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**TALMUDIC METHODOLOGY  
BY: RABBI MOSHE TARAGIN**

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**APPOINTING A SHALIACH TO PERFORM AN AVEIRA**

The gemara in Kiddushin (41-43) elaborates upon the various halakhot of shlichut. One such principle is that shlichut is invalid in the execution of an aveira. For example, if Reuven appoints Shimon to murder or physically damage someone, it is Shimon who is held legally responsible. Of course, Reuven's conduct is reprehensible and he is certainly taken to task - biydei shamayim; he will ultimately be punished by the Heavenly courts for this behavior. However, from a strictly legal standpoint, Shimon is held accountable. As the gemara in Bava Metzia (10b) remarks "Divrei ha-rav ve-divrei ha-talmid divrei mi shom'in!! - one should pay greater attention to God's wishes and less to the subordinate wishes of a human being."

Though, in general, this rule - ein shaliach li-devar aveira (there can be no shlichut representation in the execution of an aveira) applies across the board, there exists a category of exceptions. The gemara in Kiddushin (43) isolates three cases of aveira in which shlichut is effective. The first case is tevicha u-mekhira - the issur of slaughtering or selling a stolen animal. If the shaliach executes this crime at the behest of his meshaleach (his sender), he, and not the meshaleach is obligated to pay the fine (4 times or 5 times the worth of the animal). Similarly, if one steals an item of hekdesh in compliance with another's request, it is he who must reimburse hekdesh, and not the meshaleach. The third case relates to the prohibition of shlichut yad - illegally deriving benefit from a pikadon - an object which was deposited to be watched. The actual shaliach who derives the benefit and not the meshaleach is responsible (the gemara suggests that many opinions only accept two of these three cases). How are we to understand these exceptions? Why in these cases does the general rule of "ein shaliach li-devar aveira" fail?

The simplest route would be to understand these cases exactly as such - as exceptions. In each instance a pasuk is cited as the source for the effectiveness of shlichut. One might propose that the rule pertaining to the failure of shlichut in cases of aveira simply carries three built-in exceptions.

Alternatively, one might claim that the rule of ein shaliach li-devar aveira has absolutely no exceptions. The failure of shlichut in cases of aveira applies across the board. In these few instances the reason the meshaleach and not the shaliach is responsible is because the mechanism of shlichut is unnecessary. It doesn't concern us that shlichut per se fails. Responsibility is ascribed to the meshaleach for different reasons. What has changed is not the map of shlichut but rather the definition of these aveirot. This suggestion requires a broader look at the nature of shlichut. Shlichut itself is one of the most intriguing and useful halakhic implements. It allows an action to be physically delegated to a shaliach even it is considered halakhically, as having being performed by the meshaleach. For example, if Shimon is mekadash a woman at Reuven's request, the woman is legally betrothed to Reuven and not Shimon even though he was the one who actually gave her a ring and pronounced "harei at". It goes well beyond the modern conception of "agents". If I sign a proxy for my vote I have, in effect, transferred my vote or right to vote to another. That other is not acting on MY BEHALF but AS MY BENEFICIARY who has obtained my authority. If children of a deceased elect an executor, his division of property is not in their place. He divides the estate and they acquire possession based upon his division. Shlichut goes much further. It allows agency even in actions which require personal involvement. Theoretically a woman is only married to one who is actually mekadash her. In this case Reuven did not actually execute the marriage ceremony, the results are ascribed to him. This is the magic of shlichut.

Understanding shlichut as such we must admit that though is very impressive, it is only necessary in cases in which intimate, and personal involvement are needed. In these cases shlichut substitutes for this involvement. However, in cases in which one doesn't have to be directly involved, shlichut becomes irrelevant. For example, if I ignore my pet lion who proceeds to escape and trounce a person, in no way have I performed the act of damage. The animal is not my shaliach. However, my negligence CAUSED the damage and this obligates me to pay. In order to be liable I don't have to actually perform damage; CAUSING it is sufficient. In cases similar to this shlichut is unnecessary.

Possibly, in these three exceptional cases, the reason that the meshaleach and not the shaliach is responsible is that these aveirot do not revolve around personal action. One who causes hekdes items to be profaned has committed the sin of me'ila. Similarly, one who causes a stolen item to be further damaged has committed this intensification of the original theft and is liable to a heavy fine. In truth, one can NEVER appoint a halakhic shaliach to perform an aveira. The shlichut breaks down and no formal relationship remains between the meshaleach and the shaliach. However, the shaliach only executed the crime because the meshaleach requested. Being that the meshaleach is the 'first cause' of this crime he is held accountable. Shlichut as a formal category plays no role. Even in the wake of the failure of shlichut the meshaleach is responsible because he EFFECTED this crime.

SUMMARY:

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We have examined two patterns of understanding the culpability of the meshaleach. Normally in cases of aveira as the shlichut fails he is not responsible. In several exceptional cases he does pay. Is that because in these instances shlichut operates? Or does it simply mean that his chiyuv in these instances is independent of shlichut. He pays because he engendered this damage.

