CHAPTER V - INCOMING AND OUTGOING PARTNERS

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31. Introduction of a partner

31.1 No person shall be introduced as a partner into a firm without the consent of all the existing partners.

> (1) Subject to contract between the partners and to the provisions of section 30, no person shall be introduced as a partner into a firm without the consent of all the existing partners.

Section 31(1) of the Indian Partnership Act, 1932 rests on the principle that a partnership is a relationship of mutual trust and confidence. Each partner is an agent of the firm and of the other partners (s. 18), and every partner is personally liable for the firm's debts (s. 25), so no partner can be made to accept a new associate without agreeing to it. Admitting a new partner therefore needs the consent of every existing partner, not just a majority. A single partner who objects can block the admission, and a person brought in without unanimous consent does not become a partner. The rule gives way in two cases. First, it is subject to any contract between the partners: the partnership deed may allow admission by a majority, or give a particular partner the right to introduce a new partner, such as a son or heir, without the others' consent. Second, it is subject to s. 30. A minor cannot be a partner, but can be admitted to the benefits of a partnership with the consent of all the partners. When that minor reaches majority, he may elect to become a partner, and if he gives no public notice of his choice within six months he is treated as a partner anyway (s. 30(5)). In either case he becomes a full partner without the existing partners having to consent again. A newly admitted partner is ordinarily not liable for acts of the firm done before he became a partner (s. 31(2)). For example, A, B and C run a firm

under a deed that says nothing about admitting partners. A and B want to admit D, but C refuses. D cannot become a partner, because C's consent is required and the majority of A and B cannot override him. If the deed had instead provided that "a new partner may be admitted with the consent of two-thirds of the partners", D could be admitted with A's and B's consent alone, because the contract between the partners displaces the general rule. Similarly, if M, a minor, had been admitted to the benefits of the firm and on reaching majority elected to become a partner, he would become one even if C objected at that time.

31.2 A person introduced as a partner into a firm shall not be liable for any act of the firm done before he became a partner.

> (2) Subject to the provisions of section 30, a person who is introduced as a partner into a firm does not thereby become liable for any act of the firm done before he became a partner.

Section 31(2) of the Indian Partnership Act, 1932 protects an incoming partner from the firm's past liabilities. Under s. 31(1), a new partner can be introduced only with the consent of all existing partners, and once introduced, he shares in the firm's liabilities only from the date of joining; he is not personally answerable for debts or obligations the firm incurred before then. This follows from the general rule that a partner is liable for acts of the firm done while he is a partner (s. 25). An incoming partner may take on past liabilities only by agreeing to do so: an agreement with the other partners binds only them, while an agreement that also involves the creditor (a novation) makes him liable to that creditor directly. The opening words "subject to the provisions of section 30" create one exception: a minor admitted to the benefits of a partnership who, on reaching majority, chooses to become a partner is personally liable for all acts of the firm from the date he was first admitted to its benefits (s. 30(7)(a)), not merely from the date he became a partner. The rule protects only the new partner's personal assets; property of the firm, including any capital he has brought in, remains available to pay the firm's earlier debts. For example, A and B run a firm that borrows ₹3 lakh from X in January, C is admitted as a partner in June, and the firm later defaults. X can sue the firm and A and B personally, but cannot recover from C's personal property, because the debt

arose before C became a partner. If, however, C had agreed with A, B and X to be responsible for the January loan, C would also be liable to X.

32. Retirement of a partner

32.1 A partner may retire only with the consent of all the other partners, under an express agreement among the partners, or, in a partnership at will, by written notice to all the other partners.

(1) A partner may retire,

(a) with the consent of all the other partners,

(b) in accordance with an express agreement by the partners, or

(c) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.

