

If Assets are Damaged or Lost While Under the Care of One Partner

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Question: If one partner is storing merchandise in his possession on behalf of a partnership and the assets are lost or stolen, is he responsible to cover that loss?

Answer: As we mentioned, partnerships are amalgamations of several halachos, one of which is *shomrim*, meaning they each watch the merchandise on behalf of each other. Certainly, if there was negligence – which all types of *shomrim* are liable for – the partner who was negligent would be liable.

Shutfim are generally considered *shomrei sachar*, baileys who are paid to watch an item, which means they are also liable for theft or loss. There is, however, one major exception to this, which would be the case of “*ba'alav imo*”. This rule states that if the owner of an item is working with the *shomer* when he accepted to watch the item, the *shomer* has no liability for the property as long as it is in his custody.

The Poskim rule that if the partners began the partnership together, then each one is “*ba'alav imo*” with the other one; therefore, neither of them will bear liability as a *shomer* for any assets that are lost or stolen. If one partner started working before the other, he would not have this exemption, although his partner would, because the first partner was already working with him when he joined the partnership.

Question: Would the halacha be any different if one of the partners deviated from the partnership in a way similar to the case we spoke about in the previous segment?

Answer: Many Poskim say that once a partner deviates from what he is supposed to do, it is possible to hold him liable as a “*mazik*”, damager. If he purchases the wrong items, and then something goes wrong and the partnership loses money, he is considered to have damaged the assets of the partnership, and he would be liable for the loss this incurs.

Furthermore, some Poskim have a different rationale to hold a partner liable once he deviates. We mentioned in the last segment that some Poskim say a partner must bear the entire loss after he deviates, even if the loss was not a result of his improper actions. The reasoning behind that is because once he deviates, he is considered to have “borrowed” the assets, and he is solely responsible for them. Since he has the halachos of a borrower, these Poskim say that he is liable for anything that goes wrong with the assets, including loss or theft.

לע"נ ר' יעקב בן ר' זאב ז"ל

Dedicated by Mr. and Mrs. Tzvi Meltzer

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