Partnership Agreements

Ref: *Sefer Kinyan, Hilchot Shluchin Veshutafin*, Chapters 4 and 6

When a partnership is formed there has to be a method of each one acquiring the assets invested by the other.

This is achieved in the same way as all the methods available to a purchaser when he acquires property i.e. different objects need different methods of acquisition.

Reminder:
Definition of Sales. Ref: *Sefer Kinyan, Hilchot Mechirah*, Chapter 1-6

If they want to establish the partnership with money, each one should bring his share, place in a common pouch, and each then lifts up the pouch (*hagbahah*).

Craftsmen create partnership by purchasing the wares from their common funds and then producing the goods. Whatever they then earn can be shared. The basics of the partnership is the use of the shared funds.

Partnership can be dissolved at any time unless a specific period was specified.

Also if the produce of each of the partners is mixed together, this is a valid formation of partnership. Later these goods are sold and the funds can be used to create further business.

ESEK (INVESTMENT AGREEMENTS).

Reminder:
Pack on Finances
Pack on Oaths

If both partners do business with funds of partnership, then they share equally the profit or losses (or they can decide between then on some other percentage).

If only one of the partners does business with the money it's called an *esek*. The active partner is called the *mitasek*. The other partner is referred to as *baal hamaot* (investor).

Where one person supplies the funds and the other partner deals with the business, and they agree that the profits and losses are to be split, *Rabanan* instituted that half should be considered a loan and half a deposit. This would mean that both parties share the responsibility of the capital.

The problem with this partnership is that the active partner is working for the investor for free because he received a "loan". This "free service" falls into the category of *ribit* (interest).

Therefore the *Rabanan* developed a scheme whereby the active partner receives a wage of ⅙ in addition to his ½ of the profit = **⅔ of profit (½ + ⅙).**

If there is a loss, his portion is **⅓ of loss (½ – ⅙).**

½ The fund is considered an entrusted item *pikadon* for which the investor is responsible.

(So investor gets **⅓ of profit** or if a loss, will suffer **⅔ of loss.**)

Basically this means that the investor gives the businessman a wage in some form.

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This is when no stipulation was made between the businessman and the investor.

If businessman is already receiving a wage from another job, investor may stipulate to pay him a small nominal wage, and then profit or loss is divided equally.

Other formulae are also considered, but the Rambam concludes as follows:

If the parties stipulate percentages between themselves:

- If they stipulated regarding the profit, and there is a loss, the businessman bears **⅔ of the stipulated profit.** E.g. If they stipulated that the businessman would get 30% of the profits and there was a loss, the businessman only loses 20%.
- If they stipulated regarding the loss, and there is a profit, the businessman should receive **an additional ⅓ of the stipulated loss. E.g.** if they stipulated that the businessman would suffer 30% of the losses and there was a profit, the businessman receives 40% of the profits.

The investor never receives less than ½ of the investment even if there has been a substantial loss (i.e. he receives the full value of the loan i.e. half of the deal) i.e. that businessman returns the loan which is ½ of investment.

It is the duty of the businessman to use the full investment of the investor for the business. He cannot scheme to divide it in different ways to maximise the rules of ⅔ of profit and ⅓ of loss.