



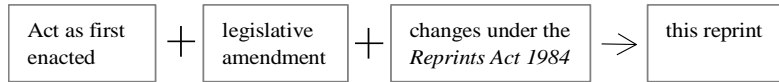
Western Australia

# **The Partnership Act 1895**

**Reprint 4: The Act as at 3 October 2003**

## Guide for using this reprint

### *What the reprint includes*



### *Endnotes, Compilation table, and Table of provisions that have not come into operation*

1. Details about the original Act and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Validation, transitional, savings, or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the Act being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

### *Notes amongst text (italicised and within square brackets)*

1. If the reprint includes a section that was inserted, or has been amended, since the Act being reprinted was passed, editorial notes at the foot of the section give some history of how the section came to be as it is. If the section replaced an earlier section, no history of the earlier section is given (the full history of the Act is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
  - removed (because it was repealed or deleted from the law); or
  - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

### *Reprint numbering and date*

1. The reprint number (in the footer of each page of the document) shows how many times the Act has been reprinted. For example, numbering a reprint as “Reprint 3” would mean that the reprint was the 3<sup>rd</sup> reprint since the Act was passed. Reprint numbering was implemented as from 1 January 2003.
2. The information in the reprint is current on the date shown as the date as at which the Act is reprinted. That date is not the date when the reprint was published by the State Law Publisher and it is probably not the date when the most recent amendment had effect.

Western Australia

## The Partnership Act 1895

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Western Australia

Reprinted under the  
*Reprints Act 1984* as  
at 3 October 2003

# The Partnership Act 1895

**An Act to consolidate and amend the law of partnership.**

## Preliminary

### 1. Short title

This Act may be cited as *The Partnership Act 1895*<sup>1</sup>.

### 2. Commencement

This Act shall commence and come into force on  
1 October 1895.

### 3. Interpretation

In this Act the following words and expressions are used in the following senses, unless a different intention appears from the context:

“**Court**” includes every Court and Judge having jurisdiction in the case.

“**Business**” includes any trade, occupation, or profession.

“**Person**” includes any body of persons corporate or unincorporate.

“**Writing**” includes print, and “**written**” includes printed.

“**Land**” includes hereditaments, corporeal and incorporeal, of any tenure.

**4. Application of Act**

This Act shall not apply to any company or association which is —

- (a) registered as a company under the *Corporations Act 2001* of the Commonwealth or any other Act of Parliament for the time being in force and relating to the registration of joint stock companies; or
- (b) formed or incorporated by or in pursuance of any other local or foreign Act of Parliament, or Letters Patent, or Royal Charter.

*[Section 4 amended by No. 10 of 2001 s. 192.]*

*[5. Omitted under the Reprints Act 1984 s. 7(4)(f).]*

**6. Present law to continue except as modified**

The rules of Equity and Common Law applicable to partnership shall continue in force, except so far as they are inconsistent with the express provisions of this Act.



## **Part I — Nature of partnership**

### **7. Partnership defined**

- (1) Partnership is the relation which subsists between persons carrying on a business in common with a view of profit.
- (2) In deciding whether a partnership does or does not exist in any particular case, the Court shall have regard to the true contract and intention of the partners as appearing from the whole facts of the case.

### **8. Rules to apply in determining partnership**

In determining whether a partnership does or does not exist regard shall be had to the following rules:

- (1) Joint tenancy, tenancy in common, joint property, common 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 thereof.
- (2) The sharing of gross returns does not of itself create a partnership whether the persons sharing such 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.
- (3) The receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business, but the receipt of such a share, or of a payment contingent upon or varying with the profits of a business, does not of itself make him a partner in the business; and in particular:
  - (a) The receipt by a person of a debt or other liquidated amount by instalments or otherwise out of the accruing profits of a business does not of itself make him a partner in the business or liable as such.

