

## PARTNERSHIP.

### No. 5 of 1963.

#### An Ordinance relating to Partnership.

##### PART I.—PRELIMINARY.

1. This Ordinance may be cited as the *Partnership Ordinance* 1963.\* Short title.

2. This Ordinance is divided into Parts, as follows:— Parts.

Part I.—Preliminary (Sections 1-5).

Part II.—Nature of Partnership (Sections 6-8).

Part III.—Relations of Partners to Persons dealing with them (Sections 9-22).

Part IV.—Relations of Partners to One Another (Sections 23-36).

Part V.—Dissolution of Partnership and its Consequences (Sections 37-50).

3. The Partnership Act, 1892 of the State of New South Wales shall cease to be in force in the Territory. Repeal.

4. In this Ordinance, unless the contrary intention appears— Definitions.

“business” includes a trade, occupation or profession;

“the Court” means the Supreme Court.

5. The rules of equity and of the common law applicable to partnership continue in force except so far as they are inconsistent with the express provisions of this Ordinance. Saving of rules of equity and common law.

##### PART II.—NATURE OF PARTNERSHIP.

6.—(1.) Partnership is the relation which exists between persons carrying on a business in common with a view of profit. Partnership is a relation between persons.

(2.) The relation between members of a body corporate, whether formed or incorporated in or outside the Territory, is not partnership within the meaning of this Ordinance.

\* Made on 22nd March, 1963; notified in the *Commonwealth Gazette* and commenced on 4th April, 1963.

**Rules for  
determining the  
existence of a  
partnership.**

7.—(1.) In determining whether a partnership does or does not exist, regard shall be had to the succeeding provisions of this section.

(2.) Joint tenancy, tenancy in common, joint property or part ownership does not, of itself, create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use of the thing so held or owned.

(3.) The sharing of gross returns does not, of itself, create a partnership, whether the persons sharing the returns have or have not a joint or common right or interest in any property from which, or from the use of which, the returns are derived.

(4.) The receipt by a person of a share of the profits of a business is evidence that he is a partner with respect to the business, but the receipt of such a share, or of a payment contingent on, or varying with, the profits of a business, does not, of itself, make him a partner with respect to the business and, in particular—

- (a) the receipt by a person of a debt or other liquidated demand by instalments or otherwise out of the accruing profits of a business does not, of itself, make him a partner with respect to the business or liable as a partner with respect to the business;
- (b) a contract for the remuneration of a servant or agent of a person engaged in a business by a share of the profits of the business does not, of itself, make the servant or agent a partner with respect to the business or liable as a partner with respect to the business;
- (c) a person, being the widow or child of a deceased partner, who receives, by way of periodical payment, a portion of the profits made in a business is not, by reason only of the receipt of that portion, a partner with respect to the business or liable as a partner with respect to the business;
- (d) the lending of money to a person engaged or about to engage in a business under a contract, made in writing with that person and signed by or on behalf of all the parties to the contract, by virtue of which the lender is entitled to receive a rate of interest varying with, or a share of, the profits arising from carrying on the business, does

not, of itself, make the lender a partner with the person carrying on the business or liable as a partner with that person; and

- (e) a person who receives by way of periodical payment a portion of the profits of a business in consideration of the sale by him of the goodwill of the business is not, by reason only of the receipt of that portion, a partner with respect to the business or liable as a partner with respect to the business.

8. For the purposes of this Ordinance, persons who have entered into partnership with one another are called collectively a firm and the name under which their business is carried on is called the firm-name.

Firms and  
firm-names.

### PART III.—RELATIONS OF PARTNERS TO PERSONS DEALING WITH THEM.

9.—(1.) A partner in a firm is the agent of the firm, and of the other partners in the firm, for the purposes of the business of the firm.

Power of  
partner to bind  
the firm.

(2.) An act done by a partner in a firm for carrying on in the usual way business of the kind carried on by the firm binds the firm and the other partners in the firm unless—

- (a) the partner who does the act has in fact no authority to act for the firm in the particular matter; and
- (b) the person with whom he is dealing either knows that he has no authority or does not know or believe him to be a partner in the firm.

10.—(1.) Subject to the next succeeding sub-section, an act or instrument relating to the business of the firm done or executed—

Partners bound  
by acts on  
behalf of firm.

