YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**GEMARA *GITTIN***

**Gittin 29a – If the Bearer of a Get Falls Ill**

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**Sources:**

1. Mishna, 29a; Gemara until *ke-get*.

2. *Tosafot*, s.v. *Rashbag*; Ramban, s.v. *amar Rav Kahana*.

3. Rif (p. 14a in Alfasi) until *ve-khen ha-da'at noteh*; Ra'avad, ad loc.

4. *Tosafot Rid* 66b: *u-mi-kan yesh le-hokhiach….*

5. Mordechai, *Gittin* no. 420; Mordechai, *Kiddushin* no. 505.

6. *Ketzot ha-Choshen* 188, no. 2.

**Preparatory Questions:**

1. What is the basis for the disagreement between Rabban Shimon ben Gamliel and the Sages?

2. Does Rabban Shimon ben Gamliel accept the exposition: "'And he shall send' – 'And he shall send her' - this teaches that an agent can appoint an agent"?

3. What are the two opinions regarding agency brought by the *Ketzot*?

4. How does the Mordechai define "verbal instructions"?

### An agent appointing another agent in the case of a *Get*

 We learned in the Mishna:

If the bearer of a *get* in Eretz Israel falls ill, he can send it by another. (*Gittin* 29a)

The Gemara (ad loc.) discusses whether the possibility of sending the *get* by another person exists only in an emergency situation, e.g. where the original agent falls ill and is incapable of delivering it himself, or whether falling ill is just an example coming to explain why the agent cannot deliver the *get* himself, but in fact the *get* is valid even if the original agent sends it by another person, even though he did not fall ill. Rav Kahana establishes that sending the *get* by way of another person is valid only if the first agent fell ill.

On the face of it, this restriction stems exclusively from the husband's intention that the *get* be delivered by the original agent, but fundamentally the agent can pass the *get* on to a different agent. For were we to say that the agent lacks the authority to send the *get* by way of a different agent, the same should apply in a case where he fell ill. Thus we are forced to say that the reason that the original agent cannot send the *get* by way of a different person in a case where he did not fall ill is that the husband objects to the agent handing the *get* over to another person for no justified reason. If so, this law is like the law found in the latter part of the Mishna, which discusses the case of a husband who asks his agent to take a certain article from his wife, where the agent may not send the *get* by another person, since the husband may not want his article in the hand of another person.

### The Dispute between Rabban Shimon ben Gamliel and the Sages

 In the continuation, the Gemara cites a dispute between Rabban Shimon ben Gamliel and the Sages on the matter:

If a man said: Take this *get* to my wife, [the bearer] can send it on by another. If he said: You take this *get* to my wife, [the bearer] cannot send it on by another. Rabban Shimon ben Gamliel said: In either case one agent cannot appoint another. (*Gittin* 29a)

According to the simple understanding of the passage, there is no fundamental disagreement between Rabban Shimon ben Gamliel and the Sages. They disagree only about the degree of the husband's insistence regarding the original agent:

If you like I can answer that he said: Take, for [even this formula authorizes the bearer to send it on by another] only if he falls ill; or if you like I can say that he said: You take, for only where he falls ill it is different; and if you like I can say that the Mishna is in agreement with Rabban Shimon ben Gamliel, only where the bearer falls ill it is different.

Now, according to the third understanding, even according to Rabban Shimon ben Gamliel, one agent can appoint another if the first agent took ill. If so, "take" according to Rabban Shimon ben Gamliel is like "you take" according to the Sages, and the husband minds if the first agent appoints another agent, unless he falls ill.

The *Tosafot* raise an objection against Rabban Shimon ben Gamliel from a Baraita that derives that one agent can appoint another from the verse in the Torah section dealing with divorce:

That which we expounded (*Kiddushin* 41a): "'And he shall send' – 'And he shall send her' – this teaches that an agent can appoint an agent" – this is where the husband doesn't mind. (*Tosafot*, *s.v. Rashbag*)

That is to say, Rabban Shimon ben Gamliel agrees that fundamentally an agent can appoint an agent, as is derived from the verse. But this is only in a case where the husband does not mind.

