BUSINESS LAW

SUBJECT CODE: 16ACBB3

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UNIT V

Partnership – Definition - Essentials - Rights, duties and Liabilities of partners -Types of partnership - Dissolution of partnership.

Meaning and Definition of "Partnership"

Section 4 Para 1 of the of the Indian partnership Act 1932, defines partnership as:

- " Partnership is 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".
- Thus, partnership is the name of legal relationship between or among persons who have entered into a contract.

Features of Partnership Business

1. Two or more Members.
2. Agreement.
3. Lawful Business.
4. Competence of Partners.
5. Sharing of Profit.
6. Unlimited Liability.
7. Voluntary Registration.
8. Separate Legal Existence.
9. Principal Agent Relationship.
10. Restriction on Transfer of Interest.
11. Continuity of Business.

Essential Elements of Partnership

- Association of two or more persons
- Max. limit : 10 for banking; 20 for other business
- Result of an agreement
- Partnership relation based on Contract.
- Implied or Express (Oral or Written)
- Must carry on some business
- Trade, Occupation or Profession
- Share profits of the business
- Business is carried on by all or any one of them acting for all (mutual agency)

Partnership Deed

<u>Partnership Deed and its contents:</u>

- **A Partnership Deed is a written agreement among the partners providing for rules and regulations. It is signed by all the partners. It is stamped as per the Stamp Act. It is documented to prevent possible disputes & disagreements among the partners at a future date.**

Contents of a Pp deed:

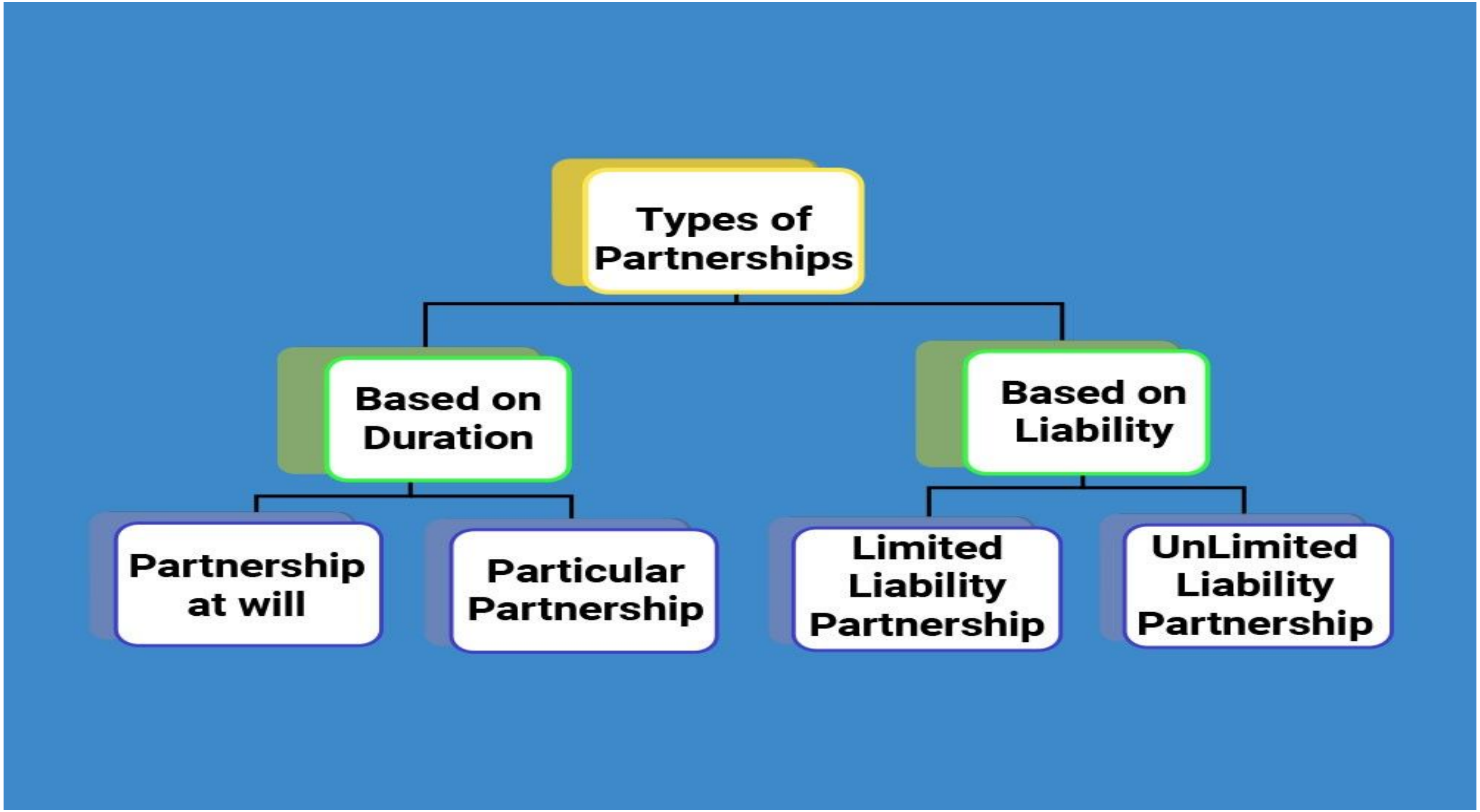
- **--The name of the firm;**
- **--Names and addresses of the partners;**
- **--Nature of business;**
- **--Date of commencement;**
- **--Duration/Period;**
- **--The amount of capital to be brought in by each partner;**
- **--The amount of drawings that may be permitted in anticipation of profits and the manner of withdrawal;**