(a) in the firm-name; or

(b) in any other manner showing an intention to bind the firm,

by a person authorized to do the act or execute the instrument, whether a partner in the firm or not, is binding on the firm and all the partners in the firm.

(2.) The last preceding sub-section does not affect a rule of law relating to the execution of deeds or negotiable instruments.

Partner using credit of firm for private purposes.

**11.—**(1.) Where a partner in a firm pledges the credit of the firm for a purpose apparently not connected with the ordinary course of business of the firm, the firm is not bound unless the partner is in fact specially authorized by the other partners in the firm.

(2.) The last preceding sub-section does not affect a personal liability incurred by an individual partner.

Effect of notice that firm will not be bound by acts of partner.

**12.** If it has been agreed between the partners in a firm that restrictions shall be placed upon the power of one or more of them to bind the firm, an act done in contravention of the agreement is not binding on the firm with respect to a person having notice of the agreement.

Liability of partner.

**13.—**(1.) Each partner in a firm is liable jointly with the other partners in the firm for the debts and obligations of the firm incurred while he is a partner.

(2.) After the death of a partner in a firm, the estate of the deceased partner is severally liable in a due course of administration for the debts and obligations of the firm incurred while the deceased partner was a partner so far as those debts and obligations remain unsatisfied, but subject to the prior payment of the separate debts of the deceased partner.

Liability of the firm for wrongs.

**14.** Where, by any wrongful act or omission of a partner in a firm acting in the ordinary course of the business of the firm or acting with the authority of the other partners in the firm—

(a) loss or injury is caused to a person, not being a partner in the firm; or

(b) a penalty is incurred,

the firm is liable in respect of the loss or injury or the penalty, as the case may be, to the same extent as the partner so acting or omitting to act.

Misapplication of money or property received for, or in custody of, the firm.

**15.** Where—

(a) a partner in a firm acting within the scope of his apparent authority receives the money or property of a third person and misapplies it; or

(b) a firm in the course of its business receives money or property of a third person and the money or property so received is, while in the custody of the firm, misapplied by one or more of the partners in the firm,

the firm is liable to make good the loss.

**16.** Each partner in a firm is liable jointly with the other partners in the firm, and also severally, for everything for which the firm becomes, while he is a partner in the firm, liable under either of the last two preceding sections.

Liability for wrongs joint and several.

**17.—(1.)** Subject to this section, if a partner in a firm, being a trustee, improperly employs trust property in the business of, or on account of, the firm, another partner in the firm is not liable for the trust property to the persons beneficially interested in that property.

Improper employment of trust property for partnership purposes.

**(2.)** The last preceding sub-section does not affect any liability incurred by a partner by reason of his having notice of a breach of trust.

**(3.)** Nothing in sub-section (1.) of this section prevents trust money from being followed and recovered from a firm if it is still in the possession, or under the control, of the firm.

**18.—(1.)** Subject to the next succeeding sub-section, a person—

Persons liable by holding out.

(a) who, by words, whether spoken or written, or by conduct, represents himself as a partner in a firm; or

(b) who knowingly suffers himself to be represented as a partner in a firm,

is liable as a partner in the firm to any person who has, on the faith of the representation, given credit to the firm, whether the representation has or has not been made or communicated to the person so giving credit by or with the knowledge of the apparent partner making the representation or suffering it to be made.

**(2.)** Where, after the death of a partner in a firm, the business of the firm is continued in the old firm-name, the continued use of that name or of the name of the deceased partner as part of that name does not, of itself, make his legal personal representatives or his estate or effects liable for debts of the firm contracted after his death.

**19.** An admission or representation made by a partner in a firm concerning the affairs of the firm and in the ordinary course of the business of the firm is evidence against the firm.

Admissions and representations of partners.

**20.** Notice to a partner in a firm who habitually acts in the business of the firm of a matter relating to the affairs of the firm operates as notice to the firm, except in the case of fraud on the firm committed by or with the consent of that partner.

Notice to acting partner to be notice to the firm.

Liabilities of incoming and outgoing partners.

**21.—**(1.) A person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of the firm for anything done before he became a partner.

(2.) A partner who retires from a firm does not thereby cease to be liable for debts and obligations of the firm incurred before his retirement.

