All about Agents II – Handout

# Section III - The Unknowing Criminal Agent

# Bavli – Bava Metzia 10b

Resh Lakish said further in the name of Abba Kohen Bardala: A girl who is [still] a minor has neither the right [to acquire, an object by means] of her courtyard nor the right [to acquire an object by means] of her ‘four cubits’. But R. Yohanan said in the name of R. Yannai: She has the right, both in regard to her ground and in regard to her four cubits.

Wherein do they differ? — One is of the opinion that [the scriptural term] courtyard is included in her ‘hand’; just as her ‘hand’ acts for her, so her courtyard also acts for her. But the other is of the opinion that courtyard acts in the capacity of ‘agent’; and as she has not the power while she is a minor to appoint an agent to act for her, neither can her courtyard act for her.

## Exodus 22:3

אִם-הִמָּצֵא תִמָּצֵא בְיָדוֹ הַגְּנֵבָה, מִשּׁוֹר עַד-חֲמוֹר עַד-שֶׂה--חַיִּים:  שְׁנַיִם, יְשַׁלֵּם.

If the stolen article be found in the hand of the thief, whether it be an ox, or ass, or sheep, alive, he shall pay double.

But is there anyone who says that courtyard is regarded as ‘agent’? Was it not taught: “in his hand”; — from this I would gather that the law applies only when it is found in ‘his hand’: how do we know that the same law applies when the theft is found on his roof, in his courtyard and in his enclosure? Because we are told: If the theft ‘be certainly found’, which means: ‘wherever it may be found.’

Now if your view is that courtyard acts because it is regarded as agent, then we must conclude that there is an agent for a transgression, whereas it is held by us that there is no agent for a transgression?

Ravina said: where do we say that there is no agency for transgression? It is where the agent himself is subject to liability for transgression. But in the case of a courtyard, which is not subject to liability, its sender, i.e., its owner, is liable.

Rav Samma stated a different resolution to the difficulty based on the *baraita*: Where do we say that there is no agency for transgression? It is specifically in a case where if the agent wants to execute his assignment he can do so, and if he wants to refrain from executing it he can also opt to not do it. But in the case of a courtyard, where one places items without its consent, its sender, i.e., its owner, is liable.

# Tosafot - Bava Kamma 79a

According to both approaches concerning why we do not recognize criminal agency…the principle is not applicable here. In general we say criminal agency is not applicable because the person ordering the crime does not know if the agent will commit the sin or not. In this situation (where the agent did not know any sin was involved) the sender knows that the agent will transgress, because the agent is under the misimpression that the animal belongs to the sender.

# Machaneh Efraim, Laws of Property Damage 7

Levi told Shimon to break Reuven’s vessels, and he broke them because he thought they belonged to Levi – who told him to break them. Which one of them is liable to pay?

It seems that Shimon is definitely exempt because he did not know that they belonged to Reuven…But regarding Levi, who told him to break them, it would at first seem that this case is the subject of a dispute (over whether agency applies where the agent does not know he is doing a crime)…However, when we delve deeper into this case, it is possible that everyone will agree that Levi must compensate. This is **not** based on agency, meaning that Shimon serves as Levi’s agent. Rather, it is because it is as if Levi broke them himself. Since Shimon did not know (they belonged to Reuven), when Levi told him to break them, it is a case of *bari hezeka*, where **damage will clearly take place** (and he is liable to pay).

# Section IV - One Exception to the Rule – Shlichut Yad

# Exodus 22:6-8

If a man delivers unto his neighbor money or stuff to keep, and it be stolen out of the man's house; if the thief be found, he shall pay double. If the thief be not found, then the master of the house shall come near unto God, to see **that he has not put his hand** unto his neighbor's goods. **For every matter of trespass**, whether it be for ox, for ass, for sheep, for clothing, or for any manner of lost thing, where one says: 'This is it' the cause of both parties shall come before God; he whom God shall condemn shall pay double unto his neighbor.

# Bavli – Kiddushin 42b

Beit Shammai says: This inclusive term “every” serves to render one liable for speech and thought, i.e., intent to misappropriate, like action. And Beit Hillel says: One is liable only if he actually misappropriates it, as it is stated: “that he has not put his hand unto his neighbor’s goods” (Exodus 22:7).

Beit Shammai said to Beit Hillel: If so, if one is liable only for actual misappropriation, why do I need: “For every matter of trespass”? Beit Hillel replied: It is necessary, as one might have thought that I have derived liability only if he himself misappropriated it; from where do I derive that he is liable also if he told his slave or his agent to do so? The verse states: “For every matter of trespass,” to teach that the bailee is liable if one acting on his behalf misappropriates the deposit.

# Shulchan Aruch Choshen Mishpat 292:5

One who illegally uses a deposit, either himself, or through an agent, becomes classified as a thief. He is therefore liable for any subsequent damages, even those beyond his control, and the object enters his domain so that he must pay according to the laws of thieves – as will be explained in the Laws of Theft.

# Shach - Choshen Mishpat 292:4

The verse (Shemot 22:8, “Concerning any matter of sin,” [which teaches that *shelichut yad* can be achieved through telling another to use the deposit]) is limited to a situation where the agent does not have the money to compensate. The ruling in that situation is obvious (according to all authorities). Whereas, in general, one who sent another to damage, the sender is exempt from any payment, even if the agent has no money (for compensation), here concerning *shelichut yad* the guardian (the sender) is obligated to compensate (because the biblical verse teaches us an extra scenario in which the sender-guardian is obligated).

Yet, if the agent has the money to pay, and he knew it was another’s deposit, and he is obligated to avoid the transgression – there it is obvious that the agent is obligated to pay according to all authorities, for we do not recognize agency in matters of transgression.

# Summary

The Agent

**When one person orders another to do something wrong – and the second person then does it – who is the guilty party?**

The one who actually did something wrong is considered the guilty party. “He told me to do it” is not recognized as an excuse. It is still wrong to order another to sin or do a crime, but the one who gave the order is not legally responsible for the act. However, our passage concludes that one who ordered another to commit a crime is *chayav bedinei Shamayim* – meaning that in Heaven he is considered as having committed the crime. He has a moral-spiritual obligation to compensate in whatever way he can.

The Criminal Agent

**Is there a difference if the agent does the action reluctantly or willingly?**

As long as the agent knows he is sinning and does it, the agent’s reluctance makes no legal difference (though, of course, God judges every case according to its nuances). The agent is responsible for his sin even if he did it at the order of another.

The Unknowing Criminal Agent

**What if one person got another to unknowingly do something wrong on his behalf? Who then is guilty?**

An agent is only held responsible for crimes he knew he was doing. An unknowing agent is not culpable, whereas the one who sent him is. There is a dissenting opinion on this matter, which we did not elaborate on in the class. However, for some cases, where the damage is immediate and certain, the unknowing agent is certainly exempt, because we look at the situation as though the sending is damaging by means of a “human tool.”

Shlichut Yad

**Does it make a difference which crime was committed? Are there some transgressions where we hold the agent culpable and others where we hold the one who ordered him culpable?**

Our blanket rule is ein shaliach lidvar aveirah – when an agent performs a transgression on behalf of another, the agent is responsible for his actions, and not the person who sent him. However, the Gemara lists a number of exceptions to this rule, where the person who instructs another is held culpable. For example, Beit Hillel holds that if a guardian tells another to illegally use a deposit, the guardian can be held responsible. Other exceptions include illegally deriving benefit from *hekdesh* – objects set aside for the Temple or sacrifices – slaughtering a stolen animal, and (according to one understanding of Shammai’s approach) murder.