

How Is Shlichus Different and Similar to Power-of-Attorney?

Rav Dovid Josilowsky

Question: We know that there is a halachic concept of “*shlichus*”. How is this concept similar to the secular concept of “power-of-attorney” and how is it different? Specifically, how does it apply when someone who appoints a *shliach* becomes incapacitated or dies?

Answer: There is a *machlokes* between the Rambam and Tur regarding a case where someone sends a *shliach* to give a *get* on his behalf and then becomes incapacitated. Everyone agrees that the *shliach* cannot give the *get*; however, the Rambam says that the *get* is only *posul m’derabanan*, while the Tur says that it is *posul m’dohraysia*. The Acharonim explain that this *machlokes* is based on a fundamental disagreement about how to define the concept of *shlichus*. The Rambam learns that when someone appoints a *shliach*, he gives over the full power to him, and enables him to act independently on behalf of the *meshalayach*; therefore, he could even give a *get* on behalf of an incapacitated person. The only problem is that the Rabbanan invalidated such a *get*. The Tur learns that the *meshalayach* only gives the *shliach* the power to do actions on his behalf that he knows reflect his will. He cannot act independently; therefore, he cannot give a *get* on behalf of an incapacitated person, and such a *get* is *posul m’dohraysia*. The Ketzos Hachoshen says that this *machlokes* also applies if the *meshalayach* dies. According to him, the Rambam would hold that the *shliach* can theoretically give a *get* after the *meshalayach* dies, aside from the technical issue that they are no longer married upon the husband’s death. This would mean that, according to this opinion, *shlichus* is actually stronger than power-of-attorney, because power-of-attorney is no longer valid after the person who appointed the attorney dies.

In a case where a person becomes incapacitated, it depends on what kind of power-of-attorney was established. Some forms of power-of-attorney, which are commonly known as “durable” power-of-attorney, are still valid if the person becomes incapacitated, while others are not.

Regarding *shluchim* who are appointed for monetary matters, the Achiezer says even the Tur would agree that a person can appoint a *shliach* to do things on his behalf even if he is incapacitated because one is certainly able to grant a *shliach* the power to make monetary decisions on his behalf.

Power-of-attorney would be the same in this regard, as someone can definitely grant an attorney the power to act on his behalf in financial matters. The Ketzos, however, disagrees with the Achiezer and says that the *machlokes* between the Rambam and Tur would apply in cases of monetary matters as well.