(3.) A retiring partner in a firm may be discharged from existing liabilities by an agreement to that effect between the retiring partner, the members of the firm as newly constituted and the creditors.

(4.) An agreement referred to in the last preceding sub-section may be either express or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted.

Revocation of continuing guaranty by change of firm.

**22.** A continuing guaranty given either to a firm or to a third person in respect of the transactions of a firm is, in the absence of agreement to the contrary, revoked as to future transactions by a change in the constitution of the firm to which, or in respect of whose transactions, the guaranty was given.

#### PART IV.—RELATIONS OF PARTNERS TO ONE ANOTHER.

Variation by consent of terms of partnership.

**23.** The mutual rights and duties of partners, whether ascertained by agreement or defined by this Ordinance, may be varied by the consent (either express or inferred from a course of dealing) of all the partners.

Partnership property.

**24.—**(1.) Subject to the next succeeding section, all property, and rights and interests in property, originally brought into the stock of a firm or acquired, whether by purchase or otherwise, on account of a firm or for the purposes, and in the course of the business, of a firm are called in this Ordinance partnership property.

(2.) Subject to the next succeeding sub-section, the partnership property of a firm shall be held and applied by the partners in the firm exclusively for the purposes of the firm and in accordance with the partnership agreement.

(3.) A legal estate or interest in land, being an estate or interest that belongs to a firm, shall devolve according to the nature and tenure of, and the general rules of law applicable to, the estate or interest, but in trust so far as is necessary for the persons beneficially interested in the estate or interest under this section.

Land purchased by co-owners out of profits from land.

**25.** Where co-owners of an estate or interest in land, not being an estate or interest which is partnership property—

(a) are partners as to profits made by the use of the estate or interest or of the land; and

- (b) purchase out of the profits another estate or interest in land to be used in like manner,

the estate or interest so purchased belongs to them, in the absence of an agreement to the contrary, not as partners but as co-owners for the same respective estates or interests as are held by them, at the date of the purchase, in the first-mentioned estate or interest.

**26.** Property bought with money belonging to a firm is, unless the contrary intention appears, deemed to have been bought on account of the firm.

Property bought with money of a firm.

**27.** Where an estate or interest in land has become partnership property, the estate or interest shall, unless the contrary intention appears, be treated as between the partners, the legal personal representatives of a deceased partner and the persons entitled under the will, or upon the administration of the estate, of a deceased partner, as personal or movable property and not real property.

Conversion into personality of land held by firm.

**28.—(1.)** A writ of execution shall not issue against partnership property of a firm except on a judgment against the firm.

Procedure against partnership property for a partner's separate judgment debt.

**(2.)** The Court may, on the application by summons of a judgment creditor of a partner in a firm—

- (a) make an order charging the interest of the partner in the partnership property and profits of the firm with payment of the amount of the judgment debt and interest on that debt; and

- (b) by that or a subsequent order—

- (i) appoint a receiver of the partner's share of the profits (whether already declared or accruing) of the firm and of any other money which may be coming to the partner in respect of the firm; and
- (ii) direct all accounts and inquiries and give all other orders and directions which might have been directed or given if the charge had been made in favour of the judgment creditor by the partner or which the circumstances of the case may require.

**(3.)** Where the interest of a partner in a firm in the partnership property and profits of the firm has been charged under the last preceding sub-section, the other partners in the firm may—

- (a) at any time—redeem the interest so charged; or
- (b) where a sale of the interest is directed—purchase the interest.

Rules as to the  
interests and  
duties of  
partners.

**29.**—(1.) All the partners in a firm are entitled to share equally in the capital and profits of the firm and are liable to contribute equally towards the losses, whether of capital or otherwise, sustained by the firm.

(2.) A firm shall indemnify each partner in the firm in respect of payments made, and personal liabilities incurred, by the partner—

(a) in the ordinary and proper conduct of the business of the firm; or

(b) in or about anything necessarily done for the preservation of the business or property of the firm.

(3.) A partner in a firm who makes, for the purposes of the firm, a payment or advance beyond the amount of capital which he has agreed to subscribe is entitled to interest at the rate of seven pounds per centum per annum from the date of the payment or advance.

(4.) A partner in a firm is not entitled before the ascertainment of the profits of the firm to interest on the capital subscribed by him.