Section 32(1) of the Indian Partnership Act, 1932 sets out the only three ways a partner can leave an existing firm while the firm carries on with the remaining partners. First, under clause (a), the partner may retire if every other partner consents. The consent must be unanimous, because retirement changes the firm's constitution, and a majority of partners cannot approve it alone. Second, under clause (b), the partner may retire as the partnership agreement provides, for example after giving a notice period it specifies or on reaching an age it fixes. In that case, no fresh consent is needed. Third, under clause (c), where the partnership is at will (one with no fixed term and no agreed way of ending it, s. 7), the partner may retire simply by giving written notice of the intention to retire to all the other partners, and their consent is not required. Oral notice, or notice to only some of the partners, does not satisfy clause (c). Retirement differs from dissolution because the firm continues among the remaining partners. Even so, under s. 32(2) and (3) the retiring partner stays liable to third parties for the firm's acts until public notice of the retirement is given. For example, A, B and C run a cloth business as a partnership at will. If A wants to leave, he can do so by sending a written notice of retirement to both B and C, without their agreement, and B and C may carry on the business as a firm. If their partnership deed had instead fixed a five-year term and contained no retirement clause, A could leave before the term ended only with the consent of both B and C. If the deed allowed any partner to retire on three months' notice, A could retire by giving that notice under clause (b).

32.2 A retiring partner shall be discharged from liability to a third party for acts of the firm done before his retirement only by an agreement with that third party and the partners of the reconstituted firm.

> (2) A retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm, and such agreement may be implied by a course of dealing between such third party and the reconstituted firm after he had knowledge of the retirement.

Section 32(2) of the Indian Partnership Act, 1932 deals with a partner's liability for debts and obligations the firm incurred while he was still a partner. Retirement does not end that liability by itself. Under s. 25 every partner is jointly and severally liable for acts of the firm done while he is a partner, and that liability stays with him after he leaves. An agreement only between the retiring partner and the continuing partners does not bind outsiders either. Even if the continuing partners promise to take over all old debts, that promise works only between the partners: it gives the retiring partner a right to be indemnified by them, but the creditor can still sue him. The creditor's rights end only through a three-way agreement between the retiring partner, the third party (the creditor) and the partners of the reconstituted firm. In substance this is a novation (s. 62, Indian Contract Act, 1872): the creditor agrees to accept the reconstituted firm as his debtor in place of the old firm, and to release the retiring partner. The agreement can be express, or it can be implied from a course of dealing between the creditor and the reconstituted firm. Two conditions apply to an implied agreement. First, the dealing must take place after the creditor knew of the retirement. Second, the conduct must show that the creditor accepted the new firm as solely responsible, for example by treating the old debt as the new firm's debt, taking fresh security or bills from it, or renewing the account in its name. Simply continuing to do business with the new firm is not enough unless it points to such acceptance. Section 32(2) covers only acts done before retirement. Liability for acts done after retirement is governed by s. 32(3), under which the retiring partner remains liable until public notice of the retirement is given. For example, A, B and C are partners in a firm that owes ₹5 lakh to supplier S. C retires, and A and B agree with C that they will pay all the firm's existing debts. If S was not a

party to that arrangement, S can still sue C for the ₹5 lakh, and C's only remedy is to claim indemnity from A and B. But if S, A, B and C sign an agreement under which S accepts the reconstituted firm of A and B as solely liable and releases C, C is discharged. The same result can be implied. Suppose S learns of C's retirement and then, over several months, debits the old ₹5 lakh to the new firm's account, accepts fresh bills of exchange from A and B for that amount, and continues supplying goods on that footing without ever looking to C. That course of dealing may show that S agreed to treat the new firm as his debtor and to release C, and C is discharged from the old debt.

32.3 A retiring partner shall continue to be liable to third parties for the acts of the firm until public notice of his retirement is given.

> (3) Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement:
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> Provided that a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner.