- (b) A contract for the remuneration of a servant or agent of any 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 in the business, or liable as such, or give him the rights of a partner.
- (c) A person who, immediately before the death of a deceased partner, was the spouse or de facto partner of the partner, or who is the child of a deceased partner, and receiving by way of annuity a portion of the profits made in the business in which the deceased person was a partner, is not by reason only of such receipt a partner in the business, or liable as such.
- (d) The advance of money by way of loan to a person engaged, or about to engage, in any business on a contract with that person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on the business, does not of itself make the lender a partner with the person or persons carrying on the business, or liable as such. Provided that the contract is at the time of the advance entered into in writing and signed by or on behalf of all the parties thereto.
- (e) A person receiving by way of annuity or otherwise 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 such receipt, a partner in the business, or liable as such.

*[Section 8 amended by No. 28 of 2003 s. 154.]*

**9.            Seller of business to be deferred to other creditors for value**

In the event of any person to whom money has been advanced by way of loan upon such a contract as is mentioned in the last

foregoing section, whether in writing or otherwise, or of any buyer of a goodwill in consideration of a share of the profits of the business, being adjudged a bankrupt, entering into any arrangement or composition with his creditors, or dying in insolvent circumstances, the lender of the loan shall not be entitled to recover anything in respect of his loan, and the seller of the goodwill shall not be entitled to recover anything in respect of the share of profits contracted for, until the claims of the other creditors of the borrower or buyer for valuable consideration in money or money's worth have been satisfied.

**10. What is a firm**

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

**11. Number of persons in firm**

A firm may consist of any number of persons not exceeding 20 (except if regulations under section 115(2) of the *Corporations Act 2001* of the Commonwealth apply to the firm).

*[Section 11 amended by No. 48 of 1988 s. 30; No. 10 of 2001 s. 193.]*

**12. Choice of firm-name**

Subject to all statutory and other rules of law for the protection of trade marks, trade names, and rights incident to the goodwill of any business, partners may carry on their business under any firm-name they think proper.

## **Part II — Relations of partners to persons dealing with them**

### **13. Partners bound by acts of firm**

An act or instrument relating to the business of the firm, done or executed in the firm-name, or in any other manner showing an intention to bind the firm by any person thereto authorised, whether a partner or not, is binding on the firm and all the partners: Provided that this section shall not affect any general rule of law relating to the execution of deeds or negotiable instruments.

### **14. Partner using credit of firm for private purposes**

Where one partner pledges the credit of the firm for a purpose apparently not connected with the firm's ordinary course of business, the firm is not bound, unless he is, in fact, specially authorised by the other partners; but this section does not affect any personal liability which may arise against any other partner who has so conducted himself as to give reasonable ground to the party dealing with the partner first mentioned for believing him to be so authorised.

### **15. Effect of notice that firm will not be bound by act of partner**

If it has been agreed between the partners that any restriction shall be placed on the power of any one or more of them to bind the firm, no act done in contravention of the agreement is binding on the firm with respect to persons having notice of the agreement.

### **16. Liability of partners**

Every partner in a firm is liable, jointly with the other partners, for all debts and obligations of the firm incurred while he is a partner, and after his death his estate is also severally liable in a due course of administration for such debts and obligations so

far as they remain unsatisfied, but subject to the prior payment of his separate debts.

**17. Liability of the firm for wrongs**

Where by any wrongful act or omission of any partner acting in the ordinary course of the business of the firm, or with the authority of his co-partners, loss or injury is caused to any person not being a partner in the firm, or any penalty is incurred, the firm is liable therefor to the same extent as the partner so acting or omitting to act.

**18. Misapplication of money or property**

- (1) Where any money or property of a third person is received by one partner, acting within the scope of his real or apparent authority in the partnership affairs, and is misapplied by that partner, and where any money or property of a third person, being as such in the custody of the firm, is misapplied by any partner, the firm shall be liable to make good the loss.
- (2) For the purposes of this section, money shall be deemed to be in the custody of the firm when it has been paid to any agent of the firm, or paid or credited to the account of the firm with any person in the ordinary course of business.

**19. Liability for wrongs, joint and several**

Every partner is liable jointly with his co-partners, and also severally, for everything for which the firm while he is a partner therein become liable under either of the 2 last preceding sections.

