v Moules,[31] one of the partners of a firm of solicitors was requested by a client to obtain loan for the client on the mortgage of some property. The said partner told the client that the mortgagees wanted some additional security and thus obtained from the client some share warrants payable to bearer. He subsequently misappropriated the share warrants and absconded. The other partners had no knowledge of the deposit of the warrants and subsequent appropriation thereof. It was found that on some earlier occasions such share warrants had been received through the same partner from the same client by this firm. It was, therefore, held that it was within the apparent authority of the partner to receive the share warrants, the transaction was a partnership transaction and the other partners were liable for the misappropriation of the warrants made in the case.

To make the firm liable for the act of a partner, it is necessary that such a partner while receiving money or property from a third party acted within his apparent authority. If the act done is outside such authority, the firm cannot be made liable for the same. In Cleather v Twisden,[32] one of the partners of a firm of solicitors received some bonds payable to the bearer and misappropriated the same. It was found that the receipt of such securities for safe custody was not apart of the business of the solicitors and therefore it was held that the other partners could not be held liable for the same. The position would have been different as was there in the case of Rhodes v Moules,[33] if the receipt of such bonds had been within the implied authority of the partner concerned.

If the money or the property has been received by a partner not in the ordinary course of business of the firm but only in his personal capacity, then also the firm cannot be liable for the same. In British Homes Corporation Ltd. V Patterson,[34] one of the partners of a partnership firm obtained a cheque payable to himself and not in the name of the firm. It was held that for the misappropriation of such a

[30] COWP 814.
[31] (1895) 1 Ch. 236.
[32] 28 Ch. D. 340.
[33] (1895) 1 Ch. 236.
[34] (1902) 86 L.T. 826.

cheque which had been received by him in his personal capacity, the other partner could not be made liable.

b) Liability of misapplication of money or property received by a firm and misapplied by a partner

Where the firm in the course of its business receives money or property from a third party and the same is misapplied by any of the partners while it is in the custody of the firm, the firm can be made liable towards the third party to make good the loss. In Blair v Bromley,[35] a firm of solicitors consisting of two partners received some money to be invested in a mortgage. The money was deposited with the firm's bankers. Only one of the partners attended to the monetary transactions of the firm. This partner misapplied the money but continued falsely telling the client that the same had been invested. The client was paid interest regularly by the said partner who attended to the matter. The fraud was not known to the other partner but it was held that the other partner could be made liable for the same. Similarly, in Ex parte Buddulph,[36] one of the partners of a firm of bankers withdrew the trust money and misapplied the same. All the partnersof the firm were held liable to make good the loss. In the same way in Sadler v Lee,[37] when one of the members of the firm of bankers misapplied the money which had been credited with the firm as sale proceeds of the stock of a customer, all the members of the firm were held liable for such misapplication.

II. THE DOCTRINE OF HOLDING OUT (S 28)

Every partner is liable for all acts of the firm done while he is a partner. Therefore, generally a person who is not a partner in the firm cannot be made liable for an act of the firm. In certain cases, however, a person who is not a partner in the firm may be deemed to be a partner for the purpose of his liability towards a third party. The basis of liability of such a person is not that he was himself a partner or was sharing the profits or was taking part in the management of the business, but the basis is the application of the law of estoppel because of which he is held out to be a partner or is deemed to be a partner by 'holding out'.

The doctrine of holding out is a branch of the law of estoppel. According to the law of estoppel, if a person, by his representation, induces another to do some act which he would not have done otherwise, then the person making the representation is not allowed to deny what he asserted earlier.

Therefore, if a person who is not a partner, by his representation creates an impression in the mind of the third party that he is a partner, on the basis of which the third party gives credit to the firm, the person making such a representation will be held out to be a partner. In the words of Lord Denman, CJ:[38]

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[35] 5 Hare 542.
[36] 3 De G & Sm 587.
[37] 6 Beav. 324.
[38] Pickard v Sears (1837) 6 A&E 469.