Section 32(3) of the Indian Partnership Act, 1932 protects people who deal with a firm in good faith. Retirement changes the relationship between the partners themselves, but outsiders may not know about it and may keep dealing with the firm on the strength of the retired partner's name and credit. The law therefore treats the retired partner, along with the continuing partners, as still a partner in relation to third parties. He is liable for any act done by any of them that would have been an act of the firm before his retirement, and this lasts until public notice of the retirement is given. Under s. 72, public notice means notice published in the Official Gazette and in at least one vernacular newspaper circulating in the district where the firm has its place or principal place of business. For a registered firm, notice must also be sent to the Registrar under s. 63. The notice may be given by the retired partner or by any partner of the reconstituted firm. Until it is given, the retired partner's liability to outsiders continues, even if his co-partners have agreed to release him. That kind of agreement binds a creditor only if the creditor joins in it under s. 32(2). The proviso sets one limit. A third party who dealt with the firm without knowing that the retired person was

ever a partner cannot hold him liable, because that party never relied on his credit. For this reason a dormant or sleeping partner who retires is not liable to such persons even without public notice. For example, A, B and C are partners in a trading firm, and C retires in January without any public notice being given. In March, A buys goods on credit from X in the firm's name, and X has long known C as a partner. The firm fails to pay, and X can sue C along with A and B, because no public notice of C's retirement had been given. If C had published the notice in the Official Gazette and a local vernacular newspaper and informed the Registrar in January, he would not be liable for the March purchase. The result would also be different if Y, a new supplier who had never known that C was a partner, supplied the goods. Under the proviso, C would not be liable to Y even though no notice was given.

32.4 Notice of a partner's retirement may be given by the retired partner or by any partner of the reconstituted firm.

> (4) Notices under sub-section (3) may be given by the retired partner or by any partner of the reconstituted firm.

Section 32(4) of the Indian Partnership Act, 1932 is about who may give the public notice that s. 32(3) requires. Under s. 32(3), a retired partner and the continuing partners remain liable as partners to third parties for any act done by any of them that would have been an act of the firm if done before the retirement, until public notice of the retirement is given. That liability does not extend to a third party who dealt with the firm without knowing that the retiring partner was a partner. Section 32(4) allows either side to give this notice: the retired partner, or any partner of the reconstituted firm. Neither side has to wait for the other. This matters most to the retired partner, who has the strongest interest in ending exposure to the firm's future debts and should not be left at risk because the continuing partners fail to act. A notice given by any one of the persons named protects all of them. Under s. 72, "public notice" means notice published in the Official Gazette and in at least one vernacular newspaper circulating in the district where the firm has its principal place of business. For a registered firm, it must also be sent to the Registrar under s. 63. Private notice to individual customers is not public notice. However, a creditor who actually knows of the retirement cannot hold the retired partner liable. For example, A, B and C are partners in a

registered trading firm in Patna, and C retires on 1 April. A and B carry on the business as a reconstituted firm but do not announce C's retirement. C does not have to depend on them. C may himself inform the Registrar and publish the notice in the Official Gazette and a local Hindi newspaper on 10 April. From that date, C is not liable for debts the firm contracts with third parties. If A and B buy goods on credit from a supplier on 5 April, and the supplier did not know of C's retirement, C remains liable for that debt because public notice had not yet been given. Had B instead given the notice on 2 April, it would have protected C equally.

33. Expulsion of a partner

33.1 No partner shall be expelled from a firm by a majority of the partners except in the good-faith exercise of a power of expulsion given by the contract between the partners.

> (1) A partner may not be expelled from a firm by any majority of the partners, save in the exercise in good faith of powers conferred by contract between the partners.

