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**TALMUDIC METHODOLOGY**

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**Shiur #15: The Inability of a *Shaliach* to Affect Third Party Interests**

*Shelichut*, the power of agency, is one of the most ubiquitous mechanisms in the halakhic system. With very rare exceptions, a person can delegate an agent to execute halakhic activities (*kinyan*, *kiddushin*, *get*). However, several *gemarot* describe an interesting case in which *shelichut* will fail – if the agency harms third party interests. For example, a *shaliach* cannot be appointed to collect debts from a debtor who owes other people money and has limited funds. Since the collection of the debt on behalf of Reuven will harm Shimon, who is also owed that money, the *shelichut* fails. Similarly, many maintain that a *shaliach* cannot be appointed to acquire lost items (*aveidot*), since acquisition on behalf of one person denies others that opportunity.

Why is *shelichut*, which is otherwise so pervasive, limited in situations of *chav le-achrini*, in which third party interests are negatively impacted? In an [earlier *shiur*](http://etzion.org.il/en/chav-le-achrini-disqualifying-shlichut-which-harms-third-party-interest), the question was addressed and a basic analysis was suggested. In this *shiur*, we will amplify the analysis and provide significant *nafka minot*.

One approach is to pin the malfunction of *shelichut* upon the selection process (*minuy*). Only the owner of the *shelichut-*targeted item (*ba’al ha-mammon*) is authorized to appoint a *shaliach*. A person cannot appoint a *shaliach* to sell someone else’s field or divorce someone else’s wife. Money that is owed to other creditors is similarly not the sole possession of the current *malveh* who seeks to appoint a *shaliach*. Since other people have rights to that money, the current *malveh* is not considered the owner of the funds, and therefore cannot APPOINT a *shaliach*.

Support for this view of *chav le-achrini* may be drawn from an interesting *gemara* that identifies an exception to the general rule – a situation in which a *shaliach* CAN operate even in cases of *chav le-achrini*. The *gemara* in *Bava Metzia* discusses a *po’el* (laborer) who can operate as a *shaliach* for his employer even in situations of *chav le-achrini*. The simplest manner of justifying this *halakha* is the absence of *minuy*-dependency. A *po’el* has been hired as a UNIVERSAL *shaliach* for the employer, and he therefore does not require specific appointment for each particular task. Since he does not require *minuy*, he is not deterred from *chav* *le*-*achrini* activities, which typically prevent *minuy* appointment.

Similar logic would explain the ability of a *chatzer* to operate as a *shaliach* for its owner in acquiring items even in situations of *chav le-achrini*. Presumably, the *chatzer* is a *minuy*-independent *shaliach* and can operate even in *chav le-achrini* situations that usually prevent *minuy*.

A different view of *chav le-achrini* may emerge from the *gemara* that applies *chav le-achrini* to collecting lost items (*Bava Metzia* 10a). According to R. Nachman and R. Chisda, just as a person may not appoint a *shaliach* to collect debts when there are other creditors, he is similarly blocked from appointing a *shaliach* to collect lost items that could potentially be retrieved by others; collecting for Reuven is inherently damaging the interests of Shimon. Since an *aveida* is not owned by anyone else, *minuy* should be effective in this case, yet *shelichut* cannot be generated to collect *aveidot*.

Perhaps *chav le-achrini* poses a different and more fundamental concern. A *shaliach* cannot execute an action on behalf of his dispatcher (*meshalei’ach*) if that action will negatively affect others. The limitation is not inherent in the *minuy* stage, but rather in the very EXECUTION OF *shelichut*. A *shaliach* can usually perform halakhic activities on behalf of his *meshalei’ach*, but this representation applies only if no one else is harmed. Once negative impact for others exists, the entire representative capacity of a *shaliach* is crippled.

Put differently, is *chav le-achrini* an impediment TO APPOINTING a *shaliach* because the *meshalei’ach* is not the sole possessor of the item, or is *chav le-achrini* a breakdown of the inherent REPRESENTATIVE CAPACITY of a *shaliach*? In theory, the *nafka mina* between these two possibilities would be situation in which the *meshalei’ach* seeks to appoint a *shaliach* who will affect someone else’s property but no harm will be caused.

The *gemara* in *Beitza* (39a) describes a case in which one person draws water from a well on behalf of another. The *gemara* probes the status of the water in the context of Shabbat. Is it considered the water of the one who draws it (and can thus be transported in the *techum* of that person), or is the water owned by the intended recipient of the water, on whose behalf the water was drawn? R. Nachman claims that the water is identified as the recipient’s water, implying that the “drawer” was able to acquire water for the recipient. Most *Rishonim* question this ability. Isn’t the “drawer” acquiring water through *shelichut* in a situation of *chav le-achrini*? Since other people also own rights to and want to draw this water, *chav le-achrini* should block *shelichut*!

