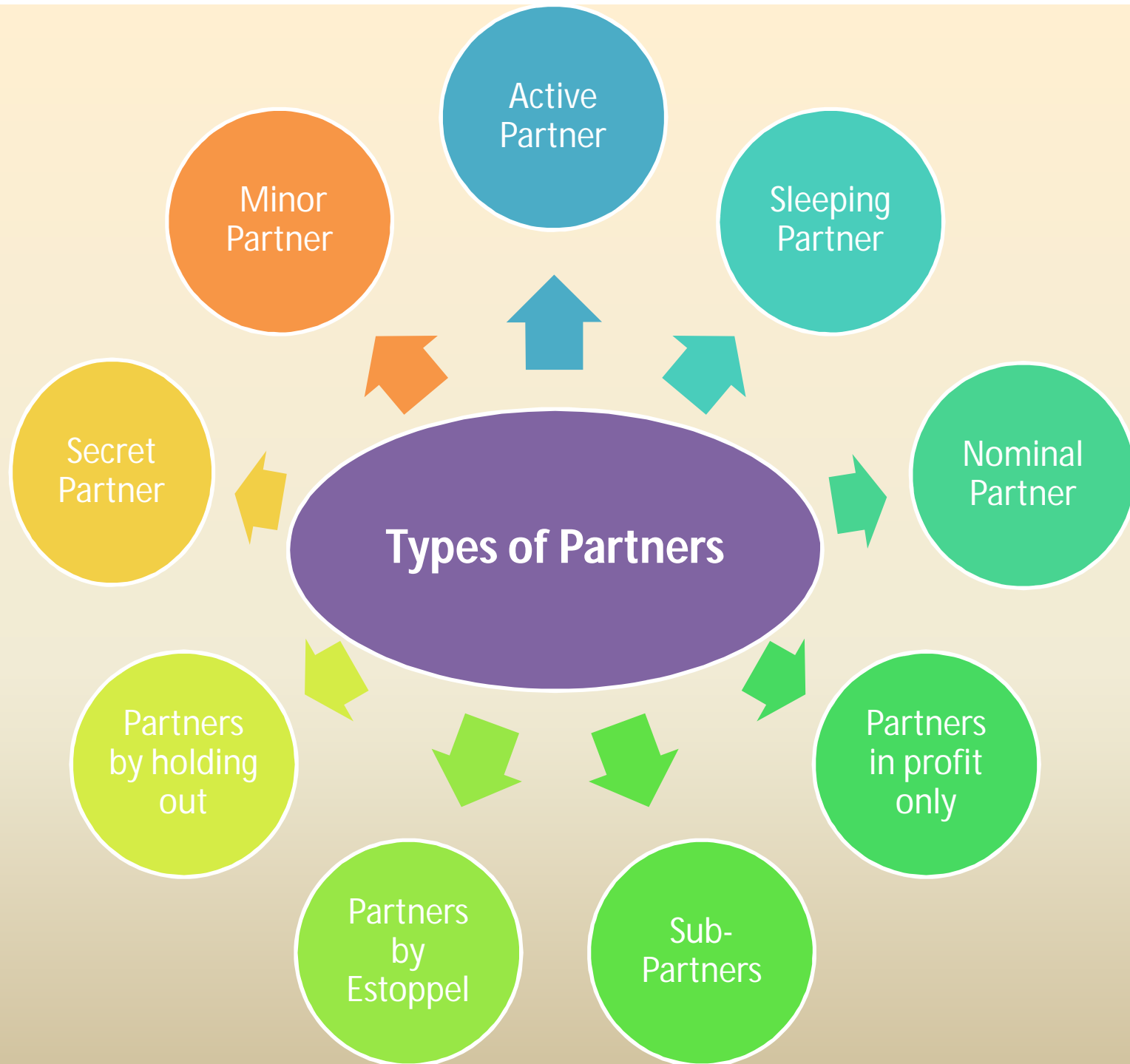




Partnership

Definition of partnership

According to Section 4 of the Indian Partnership Act, 1932, "Partnership is the relation between two or more persons who have agreed to share the profits of the business carried on by all or any of them acting for all"



Active Partner



- An active partner is also known as **Ostensible Partner/Managing Partner**
- He takes active participation in the firm and the running of the business
- He is liable to third parties for all the acts of the firm
- He carries on the daily business on behalf of all the partners.
- Unless he gives a public notice he will be liable for all acts even after his retirement.
- His insanity or permanent incapacity will dissolve the firm

Sleeping/Dormant Partner

- He does **not take an active part** in the daily activities of the firm
- He is also liable to third parties for all the acts of the firm
- If such a dormant partner retires he need not give a public notice of the same.
- His insanity or permanent incapacity won't dissolve the firm

