



Volume 4. Issue 4

He Told You To Do What?!

In the sixth *perek* of *Bava Kama* we learn that if one sent a fire in the hands of a mentally competent person and he caused fire damage, the person sent is *chayav* (liable). The person who told him to do it however, is not *chayav* at all.

We have learnt previously that a *shaliach* (messenger) takes the place of the person who sent him (*shlucho shel adam kamoto*). Consequently it would seem that one who sends a person to light a fire should be *chayav*. Why in this case is the person being sent *chayav*, and yet the sender is completely *patur*? This is because there is another general rule by *shlichut*, namely that there is no agency for a matter of transgression (*ein shaliach le'davar aveirah*).

The *Gemara* in *Kiddushin* 42b explains the logic behind this principle. The *Gemara* there refers to our case (of transferring a fire) when questioning whether a *shaliach* really takes the place of the sender. The *Gemara* answers that our case is different citing the qualifying rule stated above - *ein shaliach le'davar aveirah*. We say to the agent "If you must choose between the words of the Master (ie. G-d, who commands you not to sin) and the words of the disciple (the sender) whose words shall you obey?" (*Divrei HaRav VeDivrei HaTalmid – Divrei Mi Shomim?*)

The *Meiri* explains the logic as follows. One who instructs another to sin does not expect the person being sent to defy G-d's instructions and obey his. He is merely instructing him for no real purpose. It never enters his mind that the person would disobey G-d and do an *aveirah* just because someone told him to. Therefore, if the agent did the deed, only he would be liable for it, not the sender.

Rashi too, explains the passage similar to *Meiri*. He states that the fact that the agent had done the *aveirah* on behalf of someone else is meaningless – as he

should be listening to his Master (G-d). Therefore there is a deficiency in the act of appointing the *shaliach* – which makes the whole *shlichut* invalid.

The *Sma* (182:2) however explains the logic of the Master-student analogy as follows. He states that a person can send someone to do an *aveirah* on his behalf. However, when the agent stands for punishment, he will blame the sender for telling him to do the act. At this point the sender is able to argue that he thought the agent would not fulfil his words because he has to listen to his Master and not to the disciple. Therefore, the agent is viewed as if he acted on his own, and the sender bears no legal responsibility for the transgression.

There is an interesting practical difference between the opinions of *Rashi* and *Sma*. The *Rema* rules that if the agent was a *Yisrael mumar* (a Jew who denies belief in G-d) then there is such a thing as a *shaliach le'Davar Aveirah*, and the person who sent this *mumar* to the *aveirah* would be *chayiv*. This rule fares well according to the opinion of the *Sma* – as the sender can no longer say that he thought the agent would not listen to his orders – because the agent is a *mumar* and therefore has denied belief in his Master! This *mumar* will only act according to the words of the "disciple" (the sender); by his own erroneous beliefs he feels that these are the only orders he has to follow. Therefore the fact the sender thought he would not act is not a viable defense and he would be liable.

However, according to the opinion of *Rashi* – this ruling is problematic. *Rashi* states that the agent should be listening to the Master. This is the case whether the agent is a believing Jew or a *mumar* – as he considers what should be, as opposed to what is. Therefore, in the case that a *mumar* does an *aveirah* under instruction, *Rashi* would say that there is no *shaliach* for an *aveirah* and therefore the agent would be liable.

Yehuda Gottlieb

Revision Questions

בבא קמא ו' ב' ח' ב'

- If a person left his animal outside in the sun, and contained him in that area properly, yet the animal broke out and caused damage (*shen* or *regel*) is the owner liable? (ו' ב')
- In what situation, where an animal ate from the neighbour's garden, is the owner of the animal only liable to pay for what the animal benefited? (ו' ב')
- In the case of *shen*, how is full damage calculated? (ו' ב')
- When do we say that if one's neighbour piled produce in his field and his animals ate from that pile that he is liable? (ג' י')
- What is the law regarding one that handed a flame to minor, and this child went and caused fire damage? (ד' י')
- If one person brought kindling and another brought a flame and the resulting fire caused damage who is liable? (ד' י')
- Regarding the previous question, in what two circumstances will neither be liable? (ד' י')
- Provide the three cases where if the fire spreads beyond these obstacles the fire starter is not liable. (ד' י')
- How is liability calculated if a person lit someone's pile of wheat and there were other items hidden in the pile that were damaged as a result? (Include both opinions) (ה' י')
- Is one liable for a spark generated by the strike of an axe that causes a fire? (ו' י')
- When does *R' Yehuda* maintain that a shop owner who left candles outside his shop, and flax on a loaded camel caught fire and spread as a result of the camel's movement, is not liable for damages? (ו' י')
- What is the definition of a *ganav*? (ז' י')
- When is a *ganav* obligated to pay four times what he stole? (ז' י')
- When is a *ganav* obligated to pay five times what he stole? (ז' י')
- If someone stole from a *ganav* is he required to pay back double the value of what he stole? (ז' י')
- Is a person obligated to pay four of five times the value if: (ז' ב' י')

 - If he stole and sold the ox on *Shabbat*?
 - If he stole and slaughtered the ox on *Shabbat*?
 - If he stole and slaughtered the ox for medicinal purposes?
 - If he stole and slaughtered the ox in the *azarah*?
 - If he stole, sanctified then slaughtered the ox?
 - If he stole and slaughtered the ox from his father, then his father passed away?

- Which of the cases in the previous question is debated? (ז' ב' י')
- What is the law if two witnesses testified that a person stole an ox and two other witnesses testified that he slaughtered that ox and: (ז' ג' י')

 - Both sets of witnesses are found to be *eidim zomemim* (false witnesses)?
 - One of the first two witnesses is found to be false?

- If witnesses testify that a person stole an ox and then he admits he consequently slaughtered that ox what is he liable? (ז' ד' י')
- What is the law if a person stole an ox from his business partner then sold it? (ז' ה' י')
- What is the law if a person stole an ox and then shot it? (ז' ה' י')
- When is the thief not liable if the animal died as he was removing it from the owner's property? What other cases are similar to this one? (ז' ו' י')
- Where can sheep be raised in Israel? (ז' ו' י')
- Which animals cannot be bred in *Yerushalaim* and why? (ז' ו' י')
- What are the five components of compensation one must pay if he injures another person and explain each of them? (ז' ח' י')
- What other component of damage (aside from those mentioned in the previous question) is a person liable to pay if he caused the damage but not liable if his animal caused the damage? (ז' ח' י')

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Mizrachi Shul

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Next Week's Mishnayot...

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | שבת קודש |
|----------------------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|
| 17 th June א' תמוז | 18 th June ב' תמוז | 19 th June ג' תמוז | 20 th June ד' תמוז | 21 st June ה' תמוז | 22 nd June ו' תמוז | 23 rd June ז' תמוז |
| Bava Kama 8:3-4 | Bava Kama 8:5-6 | Bava Kama 8:7-9:1 | Bava Kama 9:2-3 | Bava Kama 9:4-5 | Bava Kama 9:6-7 | Bava Kama 9:8-9 |

