

When an Item is Sold for Less Than Its Worth

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Question: If one partner sells merchandise at an inopportune time, deviating from the standard practice of the industry, and as a result the partnership suffers a loss, is he liable to cover the lost profits?

Answer: The halacha is that if a partner sells early – meaning that he got the price available at that time but could have made a larger profit if he had waited longer to sell – he is liable to cover the loss of anticipated revenue. (This is only if it is very clear that it was the wrong time to sell this product, and he did it anyway.)

The Poskim struggle with this halacha. They note that even if someone steals property, he is only liable to pay the worth of the property at the time he stole it. The same is true if someone damages property. If someone burns down a house, he is only liable to pay the worth of the house at the current time. We cannot say that he has to pay more because the house would have had more value in a year. It is, therefore, very puzzling why a partner should be liable for more than the current market value of the merchandise.

The Nesivos Hamishpat, based on a Ritvah, takes the position that partners have a higher level of responsibility toward each other than they do to the average person. They are responsible to act in the best interest of their partners; therefore, they are liable not only for current losses they cause their partners, but even for losses of anticipated future profits that they cause. Many Poskim disagree with this idea, and there is a great debate whether it is accepted as normative halacha.

Another approach as to why a partner is liable if he sells early is that there is a halacha cited in the Yerushalmi called “*bitul kis*”, which means that if someone takes action that causes someone else not to realize projected revenue, he is not liable to pay. These Poskim say that a partner is different because he bears a higher level of accountability, and is even responsible to pay for “*bitul kis*”. Others disagree and say that a *shutef* has the exact same halachos as a common *mazik*; accordingly, we would need some other explanation as to why the partner is liable for anticipated future revenues.

לע"נ ר' יעקב בן ר' זאב ז"ל

Dedicated by Mr. and Mrs. Tzvi Meltzer

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