In light of the above, Rabban Shimon ben Gamliel and the Sages disagree only about how we are to assess the severity of the husband's insistence. If the husband doesn't mind, all agree that the first agent can appoint another agent, and if the husband minds, all are in agreement that the first agent cannot appoint another agent. This appears reasonable, for the entire standing of the agent stems from the authority of the party who appointed him. Therefore it stands to reason that if it is important to the husband that the original agent himself deliver the *get* to his wife, and he did not authorize him to appoint an agent, the first agent cannot send the *get* by way of another person. The possibility that the first agent can appoint another agent is based on the assumption that this was the husband's intention at the time of the original appointment.

The Ramban, however, writes as follows:

Even though it is written: "And he shall send" – "And he shall send her," and we expounded in chapter *Ha-Ish mekadesh* (41a): "This teaches that an agent can appoint an agent," implying that this applies whether he fell ill or he did not fall ill, for does the verse say that he took ill – nevertheless the Sages said that we need that he took ill, because some people mind, and if they hear [that the agent appointed an agent], they will cancel the original appointment. But if he fell ill, there is such insistence.

According to the Ramban, we are not dealing with the husband's intentions at the time of the original appointment, but rather with his rejection or agreement afterwards, when he hears that his agent appointed another agent. The words of the Ramban indicate that the agent can appoint another agent, even if he was not authorized to do so by the party who sent him at the time of his own appointment. According to the Ramban, the original agent cannot appoint another agent, because the husband might hear about this and cancel the entire agency. But were he not to cancel the agency, it would be valid even if the husband minds. This position requires clarification.

In order to understand the Ramban's position, we must understand the illuminating words of the *Ketzot ha-Choshen*:

"Who are not of sound mind" – A question arises in a case where the principal was of clear mind when he appointed another person as his agent, but before the latter completed his agency, the principal lost his mind – do we follow the original situation, and when he made him his agent he was of sound mind, and the agent stands in place of the principal, or perhaps we follow the current situation, and at the time of the completion of the mission, the principal had lost his mind and the agency is cancelled. We find that the earlier authorities disagreed about the matter, for according to the Rambam *Hilkhot Geirushin* 2:15), if he was of sound mind at the time when he appointed the agent, but afterwards he lost his mind, if the agent delivered the *get*, it is valid by Torah law, and invalid only by Rabbinic law, so that people not say that a person of unsound mind can divorce his wife. And according to the *Tur* (*Even ha-Ezer* 121), in such a case the *get* is invalid by Torah law. (*Ketzot ha-Choshen* 188, no. 2)

It stands to reason that this disagreement depends on how we understand the foundation of the law of agency: Is an agent merely a "long arm" of the principal, whose entire role is to perform an action on behalf of the party who sent him, or is the agent "a man in my place" – a person who stands in lieu of the party who sent him, and the law of agency bestows upon him independent standing to act on his own in the area in which he was appointed. If the agent enjoys independent standing, then it is possible that he can execute his agency on behalf of the principal, even if the latter is no longer of sound mind; but if he lacks independent standing, and is only the arm of the principal, his actions cannot have any validity if the principal has lost his mind and his own actions are invalid.

Now if the agent is merely the long arm of the principal, it would appear that he has no authority to do any more than the action that he was appointed to do, and therefore an agent cannot appoint another agent unless he was authorized to do so by the principal at the time of his own appointment. On the other hand, if the agent stands in place of the party who appointed him, it is possible that he has the authority to do additional things in order to achieve the desired result, and so even if the principal only appointed him to deliver a *get* to his wife, he can also appoint another agent in order to achieve that goal; the agent stands in place of the husband, and so just as the husband can appoint an agent, so too he can appoint an agent, since he is like the principal for this purpose. This is the novel idea of the Torah that an agent can appoint an agent by virtue of his agency, even though he was not appointed to do so.

Nevertheless, if the husband minds that his agent appoint another agent, we are concerned that when he hears about the appointment, he will cancel the agency, as argued by the Ramban. The *Tosafot*, on the other hand, explain that the Torah's novel idea that an agent can appoint an agent applies only when the husband does not mind this at the time of the original appointment, and then it is as if he explicitly authorized him to do so. This understanding is slightly difficult, because it would appear that there is no novelty in this law.

It would appear that even if the agent enjoys independent status, this might only apply when the husband does not mind at the time of his appointment. But if he minds at the time of the appointment, and he limits the authority of the agent, the agent has no authority to appoint another agent. If so, even according to the *Tosafot*, the novelty in the law that an agent can appoint an agent is that the agent enjoys independent standing, and therefore the agent can appoint an agent even if the husband did not authorize him to do so, provided that the husband did not mind at the time of the agent's original appointment.