Section 33(1) of the Indian Partnership Act, 1932 protects a partner's position in the firm. Partnership is a relationship based on mutual agreement and trust, so the other partners cannot remove a partner merely because most of them, or even all of them, want to. Expulsion is valid only if two conditions are met. First, the partnership agreement must expressly give the partners a power to expel. Without such a clause, no majority can expel anyone, and the only course open to dissatisfied partners is dissolution, either by agreement or through the court under s. 44. Second, the power must be used in good faith, meaning honestly and in the interest of the firm, not to gain a personal advantage or to get rid of an inconvenient partner. Courts have also treated good faith as requiring that the partner be told the charges against him and given a fair chance to answer them before the decision is made. An expulsion that fails either condition is void, and the partner remains a partner. Under s. 33(2), a validly expelled partner is treated like a retiring partner (s. 32(2) to (4)). He stays liable to third parties for acts of the firm done before his expulsion, and he also stays liable for later acts until public notice of the expulsion is given. For example, A, B, C and D are partners. Their deed allows expulsion of a partner who is guilty of misconduct harmful to the firm, by a three-fourths vote after notice and a

hearing. If D is found to be secretly diverting the firm's clients to his own rival business, and A, B and C give him notice and hear his explanation before voting to expel him, the expulsion is valid. But if A, B and C expel D without hearing him, only to buy his share cheaply, or if the deed contains no expulsion clause at all, the expulsion is invalid and D continues as a partner.

33.2 An expelled partner shall be treated as a retired partner for the purposes of sub-sections (2), (3) and (4) of section 32.

> (2) The provisions of sub-sections (2), (3) and (4) of section 32 shall apply to an expelled partner as if he were a retired partner.

Section 33(2) of the Indian Partnership Act, 1932 sets out an expelled partner's liability to third parties by putting him in the same position as a retired partner under three provisions of s. 32. Under s. 33(1), a partner can be expelled only if the partners have that power under a contract between them, the majority uses it in good faith, and he is first given notice and a hearing. Once he is validly expelled, s. 32(2) applies: he stays liable to third parties for the firm's acts done before his expulsion, unless the third party and the partners of the reconstituted firm agree to release him. That agreement may be implied from their course of dealing. Under s. 32(3), he and the remaining partners also stay liable to third parties for acts done after his expulsion that would have been acts of the firm if done before it, until public notice of the expulsion is given. He is not, however, liable to a third party who dealt with the firm without knowing he was a partner. Under s. 32(4), that public notice may be given by the expelled partner himself or by any partner of the reconstituted firm. The purpose is to protect outsiders, who may keep relying on the expelled partner's credit until they are told he has left, so he should make sure public notice is given promptly. For example, P, Q and R are partners in a trading firm, and their deed allows expulsion by a majority. After giving R notice and a hearing, P and Q expel him in good faith on 1 March. On 10 March, Q buys goods on credit from S, a supplier who knew R as a partner, and public notice of the expulsion is given only on 20 March. R is liable to S along with P and Q for the 10 March purchase, because it was made before public notice. He is not liable for purchases made after 20 March, or to T, a new supplier who began dealing with the firm on 12 March without knowing R had been a partner. A

loan the firm took on 15 February, before the expulsion, also remains R's liability unless the lender, P and Q agree to release him.

34. Insolvency of a partner

34.1 A partner adjudicated insolvent shall cease to be a partner from the date of the order of adjudication.

> (1) Where a partner in a firm is adjudicated an insolvent he ceases to be a partner on the date on which the order of adjudication is made, whether or not the firm is thereby dissolved.

Section 34(1) of the Indian Partnership Act, 1932 provides that a partner's insolvency ends his membership of the firm automatically. No notice, retirement or expulsion is needed. The date of cessation is the date the court makes the order adjudicating him insolvent, not the date the insolvency petition was filed. The rule applies whether or not the insolvency also dissolves the firm. The firm is dissolved compulsorily if all the partners, or all but one, are adjudicated insolvent (s. 41(a)). Where only one partner is adjudicated insolvent, the firm is dissolved subject to any contract between the partners (s. 42(d)). So if the partnership deed provides that the firm will continue, the remaining partners carry on the business, and the insolvent simply drops out. The rule exists because an insolvent's property vests in the official assignee or receiver, so he is no longer in a position to share in the firm's business and liabilities as a partner. It also protects both sides from what happens after that date. Under s. 34(2), the insolvent partner's estate is not liable for acts of the firm done after the order of adjudication, and the firm is not liable for any act of the insolvent done after that date. His share in the firm, as it stood on that date, becomes available to his creditors through the official assignee or receiver. For example, A, B and C are partners, and their deed says the firm will continue despite the insolvency of any partner. On 1 March, the court adjudicates C insolvent. C stops being a partner on 1 March, and A and B continue the firm. If on 10 March C, still acting as though he were a partner, buys goods on credit in the firm's name, the firm is not bound by that purchase. Likewise, if A and B take a loan for the firm on 15 March, C's insolvent estate is not liable for it. Debts the firm incurred before 1 March, while C was still a partner, can still be claimed against C's estate.

34.2 Where the firm continues despite a partner's insolvency, neither the insolvent partner's estate nor the firm shall be liable for the other's acts done after the date of the order of adjudication.

> (2) Where under a contract between the partners the firm is not dissolved by the adjudication of a partner as an insolvent, the estate of a partner so adjudicated is not liable for any act of the firm and the firm is not liable for any act of the insolvent, done after the date on which the order of adjudication is made.

Section 34(2) of the Indian Partnership Act, 1932 deals with a firm that keeps running after one partner has been declared insolvent. Under s. 34(1), a partner who is adjudicated insolvent stops being a partner on the date of the adjudication order. Under s. 42(d), a partner's insolvency dissolves the firm, but that rule gives way to any contrary contract between the partners. So if the partnership deed provides that the firm will continue in that event, it carries on with the remaining partners. Section 34(2) then cuts the link between them in both directions from the date of the order. The insolvent's estate, which is now held for the benefit of the insolvent's own creditors, does not answer for debts or acts of the firm after that date. The firm likewise does not answer for anything the insolvent does after that date, because the insolvent is no longer a partner or an agent of the firm. Liabilities that arose before the order are unaffected, and the insolvent's estate remains answerable for its share of them. The provision protects the insolvent's creditors from the firm's later business risks, and protects the firm from being bound by a person who is no longer a partner. For example, A, B and C are partners under a deed providing that the firm will not dissolve if a partner becomes insolvent. A is adjudicated insolvent on 1 June. On 10 June, B buys goods on credit for the firm, and the firm later fails to pay. The supplier cannot recover that debt from A's estate, because it arose after 1 June. On 15 June, A orders goods in the firm's name, and B and C are not bound, because A was no longer a partner. A firm debt incurred on 20 May, however, can still be proved against A's estate, since it arose before the order.

35. Liability of estate of deceased partner

The estate of a deceased partner shall not be liable for any act of the firm done after the partner's death, where the firm continues under the partnership contract.

> Where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death.

Under Section 42(c) of the Indian Partnership Act, 1932, the death of a partner dissolves the firm, but only if there is no contract between the partners to the contrary. Partners often agree that the business will carry on after a partner dies. Section 35 deals with that situation. The deceased partner stops being a partner on death, so his estate (the property in the hands of his legal heirs or representatives) is not liable for debts or obligations the continuing firm takes on after that date. Unlike a partner who retires, a deceased partner's estate does not need to give public notice of the death to escape liability for later acts. Section 32(3) makes a retiring partner liable to third parties until public notice of the retirement is given, but no such requirement applies on death, because death ends the person's connection with the firm by itself. This is so even when the creditor dealing with the firm did not know of the death. The protection covers only acts done after death. The estate stays liable, to the extent of the deceased's share and assets, for debts the firm incurred while he was alive. For example, A, B and C are partners in a trading firm, and their deed provides that the firm will continue if any partner dies. C dies on 1 March. On 15 April, the firm buys goods worth ₹5 lakh on credit from D, who does not know of C's death, and then fails to pay. D can sue A and B, but he cannot recover anything from C's estate, because the purchase happened after C's death. If the firm had bought the goods on 1 February, while C was alive, C's estate would be liable for that debt along with A and B.

36. Rights of outgoing partner to carry on competing business

36.1 An outgoing partner may carry on a competing business, but shall not use the firm name, represent himself as carrying on the firm's business, or solicit the firm's former customers.