> "… where one by his words or conduct wilfully causes another to believe the existence of a certain state of things, and induces him to act on that behalf, so as to alter his own previous position, the former is precluded from averring against the latter a different state of things as existing at the same time…"

For example, a partnership firm consists of A, B and C. D, who is not a partner, makes a representation to X that he is also a partner and on the faith of this representation X gives credit to the firm. In this case X can make D liable on the basis of holding out and D is estopped from denying that he is a partner in the firm.

The principle was thus stated by Eyre C.J. In Waugh v Carver[39]:

> "Now a case may be stated in which it is a clear sense of the parties to the conduct that they shall not be partners, that A is to contribute neither labour nor money, and, to go still further, not to receive any profits. But if he will lend his name as a partner, he becomes against all the rest of the world a partner, not upon the ground of the real transaction between them, but upon principles of general policy, to prevent the frauds to which creditors would be liable, if they were to suppose that they lent their money upon the apparent credit of three or more persons, when, in fact, they lent it only to two of them, to whom without the others they would have lent nothing."

S 28 makes the following provision for liability under the doctrine:

> **28 Holding out. - (1) Anyone who by words spoken or written or by conduct represents himself, or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to anyone who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.**
>
> **(2) Where after a partner's death the business is continued in the old firm name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the firm done after his death.**

As stated in s 28(1) for the application of the doctrine of holding out, the presence of the following essentials is required:

1. The person sought to be made liable under the doctrine of holding out either has himself represented, or knowingly permitted somebody else to represent, that he is a partner in the firm.
2. The third party, who wants to bring an action, must have acted on the faith of the representation and given credit to the firm.

[39] (1793) 2 HBL 235.

I. Representation

In order to make a person liable under the doctrine of holding out, it has to be proved that either he himself made a representation or knowingly permitted such a representation to be made by someone else. In other words, there has to be a representation by a person by words spoken or written or by his conduct that he is a partner in the firm. Representation in any form indicating that a person is a partner in the firm will create the liability. Fraudulent intention to mislead another person is not required. Whether the liability for holding out exists or not depends not on the motive of the person making the representation but on the fact that a third party has given credit on the faith of the representation. When the third party has acted on the representation, the section creates the liability whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit. The presence of the two essentials, i.e., the representation by one person about the fact of his being a partner and the acting by a third party on the faith of the representation are enough to create liability under the doctrine. Thus, in Snow White Food Products Pvt. Ltd. V Sohan Lal Bagla,[40] it was held that by his verbal negotiations and subsequent correspondence, Sohan Lal represented as a partner of a firm of carriers and, therefore, he was a partner by holding out.

Knowingly permitting the representation to be made

It has been noted above that the liability under the doctrine of holding out arises when a person has either made a representation that he is a partner or knowingly permitted such a representation to be made by someone else. If I know that I am being wrongly represented as a partner, I have a duty to deny that. If knowing that fact I permit the representation to be made, the law of estoppel will apply against me and I can be held out to be a partner. In case it is being represented that a person A is a partner in a firm but A is not aware of such a representation, the question of A's liability under the doctrine of holding out does not arise. The position can be explained by referring to the case of Munton v Rutherford.[41] In that case one Beckwith published a statement in a newspaper that he and Mrs. Rutherford had formed a partnership. The statement was false and Mrs. Rutherford was not liable as a partner by estoppel or holding out. It was observed:

> "… if she had been shown the article, and she assented to it and credit had been given on the strength of such assent, the rule of estoppel would have applied. There being no evidence that se authorised or assented to it, there is no room for the application of the rule."

Mere carelessness in allowing oneself to be represented may not necessarily mean that he has knowingly permitted himself to be represented as a partner. In Tower Cabinet Co. v Ingram,[42] a partnership consisted of Christmas and Ingram. The partnership was

[40] AIR 1964 Cal. 209.
[41] 12 Mich. 418.
[42] (1949) 1 All ER 1033.

dissolved and thereafter the business was carried on by Christmas alone. Christmas used an old notepaper of the firm bearing the names of both Christmas and Ingram and placed an order for the purchase of some furniture from Tower Cabinet Co. Tower Cabinet Co. sued Ingram to make him liable on the basis of the doctrine of holding out. It was held that merely because Ingram was negligent in not getting the old notepaper destroyed when he left the firm, it cannot be inferred that he permitted himself to be represented as a partner and therefore he was not liable. Lynskey, J. observed[43]:

