

HALOCHOSCOPE

Please accept my apologies for the missed issue last week.

Someone has a Jewish visitor from abroad. The visitor is not observant. The host knows his schedule, and is aware that some of the visitor's future plans include travelling on Shabbos. This will definitely involve carrying luggage through a public domain. May the host give gifts to the visitor? May the host give something to the visitor to give to a friend back in the visitor's home country?

The issues:

- (A) *Ain Shliach Lidvar Aveira*, asking someone else to violate a Mitzvah
 - (B) *Lifnei Ivair* (lit. placing a stumbling block before the blind)
 - (C) *Maasei Shabbos*, benefitting from a violation of Shabbos observances
- (A) *Ain Shliach Lidvar Aveira*

Shlichus, agency, is a concept in Jewish law whereby the actions of an agent are attributed to the person who appointed him. In effecting a legal transaction the two parties need not usually participate personally, but may appoint an agent in their stead. An independent third party may appoint himself to act on behalf of someone to his benefit. It can also involve performance of certain Mitzvos. Mitzvos are either personal obligations, such as reciting Brochos on food. (One may fulfil this by hearing another person recite it, but listening is considered the same as one reciting it personally.) Other Mitzvos may be performed by a Shliach as well, such as circumcising a child. This is the father's obligation, but he may appoint a professional *Mohel* in his place.

Although the concept applies to the performance of a Mitzvah, it does not apply to the violation of an *Aveira*. [There are three exceptions. (i) If one steals a cow or sheep he must repay double. If he then slaughters or sells it, he must pay four or five times the cost of the theft. If someone else slaughtered it the thief is not liable for the extra payment, unless he appointed the second person as his agent. (ii) A person responsible to watch an item for his fellow may not make personal use of it. If he appointed a Shliach to do so the violation is attributed to him. (iii) One may not misappropriate goods dedicated to the Bais Hamikdash to treat them as mundane or get personal benefit from them. If he asked another person to do this the violation is attributed to him. In these cases, the Torah

specifically includes a Shliach as a way to violate the Aveira.]

In one Talmudic view, which we do not follow, there is a source to implicate the appointer. The other view maintains that the appointer is not liable, but the agent is liable. There are two reasons to exclude Aveira from the concept of Shlichus. One is derived from a Scriptural source. This is either the presence of superfluous terminology for one Mitzvah, or the attention given by the Torah to the aforementioned exceptions. The other is a logical objection to being held liable. When asked to do something by a teacher, then asked to do the opposite by his student, to whom should one listen? The teacher — Hashem, and not the student — the appointer.

The Poskim debate whether the second reason is needed once the first source is revealed. To illustrate this we must explain the logical response according to differing views of the commentaries. In one view the appointer claims that he did not expect the Shliach to listen to him. The second view is that regardless of whether the appointer expected the appointee to follow his instructions, the appointee had no right to do it. Therefore, the agency is null and void.

The Talmud further debates whether the rule applies when the Shliach can not be held liable himself, for example a woman who acts on behalf of a man to violate something that women are not obligated to observe (e.g. cutting off someone's *Payos*, sides of the hair.) In one view, since the Shliach is not expected to heed the words of "the Teacher," the appointer is liable. In the other view, as long as the Shliach has the ability to choose to act, he is responsible for his actions.

The Poskim debate *Shogeg*, where the Shliach is unaware that the activity involves an Aveira. The appointer might or might not be aware. According to the logical source for the rule, a *Shogeg* can not be expected to refrain from something he thought was permissible. Therefore, the appointer is liable. It is even plausible to say that the Shliach did not have a choice to act, since he was not aware of the choices. Or is the logical reason not the main source? Even if it is the main source, had the Shliach known may we assume that he would not have accepted the Shlichus? Jews, as a rule, do not knowingly violate Mitzvos. Thus, the agency was misrepresented, and is null and void. The appointer can not be held liable.

The Poskim also debate a situation where the appointer knows that the Shliach will listen to him. The Shliach is known to violate this Aveira himself. According to the logical source, the appointer could not expect this particular Shliach to disobey his instructions in favor of those of the "Teacher." According to the other source, this does not matter. One can not be held liable for the actions of his agent.

