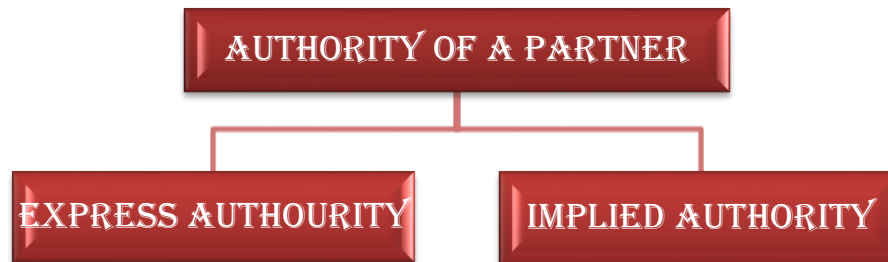


## ➤ AUTHORITY OF PARTNER

The authority of a partner means **the capacity or power of partner by which he can bind the firms by his acts**. This authority is obtained by a partner either because of partnership agreement formed mutually with other partners, or is conferred on every partner by the provisions of the Partnership Act 1932. *Authority of a partner may be of two types-*



- **Express Authority**- The authority which is given expressly to a partner of the partnership agreement is called as express authority. In other words, **the authority which is mutually decided and agreed between partners and exists in the partnership agreement as terms and conditions of the agreement** is an expressed agreement
- **Implied Authority** - Subject to the provisions of the Partnership Act, a partner is the agent of the firm for the purposes of the business of the firm. Therefore, a transaction entered into by one partner on behalf of the firm is binding on the firm and makes every partner liable, provided the following conditions laid down in Sec 19 (1) of the Partnership Act are satisfied. **The authority of a partner to bind the firm conferred by this section** is called his "*Implied Authority*".

(1) The transaction must be related to the **normal business of the firm**. If A and B carry on business as partners in a shoe shop, a contract signed by A in the firm name to supply books would not be binding on the firm or B unless it is made with the express authority of B, for the supply of books is not connected with the normal business of a shoe shop.

(2) The transaction must be **an act for carrying on business in the usual way**. It is difficult to lay down any criterion as to the usual way of carrying on any business. It is for the court to decide from all the facts and circumstances of each case as to what is an act for carrying on business in the usual way.

(3) The transaction must be **executed in the firm's name**, or in any other manner expressing or implying an intention to bind the firm.

### Example of Implied Authority

- ❖ When **John** visits a local bar, **the server** tells him he will receive a free drink if he orders an **entrée**. By making this offer, the server has made an oral contract with John on behalf of the bar. John assumes that the server has the authority to offer a free drink since he is an employee of the business and **acting on behalf of the owner**.

#### ➤ **THE ACTS OF A PARTNER WHICH FALLS WITHIN THE SCOPE OF IMPLIED AUTHORITY:**

- Buying and selling products and services
- Billing customers and accepting payments
- Contracting for advertising and other services
- In some cases, a lease may be signed
- Maintenance of registrar
- Recruitment of staffs and services for running the business
- Submit accounts to the creditors of the firm.

#### ➤ **IN THE ABSENCE OF ANY USAGE OF CUSTOM OF TRADE TO THE CONTRARY, THE IMPLIED AUTHORITY OF A PARTNER DOES NOT EMPOWER HIM TO:**

1. **Submit disputes** relating to the business of the firm to arbitration;
2. **Open a banking account** on behalf of the firm in his own name;
3. Compromise or **relinquish any claim** or portion of a claim by the firm;
4. **Withdraw a suit** or proceeding filed on behalf of the firm;
5. **Admit any liability** in a suit or proceeding against the firm;
6. **Enter into partnership** on behalf of the firm;

7. *Acquire immovable property* on behalf of the firm. It should be noted that the partners in a firm may, by contract between the partners, extend or restrict the implied authority of any partner.

But 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. A partner has also 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 firm.

### > TYPES OF PARTNERS

- 1 • **ACTIVE PARTNER**
  - 2 • **SLEEPING PARTNER**
  - 3 • **NOMINAL PARTNER**
  - 4 • **PARTNER BY ESTOPPEL**
  - 5 • **PARTNER IN PROFITS ONLY**
  - 6 • **SUB-PARTNER**
  - 7 • **INCOMING PARTNER**
  - 8 • **OUTGOING PARTNER**
  - 9 • **MINOR PARTNER**
- 

#### 1] Active Partner/Managing Partner

An active partner is also known as Ostensible Partner. As the name suggests he takes active participation in the firm and the running of the business. He carries on the daily business on behalf of all the partners. This means he acts as an agent of all the other partners on a day to day basis and with regards to all ordinary business of the firm

Hence when an active partner wishes to retire from the firm he must give a public notice about the same. This will absolve him of the acts done by other partners after his retirement. Unless he gives a public notice he will be liable for all acts even after his retirement.

## **2] Dormant/Sleeping Partner**

This is a partner that does not participate in the daily functioning of the partnership firm, i.e. he does not take an active part in the daily activities of the firm. He is however bound by the action of all the other partners.