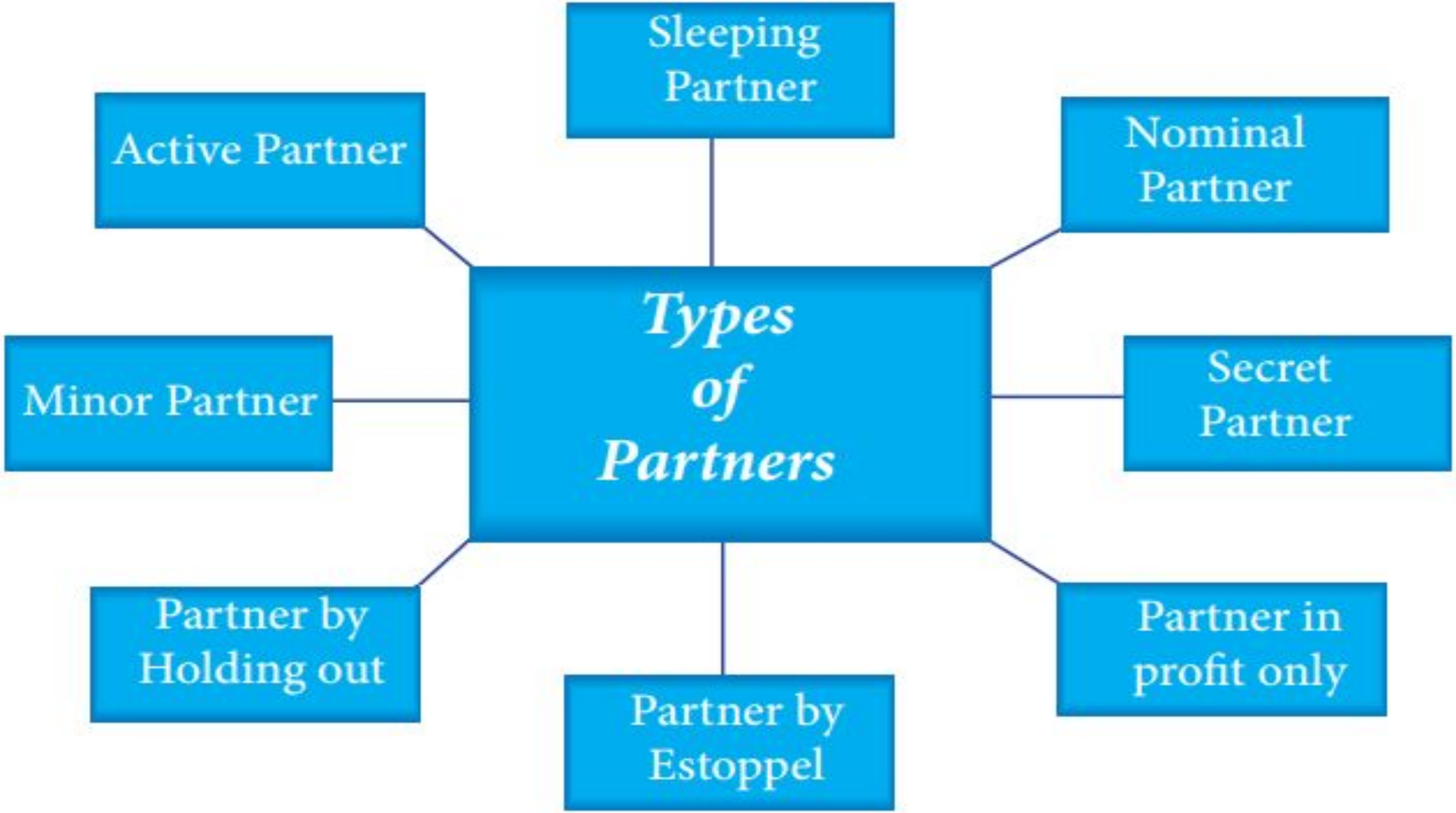
Advantages of Partnership

a. Easy to set up with few formalities.
b. Easier to secure financial assistance from financial institutions compared with sole proprietorship.
c. Equity can be increased through enlisting additional partners.
d. Business risks can be reduced and distributed among partners. In case of losses, each partner will share the burden.
e. The responsibility of managing and handling the business can be divided equally among partners.
f. A lot of ideas, talents and skills can be pooled together for better management.
g. As in a sole proprietorship business, income tax is not imposed on the partnership itself but on the owners as individuals.

Disadvantages of Partnership

- Unlimited liability
- Divided authority
- Difficulty in raising additional capital
- Hard to find suitable partners
- Possible development of conflict between partners
- Partners can legally bind each other without prior approval
- Lack of continuity
- No name protection


Types of Partnerships
Based on Duration
Based on Liability
Partnership at will
Particular Partnership
Limited Liability Partnership
UnLimited Liability Partnership


Sleeping Partner
Active Partner
Nominal Partner
Types of Partners
Minor Partner
Secret Partner
Partner by Holding out
Partner by Estoppel
Partner in profit only

Rights Of Partners

- Right to take part in the conduct of business.
- Right to express opinion.
- Right of access to accounts.
- Right to share in profit.
- Interest on capital.
- Right to interest on additional capital or loan.
- Right to indemnity.
- Rights in the firm’s property.
- Right to leave the firm.
- Right not to be expelled.
- Right to do competitive business.
- Right to share in profits after retirement.

Duties of a partner

- To carry on business to the greatest common knowledge
- To observe faith
- To indemnify for fraud/ willful neglect
- To attend diligently
- Not to claim remuneration
- To share losses
- To hold and use the property of the firm exclusively for the firm
- To account for personal profits
- To account for profits in competing business
- To act within authority
- Not to assign his rights
- To be liable jointly and severally

Liabilities of Partners

- Any individual or body corporate can be a partner.
- “Partner” means any person admitted as a partner in accordance to the LLP agreement and includes salaried partner.
- Any obligation arising from contract or tort will be the liability of the LLP and not the partners.
- A partner however will be jointly and severally liable for his own wrongful act or omission in the course of the business of the LLP.
- Liabilities of LLP will be borne out of the property of the LLP.

