Subject Name: Partnership Act
Topic Name: Ingredients of Partnership

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What constitutes a Partnership?

In Section 4 of the Act, a partnership is delineated as 'the bond among individuals who have consented to partake in the profits of a business conducted collectively by all, or by any of them acting on behalf of all.'

As articulated by Sir F. Pollock, a partnership embodies 'the connection that exists between individuals who have agreed to divide the profits of a business managed by all, or by any of them representing the interests of all.'

Nonetheless, the English Partnership Act of 1890 defines a partnership as 'the affiliation among individuals engaged in a joint business venture with the objective of securing profit.'"

A Partnership Arises from Agreement

According to Section 5, a partnership necessitates an agreement, meaning there must be at least two individuals involved, as no agreement, including a partnership agreement, can occur with just one person.

Consequently, when two or more individuals decide to form a partnership, they enter into a partnership agreement and execute a 'Partnership Deed' outlining the partnership's terms and conditions. Following this agreement, the partnership is officially established, and the individuals involved are henceforth recognized as partners of the partnership entity.

Furthermore, since a partnership originates from an agreement, the partnership agreement must adhere to all conditions stipulated for a valid and legally binding contract, as outlined in the Indian Contract Act, 1872. Such a contract may be either express or implied.

Ineligibility of Minors as Partners

A minor is ineligible to become a partner in the establishment of a new partnership firm. This is due to the provision outlined in Section 11 of the Indian Contract Act, which deems minors as legally incapable of entering into a valid contract, including partnership agreements.

However, a minor may be admitted to an already existing partnership firm, albeit solely for the purpose of enjoying its benefits and not for bearing any losses incurred by the firm.

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'Particular Partnership'

A partnership agreement can be established for a set period or for the execution of a specific project, venture, or task. Furthermore, as stipulated in Section 8, a partnership agreement formed solely for the purpose of undertaking a particular project, adventure, or job is termed a 'Particular Partnership.'

Typically, a 'Particular Partnership' dissolves automatically upon the completion of the specified project, adventure, or job. For instance, a group comprising two or more auditors involved in auditing the accounts of a specific company may be considered partners for that particular audit, as established in the case of Robinson vs Anderson. Once this particular audit concludes, and the final audit report is submitted to the company's management, the partnership ceases to exist automatically.

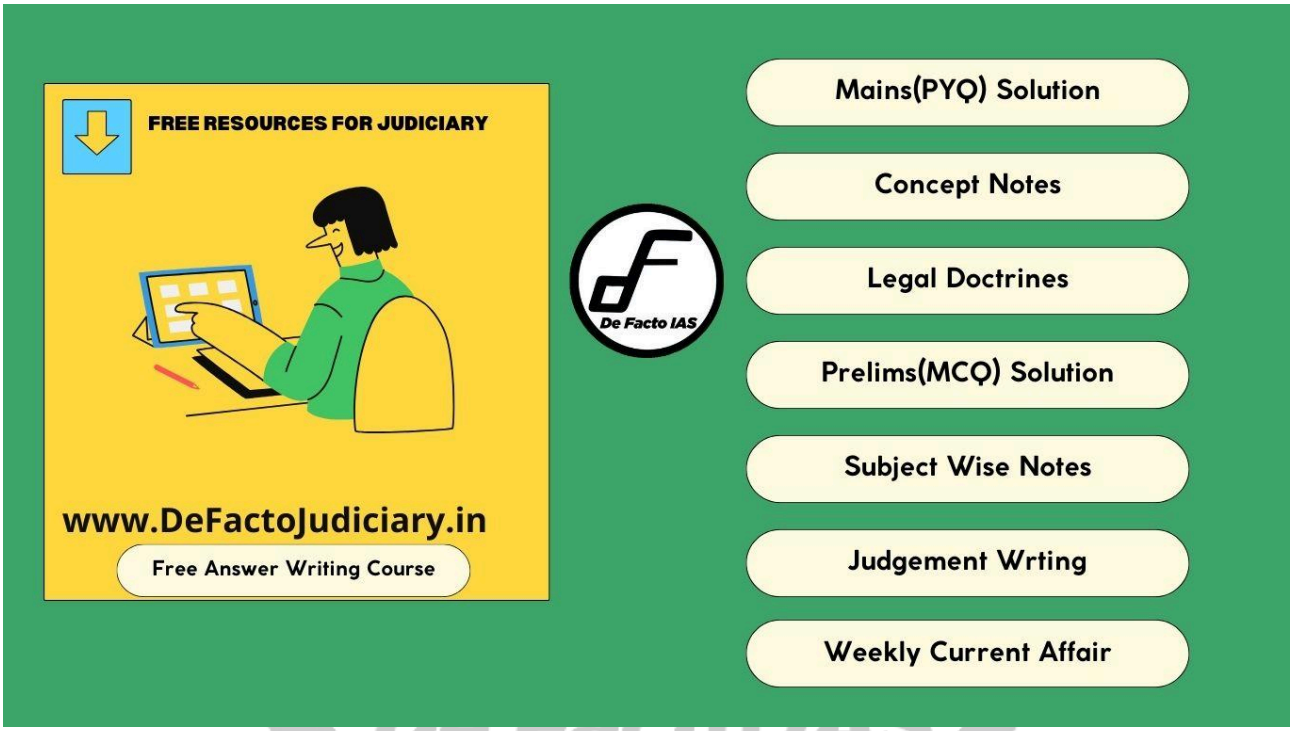
HUF Business Concern Differs from a Partnership

Additionally, as a partnership inherently stems from an agreement, a Hindu Undivided Family (HUF) business endeavour, which conducts the family business inherited from ancestors by the members of the Joint Hindu Family (known as coparceners), cannot be classified as a partnership.

This distinction arises because an HUF business typically does not originate from an agreement among the members of the Joint Hindu Family but rather by virtue of their familial status, i.e., being born into that family.

However, members of a Joint Hindu Family can also establish a partnership by mutually agreeing to conduct business as a partnership firm rather than as a Joint Hindu Family enterprise. In such instances, they must demonstrate that the partnership firm has materialised through a distinct agreement among them and not solely due to their familial status.

Similarly, it cannot be established through legal operation alone, such as in the case of co-ownership or joint acquisition of property.



Partnership Agreement Requires Business Operations

As elaborated in Section 2, Clause (b), the term 'business' encompasses any trade, occupation, or profession. This business activity may span a defined duration, involving numerous transactions over that period, or it may relate solely to transactions within a 'Particular Partnership,' as discussed previously in Section 8.

However, the pivotal and indispensable aspect of a partnership agreement is its intention to engage in business activities. Consequently, entities such as charitable societies or religious associations cannot be classified as partnerships under the Act. Similarly, even a club does not meet the criteria for a partnership, as affirmed in the case of Caldecott vs Griffiths (1853) 8 Ex Re. 898.