

Dividing Profits When the Terms Were Not Specified

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Question: How should partners split their profits when the terms were not clearly specified? If one partner put up 70% and the other 30%, should they divide the profits along those lines?

Answer: The Gemara discusses this and says that when the terms were not clarified beforehand, partners divide the profits evenly – not according to the proportion of the amount they invested.

The Gemara has some qualifications to that. There are numerous approaches regarding how to understand the Gemara's intent, with the Prisha listing five different views amongst the Rishonim. *Halacha l'maaseh*, we generally say the profits would be divided 50-50; however, this situation rarely comes up, for the simple reason that it would only be relevant if nothing was stipulated between the partners. In most scenarios, partners do have some idea how they plan on dividing the profits, and they usually specify their intentions.

In rare cases where partners do not make up their own arrangements, they would be bound to the default rules from the Gemara, with the basic rule being that they divide the profits evenly, regardless of the sizes of their investments.

Question: Would they also divide losses evenly?

Answer: The basic rule of losses is the same as profits. Virtually all Poskim agree that the Gemara's rule of splitting profits 50-50 applies to losses as well. Again, this is regardless of the relative sizes of the investments.

If, however, one party's share of the loss would be greater than his entire investment – for example, if one partner invested \$70,000 and the other partner invested \$30,000, and the business lost \$80,000, which would mean that if the loss is divided evenly, the partner that invested \$30,000 would owe the other partner \$10,000 – in such a case, there is a major dispute amongst Rishonim and Acharonim if the loss would still be split evenly and the smaller partner would have to come up with the money to pay back the larger partner.

The halacha of splitting a loss evenly is said in regards to business losses. An example of this would be if they weren't able to sell their merchandise for as much as they expected. In a case where an accident occurred, like if the merchandise was stolen or it was destroyed in a fire, then the loss would be split in proportion to the partners' initial stakes. If 80% of the merchandise was lost, each partner would lose 80% of their initial investment.

Once again, these rules are only defaults. In general, partners can stipulate how they want losses to be allocated.