Nominal/ostensible partner

- He **lends his name to the firm**, without any capital contributions, and doesn't share the profits of the business.
- He is liable to outsiders as an actual partner.
- He must give public notice of his retirement
- His insanity or permanent incapacity won't dissolve the firm

Partners in profit only

- He shares profits only, **not losses**
- He is also liable to third parties for all the acts of the firm
- He must give public notice of his retirement
- His insanity or permanent incapacity will dissolve the firm

Sub-Partner

- A Sub-Partner has no direct contact with the firm. He is only next to a partner.
- He is a third person with whom a partner agrees to share his profits derived from the firm
- He is not liable to third parties for all the acts of the firm
- No need to give public Notice
- His insanity or permanent incapacity won't dissolve the firm

Partner by Estoppel

- He is not a partner of the firm but by his words and conduct he leads the outsiders to believe that he is also a partner of the firm.
- Such person remained silent without denying it, he also considered a partner by holding out.
- He is liable to such third parties for all the acts of the firm
- Usually this arises, when the outgoing partner fails to give notice about his retirement.

Partner by holding out

- Though he is not a partner, he knowingly permits himself to be a partner of the firm by his activities.
- Thus he liable to third parties who do business with that partnership believing that he is also a partner
- He is not really a partner in a business

Secret Partner

- A Secret Partner is actually a partner of the firm.
- But he does not hold out to the public as a partner of the firm but **keeps his existence as secret.**
- His liability is also unlimited.
- He is liable for the losses of the business. He can take part in the working of the business.

Minor Partner

- A minor is a person who has not yet attained the age of majority.
- A minor cannot enter into a contract according to the Indian Contract Act because a contract by a minor is void-ab-initio . However, a minor may be **admitted to the benefits of an existing partnership**
- The minor is not personally liable for liabilities of the firm, but his share in the partnership property and profits of the firm will be liable for debts of the firm.

Mohri bibi v. Dharamodas ghosh

- Dharamodas ghosh lent the minor Rs.20,000 @ 12% interest and secured the loan by way of mortgage executed by the minor in favor of Dharamodas ghosh
- Later the mother of the children claim that the mortgage was void for the lack of capacity

Position Of Minor as a partner

- Before admission of a minor as a partner , there must be a existence partnership.
- He has right to share the property and profit of the firm as may have been agreed upon.
- He has a right to access to and to inspect and take a copy the accounts of the firm.
- There must be mutual consent of all the partners

Note: There cannot be a partnership consisting of all the minors or of one major and all other minor

Merits of partnership

Easy
formation

More financial
resources

More
managerial
skills

Flexible
management

Balanced
business
decisions

Sharing of
Risks

Easy Formation

At least two persons, Agreement may be oral or written, lawful business, sharing of profit and mutual agency

More financial resources

Pooling of financial resources of all of its partners , scope for expansion and growth of business

More managerial Skills

Pooling of managerial skills of all of its partners , scope for efficient management expansion and growth of business

Flexible Management

The partners can easily bring about changes in the size and nature of activity according to the changing conditions. This give flexibility to business

Balanced Business Decisions

All partners participate in major decisions, there is lesser scope for reckless and hasty decisions

Sharing of Risks

Risks are shared by all partners on agreed basis. Less risk than sole proprietorship. It motivates to undertake risk for profitable business activities

Limitations of partnership

Uncertainty
of Existence

Risks of
Implied
Authority

Risks of
Conflicts

Lack of
Institutional
Confidence

Limited
Capital

Unlimited
Liability

Uncertainty of Existence

It may dissolve at any time due to death of partner or insolvency of partner

Risks of Implied Authority

Each partner is an agent to the firm , he can bind the firm . A dishonest or incompetent partner may lend the firm into difficulties

Risks of Conflicts

Misunderstanding between partners will delay in decision making and it leads to dissolve the firm

Lack of Institutional confidence

Since accounts are not published , the firm is not able to enjoy much confidence from financial institutions

Limited capital

There is a limit of maximum partners , thus capital raising capacity of partnership is difficult

Unlimited liability

Partner's liable not only for his private assets but also for his personal assets

Distinction between sole proprietorship and partnership

- Formation
- Specific regulation
- Membership
- Extent of financial resources
- Extent of managerial skills
- Existence of business depends on
- Business secrets
- Sharing of profits
- Sharing of Risks
- Quickness in decision making
- Scope for reckless & Hasty Decisions

Distinction between partnership and Hindu undivided family

- Agreement
- Regulating law
- Name of the persons involved
- Maximum limit
- Admission of new member
- Minor members
- Female members
- Implied Authority
- Liability of members
- Right to demand accounts
- Effect of death of a members