

INDIAN

PARTNERSHIP

ACT


LL.B. II Sem.

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 How will you determine whether a person is or is not a partner ?

**Ans.** Whether a person is partner or not is an open question and in the absence of an express agreement all the circumstances of the case, besides the incident of sharing profits would be taken into account by a court of law in deciding whether a particular person was a partner in the firm. In short whether a partnership between a given set of the individuals exists or not is a question which "must depend on the real intention and a contract of the parties. In determining whether a person is not a partner in a firm, regard shall be had to the real relation between the parties as shown by all relevant facts taken together." (Section 6, Indian Partnership Act).

A and B may in a written agreement, have stated expressly that they are not partner, yet they may be held to be partners [*Moorze v. Davis*, (1879) 11 Ch. D. 261]; or they may have stated that they are partners and may be held not to be partners. (*Bhaggu Lal v. De Gurvther*, ILR All 74). Nature of the relation is not altered by the mere use of the word 'partnership' either in the agreement or in pleadings. (*Mamooji v. Taybali*, AIR 1938 Sind 210). It is not

essential that all the partners should also share the losses and they may agree to draw a salary instead of share in profits.

Section 6 of the Act expressly envisages the examples of cases where there is sharing of profit but no partnership in its two explanations—

(1) *Joint owners* who agree to share gross returns out of the property do not become partners.—(*Govind Nair v. Maga*).

(2) *Lender of money* if receives profit has not been considered to be a partner—[*Cox v. Hickman*, (1860) 8 H.L.C. 268 and *Badley v. Consolidated Bank*, (1888) 38 Ch. D. 238].

(3) *Servant* where receives profit along with remuneration or lieu of it will not become a partner. Similar is the case with an agent.—(*Munshi Abdul Latif v. Gopeshwar Chatterji*).

(4) *Widow*, or child of a deceased partner do not become partner automatically, though they may get a share in profits.

(5) *Seller of goodwill* if agrees to solicit the old customers to the purchaser and thereby gets shares profit, cannot be treated as partner.—(*Rawlinson v. Clarke*).