> "before the Company can succeed in making Mr. Ingram liable they have to satisfy the court that Mr. Ingram by words spoken or written… or by conduct, represent himself as a partner. There is no evidence of that. Alternatively, they must prove that he knowingly suffered himself to be represented as a partner. The only evidence of Mr. Ingram's having knowingly suffered himself to be so represented is that the order was given by Mr. Christmas on notepaper which contained Mr. Ingram's name. That would amount to a representation by Mr. Christmas that Mr. Ingram was still a partner in the firm, but, on the evidence and the master's finding, that representation was made by Mr. Christmas without Mr. Ingram's knowledge and without his authority. That being the finding of fact, which is not challenged, it is impossible to say that Mr Ingram knowingly suffered himself to be so represented. The words are 'knowingly suffers' – not being negligent or careless in not seeing that all the notepapers had been destroyed when he left."

In Oriental Bank of Commerce v M/s. S.R. Kishore & Co.,[44] a person, who was not a partner not only represented himself to be a partner, but he signed the partnership deed, actively participated in various transactions of the firm, and signed various partnership documents from time to time. It was held that he was liable for the acts of the firm on the basis of the principle of 'holding out'.

II. Acting on the faith of representation and giving credit

In order to entitle a person to bring an action under the doctrine of holding out, it has to be shown that he acted on the faith of the representation and gave credit to the firm. But if a person while giving credit to the firm did not know about th representation, he can't take advantage of this doctrine and make such person liable as a partner.[45]The estoppel can be relied upon only by the person to whom the representation has been made, and who has acted upon the faith of it.[46] For example, D, who is not actually a partner in the firm consisting of A,B & C represents to X that he is also a partner in that firm. On the faith of that representation, X gives credit to the firm. X can make D liable under the doctrine

[43] Ibid at p. 1036.
[44] AIR 1992 Delhi 174.
[45] Tower Cabinet Co. v Ingram (1949) 2 K.B. 397.
[46] In Re Fraser (1892) 2 QB 633.

of holding out. But if Y, who does not know of the representation gives credit to the firm of A, B & C, he cannot make D liable.

In M/s Glorious Plastics Ltd. V Laghate Enterprises,[47] a partner had retired from the firm on 1.4.1982, and the question arose whether he could be liable towards a third party for an act of the firm done on 1.3.1985. It was held that he could not be held liable for such an act as the third party had not given credit to the firm on the representation that he was a partner in the firm.

Liability for torts

The liability under the doctrine of holding out arises when the person acting on the faith of the representation has given credit to the firm. If the basis of the action is the tort committed by one of the partners, the doctrine of holding out does not apply in such a case.

In an old case,[48] a retired partner was held liable for the negligence of the cart driver of the firm on the ground that his name still continued to be there on the cart. The decision is apparently a wrong decision as the doctrine of holding out does not apply in cases of tort and the case has been subsequently disapproved by the Court of Appeal in Smith v Bailey.[49]

Position of a retired partner

When a partner retires, the relation of partnership between the retiring and the other partners comes to an end. If a third party who knew of the existence of this relationship does not know that the relationship has come to an end and gives credit to the firm, he can make the retiring partner also liable. Similarly, if he gives credit to the retiring partner thinking him to be still a partner, he can make the continuing partners liable. In other words, from the point of view of the third parties, the mutual agency which had earlier come into existence is still presumed to be continuing until public notice of retirement is given. S 32 (3) provides that "notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement."

Such public notice may be given either by the retired partner or by any partner of the reconstituted firm.[50]

The reason for liability even after the retirement is that the absence of the notice of revocation of an agent's authority makes the principal liable to those who act on the supposition that the agency still continues.

Lord Blackburn referring to liability in such cases stated:[51]

[47] AIR 1993 Bom. 224.
[48] Stables v Eley, 1 C and P. 614.
[49] (1891) 2 QB 403.
[50] S 32 (4).
[51] Scarf v Jardine (1882) 7 A.C. 345, 357.