In light of the above, let us revisit the dispute between Rabban Shimon ben Gamliel and the Sages. The Sages maintain that fundamentally an agent has the authority to send a *get* by way of another person. But nevertheless, if the husband explicitly minds and says: "You take," he may not send it by way of another person. Rabban Shimon ben Gamliel, in contrast, clearly states: "In either case, one agent cannot appoint another." This implies that it does not depend on the husband's minding. This, in fact, is what the Gemara understands at first: "And if [the Mishna] follows Rabban Shimon ben Gamliel, then even if he fell ill [although the husband merely said 'take'] he cannot [send it on by another]."

Only in the Gemara's third answer does the Gemara retract this understanding, but according to the first two answers, it would appear that an agent cannot appoint an agent even if the first agent fell ill. And it stands to reason that, according to the Sages, the agent stands in place of the principal, and therefore fundamentally an agent can appoint another agent, unless the husband minds and limits his authority, whereas Rabban Shimon ben Gamliel disagrees and maintains that "one agent cannot appoint another," and according to him, an agent is merely a long arm of the principal, and he has no independent authority to appoint another agent unless the husband authorized him to do so and appointed him as his agent to appoint an agent.

The Ra'avad in his strictures on the Rif argues that the halakha is not in accordance with Rabban Shimon ben Gamliel:

That which was taught: "'And he shall send' – a second time. This teaches that an agent can appoint an agent." And since we are expounding verses, and the verse does not distinguish between one who has fallen ill and one who has not, how can we distinguish? But between 'Take' and 'You take' we can certainly distinguish, because the husband only divorces willingly, and the husband minds.

 The Ra'avad implies that Rabban Shimon ben Gamliel disagrees with the exposition from which we derive that an agent can appoint another agent, and that according to him, an agent cannot appoint another agent.

 But let us examine the words of the Ra'avad more carefully. He implies that Rabban Shimon ben Gamliel disagrees with this exposition even according to the third answer, according to which Rabban Shimon ben Gamliel agrees that an agent who fell ill can appoint another agent. But this is difficult, for the difference between falling ill and not falling ill relates to whether or not the husband minds. If so, how do the Sages, who distinguish between "Take" and "You take" deal with the exposition – this distinction too depends on whether or not the husband minds!

 It seems that according to the Ra'avad, Rabban Shimon ben Gamliel maintains that an agent is merely the long arm of the principal. Therefore, the agent has no authority to appoint another agent, but nevertheless, if the first agent falls ill, there is a presumption that the husband allows him to appoint another agent. If so, this is like someone who was appointed from the outset to appoint an agent, and there is no novelty, and this does not have to be derived from a verse. On the other hand, in the case of: "Take this *get* to my wife," there is no presumption that the husband authorized the agent to appoint another agent, but nevertheless, since there is no explicit indication that the husband minds, since he did not say: "You take," the agent has the authority to appoint another agent. This law is based on the independent standing of an agent, and therefore we need the exposition that teaches us that an agent can appoint another agent.

### Verbal instructions cannot be Transmitted to an agent

 The Gemara continues with another objection against the law that an agent can appoint another agent from a different Baraita:

Does this not contradict the following? [For we learned:] If a man says to two persons: Give a *get* to my wife… they are to write and give it, [which implies, does it not, that] they themselves are [to write it] but not an agent [of theirs]?

Rava answers by distinguishing between our Mishna, where a *get* that was already written was handed over to an agent, and the Baraita, which deals with a *get* that was not yet written. He explains that if the *get* was not yet written, then: "These are only verbal instructions, and verbal instructions cannot be transmitted to an agent." Rashi explains:

There the reason that he cannot appoint an agent is that he only gave him verbal instructions, and verbal instructions cannot be given to another person. But a get – which has substance – can be given to another person.