**20. Improper employment of trust property**

If a partner, being a trustee, improperly employs trust property in the business, or on account of the partnership, no other partner shall be liable for the trust property to the persons beneficially interested therein, unless he knew of the breach of trust. Nothing in this section shall prevent trust money from

being followed and recovered from the firm if still in its possession or under its control.

**21. Persons liable by “holding out”**

- (1) Everyone who by words spoken or written, or by conduct, represents himself, or who knowingly suffers himself to be represented as a partner in a particular firm, is liable as a partner to any one who has on the faith of any such 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) Provided that where, after a partner's death, the partnership business is continued in the old firm-name, the continued use of that name or of the deceased partner's name as part thereof shall not of itself make his executors' or administrators' estate or effects liable for any partnership debts contracted after his death.

**22. Admissions and representations by partners**

An admission made by any partner concerning the partnership affairs and in the ordinary course of its business is evidence against the firm, and a representation made by any partner to any person concerning the partnership affairs and in the ordinary course of its business shall have the same effect as against the firm, and so far as concerns the civil rights and liabilities of the partners as if it had been made by all the partners. Provided that this section shall not apply to a representation made by one partner as to the extent of his own authority to bind the firm.

**23. Notice to acting partner to be notice to firm**

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

**24. Liabilities of incoming and outgoing partners**

- (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 or omitted before he became a partner.
- (2) A partner who retires from a firm does not thereby cease to be liable for partnership debts or obligations incurred before his retirement.
- (3) A retiring partner may be discharged from any existing liabilities, and an incoming partner may become subject thereto by an agreement to that effect between himself and the members of the firm as newly constituted and the creditors, and such agreement may be either express or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted.

**25. Revocation of continuing guaranty**

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 an agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which or of the firm in respect of the transactions of which the guaranty was given.

**26. Special powers of partners**

Subject to the provisions of this Act, the acts of every partner who does any act necessary for or usually done in carrying on business of the kind carried on by the firm of which he is a member shall bind his partners to the same extent as if he were their agent duly appointed for that purpose; unless the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing —

- (a) knows that he has no authority, or
- (b) does not know or believe him to be a partner.

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**27. Special powers of partners in certain firms**

Subject to the provisions of the last foregoing section, every member of a partnership carrying on business of a kind in which any of the following acts is usually done, may bind the firm by the same respectively:

- (a) He may draw, accept, indorse, make, and issue bills and negotiable instruments in the name of the firm.
- (b) He may borrow money on the credit of the firm.
- (c) He may, for the purpose of such borrowing, or of securing an existing debt, pledge any goods or personal chattels belonging to the firm.
- (d) He may, for the like purposes, make an equitable mortgage by deposit of deeds or otherwise of real estate or chattels real belonging to the firm.

**28. Execution in respect of separate debt of partner**

- (1) After the commencement of this Act no writ of execution shall issue against any partnership property, except on a judgment against the firm.
- (2) The Supreme Court, or a Judge thereof, may on the application by summons of any judgment creditor of a partner, make an order charging that partner's interest in the partnership property and profits with payment of the amount of the judgment debt and interest thereon, and may by the same or a subsequent order appoint a receiver of that partner's share of profits (whether already declared or accruing), and of any other money which may be coming to him in respect of the partnership, and 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) Every order for sale or foreclosure made under this section shall include liberty for the other partner or partners at any time to purchase or redeem the interest charged.



- (4) For the purposes of this section, the terms “**firm**” and “**partners**” shall include every unincorporated company and association formed for purposes of gain, and the members thereof; and “**writ of execution**” shall include writs of *facias*, *elegit*, sequestration, and attachment, and all subsequent writs that may issue for giving effect thereto.

## **Part III — Relations of partners to one another**

### **29.        Terms of partnership may be varied by consent**

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

### **30.        Partnership property**

- (1) All property and rights and interests in property originally brought into the partnership stock, or acquired, whether by purchase or otherwise, on account of the firm or for the purposes and in the course of the partnership business, are called in this Act partnership property, and must be held and applied by the partners exclusively for the purposes of the partnership, and in accordance with the partnership agreement.
- (2) Provided that the legal estate or interest in any land which is partnership property shall devolve according to the nature and tenure thereof, and the general rules of law thereto applicable, but in trust so far as necessary for the persons beneficially interested in the land under this section.
- (3) Where the co-owners of an estate or interest in any land, not being itself partnership property, are partners as to profits made by the use of that land or estate, and purchase other land or estate out of the profits to be used in like manner, the land 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 and interests as are held by them, in the land first mentioned at the date of the purchase.