Tosafot (both in *Bava Metzia* and *Beitza*) cite Rabbenu Tam, who claims that *chav le-achrini* does not apply in this case since there is sufficient water in the well for everyone. Even though *shelichut* is being executed over items that are not uniquely owned by the *meshalei’ach*, the *shelichut* can operate because no harm is being caused. Evidently, it is the damage to others that impedes *shelichut* in classic cases of *chav le-achrini*. Since no damage ensues in the water case, *chav* *le-achrini* does not prevent this *shelichut*.

Similar logic may help explain the famous “exception” in which *shelichut* operates in a case of *chav le-achrini* – the situation of *migu de-zachi*. If the *shaliach* is ALSO owed money, he can seize money from the *loveh* on behalf of the *malveh* even though he is damaging third party interests (see *Bava Metzia* 8a, 10a). If a *meshalei’ach* cannot appoint a *shaliach* on money owned by others, the ability of the *shaliach* to collect his own debt should not validate *shelichut*. He may be able to collect the money for HIMSELF, but he should still be barred from being appointed a *shaliach* because the *meshalei’ach* is not the sole owner of the money. If, however, it is specifically damage that scuttles the representative capacity of a *shaliach*, perhaps *migu de-zachi* scenarios are defined as damage-less situations. Since the *shaliach* could have personally collected this money, those funds are already inaccessible or LOST to other potential creditors. Since the monies are already lost, no real damage results from the *shaliach’s* seizure of the funds for the *meshalei’ach*.

If the *chav le-achrini* prevention of *shelichut* stems from the fact that the *meshalei’ach* does not own the item and cannot appoint a *shaliach*, the absence of damage should not constitute an exception. If, however, *chav le-achrini* disqualifies *shelichut* because of the damage to other parties, situations in which negligible damage occurs should allow for *shelichut*. If the actual damage impedes *shelichut*, situations of *migu de-zachi* render the item already lost. The *shelichut* no longer causes damage.

By contrast, if non-ownership of the funds owed to others prevents *shelichut*, a different logic for the function of *migu de-zachi* in validating *shelichut* must be developed. Evidently a new model to understand the operation of *migu* *de-zachi* must be posed.

Let us return for a moment to the situation of the *po’el* who can operate as a *shaliach* even in *chav le-achrini* circumstances. We suggested above that this exception indicates that the *chav le-achrini* affects the *minuy* ability, and since a *po’el* is *minuy*-independent, he can freely operate as a *shaliach*. If *chav le-achrini* does not affect the *minuy*, but rather the essence of a *shaliach’s* representative capacity, the *po’el* case must be understood differently. Perhaps a *po’el* represents a different and HIGHER grade of *shaliach*, whose representative capacity is unaffected by potential damages to third party interests. If this is true, other forms of superior *shaliach*s may also be empowered, like the *po’el,* to operate even in instances of *chav le-achrini*.

The Rosh cites the situation of an *apotropus*, the executor of an estate who can represent orphans even in *chav le-achrini* situations. This case is not that much different from a *po’el*, as an *apotropus* also does not require action-specific *minuy*. However, many *Rishonim* (as part of an attempt to resolve contradictions in Rashi) nominate additional *shaliach*s who DO require *minuy* but who nevertheless CAN operate in *chav le-achrini* circumstances. For example, the Shitta Mekubezet in *Bava Metzia* (10a) suggests that a *shaliach* appointed with a *harsha’ah* (a ”reinforcement” document strengthening the terms of his debt collection) may be able to seize the funds. Similarly, the Shitta suggests that a *shaliach* who was appointed with *eidim* may be able to successfully execute *chav* *le-achrini* representations. The Shach adds that a *shaliach* who was paid money may also act in these circumstances. Presumably, all these *shaliachs* require an appointment process, yet they succeed even in *chav le-achrini* situations. Evidently, then, the *minuy* stage is not the problematic issue; even *shaliachs* who require *minuy* may be successful. The real issue stems from the *shaliach*’s incapacity to execute representation when he harms others. The exception of *po’el* illustrates that more powerful *shaliachs* overcome this concern. In addition to *po’el*, other types of *shaliach* may be seen as equally powerful and similarly capable of overcoming *chav le-achrini* limitations.

By extension, perhaps a *shaliach* who can also personally acquire the funds or lost item – constitutes a higher and more powerful form of *shaliach*. *Migu de-zachi* doesn’t render the scenario as “harmless” thereby enabling successful *shelichut*. It empowers the *shaliach* to operate more autonomously and skirt the limiting effect of *chav le-achrini*.