> (1) An outgoing partner may carry on a business competing with that of the firm and he may advertise such business, but, subject to contract to the contrary, he may not
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> (a) use the firm name,
>
> (b) represent himself as carrying on the business of the firm, or
>
> (c) solicit the custom of persons who were dealing with the firm before he ceased to be a partner.

Section 36(1) of the Indian Partnership Act, 1932 applies to a partner who has left the firm, whether by retirement, expulsion or otherwise, and preserves his freedom of trade: once he ceases to be a partner, he may start or join a business of the same kind as the firm's, even in direct competition with it, and may advertise that business publicly. To protect the goodwill of the firm he has left, the section places three limits on that freedom. He may not use the firm name, since that would let him take the reputation the firm has built up; he may not represent himself as carrying on the firm's business, for instance by claiming to be its successor or continuation, since that would mislead the public; and he may not solicit the custom of persons who were dealing with the firm before he left, that is, he may not actively approach the firm's existing clients to win them away. These limits operate "subject to contract to the contrary", so the partners may agree otherwise, for example by expressly allowing the outgoing partner to take certain clients with him. The restriction on soliciting forbids only active canvassing, so if a former customer approaches the outgoing partner of his own accord, the partner may deal with him. If the outgoing partner breaches any of these limits, the firm may seek an injunction or damages. Separately, s. 36(2) allows the partners to agree that an outgoing partner will not carry on a similar business within a specified period or within specified local limits, and such an agreement is valid despite s. 27 of the Indian Contract Act, 1872, provided the restrictions are reasonable. For example, A, B and C run a chartered accountancy firm called "ABC Associates". A retires, opens his own practice in the same city as "A & Co." and advertises it in newspapers, which he is entitled to do. However, he cannot call his practice "ABC Associates", tell the public that it continues ABC Associates, or write to or call the firm's clients asking them to move their work to him. If X, a client of the firm, comes to A of his own accord and asks him to handle his accounts, A may accept, since he did not solicit X. And if the retirement

deed had expressly allowed A to take X and Y as clients, A could approach them, because the deed would be a contract to the contrary.

36.2 A partner may validly agree not to carry on a business similar to that of the firm after ceasing to be a partner, provided the restriction is reasonable.

> (2) A partner may make an agreement with his partners that on ceasing to be a partner he will not carry on any business similar to in that of the firm within a specified period or within specified local limits; and, notwithstanding anything contained in section 27 of the Indian Contract Act, 1872 (9 of 1872), such agreement shall be valid if the restrictions imposed are reasonable.

Section 36(2) of the Indian Partnership Act, 1932 creates an exception to Section 27 of the Indian Contract Act, 1872, which makes void every agreement that restrains a person from carrying on a lawful profession, trade or business. Without this provision, a promise by an outgoing partner not to compete with the firm would be unenforceable under Section 27. Section 36(2) allows a partner to agree with his co-partners, either when he leaves or in advance in the partnership deed, that after ceasing to be a partner he will not carry on a business similar to that of the firm. The restraint covers only similar business, not every business. It must be confined to a specified period or within specified local limits, and it is valid only if it is reasonable. Courts judge reasonableness by the nature of the business, the area the firm actually serves and the time needed to protect its goodwill. A restraint that goes further than is needed to protect the continuing partners, such as a lifetime ban or a nationwide ban on a local business, is void. The purpose of the provision is to protect the firm's goodwill, which the remaining partners keep, from being drawn away by a departing partner who knows its customers and methods. Similar protection is given on dissolution of the firm (s. 54) and to the buyer of the firm's goodwill (s. 55(3)). For example, A, B and C run a chartered accountancy firm in Patna. On retiring, C agrees not to practise as a chartered accountant within Patna for two years. This restraint is limited in time and area and protects the firm's clientele, so it is valid, and A and B may obtain an injunction if C opens a rival practice in Patna within that period. C remains free to practise in Gaya, or in Patna after two years. Had C agreed never to practise accountancy anywhere in India, the restraint would be unreasonable and void under Section 27.