### **31.        Property bought with partnership money**

Unless the contrary intention appears, property bought with money belonging to the firm is deemed to have been bought on account of the firm.

**32. Conversion of real into personal estate**

Where land has become partnership property, it shall, unless the contrary intention appears, be treated as between the partners (including the representatives of a deceased partner), and also as between the heirs of a deceased partner and his executors or administrators, as personal and not real estate.

**33. What is a partner's share**

The share of a partner in the partnership property at any time is the proportion of the then existing partnership assets to which he would be entitled if the whole were realized and converted into money, and after all the then existing debts and liabilities of the firm had been discharged.

**34. Rules as to interests and duties of partners**

The interests of partners in the partnership property, and their rights and duties in relation to the partnership, shall be determined, subject to any agreement, express or implied, between the partners, by the following rules:

- (1) All the partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards the losses, whether of capital or otherwise, sustained by the firm.
- (2) The firm must indemnify every partner in respect of payments made and personal liabilities incurred by him —
  - (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 making, for the purpose of the partnership, any actual payment or advance beyond the amount of capital which he has agreed to subscribe, is entitled to

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interest at the rate of 6% per annum from the date of the payment or advance.

- (4) A partner is not entitled, before the ascertainment of profits, to interest on the capital subscribed by him.
- (5) Every partner may take part in the management of the partnership business, and shall attend diligently to the partnership business, and shall not be entitled to any remuneration for acting in the partnership business.
- (6) No person may be introduced as a partner, without the consent of all existing partners.
- (7) Any difference arising as to matters connected with the ordinary course of the partnership business may be decided by a majority of the partners: Provided that the decision must be arrived at in good faith for the interest of the firm as a whole, and that every partner must have an opportunity of being heard in the matter. This proviso extends to powers conferred by a majority of the partners by express agreement.
- (8) The partnership books are to be kept at the place of business of the partnership (or the principal place, if there is more than one), and every partner may, when he thinks fit, have access to inspect and copy any of them.
- (9) No change may be made in the conduct or regulation of the partnership affairs without the consent or authority of a majority of the partners, and no change may be made in the nature of the partnership business, or the place where it is carried on, without the consent of all existing partners.

**35. Expulsion of partner**

- (1) No majority of the partners can expel any partner unless a power to do so has been conferred by written agreement between the partners.
- (2) Where such power is conferred, it may be exercised only in good faith with a view to the benefit of the firm, and the partner

whom it is sought to expel must have an opportunity of being heard.

**36. Retirement of partner where fixed term**

Where a partnership has been entered into for a fixed term, no partner can retire from it during that term except with the consent of all the partners, or in the exercise of an option previously conferred by written agreement.

**37. Retirement from partnership at will**

- (1) Where no fixed term has been agreed upon for the duration of the partnership, any partner may determine the partnership at any time on giving notice in writing of his intention so to do to all the other partners.
- (2) Where the partnership has originally been constituted by a deed, a notice in writing, signed by the partner giving it, shall be sufficient for this purpose.

**38. Where partnership continued after expiration of term**

- (1) Where a partnership entered into for a fixed term is continued after the term has expired, and without any 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.
- (2) A continuance of the business by the partners, or such of them as habitually acted therein during the term without any settlement or liquidation of the partnership affairs, is presumed to be a continuance of the partnership.

**39. Partners to render accounts**

Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

**40.       Partners must account for all benefits derived**

- (1) Every partner must account to the firm for any benefit derived by him, without the consent of the other partners, from any transaction concerning the partnership, or from any use by him of the partnership, property, name, or business connection.
- (2) This section applies also to transactions undertaken after a partnership has been dissolved by the death of a partner, and before the affairs thereof have been completely wound up, either by any surviving partner or by the representatives of the deceased partner.

