

Vicarious (Secondary) Liability: Who is Responsible?

**Rav Yitzchok Grossman**

**Question:** In western law there's a concept of vicarious responsibility, where an employer is sometimes responsible for the actions of his employees. For example, in a restaurant, if the cook – who is just an employee – serves something that is spoiled and someone gets food poisoning, he can sue the restaurant and the employer will be held liable. How would that apply to the halachas of *shutfim*? If two partners own a restaurant and one serves something that's spoiled, is the other partner liable?

**Answer:** This is an area where halacha takes a very different view than modern, Western law. While the law does have a concept of vicarious responsibility, and an employer is liable for the actions of a low-level employee, halacha has no such notion. Halacha says that if someone does something wrong, he is liable, and no one else is responsible. Even if someone would deliberately send a messenger to injure someone else, he would not bear responsibility, as the halachic rule is that "*ain shliach l'dvar aveirah*."

The same is true of a partnership. If one partner causes damage to someone else, the other partner is not liable according to halacha.

There are Poskim who argue that in today's world there is a clear common custom to hold a company responsible through vicarious liability. If a low-level employee damages someone's property – for example, if an employee in a dry cleaners ruins someone's suit – all the parties understand that it is accepted that the business is implicitly liable according to common practice. Therefore, these Poskim claim that since halacha recognizes common custom as binding, one could hold an employer or partner liable in today's society.