He will continue to share the profits and losses of the firm and even bring in his share of capital like any other partner. If such a dormant partner retires he need not give a public notice of the same.

## **3] Nominal Partner**

This is a partner that does not have any real or significant interest in the partnership. So, in essence, he is only lending his name to the partnership. He will not make any capital contributions to the firm, and so he will not have a share in the profits either. But the nominal partner will be liable to outsiders and third parties for acts done by any other partners.

## **4] Partner by Estoppel or Holding out**

If a person holds out to another that he is a partner of the firm, either by his words, actions or conduct then such a partner cannot deny that he is not a partner. This basically means that even though such a person is not a partner he has represented himself as such, and so he becomes partner by estoppel or partner by holding out.

## **5] Partner in Profits Only**

This partner will only share the profits of the firm; he will not be liable for any liabilities. Even when dealing with third parties he will be liable for all acts of profit only, he will share none of the liabilities

## **6] Sub-Partner**

A partner may associate anybody else in his share in the firm. He gives a part of his share to the stranger. The relationship is not between the sub-partner and the firm but between him and the partner. The sub-partner is a non-entity for the partnership. He is not liable for the debts of the firm.

## **7] Incoming Partner**

The partner, who is admitted afresh in the firm is known as new or incoming partner. Such a partner can be admitted with the consent of all partners. The incoming partner brings his share of capital and goodwill.

### **8] Outgoing or Retiring partner**

The partner who retires from the firm with the consent of other partners is termed as retiring partner. The outgoing partner must serve notice to the general public that he had retired from the firm. Otherwise he will be liable to third parties for the payment of their debts and dues even after his retirement.

### **9] Minor Partner**

A minor, who is below 18 years of age, may be admitted into a firm to the benefits of the partnership. But he cannot become a partner as he is incompetent to enter into a contract. His liability will be limited to the extent of his share. He cannot, take part in the management. He has a share in the profits of the firm. After attainment of major age limit, within six months, he has to decide whether to continue in the firm or not. He should issue a notice to that extent. Otherwise he is deemed to be a regular partner.

#### **➤ CAN A MINOR BE ADMITTED TO A PARTNERSHIP?**

*As a minor he/she is not capable of entering into any contract thus, any agreement by, or with a minor is void ob initio. As partnership is created by an agreement, a minor thus cannot enter into partnership, though he can be admitted to the benefits of the firm only with the consent of all the other partners.*

Section 30 of the Indian Partnership Act 1932 contains legal provisions about a minor in a partnership. As we know the Indian Contract Act clearly states that no person less than the age of 18, i.e. a minor can be a party to a contract. And a partnership is a contract between the partners. Hence a minor cannot be a partner in a partnership firm.

However, according to the Partnership Act, a minor may be admitted to the benefits of a partnership. So while the minor will not be a partner he will enjoy all the benefits of a partnership. To admit the entire minor to the benefits of the partnership all of the partners of the firm must be in agreement.

➤ **RIGHTS OF A MINOR PARTNER**

*Once the minor is given the benefits in a partnership there are certain rights that he enjoys. Let us take a look at the rights of a minor partner.*

- i. A minor partner will obviously have the right to his **share of the profits of the firm**. But the minor partner is not liable for any losses beyond his interests in the firm. So a minor partner's personal assets cannot be liquidated to pay the firm's liabilities.
- ii. He can also like any other partner **inspect the books of accounts** of the firm. He can demand a copy of the books as well.
- iii. If necessary **he can sue** any or all of the other partners for his share of the profits or benefits.
- iv. A minor partner on attaining majority has the right to **become a partner of the firm**. He has six months from attaining majority to decide if he will exercise this right. Whether he decides to become a partner or not he must give public notice about the same.

➤ **LIABILITIES OF A MINOR PARTNER**

- i. A minor cannot be held **personally liable for the losses** of the firm. And if the firm declares insolvency the minor's share is kept with the Official Receiver.
- ii. After turning 18 the minor partner can choose to become a partner of the firm. But he may choose to not become a partner. In this case, the minor partner has to give a public notice about this decision. And the notice has to be given within 6 months of gaining a majority. If such a notice is not given even after 6 months then the minor partner will become liable **for all acts done by the other partners** till the date of such notice.
- iii. Should the minor partner choose to become a partner he will be liable to all the **third parties for the acts done** by any and all partners since he was admitted to the benefits of the partnership.
- iv. If he **becomes a full-time partner** he will be treated as a normal partner and **have all the liabilities of one**. His share in the profits and property of the firm will remain the same as it was when he was a minor partner.

# Status of a Minor



Cannot become a partner in any firm as is incompetent to enter into a valid contract with others.

Can be admitted to benefits of a partnership firm with the mutual consent of all other partners.

Liability is limited to the extent of capital contributed by him.

Not eligible to take part in active management

When he attains majority, he decides whether he would like to become a partner in the firm.