

Does One Need a Kinyan to Make a Partnership?

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Question: If two people want to enter a business partnership together, what do they have to do to ensure the *shutfus* is halachically binding?

Answer: In general, a *kinyan* is needed to make a typical transaction, such as a sale or a loan, valid. There is a dispute amongst the Rishonim if a *kinyan* is required to create a partnership. Some say that it is required, just like by other transactions. Others say that it is not needed because a *kinyan* is only necessary when the deal is not symmetrical – for example, if one party is a buyer and one is a seller. In such a case, a *kinyan* is needed to ensure that both sides agree to the transaction's terms and fully commit themselves. With a partnership, however, this opinion rules that a *kinyan* is not necessary, since both sides have mutual interests and it can be assumed that they commit to the terms in order to get the other partners to do so as well.

According to the view that a *kinyan* is required, there is further debate whether it will work only for assets that already exist or even for future revenues. Some say that no *kinyan* can be made on future profits because they fall under the category of "*davar shelo bah l'olam* (something that does not currently exist) ." Others disagree and say that a *kinyan* can even work for such revenue. They compare a partnership to the purchase of a share of the partner, which automatically entitles the partner to an equal share of all future earnings (meaning, that it does exist already).

L'chatchilah, one should definitely make a *kinyan*. If a *kinyan* was not made, a *bais din* should be consulted to reconcile how to proceed.

Question: Is it necessary to get the partnership agreement in writing?

Answer: According to the letter of the law, it does not have to be put in writing. Usually writing a *shtar* is only needed to serve as proof of a transaction, and it is not technically needed for a partnership to go into effect.

That being said, although it may not affect the creation of the partnership, from my experience I can say that most arguments and acrimony between partners arise because of misunderstandings regarding what was agreed upon. Therefore, I would strongly recommend that all agreements should be documented and put in writing with as much detail as possible, so as to avoid disputes and arguments later on.