37. Right of outgoing partner in certain cases to share subsequent profits

Where partners continue the firm's business with the firm's property without settling accounts with an outgoing partner, the outgoing partner or his estate shall be entitled, at his option, to the share of later profits attributable to the use of his share of the property, or to interest at six per cent per annum on that share.

> Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, then, in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six per cent per annum on the amount of his share in the property of the firm
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> Provided that whereby contract between the partners an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section

Section 37 of the Indian Partnership Act, 1932 protects a partner who dies, retires, is expelled or otherwise leaves the firm when the remaining partners carry on the business with the firm's property, including his share in it, before his accounts are finally settled. Without this rule, the continuing partners could profit from his capital and assets and pay him only the original value of his share. The section therefore lets the outgoing partner, or the legal representatives of a deceased partner, choose between two remedies. The first is the share of profits earned after he left that can be attributed to the use of his share of the firm's property. This is not automatically his old profit-sharing ratio, because later profits may also come from the continuing partners' own skill and effort, so the court works out what part came from the use of his share. The second is interest at 6% per annum on the value of his share in the firm's property. He may choose

whichever is more beneficial. The right applies only where there is no contract to the contrary, so the partnership deed may exclude or change it. Under the proviso, if the partnership agreement gives the continuing partners an option to buy the outgoing partner's interest and they exercise it properly, the outgoing partner or his estate gets only the agreed price and no further share of profits. But if they claim to exercise the option without complying with its terms in all material respects, they lose this protection and must account to him under the main section. For example, A, B and C are equal partners in a garment business, and C's share in the firm's property is worth ₹10 lakh. C retires, and A and B carry on the business with the same shop, machinery and stock without settling C's account. Next year the firm earns ₹9 lakh, and the court finds that ₹2 lakh of it is attributable to the use of C's share. C may claim either that ₹2 lakh or 6% interest on ₹10 lakh, which is ₹60,000, and he will naturally choose ₹2 lakh. If the deed had given A and B an option to buy C's share at book value within three months, and they bought it on those terms in time, C would get only the agreed price. If they paid late or paid less than the agreed value, they would remain liable to account to C under s. 37.

38. Revocation of continuing guarantee by change in firm

A continuing guarantee given to or for a firm shall stand revoked as to future transactions from the date of any change in the constitution of the firm, unless otherwise agreed.

> A continuing guarantee given to a firm, or to a third party in respect of the transactions of a firm, is, in the absence of agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm.

Section 38 of the Indian Partnership Act, 1932 deals with continuing guarantees, which under s. 129 of the Indian Contract Act, 1872 are guarantees that extend to a series of transactions. It covers two situations. In the first, the guarantee is given to a firm, so the firm is the creditor. In the second, it is given to a third party for the firm's transactions, so the firm is the principal debtor. A surety gives a guarantee because they trust particular persons. A change in the firm's constitution brings in a different set of people, such as when a partner is admitted, retires, dies, is expelled or becomes insolvent. In law the reconstituted firm is treated as a new firm, so

the surety is not taken to have guaranteed it. The guarantee therefore ends automatically from the date of the change, and the surety does not need to give notice under s. 130 of the Contract Act. The revocation applies only to future transactions. The surety stays liable for transactions entered into before the change. The rule also gives way to an agreement to the contrary: a surety may expressly agree that the guarantee will continue despite changes in the firm. For example, S guarantees payment for all goods that the firm "A & B" buys on credit from supplier T, up to ₹5 lakh. On 1 June, C is admitted as a partner, and the firm buys more goods from T on 15 June. S remains liable for goods supplied before 1 June. S is not liable for the 15 June purchase, because the guarantee was revoked for future transactions when C joined. The result would be different if S's guarantee had said that it would continue despite any change in the firm's partners. Then S would be liable for the later purchases too.