**41.       Partner must not compete with firm**

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

**42.       Effect of assignment of partner's share**

- (1) An assignment by any partner of his share in the partnership, either absolute or by way of mortgage, does not, as against the other partners, entitle the assignee during the continuance of the partnership to interfere in the management or administration of the partnership business or affairs, or to require any accounts of the partnership transactions, or to inspect the partnership books, but entitles the assignee only to receive the share of profits to which the assigning partner would otherwise be entitled, and the assignee must accept the account of profits agreed to by the partners.
- (2) In case of a dissolution of 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 assets 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.

### **Dissolution of partnership, and its consequences**

#### **43. Dissolution by expiration of notice**

Subject to any agreement between the partners, a partnership is dissolved —

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

In the last mentioned case the partnership is dissolved as from the date mentioned in the notice as the date of dissolution, or, if no date is so mentioned, as from the date of the communication of the notice.

#### **44. Dissolution by death, bankruptcy, etc.**

- (1) Subject to any agreement between the partners every partnership is also dissolved by the death or bankruptcy of any partner.
- (2) A partnership may, at the option of the other partners or any of them, by written notice, be dissolved if any partner assigns his share of the partnership property or suffers such share to be charged under this Act for his separate debt.
- (3) The dissolution shall take effect from the date of the death, bankruptcy, or notice as the case may be.
- (4) Such notice shall be given within 28 days after the partner or partners giving the same has or have notice of the assignment or charge.

#### **45. Dissolution by illegality of partnership**

A partnership is in every case dissolved by the happening of any event which makes it unlawful for the business of the firm to be

carried on, or for the members of the firm to carry it on in partnership.

**46. Dissolution by the Court**

On application by a partner the Court may decree a dissolution of the partnership in any of the following cases:

- (a) When a partner is found lunatic by inquisition, or is shown to the satisfaction of the Court to be of unsound mind, in either of which cases the application may be made as well on behalf of that partner by his committee or next friend or person having title to intervene, as by any other partner.
- (b) When a partner other than the partner suing, becomes in any other way permanently incapable of performing his part of the partnership contract.
- (c) When a partner, other than the partner suing, has been guilty of such conduct as in the opinion of the Court, regard being had to the nature of the business, is calculated to prejudicially affect the carrying on of the business.
- (d) When a partner, other than the partner suing, wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with him.
- (e) When a partner, other than the partner suing, encumbers his interest in the property or profits of the firm.
- (f) When the business of the partnership can only be carried on at a loss.
- (g) Whenever in any case whatever circumstances have arisen which, in the opinion of the Court, render it just and equitable that the partnership be dissolved.



**47. Rights of creditors against apparent members of firm**

- (1) Where a person deals with a firm after a change in its constitution, he 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.
- (2) An advertisement in the '*Government Gazette*' and in a Perth or local newspaper (if any) as to a firm whose principal place of business is in Western Australia shall be notice as to persons who had not dealings with the firm before the date of the dissolution or change so advertised.
- (3) The estate of a partner who dies or becomes bankrupt, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable for partnership debts contracted after the date of the death, bankruptcy, or retirement respectively.

**48. Partner may notify of dissolution**

On the dissolution of a partnership, or retirement of a partner, any partner may publicly notify the same, and may require the other partner or partners to concur for that purpose in all necessary or proper acts, if any, which cannot be so done without his or their concurrence.

**49. Authority for purposes of winding up**

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 may be necessary to wind up the affairs of the partnership, and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise.

Provided that the firm is in no case bound by the acts of a partner who has become bankrupt; but this proviso does not affect the liability of any person who has, after the bankruptcy,

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represented himself or knowingly suffered himself to be represented as a partner of the bankrupt.

**50. Application of partnership property**

On the dissolution of a partnership every partner is entitled, as against the other partners in the firm, and all persons claiming through them in respect of their interests as partners, to have the property of the partnership applied in payment of the debts and liabilities of the firm, and to have the surplus assets after such payment applied in payment of what may be due to the partners respectively, after deducting what may be due from them as partners to the firm; and for that purpose any partner or his representatives may, on the termination of the partnership, apply to the Court to wind up the business and affairs of the firm.