(5.) Each partner in a firm is entitled to take part in the management of the business of the firm.

(6.) A partner in a firm is not entitled to remuneration for acting in the business of the firm.

(7.) A person shall not be introduced into a firm as a partner without the consent of all existing partners in the firm.

(8.) A difference arising as to ordinary matters connected with the business of a firm may be decided by a majority of the partners in the firm, but no change may be made in the nature of the business of the firm without the consent of all existing partners in the firm.

(9.) The books of a firm shall be kept at the place of business of the firm (or the principal place of business, if there is more than one), and each partner in the firm is entitled, when he thinks fit, to have access to, and to inspect and to copy, any of the books.

(10.) The operation with respect to a firm or a partner in a firm of any provision of this section is subject to any agreement express or implied between the partners in the firm.

Expulsion of  
partner.

**30.** A majority of partners in a firm are not entitled to expel another partner from the firm unless the majority are acting in the exercise of a power so to do conferred by express agreement between all the partners in the firm.

Retirement  
from  
partnership at  
will.

**31.** Where a fixed term has not been agreed upon for the duration of a partnership, a partner may determine the partnership at any time on giving notice to all the other partners of his intention so to do.



**32.—**(1.) Where a partnership entered into for a fixed term is continued after the term has expired without an express new agreement, the rights and duties of the partners remain the same as they were at the expiration of the term so far as is consistent with the incidents of a partnership at will.

Partnership for term continued over.

(2.) For the purposes of the last preceding sub-section, a continuance, after the expiration of the fixed term for which the partners entered into partnership, of the business of a firm by the partners in the firm, or by those of the partners in the firm who habitually acted in the business during the term, without a settlement or liquidation of the affairs of the firm is deemed to be a continuance of the partnership.

**33.** A partner in a firm is bound to render true accounts and full information of all things affecting the firm to another partner, or to the legal personal representatives of another partner, in the firm.

Duty of partners to render accounts

**34.—**(1.) A partner in a firm is bound to account to the firm—

Accountability of partners for private profits.

- (a) for any benefit derived by him, without the consent of the other partners in the firm, from a transaction concerning the firm; or
- (b) for any use by him of the partnership property, the firm-name or the business connexion of the firm.

(2.) This section applies also to transactions undertaken, after a partnership has been dissolved by the death of a partner in a firm and before the affairs of the firm have been completely wound up, either by a surviving partner in the firm or by the legal personal representatives of the deceased partner.

**35.** If a partner in a firm carries on, without the consent of the other partners in the firm, a business of the same nature as, and competing with, that of the firm, the partner so carrying on business shall account for and pay over to the firm all profits made by him in the business.

Duty of partner not to compete with firm.

**36.—**(1.) An assignment by a partner in a firm of his share in the partnership, whether absolute or by way of mortgage or redeemable charge, does not, as against the other partners in the firm, entitle the assignee during the continuance of the partnership—

Rights of assignee of share in partnership.

- (a) to interfere in the management or administration of the business or affairs of the firm;
- (b) to require an account of the transactions of the firm; or
- (c) to inspect the books of the firm.

(2.) An assignment referred to in the last preceding sub-section entitles the assignee only to receive the share of profits of the firm to which the assigning partner would otherwise be entitled, and the assignee must accept the account of profits of the firm agreed to by the partners.

(3.) In case of a dissolution of a partnership after a partner has assigned his share in the partnership, whether as respects all the partners or as respects the assigning partner, the assignee is entitled to receive the share of the partnership property to which the assigning partner is entitled as between himself and the other partners and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

#### PART V.—DISSOLUTION OF PARTNERSHIP AND ITS CONSEQUENCES.

Dissolution by  
expiration or  
otherwise.

**37.**—(1.) Subject to any agreement between the partners, a partnership is dissolved—

- (a) where the partnership was entered into for a fixed term—by the expiration of that term;
- (b) where the partnership was entered into for a single adventure or undertaking—by the termination of that adventure or undertaking; or
- (c) where the partnership was entered into for an undefined time—by a partner giving notice to the other or others of his intention to dissolve the partnership.

(2.) A partnership which is dissolved by a partner giving the notice referred to in paragraph (c) of the last preceding sub-section is dissolved—

- (a) as from the date mentioned in the notice as the date of dissolution; or
- (b) if no date of dissolution is so mentioned—as from the date of the communication of the notice.

