

Does Shlichus and Shutfus Need a Kinyan?

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Question: Reuven and Shimon are friends. Reuven is a Rosh Yeshiva and Shimon is a successful businessman. Shimon wants to help Reuven, so he offers him an opportunity to be a partner in his business. Over the next few months, Shimon regularly sends Reuven money for his share in the partnership. One day, Shimon's manager informs Reuven that the partnership is over and he will not be sending him any more distributions. Does Reuven have a legal claim to his share in the business?

Answer: The Rambam says that a person only becomes a partner if he makes a valid *kinyan*. Some Rishonim say that a *shutfus* can start without a *kinyan*, but even they hold that the two partners need to come together and officially create a partnership. If a business owner just promises his friend a share in his business that would not suffice to create a binding *shutfus*. Accordingly, Reuven would not have the status of a partner just because Shimon said so.

Question: How is this different from where Shimon makes Reuven into an agent to buy and sell things for his company? In such a case there is also no *kinyan*, so how is this authorization valid?

Answer: *Shlichus* is different than *shutfus* in the sense that it is valid just by telling someone that he is a *shliach* and asking him to do something. The way *shlichus* works is that one person is doing an action on behalf of another person. If a *meshalayach* authorizes someone to do an action for him, that person immediately becomes his *shliach* to do that action. *Shutfus*, on the other hand, is the establishment of a mutual partnership wherein two parties own something jointly, which needs to be done either with a *kinyan* or some other means. The Rishonim in Bava Basra discuss cases where *shutfim* agree to split profits and whether or not that makes them *shluchim* for each other even without a *kinyan*.

The qualifying difference seems to be that if someone is doing a specific action for another, he can be said to be his *shliach*; but if all the actions he is doing are for the *shutfus* in general, a *kinyan* would be needed to create the *shutfus*.