> "I do not think that the liability is upon the ground that the authority actually continues. I think it is upon the ground that there is a duty upon the person who has given that authority, if he revokes it, to take care that notice of that revocation is given to those who might otherwise act on the supposition that it continued; and the failure to give that notice precludes him from denying that he gave the authority against those who acted upon the faith that authority continued."

No public notice is needed on the retirement of a dormant partner, i.e., a partner who is not known as such to third parties, because the Partnership Act further provide that a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner.[52]The object of public notice being to remove the impression from the mind of the third parties that a certain person was a partner, no public notice is needed when the third parties had no such impression.

An important point came for consideration in Scarf v Jardine,[53] where a third party was ignorant of either the retirement of a partner or the introduction of a new partner, when both the changes had taken place simultaneously. In that case a firm consisted of two partners, A and B. A retired and C joined the partnership in his place. No notice of the change was given. A customer of the old firm, who was not aware of the abovestated change, supplied goods to the reconstituted firm. To recover the price of the goods he brought an action against B and C. Having failed to recover the price from them he brought another action against A. the question before the court was, whether the third party who had supplied goods to the firm, could successfully bring action against A,B and C. it was held that when the customer is ignorant of the retirement of A as well as the introductionof C, he has an option to sue either A and B on the ground of estoppel or B and C on the basis of actual facts. Since A never held himself out as a partner alongwith B and C both, he cannot make A, b and C all of them liable. Therefore, after having elected to sue B and C he cannot bring an action against A. The position would have been different if he was aware of the introduction of C to the firm but was not aware of the retirement of A. the he could presume that C had joined the firm which already consisted of Aand B and in that situation could make all the three partners liable.

The position of an expelled partner is the same as that of a retired partner.[54] And in his case also a public notice of expulsion has got to be given to avoid his liability for the acts done after the date of expulsion.

Death of a partner

On the death of a partner, there is automatic dissolution of a firm unless there is a contract to the contrary between the partners.[55] When there is a contract between the partners by virtue of which the firm is not dissolved, viz., the remaining partners continue the business- the fact that the business of the firm is continued in the old firm name, does not of itself make the legal representatives or the estate of the deceased partner liable for an act of the firm done

[52] Proviso to s 32 (3).
[53] (1882) 7 AC 345.
[54] S 33 (2).
[55] S 42 (c).

after his death.[56] The position of the legal representatives of a deceased partner is different from that of a retired partner, as the former will not be liable for the acts of the firm done after the death of the partner even though no public notice of partner's death is given, whereas a retiring partner will continue to be liable for the acts of other partners until public notice of retirement is given.

III. RIGHTS OF TRANSFEREE OF PARTNER'S INTEREST (S 29)

The relation of partners is based upon mutual confidence and trust and obviously, therefore, no person may be introduced as a partner in the firm without the consent of all the existing partners.[57] It follows that no partner can assign his share in a way which may substitute an outsider in his place. If any partner transfers the whole of his interest in the firm to a third party, the other partners may apply to the court for the dissolution of the firm.[58] It is, however, possible that a partner may transfer his interest in the business in favour of a third person. S 29 contains the following provision with regard to the rights of the transferee of a partner's interest:

29. Rights of transferee of a partner's interest.- (1) A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation of him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of the business, or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the accounts of profits agreed to by the partners.

(2) If the firm is dissolved or if the transferring partner ceases to be a partner, the transferee is entitled as against the remaining partners to receive the share of the assets of the firm to which the transferring partner is entitled, and, for the purpose of ascertaining that share, to an account as from the date of dissolution.

S 29 (1) deals with the position during the continuance of the firm whereas the position of the dissolution of the firm or the transferring partner ceasing to be a partner is contained in s 29 (2).

During the continuance of the firm, the transferee of a partner's interest does not become entitled to interfere in the conduct of the business of the firm. Nor can such a transferee require accounts, nor can he inspect the books of the firm. He is bound to accept the account of profits agreed to by the partners. His only right is to receive the share of profits of the transferring partner. The reason why the transferee is not entitled to interfere in the conduct of the business is that partnership being based on mutual confidence and trust between the partners, there should be no interference by any outsider.

