

OVERVIEW of the Daf

1) Agency (cont.)

One source is suggested, that would be valid even according to R' Yonason, for the use of agency when offering a korban.

This source is rejected and another source is cited.

The validity of this source is unsuccessfully challenged.

The Gemara questions why Rav is cited as identifying an alternative source for agency.

The Gemara answers that the citation of Rav is not accurate and he derives a different principle from the pasuk he cited.

2) Dividing the assets of orphans

R' Nachman cites Shmuel's ruling about the division of assets for orphans and notes that he disagrees with Shmuel whether the orphans will be allowed to protest Beis Din's decision.

The Gemara unsuccessfully challenges whether R' Nachman maintains that we are concerned with the authority of Beis Din.

R' Nachman issues rulings related to two brothers dividing their inheritance.

Rava qualifies the rulings of R' Nachman.

3) Agency to commit a transgression

The Gemara questions a ruling in Bava Kama that holds an agent responsible rather than the principal for causing damage with a fire.

It is explained that the principal is not responsible when damage was done due to the rule that there is no agency to commit a transgression.

This principle is challenged from the halacha of me'ilah where the principal rather than the agent is responsible for the transgression.

It is explained why the transgression of me'ilah is different and why it does not establish the rule that there is agency to commit transgressions.

A discussion of agency for the transgression of misappropriation (שליחות יד) is presented.

It is noted that inability for me'ilah and misappropriation to establish the rule that there is agency to commit a transgression is limited to the position of Beis Hillel but according to Beis Shammai another source would be necessary. ■

Distinctive INSIGHT

Messengers for sin—שליח לדבר עבירה

דברי הרב ודברי התלמיד דברי מי שומעין

The rule is that there is no agency for doing a sin. In other words, if Reuven asks Shimon to do a sin on his behalf, Reuven's appointment of Shimon to represent him in this wrongful act is not valid. If Shimon continues and does the sin, he is acting on his own and not as a messenger on the behalf of Reuven. The reason given by the Gemara is that we say that when one must choose between the instructions of the rabbi or those of the student, to whose command should he listen? Obviously, a person must listen to Hashem and refrain from doing a sin, rather than to listen to someone who tells him to sin.

Two general approaches are suggested to explain the underlying principle behind this concept. Tosafos HaRosh writes that the one sending another to sin does not rely upon the messenger to fulfill the mission. The sender does not sincerely expect the agent to do the act, so the messenger's appointment is faulty. Nevertheless, if the agent is unaware that the act he is being asked to perform is sinful (i.e., he does not know that an item does not belong to the sender and that his act constitutes theft), the one sending him would expect the agent to fulfill his task. In this case, the agency would be valid.

Rabbi Akiva Eiger explains that the Torah does not recognize one person representing another when the mission being assigned is sinful. שליחות is not legally binding in such a case, whether the agent realizes that his act is sinful or not.

Rema (C.M. 3388:15) writes that if a person has a reputation as a sinner, and he will carry out any mission assigned to him, regardless of whether the task entails a sin or not, the one who sends him is responsible for the sin that is committed. In this case the sender knows that the sin will be done, and he has no reason to believe that the messenger will not act. According to this, Rema would learn that our Gemara is dealing with an agent who has no such reputation to sin on the behalf of others. ש"ך (ibid., #67) disagrees with Rema, and he holds that the agency has no validity even if the messenger is a known sinner.

Rabbi Akiva Eiger notes that the argument between Rema and ש"ך can be understood according to the two approaches mentioned above. If the Torah does not recognize agency when sin is involved, then even if the messenger is a sinner he cannot represent anyone other than his own self. If, however, the issue is whether the sender reliably counts on the messenger to fulfill the mission to sin, then where the agent is a known sinner, the sender would be accountable for the act. ■

HALACHAH Highlight

Asking a non-Jew to do melacha on Shabbos

דברי הרב ודברי התלמיד דברי מי שומעין

[If the] words of the teacher [conflict with] the words of the student, whose words should be followed?

