

**YESHIVAT HAR ETZION  
ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)**

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**TALMUDIC METHODOLOGY**

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**APOTROPUS**

Halakha legislates the concept of apotropus – a court-appointed agent acting on behalf of orphans who cannot oversee their financial holdings. Though generally instructed to maintain a holding pattern with the orphans' estate (acting in the most minimal, absolutely necessary manner), there is one instance in which an apotropus is forced to engage in active decision-making with permanent long-term ramifications. If he is appointed to help divide inherited lands the apotropus will actually decide which lands to surrender to the other brothers in exchange for lands he will secure entirely for the orphans he is representing. How does halakha define his role in this situation?

The gemara actually cites a textual source authorizing the apotropus to divide an estate. The Torah describes the involvement of the nesi'im who helped distribute Eretz Yisrael among the 12 shevatim. Inevitably, some land was distributed among minors who themselves were incapable of dividing or even formally appointing a shli'ach on their behalf. Presumably, then, the nesi'im served as their representatives. At first the gemara invokes the principle of "zachin" to justify this process. Zachin allows an individual to act on behalf of another for that other's benefit even without formal appointment. As receiving land is deemed a benefit for the recipient, these nesi'im might have operated under the authority of the zachin provision. Subsequently, though, the gemara rejects this option, since in some scenarios they actually operated against the interests of the people they were representing. Conceivably, they might have selected lands which were undesirable for the beneficiary. In such a scenario, zachin would not apply. Therefore, the gemara chooses a different logic to justify the role of the nesi'im: they were considered apotropusim and could thereby represent the minors even in matters which would ultimately be 'detrimental' - by selecting undesirable land. The gemara appears to base the law of apotropus on a pasuk, thus defining it as d'oraita in origin.

The logical flow of the gemara reflects a fundamental question about the nature of apotropus: is he a representative of the orphans or a representative of the court administering the court's interest to supervise the orphans' estate. Is the institution of apotropus merely a broadening of zachin, allowing him to act without formal appointment to the benefit of the orphans, EVEN if ultimately his actions might be harmful? According to this perspective, the Torah specifically authorized the apotropus to act beyond the parameters of zachin in representing the orphans. Alternatively, we might conclude that upon failing to apply zachin to the episode of the nesi'im, the gemara arrives at something entirely different: an institution of apotropus which is structurally unrelated to zachin. In this case, the apotropus represents the Beit din, not the orphans.

This question may form the basis of the machloket between Shmuel and Rav Nachman as to whether the orphans may reject their allotment upon discovering their shares. Shmuel allows them to do so while Rav Nachman prevents them. As the distribution was sponsored by Beit din, Rav Nachman argues, it cannot be overturned. Presumably, the Amoraim are debating the nature of apotropus. If it is based on some extended form of zachin (allowing the apotropus to represent the orphans without any formal appointment), future disavowal would be possible. Every case of zachin allows the beneficiary to reject the acquisition presumed beneficial for him. If, however, the apotropus acts on behalf of Beit Din, we would not allow subsequent renunciation, but choose instead to reinforce our decision since it bears the emblem of Beit Din.

An additional consequence of this question might be the scope of an apotropus' authority. How liberal may he be and how aggressive may he act in distributing the land? For example, may he choose land independently, or must he rely upon a court-supervised lottery to apportion the lands? May he independently evaluate the respective tracts (with eye toward exchange), or must he employ a court-directed assessor? What about items which cannot be easily divided - can he claim them on behalf of his orphans (in exchange for money) or surrender them whole to the other brothers (again in exchange for money), even though this process - known as 'gud o aggud' (Bava Batra 13a) - is comparable to a sale? Tosafot (in Kiddushin 42a and Gittin 34a) cite the opinions of the Ri who is more liberal in authorizing the apotropus, and the Rabenu Tam, who is

more conservative. Conceivably, Rabenu Tam viewed the shli'ach as a court agent and thereby contracted his authority. He must employ court services whenever possible (assessors, lotteries) and may not engage in creative exchanges. In fact, according to the Ritva in Kiddushin, the actual lottery must occur in the presence of Beit din. By contrast, the Ri viewed the apotropus as an agent of the orphans and empowered to act as the orphans might have if they were of legal age. In fact, when justifying their broad powers, the Ri (as cited in Tosafot Kiddushin 42a s.v. u'voririn) claims, "the Chakhamim regarded the apotropus as the orphans themselves, licensed to divide without the mechanism of Beit din but based purely upon their own discretion."

An interesting question surrounding the 'number' of appointed apotropusim might also revolve around the original concept. Rashi in Gittin clearly asserts that one apotropus must be appointed per orphan. The Ritva in Kiddushin, however, allows a situation in which one common apotropus supervises the affairs of multiple orphans. Conceivably, Rashi might be viewing the apotropus as an extension or agent of the orphans. Therefore, each orphan requires a unique and independent representative. By contrast, the Ritva might have viewed the apotropus as a proxy of Beit din to defend the rights of minor orphans. For this purpose, a common apotropus suffices.

A final question which might stem from the nature of apotropus surrounds the issue of appointing an apotropus against the will of the orphans. Rabenu Tam contends that only if all orphans request an apotropus may he be appointed. Effectively, halakha does not allow the appointment of an apotropus against the will of the beneficiary. The Rambam, however, describes a scenario in which the older children wish to divide the land (to begin their personal affairs with their portions separate from the lands of their brothers, who are still ketanim). In this instance, Beit din will appoint an apotropus even against the will of the younger children in order to accommodate the legitimate interests of the older children. Presumably, allowing the appointment of an apotropus against the will of an orphan reflects the notion that an apotropus serves as a representative of Beit din. If he represents the orphans through some extended form of zachin, it would be difficult to appoint him against the will of the individual he is representing.

This issue forces us to reevaluate the position of Rabenu Tam. Earlier we noted that he greatly limits the authority of the apotropus – suggesting that he views him as an agent of Beit din. Alternatively, by disallowing his appointment against the will of the orphans, he might be establishing the apotropus' status as a representative (through zachin) of those orphans. Evidently, at least according to the Rabenu Tam, one of our interpretations must be altered.

#### AFTERWORD:

This analysis of apotropus might not extend to all forms and scenarios. The gemara might be debating a very unique form of apotropus - one empowered to actively divide land and make long-lasting decisions on behalf of the orphans. The classic form of apotropus (defending their rights, preserving their holdings) might operate along very different logical lines. In addition, the above gemarot refer to a court-appointed apotropus. Presumably, an apotropus appointed by the father might operate much differently. (See, for example, the mishna in Gittin 52 regarding the unique status of an apotropus appointed by a father.)