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[56] S 28 (2): also see proviso to s 45 (1).
[57] S 31 (1).
[58] S 44 (e).

A transferee of partner's interest in the firm cannot have any interest in the partnership property until the firmis dissolved. He has only a limited right to receive the share of profits of the transferring partner. The transferee of partner's interest being an outsider, he has no right to do business of the firm.

When the firm is dissolved or the transferring partner ceases to be a partner, there is obviously final settlement of accounts. At that time the transferee is entitled to the share of assets of the transferring partner. For the purpose of ascertaining such share, he is also entitled to an account as from the date of dissolution. What is meant by the share of a partner is his proportion of the partnership assets after they have been realised and converted into money, and all the partnership debts and liabilities have been paid and discharged.

The transferee cannot acquire any interest in partnership property till the firm is dissolved and he has no right to interfere in management of business.

It is apt to notice that there is a clear distinction between a case where a partner of a firm assigns his share in favour of a third person and a case where a partner constitutes a sub-partnership with his share in the main partnership. Whereas in the former case, in view of s 29 (1) of the Indian Partnership Act, the assignee gets no right or interest in the main partnership except, of course, to receive that part of the profits of the firm referable to the assignment and to the assets in the event of dissolution of the firm, but in the latter case, the sub-partnership acquires a special interest in the main partnership.

IV. Position of a minor admitted to the benefits of partnership (S 30)

30. Minors admitted to the benefits of partnership.- (1) As already noted, in order to create a partnership between a number of persons, they must have entered into a contract to that effect,[59] and that the relation of partnership arises from contract and not from status.[60] That obviously implies that all the essentials of a valid contract are to be satisfied and, therefore, all the partners must be competent to contract. A minor is incompetent to contract, his agreement is void and, therefore, he is incapable of becoming a partner in any partnership firm.[61] If, while creating partnership, a minor is made a full-fledged partner in a partnership firm, the deed would be invalid and the document cannot be enforced even vis-à-vis other partners.

Minor's admission to the benefits of partnership

The agreement by a minor is void but he is capable of accepting benefits. In consonance with this position of law, s 30 (1) provides that a minor may not be a partner in affirm, but with the consent of all the partners for the time being, he may be admitted to the benefits of

[59] S 4.
[60] S 5.
[61] Ss 10, 11, Indian Contract Act.

partnership. The introduction of a minor to the benefits of partnership presupposes the existence of a valid partnership between persons competent to contract. There can be no partnership of all minors, but a partnership between persons competent to contract must exist before a minor can be admitted to its benefits.

In Lachhmi Narain v Beni Ram,[62] two persons entered into partnership in 1900 under the style Beni Ram Hotilal. Hotilal died in 1920 and thereafter Beni Ram continued the business under the old name and style with the partnership funds. Hotilal's minor son (the plaintiff) alleged that after his father's death he was admitted to the benefits of partnership.

Held that the plaintiff (minor) could not be admitted to the benefits of partnership as no partnership existed after the death of Hotilal. Moreover, the plaintiff being a minor could not enter into a contract with Beni Ram to form partnership.

It is possible that the major members decide to constitute partnership and admit the minor to the benefits of the said partnership. Admission of a minor to the benefits of partnership can be done only with the consent of all the partners.

Minor's position during minority

The minor thus admitted has a right to such share of the property and of the profits of the firm as may be agreed upon he however cannot go to the court of law to enforce his rights in respect of such share so long as he continue admitted to the benefits of partnership this disability is removed when he is severing his connection with the firm he can also have access to any of the accounts of the firm and can inspect and copy them. In this matter,his position is different from a partner of the firm. A partner has a right to have access to and to inspect and copy any of the books of the firm whereas a minor's right has been limited to accounts only. It was considered undesirable to allow a person other than a real partner to have access to secrets of the firm.