In our case, this Shliach is known to violate Shabbos himself. The Shliach is

also considered *Shogeg* by most Poskim. He was not raised as an observant Jew. He might think that observant Jews are fanatical. Even if he knows that they have some basis for their practice, he might think it is one denomination of Judaism, and that his own is also valid. If he realizes that all Jews must keep Shabbos, he might not know exactly what is forbidden, and under which circumstances. Thus, he might think that this activity is somehow not forbidden. The sender is not requesting the Shliach to violate a Mitzvah, but knows that by carrying out the mission he will inevitably do so. Though it is ultimately the choice of the Shliach, the sender knows that he will do it. It is similar to the arguments made for or against a Shliach *Shogeg*. Accordingly, at least according to some Poskim, if the Shliach violates Shabbos, the sender is liable. [See *Kidushin* 42b-43a *Baba Metzia* 10b, Poskim. *Rema Choshen Mishpat* 388:15, *Shach* 68, commentaries.]

(B) *Lifnei Ivair*

It is Scripturally forbidden to place a stumbling block before the blind. Apart from the literal meaning of this verse, other meanings are intended. One may not give bad advice to someone. This applies to a person who is unaware of the bad results of the advice. Even if the advice would be good for one in a different situation, if it is not good for this person it is forbidden to advise him of it. Second, one may not help another person violate a Torah commandment.

Thus, one may not sell forbidden food. The Talmud says that *Lifnei Ivair* applies to helping any person who will be held in violation of his Mitzvah, including a gentile who must keep seven Mitzvos. One may, however, sell forbidden food to a gentile, even if he will sell it to Jews. His selling it to Jews is helping them violate, but *Lifnei Ivair* is not one of his seven Mitzvos. By inference, some Poskim point out that it is forbidden to sell these to another Jew if he will violate *Lifnei Ivair*. This is *Lifnei Ivair* of *Lifnei Ivair*.

Lifnei Ivair only applies Scripturally in cases where the violator could not have performed his activity without the help of the facilitator. For example, a person is on one bank of a river and can not reach some pork on the other bank. If a person on the other bank hands him the pork, he has violated *Lifnei Ivair*. If the person could reach it himself, but still asked for the help, the helper is in violation of the Rabbinical extension of *Lifnei Ivair*, known as *Mesayeiya*.

Even if the violator is an intentional sinner, one may not help him violate. Therefore, in our case, even if the sender is not liable for the activity of the Shliach, he may not ask him to do it. The Shliach will now be held liable for the violation.

The sender helped him violate. Even if the Shliach would anyhow be violating Shabbos, asking him to violate it for this item could be Mesayeiya. There is a view that the Rabbinical Mesayeiya does not apply when helping a habitual violator. However, if the violator was never religious, many Poskim do not consider him habitual. There are situations where Poskim rely on the fact that one is not adding to the *Chilul Shabbos* of a violator. Another possible way out is a view that one is only in violation of *Lifnei Ivair* when helping the sinner at the time of the violation, not ahead of time. This is, however, a matter of debate. [See Parshas Kedoshim 19:14, commentaries. Psachim 22b 40b Baba Metzia 75a Avoda Zara 6a-b 14a 21a, Poskim. Tur Sh. Ar. Y.D. 151:9, 159:2 160:1, O.C. 159:1-2, commentaries. Halochose IV:43.]

(C) Maasei Shabbos

A third problem arises in our case. One may not benefit from *Chilul Shabbos* activity. A minority view in the Talmud considers this a Scriptural restriction. We follow those who consider it a Rabbinically imposed penalty on the lax, and a discouragement from future laxities. The violator is penalized, as are those on whose behalf the *Chilul Shabbos* was done. If the *Melacha* was done intentionally benefit is forbidden to the violator and intended beneficiaries forever, and to all others until the close of Shabbos. If it was unintentional, everyone may benefit after Shabbos. A more lenient Talmudic opinion permits the results of intentional *Chilul Shabbos* to everyone after Shabbos, and of unintentional *Chilul Shabbos* immediately. The Poskim debate the conclusive ruling. [See Chulin 15b Shabbos 38a, Poskim. Sh. Ar. O.C. 318 etc.]

In our case, we may assume that the Shliach is unintentionally violating Shabbos as a *Shogeg*. The sender is also somewhat unintentional, since he does not really want the Shliach to do it on Shabbos, but can not help it. Benefit comes to both the sender and the final recipient. Benefit after Shabbos should be permitted, but both will actually benefit on Shabbos. The present will arrive and the recipient will be happy, the sender benefits from the gratitude.

In conclusion, giving gifts to the visitor pose no problem. Sending gifts to others pose problems. Though it is possible to find ways to mitigate each of the problems raised by this case, the general conclusion is that one should find an alternative means to send the gift.