Two reasons are given for the restriction against asking a non-Jew to do melacha for a Jew on Shabbos. Rashi¹ writes that it violates the prohibition of **ממנו חפצך ודבר דבר**— [by refraining] from pursuing your weekday activity and from speaking [of them.] Shulchan Aruch Harav² offers another rationale for this restriction in the course of his explanation of a ruling of Magen Avrohom. Shulchan Aruch³ rules that it is prohibited to give money to a non-Jew on erev Shabbos so that the non-Jew will purchase something on Shabbos. Magen Avrohom⁴ explains that this is similar to instructing the non-Jew on Shabbos to make the purchase. The reason instructing the non-Jew during the week is prohibited, explains Shulchan Aruch Harav, is that the non-Jew acts as an agent for the Jew. Even though there is a principle that a non-Jew cannot act as an agent for a Jew (**אין שליחות לעכו"ם**), nevertheless, the rabbis recognize the agency of a non-Jew when the agency would result in stringency. In other words, there are two possible reasons for the prohibition. One reason is that the non-Jew acts as an agent for the Jew and it is seen as though the Jew is doing the melacha himself. (Interestingly, according to this approach it would not be prohibited for a person to instruct a non-Jew to do melacha that will benefit the non-Jew.) The second reason is that the instruction to do a melacha violates a pro-

REVIEW and Remember

1. Does a minor have the authority to appoint an agent?
2. Explain **אם כן מה כח בית דין יפה**.
3. What is the rationale behind the principle that one cannot send an agent to commit a transgression?
4. What is **שליחות יד**?

hibition.

Rav Baruch Tzvi Hakohen Moscowitz in a letter to Minchas Yitzchok⁵ challenges the explanation that the prohibition is because the non-Jew acts as an agent of the Jew. How can the Jew violate a prohibition when a non-Jew acts as his agent when there is a principle **אין שליח לדבר עבירה**— there is no agency to commit a transgression? He answered that the rationale behind the principle of **אין שליח לדבר עבירה** is **דברי הרב ודברי התלמיד דברי מי שומעין**— [If the] words of the teacher [conflict with] the words of the student, whose words should be followed? This rationale, however, does not apply to a non-Jew who is not commanded to observe Shabbos. As a result, the principle **אין שליח לדבר עבירה** does not apply. ■

1. רש"י עבודה זרה ט"ו. ד"ה כיון דזבנה.
2. שו"ע הרב או"ח בסוף סי' רס"ג בקונטרס אחרון סק"ח.
3. שו"ע או"ח סי' ש"ז סעי' ג'.
4. מג"א שם סק"ג.
5. שו"ת מנחת יצחק ח"ד סי' כ"ה. ■

STORIES Off the Daf

Following instructions

"לתקוני שדרתיך ולא לעוותי..."

On today's daf we find that a messenger who deviates from his instructions loses his status as a messenger.

A businessman sent an emissary to purchase a house in a nearby city. However, he warned his agent not to make a commitment for more than a thousand gold coins. They made a kinyan so that the messenger's decisions and commitment would be binding on the sender's behalf up to the value of a thousand gold coins, and the man went on his way. But when the messenger arrived in the city and found a suitable property, the owner was adamant that he could sell for no less than

eleven hundred coins.

The seller reasoned, "If I agree to sell for a thousand, I will never sell any of my other houses in the area for more. So let's draw up a document of sale for eleven hundred. If the businessman who sent you is unwilling to pay no more than a thousand, why not offer to pay it yourself and I will reimburse you and even pay you something for your trouble."

They made a kinyan in front of witnesses and wrote up a document, but when the messenger arrived home he was shocked to find the businessman delighted with the deal—but for a very different reason then he could ever have foreseen.

The businessman said, "You say that you deviated from my instructions? Well, that's excellent since any deal you made with him at a higher price than we agreed is not halachically binding. I have just

been given an opportunity to make an excellent investment and now I have another thousand to invest in it instead of that property."

"But I will make up the difference!" blurted out the messenger.

"I don't care. I can't trust you to do my bidding, so I don't want to have any dealings with you."

When this question came before the Mahariyah Halevi, zt"l, he ruled in favor of the businessman. He said, "The kinyan they made is absolutely not binding. And it isn't only the businessman who can annul the deal, as in our case. Even if both the messenger and the sender wish to do the deal with terms against the sender's original agreement with the messenger, the seller also has the right to change his mind!"¹ ■

1. שו"ת מהר"י"א הלוי, חלק ב', סימן ס'.