The implication is that if the husband did not give the agent a tangible object, the agent does not have the authority to appoint another agent. The *Tosafot Rid* explains:

From here it can be proven that if a woman appoints an agent to receive her *get,* the agent cannot appoint another agent… because these are merely verbal instructions, as she did not give him any tangible object. (*Gittin* 66b)

This law requires explanation. Let us examine the words of the Mordechai who disagrees with the *Tosafot Rid*:

The master raised an objection… But surely we said: "'And he shall send' – 'And he shall send her' – this teaches that an agent can appoint an agent." But these are merely verbal instructions, so how can he appoint an agent? Some explain that receiving a *get* or accepting a betrothal is a full-fledged act. From my master, the Kohen, I received: Any process that is not completed by the agent is considered verbal instructions which cannot be transmitted to an agent. But receiving a *get* completes the process. But the writing about which he spoke to the witnesses is considered verbal instructions, because the process is not complete until the *get* is given. (Mordechai, *Gittin,* no. 420)

According to the Mordechai, the distinction is not between an object and mere words. According to him, "verbal instructions" refers to any agency which does not involve the completion of a process. Therefore receiving a *get* is not considered "verbal instructions" even though there is no handing over of any object, because receiving the *get* completes the divorce. Writing a *get*, on the other hand, is considered "verbal instructions," because the divorce is not finalized with the writing of the *get.*

It may be possible to explain the position of the Mordechai based on the definitions of agency proposed above. Agency that includes the completion of a process bestows upon the agent independent power and authority over that process. Therefore, in such a case, the agent can appoint another agent, and about him it is written: "'And he shall send' – 'And he shall send her' – this teaches that an agent can appoint another agent." On the other hand, an agent who was not appointed to complete a process is merely the long hand of the principal, and he has no independent authority. Therefore he lacks the authority to do for the principal something that he was not explicitly appointed to do. Thus he cannot appoint another agent to write the *get* in his place.

The Mordechai in *Kiddushin* writes:

The holy one from Troyes ruled that if one appointed an agent to betroth a woman and gave him a ring with which to betroth her, then even if he was prevented from carrying out his agency by circumstances beyond his control, he cannot appoint another agent, because these are verbal instructions, and verbal instructions cannot be transmitted to an agent. Even though regarding a *get* we say that an agent can appoint another agent, and it is not mere verbal instructions because he gives him the *get*, and here too he hands over the ring – it is not the same, for in the case of a *get* the woman can be divorced against her will, and as soon as the *get* reaches the hand of the agent, it is as if she were divorced, therefore they are not mere verbal instruction, for the agent can divorce her against her will, and the hand of the agent is like the hand of the husband. But an agent for betrothal, if the woman does not agree, she is not betrothed; there they are mere verbal instructions. (beginning of chap. 2, no. 505)

Here too the Mordechai establishes that the law of verbal instructions does not depend on "words" versus "articles": surely the man who wished to betroth the woman gave the agent a ring, and nevertheless the agent cannot appoint another agent, because this is considered a case of verbal instructions. As for the reason for the distinction, he distinguishes between divorce, where the woman can be divorced against her will, and betrothal, where the woman can only be betrothed with her consent.

Here too it seems that the difference between the two cases is based on the distinction between the two types of agents mentioned above: When an agent can carry out his agency in all situations, and nobody can stop him from doing so, he is given independence and authority over the process in place of the principal. But when he cannot carry out his agency without the consent of other parties, then he is merely a long arm of the principal, and in such a case verbal instructions cannot be transmitted to an agent.

### Summary

 We saw that the law that an agent can appoint another agent that is derived from the exposition "'And he shall send' – 'And he shall send her,' stems from the independent authority enjoyed by the agent, because of which the agent can appoint another agent, even though he was not explicitly authorized to do so by the principal at the time of his appointment. Rabban Shimon ben Gamliel may disagree with this understanding of agency, and according to him, an agent is merely the long arm of the principal. Therefore (according to the Ra'avad) Rabban Shimon ben Gamliel disagrees with the exposition that teaches that an agent can appoint another agent, though it is possible that he too agrees that an agent can appoint another agent if he was explicitly or implicitly appointed to do so by the principal (e.g., in the case where he fell ill).

 Even the Sages, who maintain that an agent can appoint another agent, because the agent enjoys independent standing, agree that verbal instructions cannot be transmitted to an agent. According to the Mordechai, agency which is regarded as mere verbal instructions is agency in which the agent does not enjoy independent standing, but rather is considered the long arm of the principal, that is to say, when the agent was not sent to complete the process (Mordechai in *Gittin*), or when the agent was sent on a mission that depends on the consent of others (Mordechai in *Kiddushin*). In each of these two cases the first agent cannot appoint another agent because he does not enjoy independent standing. The possibility that the principal would authorize such an agent to appoint another agent is discussed in the passage dealing with *omer imru* (on p. 66b).

(Translated by David Strauss)