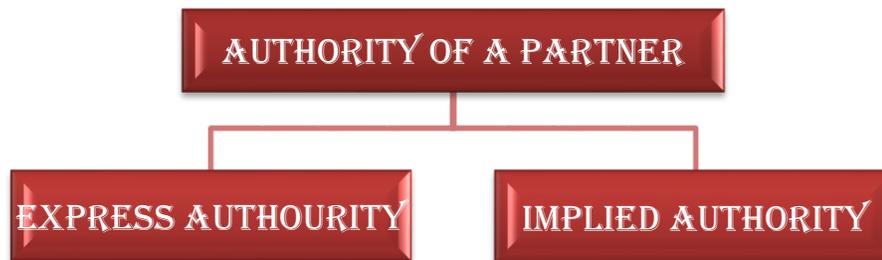


INDIAN PARTNERSHIP ACT 1932

➤ 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.