Dissolution by  
bankruptcy,  
death or charge.

**38.**—(1.) Subject to any agreement between the partners, a partnership is dissolved as regards all the partners by the death or bankruptcy of a partner or upon a partner executing a deed of assignment under any law of the Commonwealth relating to bankruptcy.

(2.) A partnership may, at the option of the other partners, be dissolved if a partner suffers his share of the partnership property to be charged under this Ordinance for his separate debt.

Dissolution by  
illegality of  
partnership.

**39.** A partnership is dissolved by the happening of an event which makes it unlawful for the business of the firm to be carried on or for the members of the firm to carry on the business of the firm in partnership.

**40.—(1.) Subject to this section, when—**Dissolution by  
the Court.**(a) a partner in a firm—**

(i) has been declared in accordance with law to be of unsound mind and incapable of managing his affairs; or

(ii) is shown, to the satisfaction of the Court, to be of permanently unsound mind;

**(b) a partner in a firm becomes in any other way permanently incapable of performing his part of the partnership agreement;**

**(c) a partner in a firm has been guilty of such conduct as, in the opinion of the Court, regard being had to the nature of the business of the firm, is calculated to affect prejudicially the carrying on of that business;**

**(d) a partner in a firm—**

(i) wilfully or persistently commits a breach of the partnership agreement; or

(ii) otherwise so conducts himself in matters relating to the business of the firm that it is not reasonably practicable for the other partners to carry on the business in partnership with him;

**(e) the business of a firm can only be carried on at a loss; or**

**(f) circumstances have arisen which, in the opinion of the Court, render it just and equitable that a partnership be dissolved,**

the Court, may, on the application of a partner in the firm, order that the partnership be dissolved.

(2.) An application under paragraph (a) of the last preceding sub-section may be made, on behalf of the partner concerned, by his committee or next friend or person having title to intervene instead of by the partner himself.

(3.) An application under paragraph (b), (c) or (d) of sub-section (1.) of this section shall not be made by the partner concerned.

**41.—(1.) A person who deals with a firm after a change in its constitution is entitled to treat all apparent members of the old firm as still being members of the firm until he has notice of the change.**

Rights of  
persons dealing  
with a firm  
against  
apparent  
members of the  
firm.

(2.) A person who, not having been known to a person dealing with a firm to be a partner in the firm, retires from the firm is not liable for the debts of the firm contracted, after the date of his retirement, with the person so dealing with the firm.

(3.) The estate of a person who dies, becomes bankrupt, or executes a deed of assignment under any law of the Commonwealth relating to bankruptcy while a partner in a firm is not liable for the debts of the firm contracted after the date of his death, bankruptcy or execution of the deed of assignment, as the case may be.

Right of  
partners to  
notify  
dissolution.

**42.** On the dissolution of a partnership or the retirement of a partner, a partner in the firm—

- (a) may publicly notify that the partnership has been so dissolved or that the partner has so retired, as the case may be; and
- (b) may require the other partners in the firm to concur for that purpose in all necessary and proper acts, if any, which cannot be done without the concurrence of the other partners.

Advertisement  
of dissolution  
or change.

**43.** An advertisement in the *Gazette*, or in a daily newspaper published in the Territory, of the dissolution, or a change in the constitution, of a firm is notice of the dissolution or change to a person who did not have dealings with the firm before the date of the dissolution or change.

Continuing  
authority of  
partners for  
purposes of  
winding-up.

**44.**—(1.) After the dissolution of a partnership, the authority of each partner to bind the firm and the other rights and obligations of the partners continue, notwithstanding the dissolution, so far as is necessary to wind up the affairs of the firm or to complete transactions begun but unfinished at the time of the dissolution, but not otherwise.

(2.) The last preceding sub-section does not operate so as to make, in a case where a person who was a partner in a firm becomes bankrupt or executes a deed of assignment under any law of the Commonwealth relating to bankruptcy, any other person who was a partner in the firm liable for the acts of the bankrupt or assignor unless the other person has, after the bankruptcy or execution of the deed of assignment, represented himself, or knowingly suffered himself to be represented, as a partner of the bankrupt or assignor.