Every partner is jointly and severally liable for all the acts of the firm. Moreover, his liability is unlimited and can extend to his personal property. A minor, on the other hand, is not personally liable for any such act. It is only his share which is liable for the acts of the firm.[63]

Option on attaining majority

According to s 30 (5), at any time within six months of his attaining majority or of obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, he can elect to become or not tobecome a partner. Such option is exercised by giving a public notice under s 72 of the Act. If he remains silent and fails to give such a notice, there is a presumption that he wants to be a partner and on the expiry of the said six months, he shall become a partner in the firm.

Sometimes without the knowledge of a minor, his guardian may have accepted his admission to the benefits of a partnership and the minor may have remained ignorant of his admission to

[62] AIR 1931 All 327.
[63] S 30 (3).

the benefits of partnership even after he has attained majority. According to s 30 (6), the burden of proving the fact that such had no knowledge of such admission until a particular date after the expiry of six months of his attaining majority shall lie upon the person asserting that fact. The Act, however, is silent as to who will have to prove that the minor obtained the knowledge of his admission after he attained majority but before the said period of six months from that date expired. Such cases would presumably be decided by the general rule contained in s 101, Indian Evidence Act.

For the purpose of exercise of option under section 30(5), it is necessary that the firm must be in existence when the minor attains the age of majority. If the firm has already been dissolved before the minor attained majority, the question of exercise of option does not arise, and such a minor admitted to the benefits of the partnership cannot be presumed to have become a partner on the expiry of a period of six months from the date of his attaining the majority. This may be explained by referring to the decision of the Supreme Court in Shivagouda v Chandrakant.[64] In this case in a partnership firm which consisted of A & B, Chandrakant, who was a minor, was admitted to the benefits of the partnership. The firm had dealings with the appellants and it became indebted to them to the extent of Rs. 1, 72, 484. After that, i.e., on April 18, 1951, the partnership was dissolved. Subsequently, Chandrakant attained majority but did not exercise an option under s 30 (5) declaring that he did not want to become a partner. The appellants having failed to recover the dues from A and B as they had become insolvent, brought an action against Chandrakant contending that since Chandrakant had failed to exercise an option within the period of six months of his attaining the majority as stipulated in s 30 (5), he had become a partner and, therefore, he should also be adjudicated insolvent for the debts of the firm. It was, however, held by the Supreme Court that s 30 of the Act did not apply to Chandrakant as he had attained majority only after the firm had already been dissolved. He was not a partner of the firm, and therefore, he could not be adjudicated insolvent for the acts of insolvency committed by the partners of the firm, i.e., A & B.

Shah, J. observed:[65]

> "When the partnership itself was dissolved before the first respondent (Chandrakant) became a major, it is legally impossible to hold that he had become a partner of the dissolved firm by reason of his inaction after he became major within the time prescribed under s 30 (5) of the Partnership Act. S 30 of the said Act presupposes the existence of a partnership… One cannot become or remain a partner of a firm that does not exist."

His position if he becomes a partner [s 30 (7)]

As already noted, such a minor becomes a partner in the firm-

i) When he himself elects to become a partner, or
ii) Fails to give the required public notice of his intention to become or not to become a partner within the specified time.

[64] AIR 1965 SC 212.
[65] Ibid, at 214.

So far as his rights and liabilities vis-à-vis partners of the firm are concerned, they continue to be the same up to the date on which he becomes a partner. Moreover, his share in the property and profits of the firm shall be the same to which he was entitled as a minor.

Towards the creditors of the firm, he becomes personally liable for all the acts of the firm, not from the date of his attaining majority, nor from the date of his becoming a partner but retrospectively from the date of his admission to the benefits of partnership.[66]

His position if he elects not to become a partner [s 30 (8)]

When he elects not to become a partner, his rights and liabilities continue to be the same as that of a minor up to the date of his giving public notice. His liability as regards his share in the firm continues only up to the date of the notice.[67] Therefore, neither his share in the firm is liable, nor there arises any question of his personal liability.

Application of doctrine of holding out on his attaining majority [s 30 (9)]

According to s 30 (9), if after attaining majority, he represents or knowingly permits himself to be represented as a partner in the firm, his liability on the ground of holding out can still be there.

[66] S 30 (7).
[67] S 30 (8).