DISSOLUTION OF PARTNERSHIP AND FIRM

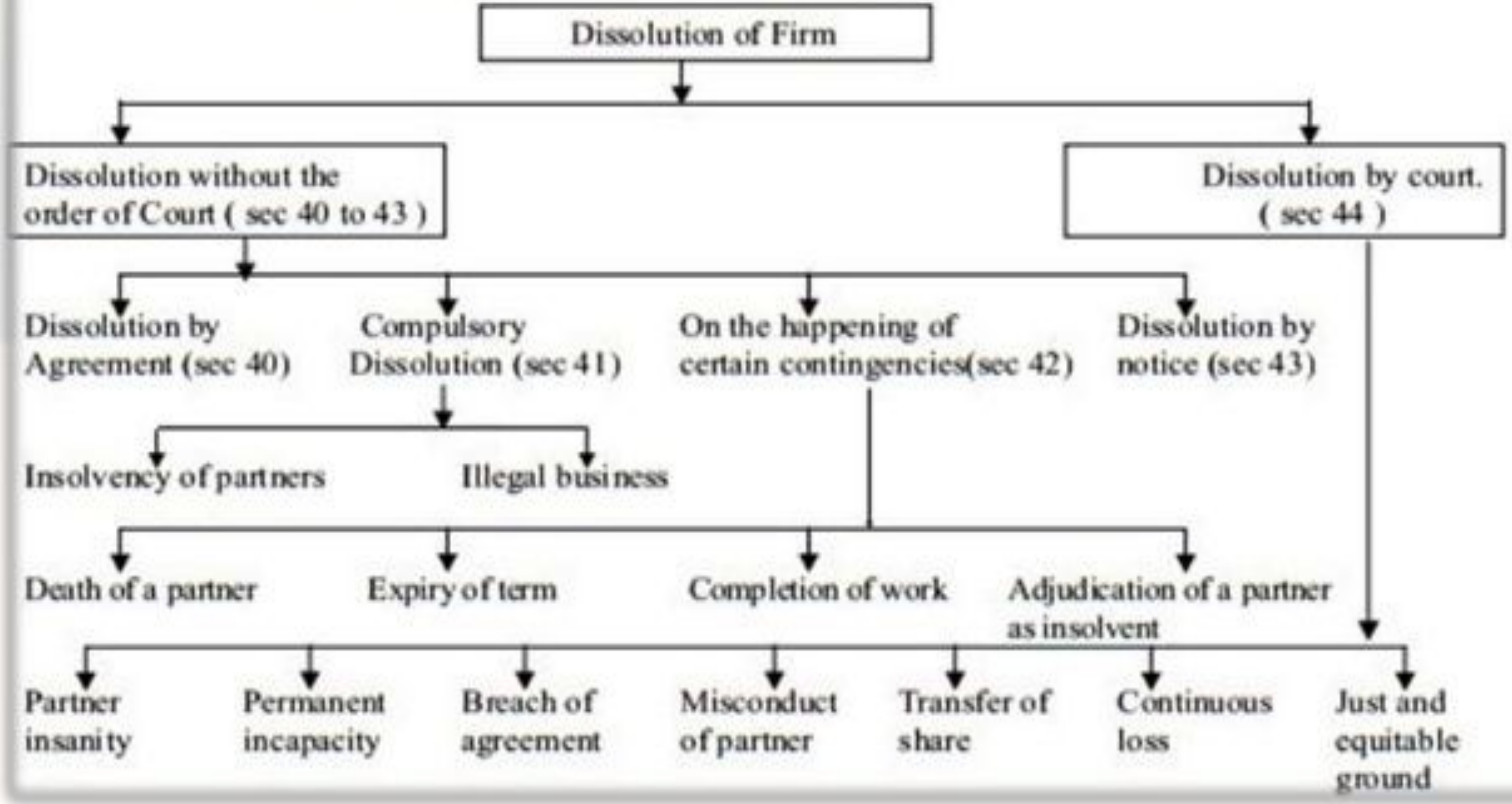
"The dissolution of partnership between all the partners of a firm is called the dissolution of the firm."

DISSOLUTION OF PARTNERSHIP:- When a partner of the firm breaks his relation with the other partners, and the other partners continue to operate the business of the firm, it is deemed to be a dissolution of partnership.

DISSOLUTION OF FIRM:- A firm is deemed to be dissolved when the relations between all partners break down

Modes of dissolution of firms

The Partnership firm may be dissolved in any one of the following ways.



Partnership Is Dissolved In The Following Circumstances:

Partnership is dissolved in the following circumstances:

- 1) At the time of admission of a new partner;
- 2) On the retirement/death of an old partner;
- 3) At the time of change in profit sharing ratio among existing partners;
- 4) If any partner is declared insolvent;
- 5) On the expulsion of any partner;
- 6) On the expiry of the period of partnership.

Thus this is clear from the above discussion that in the case of *dissolution of the partnership* the firm may continue under a new agreement whereas in the case of *dissolution of partnership firm* the business of the firm comes to an end.