

Legal Partnerships Vs. Halachic Partnerships

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Question: If a partnership is created in a way that is not according to halacha, but is in accordance with common custom or legal norms, is that enough?

Answer: There are Gedolei Acharonim, including the Ridvaz and Chasam Sofer, that say that *minhag hamakom*—local custom— does validate a partnership, even if all halachic terms are not satisfied. For example, if there was no *kinyan* performed (according to the opinions that hold a *kinyan* is needed to create a halachic partnership), or if the partnership is for a *davar shelo bah l'olam* (according to the opinion that a *kinyan* does not suffice for that), this opinion would posit that if common custom is to establish partnerships in such a manner, that would suffice even though this partnership is not valid in halachic terms.

Rav Meir Arik disagrees and says *minhag hamakom* only works to enact specific terms that were not specified. If it is common custom for these terms to be included, they are put in place even if they were not specified; however, *minhag hamakom* cannot be stronger than actually specifying the terms. Thus, if it is impossible according to halacha to make a *kinyan* on a *davar shelo bah l'olam* even if the partners specify that this is what they want, *minhag hamakom* cannot accomplish this either. Others disagree on Rav Meir Arik and say that *minhag hamakom* is strong enough to overcome fundamental problems, such as *davar shelo bah l'olam*.

Whether the rule of *dina d'malchusa dina* applies to partnerships is also a matter of dispute. Some Poskim say that the law of the land would apply to partnerships, and this concept can validate partnership agreements even in instances where the halachic terms were not met. Others disagree and say that *dina d'malchusa dina* does not apply to transactions between Jews, and only halachic law is taken into consideration for such transactions.