**51. Sale of goodwill on dissolution**

On the dissolution of a partnership every partner shall be entitled, in the absence of any agreement to the contrary, to have the goodwill of the business sold for the common benefit of all the partners.

**52. Use of partnership name may be restrained**

After a dissolution every partner in the dissolved firm, or his representatives, may, in the absence of any agreement to the contrary, restrain any other partner, or his representative, from carrying on the same business under the firm-name until the affairs of the firm have been wound up, and the partnership property disposed of.

**53. Provision where premium paid**

Where one partner has paid a premium to another on entering into a 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 thereof as it thinks just, having regard

to the terms of the partnership contract and to the length of time during which the partnership has continued; unless —

- (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 any part of the premium.

**54. Lien on assets where partnership dissolved for fraud**

Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled —

- (a) to a lien on or right of retention of the surplus of the partnership assets, after satisfying the partnership liabilities for any sum of money paid by him for the purchase of a share in the partnership, and for any capital contributed by him, and is
- (b) to stand in the place of the creditors of the firm for any payments made by him in respect of the partnership liabilities, 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.

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

- (1) 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 its capital or assets without any final settlements of accounts as between the firm and the outgoing partner or his estate, then, in the absence of any agreement to the contrary, the outgoing partner, or his estate, is entitled at the option of himself or his representatives to such share of the

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profits made since the dissolution as the Court may find to be attributable to the use of his share of the partnership assets, or to interest at the rate of 6% per annum on the amount of his share of the partnership assets.

- (2) Provided that where by the partnership contract 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.
- (3) In determining how far the profits made since the dissolution are attributable to the outgoing partner's capital, the Court shall have regard to the nature of the business, the amount of capital from time to time employed in it, the skill and industry of each partner taking part in it, and the conduct of the parties generally. And the Court may allow to any such continuing partners such remuneration as to the Court seems meet for carrying on the partnership business.

**56. Retaining of deceased partner's share to be a debt**

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

**57. Rule for distribution of assets on final settlement of accounts**

In settling accounts between the partners after a dissolution of partnership, the following rules shall, subject to any agreement, be observed:

- (a) Losses, including losses and deficiencies of capital shall be paid first out of profits, next out of capital, and lastly,

if necessary, by the partners individually in the proportion in which they were entitled to share profits.

- (b) The assets of the firm, including the sums, if any, contributed by the partners to make up losses or deficiencies of capital, shall be applied in the following manner and order:
- (1) In paying the debts and liabilities of the firm to persons who are not partners therein.
  - (2) In paying to each partner rateably what is due from the firm to him for advances as distinguished from capital.
  - (3) In paying to each partner rateably what is due from the firm to him in respect of capital.
  - (4) The ultimate residue, if any, shall be divided among the partners in the proportion in which profits are divisible.

*[Schedule omitted under the Reprints Act 1984 s. 7(4)(f).]*

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## Notes

- <sup>1</sup> This reprint is a compilation as at 3 October 2003 of *The Partnership Act 1895* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>The Partnership Act 1895</i>	59 Vict. No. 23	2 Oct 1895	1 Oct 1895 (see s. 2)
<b>Reprint of <i>The Partnership Act 1895</i> authorised 23 Jul 1956</b>			
<b>Reprint of <i>The Partnership Act 1895</i> authorised 1 Sep 1981</b>			
<b>Reprint of <i>The Partnership Act 1895</i> as at 26 Jul 1985</b>			
<i>Companies and Securities Legislation (Miscellaneous Amendments) Act 1988</i> Pt. 10	48 of 1988	1 Dec 1988	9 Dec 1988 (see s. 2 and <i>Gazette</i> 9 Dec 1988 p. 4817)
<i>Corporations (Consequential Amendments) Act 2001</i> Pt. 51	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>Acts Amendment (Equality of Status) Act 2003</i> Pt. 47	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
<b>Reprint 4: <i>The Partnership Act 1895</i> as at 3 Oct 2003</b> (includes amendments listed above)			