

Shluchin

PART IV

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A TRANSCRIPTION OF THE YORUCHA CURRICULUM WEEKLY SHIUR VIDEO

THE SON WHO REPRESENTED HIS INCAPACITATED FATHER:

A young man came to *bais din* claiming that the defendant had borrowed money from his father and he wanted to force him to pay up. The son explained that his father was incapacitated and currently living in a nursing home; therefore, he was acting on his father's behalf. When questioned about what right he had to speak on behalf of his father, he replied that he had obtained a legal power of attorney.

This raises the question of whether a power-of-attorney has the same credence as a halachic "*harsha'ah*", which is a process that grants an agent full rights to represent someone else in a claim.

Before delving into the topic of *harsha'ah*, however, we first must ascertain whether any *shliach* has the ability to act on behalf of an incapacitated person. For example, if someone tells a *shliach* to sell his house for him and then becomes incapacitated before the sale is carried out, is the *shlichus* still valid?

AGENCY FOR A SHOTEH OR A DECEASED PERSON:

The Ketzos Hachoshen famously discusses this question, and he correlates it with a similar question of whether a *shlichus* can be carried out after the *meshalayach* (the principal) dies.

He goes on to prove that the agency is still valid at least according to some Rishonim. He begins by citing a Mishnah that says that if a man appoints a *shliach* to give a *get* to his wife or to give a "*shtar shichror*" (a writ of emancipation) to his slave, and then dies, the document can no longer be given by the messenger. Rashi explains that the reason the *get* or *shtar shichror* cannot be given is because these *shtaros* cannot be effective after his death. Meaning, even if the *shliach* would give the document to the wife or slave, it could not work because the man is no longer alive and consequently she is no longer his wife, nor does the slave belong to him. From Rashi's words, it seems clear that there is technically no problem with the *shlichus*. The only problem is that the *get* has no purpose after the husband is dead. Tosafos, however, writes that the problem is that the *shlichus* becomes annulled after the *meshalayach* dies and he is no longer the *shliach* of the husband. Apparently, Rashi and Tosafos disagree about whether a *shlichus* becomes

anceled after the man who appointed the *shliach* dies.

The Ketzos also notes that there seems to be a relevant *machlokes* between the Rambam and the Tur. The Gemara in Gittin speaks about a case where someone appoints a *shliach* to write a *get* for his wife and then is struck with an illness that causes him to temporarily lose his sanity. Reish Lakish says that the *shliach* can write the *get*. He reasons that since the *meshalayach* will eventually regain his sanity, he is currently akin to a person who is sleeping, and the *shlichus* is still valid. Rav Yochanon disagrees and says that because the *meshalayach* is currently not of sound mind, the *shlichus* is no longer valid.

The Rambam rules like Rav Yochanon that the *get* cannot be written until the husband regains his sound mind, adding that when he does recover, the *get* can be written and there is no need to ask him if he still wants to continue with the process. When the Rambam writes this *halacha*, he says that a *get* written when the husband is not of sound mind is "*posul*". The Rambam himself writes that as a rule, whenever he uses the word "*posul*" about a *get*, his intent is that it is *posul* only *m'derabanan*, but not *m'dohraysia*. This seems to indicate that, in this instance, he means to say that *m'dohraysia* the *shlichus* is still valid and the *shliach* can write a *get* even though the *meshalayach* is mentally incapacitated; however, the Rabbanan instituted a *chumrah* that it should not be done. According to this view, in monetary matters, where there is no reason for such a *chumrah*, the agency would be valid.

The Tur, however, clearly says that any *get* written while the husband is in the state of a "*shoteh*" is *posul m'dohraysia*. Consequently, even in monetary matters, the agency would be nullified.

[It should be noted that the Chazon Ish disagrees with this assessment and says that in this case, even the Rambam agrees that a *get* written while the husband is insane is *posul m'dohraysia*. Most Achaornim, however, assume like we said above, that the Rambam's opinion is that the *get* is valid *m'dohraysia*.]

The Chelkas Mechokek and other commentators on the Shulchan Aruch say that the *halacha* is like the Rambam, which would mean that *m'dohraysia* a *shliach* can give a *get* on behalf of an incapacitated *meshalayach*.

DEFINING THE POWER OF AGENCY:
