

YESHIVAT HAR ETZION
ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

TALMUDIC METHODOLOGY
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LECTURE #09: CULMINATION OF *SHALIACH*

Typically, "halakhic transformations" may be delegated to a *shaliach* and enacted in the absence of the true author. The ubiquitous principle of "*shelucho shel adam kemoto*" allows for almost any halakhic activity to be designated to a *shaliach*. Once the *shaliach* executes the prescribed action, the person he represents immediately absorbs the halakhic consequences.

In fact, there is one form of "*shaliach*" which requires confirmation on the part of the original author. In purely beneficial transactions (known as *zechut*), a person can serve as *shaliach* without specific designation. Anyone can unilaterally represent another person if that representation is purely beneficial. Although this principle of *zachin le-adam she-lo be-fanav* allows self-designation by the messenger, the recipient of the *zechut* reserves the right to refuse it.

The situation of *zachin* is unique in that the action performed by the *shaliach* may not ACTUALLY be beneficial to the recipient. Generally, we may assume benefit based on universal norms and act without articulated *shaliach*. The recipient of the *zechut* may however, object by insisting that, despite *general* interest, he views the "*action*" as detrimental. Once the package is no longer advantageous, the warrant for *zachin* or self-prescribed *shaliach* disappears.

We can summarize these principles as follows: In general, *shaliach* concludes after the agency has been executed, while the unique form of *zachin le-adam she-lo be-fanav* requires final confirmation.

There are, however, two interesting halakhot which may indicate that even classic *shaliach* requires some final consultation, or at least the "ability" to secure confirmation. The *gemara* in *Gittin* (24a) describes a husband who dispatches a *shaliach* to divorce his wife and instructs the messenger to appoint a different *shaliach* to deliver the *get*; this allows the original *shaliach*,

who was appointed by the husband, to serve as a *shaliach kabbala* representing the absent wife in receiving the *get*. The *gemara* appears to disqualify this setup since "*lo chazra shaliach eitzel ha-ba'alim*;" this *shaliach* – who changes sides at the last minute to represent the woman - is incapable of returning to his dispatcher, as he now represents the other party.

There are different options for explaining this concept and perhaps limiting it to the unique circumstances of a *get*. For example, the Nimukei Yosef claims that the infraction occurs because the DELIVERY is compromised. A *get* must be physically delivered, and one person can't participate in both the delivery and the receipt. In halakhic areas which do not require direct delivery, however, we may allow a *shaliach* to "play" both sides.

The simple language of the *gemara*, however, suggests a broader concept, demanding that a *shaliach* remain CAPABLE of representing the dispatcher through the performance of the *shaliach*. Indeed, both Tosafot (s.v. *ve-ha*) and Rashi (s.v. *lo* on *Gittin* 63b) take the *gemara* literally - a *shaliach* must serve the *shaliach* through, and be capable of reporting back to the *meshalei'ach*. Why should the structure of *shaliach* demand such capacity? Shouldn't the entire process terminate with the successful performance of the designated act even if the *sheliach* cannot "report" back to the one who sent him?

Perhaps this position reflects the essence of a *sheliach* and the manner in which he represents the dispatcher. Some view a *sheliach* as merely a "puppet" designated with performing an ACTION which the absent *meshalei'ach* cannot implement. Essentially, the *meshalei'ach* remains the "author" and primary catalyst of the process (*ba'al chalot*), while the *shaliach* is merely sent to perform a "dumb" action on behalf of the *meshalei'ach*. If this were true, we might wonder about the need for the *shaliach* to report back to the one who sent him. After all, the *meshalei'ach* was driving the process all along, even during the actual performance; once that performance has concluded, the halakhic transaction is complete without the *shaliach* "checking in" with the *meshalei'ach*.

Alternatively, if we view the *shaliach* as the primary executor of this process - by designating him I empower him to independently author an action, which I ultimately absorb - the *meshalei'ach* essentially withdrew from the process, which is now entirely driven by the *shaliach*. Conceptually, after

the act has been performed, we still may require some "transfer" of the halakhic package back to the *meshalei'ach*. Even though we don't require ACTUAL delivery or return, the *shaliach* must be capable of at least symbolically returning and passing the halakhic consequences back to his dispatcher. If he chooses to represent a different party, and compromises this ability, he may subvert his *shaliach*. The rule of "capacity of return," if taken literally (as Rashi and Tosafot do), may indicate that a *shaliach* has become an independent force and is not merely acting as an extension of the original *meshalei'ach*.

A second manifestation of this concept – and in many ways a more overt example – can be located in a Ra'avad in his comments to the Rambam in *Hilkhot Shluchin* 1:2. Several *gemarot* assert that if a *shaliach* errs in his agency (for example, fetching too low a price for the item he sells on behalf of the *meshalei'ach*), his *shaliach* is canceled. The *meshalei'ach* can challenge him: "I appointed you to my benefit - not my detriment." Most *Rishonim* believe that once the *sheliach* deviates, his agency is AUTOMATICALLY cancelled. The Ra'avad, however, claims that the *meshalei'ach*, upon discovering the deviance, may choose to AFFIRM or REJECT the deviant *shaliach*.

At first glance, this position is quite surprising. The machinery of *shaliach* has already been erected and a significant deviance should inherently subvert it. What is the mechanism that allows the *meshalei'ach* to make the final determination about the nature of the *sheliach*? Perhaps the above stated structure of *shaliach* helps explain the Ra'avad's stance. Since a *shaliach* has been empowered to independently enact the halakhic process, there is a "transfer" point at which he symbolically relays the halakhic package that he has created. The *gemara* in *Gittin* requires the *sheliach*'s CAPACITY to report back to his dispatcher (as opposed to joining a different *shaliach*). The Ra'avad believed that the *shaliach* is actually confirmed or rejected at that final stage or moment. Although we do not obligate the *shaliach* to return, the *meshalei'ach* has the right to refuse or reject a *shaliach* which was deviant.