All about Agents I – Handout

# Section I - The Agent

# Mishnah – Kiddushin 2:1

A man can betroth by himself or by his agent. A woman can become betrothed by herself or by her agent. A man can betroth his daughter when she is a young woman, by himself or by his agent.

# Deuteronomy 24:1

כִּי-יִקַּח אִישׁ אִשָּׁה, וּבְעָלָהּ; וְהָיָה אִם-לֹא תִמְצָא-חֵן בְּעֵינָיו, כִּי-מָצָא בָהּ עֶרְוַת דָּבָר--וְכָתַב לָהּ סֵפֶר כְּרִיתֻת וְנָתַן בְּיָדָהּ, וְשִׁלְּחָהּ מִבֵּיתוֹ.

A man takes a wife and possesses her. She fails to please him because he finds something obnoxious about her, and he writes her a bill of divorcement, hands it to her, and sends her away from his house;

# Bavli – Kiddushin 41b

**From where do we** derive that there is halakhic **agency?** The Gemara answers: **As it is taught** in a *baraita*: The Torah states with regard to one who divorces his wife: “That he writes her a bill of divorce, and gives it in her hand, and sends her [*veshilleḥah*] out of his house” (Deuteronomy 24:1). The verse employs the verb: **And he sends [*veshillaḥ*].** The fact that the verse employs the term *veshillaḥ*, as opposed to another verb denoting divorce, *vegereshah*, **teaches that he can appoint an agent [*shaliaḥ*],** as both words share the root *shin*, *lamed*, *ḥet*. The husband does not have to personally give his wife the bill of divorce.

Additionally, the fact that the term **“and he sends her [*veshilleḥah*]”** can also be read as: And she sends [*veshalleḥa*], **teaches that she** too **can appoint an agent** to accept her bill of divorce. Furthermore, in this same passage the verb is repeated in the phrases **“and he sends,” “and he sends her”** (Deuteronomy 24:1-3), which serves to **teach that an agent can appoint another agent.**

From where is it derived that the legal status of a person’s agent is like that of himself? As it is stated with regard to the Paschal offering: “And the whole assembly of the congregation of Israel shall slaughter it in the afternoon” (Exodus 12:6). Is it so that the whole assembly slaughters the offering? But only one person from each group slaughters it. **Rather, it can be derived from here that the legal status of a person’s agent is like that of himself.**

שְׁלוּחוֹ שֶׁל אָדָם כְּמוֹתוֹ

# Section II - The Criminal Agent

# Mishnah – Bava Kamma 6:4

**One who sends a fire,** i.e., places a burning object, **in the hand of a deaf-mute, an imbecile, or a minor** is **exempt** for any damage later caused by the fire **according to human laws but liable according to the laws of Heaven.** If **he sent** it **in the hand of a** **competent** person, **the** **competent** person is **liable,** not the one who sent him.

# Bavli – Kiddushin 42b

Now, when we learned: He who sends forth a fire by a deaf-mute, imbecile, or minor, is not liable [for the damage caused] by law of man, yet liable by the law of Heaven. But if he sends it by a normal person, the latter is [legally] liable. Yet why so? Let us say that a man's agent is as himself. — There it is different, for there is no agent for transgression, for we reason: [When] the words of the master and the words of the pupil [are in conflict], whose are obeyed?

Then when we learned: If the agent does not carry out his instructions, the agent is liable for me’ilah: if he carries out his instructions, the sender is liable for me’ilah. Thus, at least, if he carries out the sender's instructions, the latter is liable for me’ilah. Yet why? Let us say: There is no agent for transgression. — A me’ilah-offering is different, because the meaning of ‘sin’ is derived from terumah: just as an agent can be appointed for [separating] terumah, so can one be appointed in respect of me’ilah. Then let us learn [a general law] from it? — We cannot…

# Bavli – Kiddushin 43a

Now, when it was taught: If he says to his agent, ‘Go forth and slay a soul,’ the latter is liable, and his sender is exempt. Shammai the Elder said on the authority of Haggai the prophet: His sender is liable, for it is said, “Him you have slain with the sword of the children of Ammon” (II Samuel 12:9).

# Rashi – Kiddushin 42b

Should we not say that a person’s agent is considered like himself? [If so,] we would then say that the sender is liable (for damages) and not the agent.

# Tosafot – Kiddushin 42b

“If he set a fire through [the agency of] another competent adult, the other competent adult is liable.” Why do we rule this way? Should we not say, “A person’s agent is considered as himself ” and obligate the sender? This means to say: Although the agent cannot be exempted from liability, because he is a normal competent adult (and therefore responsible for his own actions), the practical ramification (of recognizing criminal agency) is that if he (the agent) lacks the funds to compensate for the damage, the victim can claim the money from the person who sent him.

# Shulchan Aruch, Choshen Mishpat 182:1

Note: In all matters, a person’s agent is considered as himself, except concerning transgression, for we take the position that agency is inapplicable to matters of transgression.

# Leviticus 19:14

You shalt not curse the deaf, nor put a stumbling-block before the blind, but you shall fear thy God: I am the LORD.

# Sefer HaMitzvot of the Rambam - Negative Commandment 299

The Sages also explained that this prohibition includes someone who aids a person in sinning or brings him to do so by blinding him with desire, so that he is considered visionless. He ensnares him and assists him in completing the sin, or prepares the cause of the sin.

# Meiri – Kiddushin 42b

Even though agency is not effective in areas of sin, one must nonetheless avoid causing another to stray. For a sin that one causes is referred to as his own. Thus we find that God told David concerning Uriah, “You killed him through the sword of the Ammonites.”