Rights of  
partners to  
application of  
partnership  
property.

**45.**—(1.) On the dissolution of partnership, every partner in the firm is entitled, as against the other partners in

the firm and all persons claiming through those other partners in respect of their interests as partners—

- (a) to have the partnership property of the firm applied in payment of the debts and liabilities of the firm; and
- (b) to have the surplus partnership property after such payment applied in payment of what may be due to each partner in the firm after deducting what may be due from that partner as a partner in the firm.

(2.) For the purpose of exercising his rights under the last preceding sub-section, a partner in a firm, or his legal personal representatives, may, on the termination of the partnership, apply to the Court to wind up the business and affairs of the firm.

**46.** Where one partner has paid a premium to another on entering into partnership for a fixed term and the partnership is dissolved before the expiration of that term otherwise than by the death of a partner, the Court may order the repayment of the premium or of such part of the premium as it thinks just having regard to the terms of the partnership agreement and to the length of time during which the partnership has continued unless—

Apportionment of premium when partnership prematurely dissolved.

- (a) the dissolution is, in the judgment of the Court, wholly or chiefly due to the misconduct of the partner who paid the premium; or
- (b) the partnership has been dissolved by an agreement containing no provision for a return of the premium or any part of the premium.

**47.** Where the partnership agreement is rescinded on the ground of the fraud or misrepresentation of one of the parties to the agreement, the party entitled to rescind is, without prejudice to any other right, entitled—

Rights where partnership dissolved for fraud or misrepresentation.

- (a) to a lien on, or right of retention of, the surplus of the partnership property of the firm after satisfying the liabilities of the firm for any sum of money paid by him for the purchase of a share in the partnership and for any capital contributed by him;
- (b) to stand in the place of the creditors of the firm for any payments made by him in respect of the liabilities of the firm; and
- (c) to be indemnified by the person guilty of the fraud or making the representation against all the debts and liabilities of the firm.

Right of outgoing partner in certain cases to share profits made after dissolution.

**48.—(1.)** Subject to the next succeeding sub-section, where—

(a) a member of a firm has died or otherwise ceased to be a partner in the firm; and

(b) the surviving or continuing partners carry on the business of the firm with its capital or assets without any final settlement of accounts as between the firm and the outgoing partner or his estate

the outgoing partner or his estate is, in the absence of an agreement to the contrary, entitled, at the option of that partner or his legal personal representatives—

(c) to such share of the profits made since the dissolution as the Court finds to be attributable to the use of that partner's share of the partnership property; or

(d) to interest at the rate of Seven pounds per centum per annum on the amount of that partner's share of the partnership property.

(2.) Where, by the partnership agreement, an option is given to the surviving or continuing partners in a firm 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 the estate of the outgoing partner, as the case may be, is not entitled to any further or other share of the profits of the firm, but, if a partner in the firm assuming to act in exercise of the option does not in all material respects comply with the terms of the option, that partner is liable to account under the provisions of the last preceding sub-section.

Retiring or deceased partner's share to be a debt.

**49.** Subject to any agreement between the partners, the amount due from the surviving or continuing partners to an outgoing partner, or the legal personal representatives of a deceased partner, in respect of the outgoing or deceased partner's share in the partnership, is a debt accruing at the date of the dissolution or death.

Rules for distribution of assets on final settlement of accounts.

**50.—(1.)** In settling accounts between the partners in a firm after dissolution of partnership, the provisions of this section apply subject to an agreement to the contrary.

(2.) Losses suffered by the firm, including losses and deficiencies of capital, shall be paid first out of the profits of the firm, next out of the capital of the firm and, lastly, if necessary, by the partners in the firm, individually, in the proportions in which they were entitled to share the profits of the firm.

(3.) The partnership property of the firm, including the sums, if any, contributed by the partners in the firm to make up losses or deficiencies of capital, shall be applied in the following manner and order:—

- (a) in paying the debts and liabilities of the firm to persons who are not partners in the firm;
  - (b) in paying to each partner in the firm ratably what is due from the firm to him for advances as distinguished from capital;
  - (c) in paying to each partner in the firm ratably what is due from the firm to him in respect of capital; and
  - (d) in dividing the ultimate residue, if any, among the partners in the firm in the proportions in which the profits of the firm were divisible.
-