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FORMS OF BUSINESS ORGANISATION

Question 1:

Compare the status of a minor in a Joint Hindu Family Business with that in a partnership firm.

ANSWER:

As per the Indian law, any person below the age of 18 years is considered a 'minor'. The status of a minor in a Joint Hindu Family differs from that in a partnership firm. In case of a Joint Hindu Family, membership in the family business is by birth. This means that as soon as a boy child is born in a Joint Hindu Family, he is automatically entitled to a share in his family business. In this case, the minor enjoys an equal ownership right over the inherited property as the other members of the family. However, his liability is limited only to the extent of his share in the joint property.

As per the Partnership Act, 1923, no minor can be a partner in a partnership firm. But a partnership firm, with the consent of all the partners, can admit a minor to share the profits of the firm; but he cannot be asked to either contribute capital or bear the losses incurred by the business. A minor is not legally competent to enter into any legal contracts, and therefore, he or she cannot be considered a partner. However, a minor, after attaining the age of 18 years, has the option of either continuing with the partnership firm or withdrawing his interest from it.

Question 2:

If registration is optional, why do partnership firms willingly go through this legal formality and get themselves registered? Explain.

ANSWER:

Although registration in case of a partnership firm is optional yet many firms voluntarily opt for it. This is because of the various legal disadvantages associated with non-registration. A few of these disadvantages are listed below.

(a) The partners of a non-registered firm cannot file a suit against a third party; however, non-registration of a partnership firm does not prevent other firms from suing it .

(b) The firm cannot file a case against any of its partners. Similarly, a partner of a non-registered firm cannot file a case against his or her co-partners or the firm.

(c) A non-registered partnership firm cannot enforce its claims against a third party in a court.

Question 3:

State the important privileges available to a private company.

ANSWER:

A private company enjoys certain exemptions or privileges which are often not available to a public company. Some of the privileges enjoyed by a private company are given below.

(a) Lesser number of members required: A private company requires only two members for formation, while a public company requires at least seven members.

(b) Commencement of business: A private company can start its business operations right from the day of receiving the certificate of incorporation. On the other hand, it is mandatory for a public company to obtain a certificate of commencement along with a certificate of incorporation before starting business.

(c) No restriction on advancing loans to the directors: In the case of a private company, there is no restriction on the amount of loans that can be granted to the directors. No prior permissions are required to be sought for advancing such loans. In contrast, a public company has to seek permission from the government before advancing loans to its directors.

(d) Lesser number of directors required for operations: A private company can continue operations with just two directors, whereas a public company must have at least three directors to continue its operations.

Question 4:

How does a cooperative society exemplify democracy and secularism? Explain.

ANSWER:

In a cooperative society, management is in the hands of a managing committee elected by the members of the society. The elections in such societies are governed by the principle of 'one member, one vote'. This implies that all members have equal voting rights irrespective of the amount of capital they have contributed to the society. This principle prevents the dominance of the richer members (who may own a higher number of shares) in the decision-making process. Thus, as in a democracy, a cooperative society treats all its members equally and provides equal rights to its members.

Moreover, there is no discrimination among the members on the basis of their religion, caste or sex. In addition, the members are free to elect the members of the managing committee of their choice. Therefore, a cooperative society exemplifies a secularist system.

Question 5:

What is meant by 'partner by estoppel'? Explain.

ANSWER:

A person can be regarded as a 'partner by estoppel', if he or she through his/her actions or behaviour, leaves an impression on third parties that he or she is a partner in a particular firm. This means that if a person behaves in a manner that makes third parties consider this individual as one of the actual partners, then he or she is regarded as a 'partner by estoppel'. Such a partner (by estoppel) is actually not a partner, as he or she neither contributes any capital to the firm nor actively participates in the operations of the firm and is not entitled to any share in the firm's profits or losses. Nevertheless, he or she can be held liable for the debts that the firm owes to third parties. Accordingly, if the funds available to the firm fall short of requirement for the repayment of debts, then the private assets of a partner by estoppel can be used to repay the debts.