The first method of testing this question is by scrutinizing the manner in which 'shlichut' operates in these cases. If it operates within the normal patterns of shlichut we might assume that a full-blown halakhic shlichut is active even though an aveira is being commissioned. If, however, in these cases we witness this 'arrangement' operating beyond the parameters of standard shlichut, we might infer that shlichut is not active at all. We are merely assigning guilt to the meshaleach based upon his effectuating the ultimate crime. The gemara in Me'ila (21a) discusses the form of 'shlichut' when stealing from hekdesch. In one case the meshaleach asks a katan (a minor) to pilfer an item from hekdesch. The mishna maintains that the meshaleach is chayav. In general, a katan may not be appointed as a shaliach. If the meshaleach is culpable in this scenario, this might indicate his guilt is not based upon shlichut. Instead, he is responsible simply because he caused this crime. His role is not affected by the fact that his messenger was a katan. He still generated this crime.

A similar situation concerns a nochri (gentile) who executes the wishes of his meshaleach. The Netivot in Siman 182;1 addresses this concept and defends the fact that a gentile or katan can be this 'shaliach'. A gentile, as well, cannot legally be considered a shaliach. If indeed we obligate the meshaleach for the deeds of his gentile messenger, we might have evidence that this is not based upon conventional shlichut but rather is a chiyuv which stems from the meshaleach's role in causing the aveira.

A second form of nafka mina might surround the culpability of the shaliach. Again on a moral level he is certainly guilty. Even though these three aveirot are exceptions and in these cases the 'shlichut' arrangement in one way or another is effective, we still cannot exonerate the shaliach. Just because the meshaleach ordered a hit does not mean the shaliach should fulfill his wishes. However, a legal question still remains in terms of who must make financial remuneration to the victim. Obviously, as these cases are exceptions to the general failure of shlichut, the primary compensation is taken from the meshaleach. What about secondary compensation? If the meshaleach is indigent or has fled can we turn to the shaliach and request payment? A machloket surrounding this point emerges from a debate between the Sema and the Ketzot in Choshen Mishpat 292 (se'if katan 10 in the Sema). If indeed, in these instances shlichut has operated effectively, we transfer the entire 'action' to the meshaleach and do not consider the shaliach as having perpetrated this aveira (again on a legal compensatory level, not a moral one). If so, we would not accept him to be the source for secondary payment. If, however, shlichut has failed EVEN in these exceptional cases and the meshaleach is guilty because he has caused the damage, we might still obligate the shaliach. After all, he also participated in the affair. Given the breakdown of shlichut he is held accountable for his actions. He has no halakhic mechanism for projecting his action unto others or ascribing them to the meshaleach.

A final question would concern the case where shlichut is commissioned for something which contains multiple aveirot. What if a shaliach is sent to slaughter a stolen animal on Shabbat? This action entails two issurim: chillul Shabbat and tevicha u-mekhira. If the exception of shlichut in the case of tevicha u-mekhira entails the successful launching of shlichut it would certainly fail in this scenario. Indeed, tevicha u-mekhira per se do not subvert shlichut but the aveira of Shabbat, which is also integral to this action should!!! The meshaleach should not be guilty because the shlichut has been invalidated by the issur Shabbat!! On the other hand if the chiyuv of the meshaleach were not based upon the effectiveness of shlichut but upon his role on causing the aveira (and the damage), he would be culpable even though the shlichut is void. Adding an extra issur to nullify the shlichut does not in any way change the fact that he caused the aveira and should be guilty. The Rambam in Hilkhot Geneiva 3:6 contends that in such a case the meshaleach is not culpable. Evidently, he viewed the standard case of tevicha u-mekhira as an exception - a case of aveira in which shlichut is operative. Mixing an additional issur invalidates the shlichut and exonerates the meshaleach from payment. See the Rambam in Peirush ha-mishnayot (Bava Kama perek 7) where he seems to imply the opposite.

#### METHODOLOGICAL POINTS:

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Oftentimes a halakhic mechanism operates in a particular area while it fails in most (shlichut for aveira operating in cases of me'ila or tevicha u-mekhira). The explanation of this phenomenon can be explained in two ways. It might reflect a feature of the said mechanism (shlichut for aveira might have unique status when it comes to these aveirot). Alternatively, this might reflect not upon the mechanism but the field itself. Are me'ila and tevicha u-mekhira areas which can dispense with shlichut and still 'survive'... The simplest way to check this question is by exploring the nature and scope of this operation. By questioning the application of shlichut le-aveira for katan and nochri we sought to examine whether shlichut was in operation or some other independent relationship (causality).

#### AFTERWORD:

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1. See the gemara Bava Metzia (10b) for additional examples where shaliach li-devar aveira operates.
2. What if anything can this discussion tell us about why shlichut IN GENERAL fails by most aveirot. Can the discussion about the nature of the exceptions reveal the nature of the overall inability to appoint a shaliach for an aveira?

Shabbat Shalom, Moshe Taragin

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