

Shluchin

PART II

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A TRANSCRIPTION OF THE YORUCHA CURRICULUM WEEKLY SHIUR VIDEO

IF AN AGENT EXCEEDS HIS AUTHORITY:

Reuven decided to visit Eretz Yisrael for Sukkos. He called his friend Shimon who lived in Eretz Yisrael to ask him for help in locating and renting an apartment for him. Reuven described the exact requirements of what he desired, including the location, size, and maximum price he was willing to pay, which was \$8000. Shimon spent time searching for an apartment that met all the specifications, which was quite difficult, and finally found one, but the price was \$9000. Since the apartment fit the rest of Reuven's requirements, Shimon decided to sign the lease immediately on behalf of Reuven and put down a deposit for him so that he would not lose it.

When he later reached Reuven and updated him as to what happened, Reuven responded that the price was too expensive and beyond his budget. Reuven, therefore, insisted that Shimon cancel the contract and demand the deposit be returned. The owner of the apartment refused, claiming that since they had signed the contract, he was permitted to keep the deposit and the lease was still valid. What is the halacha in this case? Is the contract signed by Shimon valid against Reuven's instructions? If yes, who is responsible for the lost deposit, Reuven or Shimon?

A SHALIACH WHO OVERPAYS:

First, let us briefly summarize some of the relevant principles concerning a *shaliach* that deviates from the instructions given to him by the *meshalayach*. We will then attempt to apply those principles to determine the *halacha* in our case.

The Gemara (Kesubos 99b) discusses a case where a *shaliach* errs and overpays or underpays for real estate on behalf of the *meshalayach*. The Gemara states that although overpaying by a small amount does not normally invalidate a sale, if it takes place through a *shaliach* the sale can be nullified by the *meshalayach* if he says "*l'tikunei shedartich*" – I only authorized you to purchase the property for a proper sum of money, not to deviate from my instructions and purchase the property for a greater sum. According to the simple understanding of this Gemara, any time the *shaliach* did not follow the *meshalayach's* instructions precisely, the transaction is entirely void. Therefore, in our case as well, it would seem that the rental agreement is void, and the deposit must be returned.

THE AGENT'S RESPONSIBILITY:

However, the Gemara elsewhere (Bava Basra 169b) appears to contradict the aforementioned conclusion. The Gemara relates that a woman once appointed a *shaliach* to purchase land for her. The

shaliach forgot to insert a guarantee for *achrayus* (responsibility) usually given by the seller that if the property is seized due to the seller, he will compensate the buyer for the loss (this was a normal practice in Talmudic times, similar to title insurance). This contract was signed without any *achrayus*. Rav Nachman ruled that the sale was valid, but the *shaliach* must compensate the *meshalayach* for his error by providing the *achrayus* guarantee at his own expense. Consequently, in this case neither the seller nor the *meshalayach* lose out, as the *meshalayach* still receives his *achrayus* and the seller still receives the money for the transaction; only the *shaliach* must suffer the loss due to his error. This appears to contradict the aforementioned Gemara which rendered the entire transaction to be invalid if the *shaliach* deviates from his instructions.

THE RESOLUTION OF THE RAAVAD:

The Rishonim offer two possible approaches to resolve the contradiction. The Raavad suggests that the claim of the *meshalayach* of "*l'tikunei shedartich*" that invalidates the sale is only one option given to the *meshalayach*. Alternatively, he can choose to uphold the transaction and force the *shaliach* to take responsibility for any loss to the financial interests of the *meshalayach* that is caused by his error. Accordingly, Rav Nachman ruled that since the *meshalayach* was supposed to receive the property with *achrayus*, it is unfair to require him to invalidate the sale if he desires to uphold it. Rather, he may force the *shaliach* to maintain the sale and compensate him for the difference due to his error.

THE RESOLUTION OF THE OTHER RISHONIM:

The Rambam and the Rosh take a different approach. The ruling of the Gemara that the *meshalayach* may say "*l'tikunei shedartich*" and invalidate the sale applies only if the *shaliach* specifically informed the seller that he was acting as an agent on behalf of another individual. In such a case, the seller is aware that the *shaliach* may not be representing the *meshalayach* accurately, but he nonetheless decides to take that risk and go ahead with the transaction. For this reason, if the *meshalayach* chooses to void the sale due to an error, the sale is indeed void. Whereas, if the *shaliach* never specified that he was an agent, he cannot return to the seller and claim that the *meshalayach* does not agree with the terms of the sale. It is in this case that the *shaliach* must take responsibility for the transaction. This is the case of the Gemara Bava Basra, and that is why the sale was still valid but the *shaliach* was required to add the *achrayus* guarantee to the sale. Had the *meshalayach* turned down the *shaliach's* guarantee, the *shaliach* would have had to keep it for himself. As the Sema formulates the

