



Nedarim Daf Ayin Gimmel

HAFARAH AND HAKAMAH USING A SHALIACH

בנדרים דף ע"ב: תא שמע, האומר לאפטרופוס כל נדרים שנודרת אשתי מכאן ועד שאבא ממקום פלוני הפר, והפר לה, יכול יהו מופרין, תלמוד לומר אישה יקימנו ואישה יפרנו. דברי רבי יאשיה. אמר לו רבי יונתן מצינו בכל התורה כולה שלוחו של אדם כמותו, ואפילו רבי יאשיה לא קאמר אלא משום דגזירת הכתוב הוא, אישה יקימנו ואישה יפרנו, אבל דכולי עלמא שלוחו של אדם כמותו, והא לא שמיע ליה, הכא נמי דאמר ליה לכי שמענא מיפר לה. לכי שמע ליפר לה הוא, סבר דלמא מטרידנא.

- א -

The ruling of the Poskim that *hafarah* cannot be made through a *shaliach*

Since a case of uncertainty in a deoraisa is ruled stringently, it should be ruled that shlichus cannot be used for hafarah / Regarding hakamah, it is fitting to be stringent and say that hakamah can be made by a shaliach / Everyone agrees that hakamah cannot be made by a shaliach because there is no shlichus for aveiros / Whether a stipulation can be made in a hafarah / One who made a hafarah using a shaliach and later made a hafarah with a stipulation

-רמב"ם, שו"ע, רא"ש, רבי עקיבא איגר, שער משפט-

א. Regarding the dispute between Rabi Yochanan and Rabi Yoshaya, the Rambam¹ writes that one who appoints a *shaliach* to make a *hafarah* or a *hakamah* has achieved nothing, as the *possuk* says, "Ishah yekimanah ve'ishah yefeirenah." Similarly, a father must make the *hafarah* himself and not through a *shaliach*. This is also written in the Tur and the Shulchan Aruch that a *shaliach* cannot be appointed to make a *hafarah* or a *hafarah*.

The Rosh² writes that the halachah follows Rabi Yoshaya because, regarding matters that pertain to

deoraisa, the halachah follows the stringent opinion. He brings this in the name of the Rif and the Rambam.

Chiddushei Rabi Akiva Eiger³ questions the position of the Rosh that the *hakamah* follows Rabi Yoshaya because the stringent view is followed in matters of *deoraisa*. This indicates that the halachah is not established with certainty like Rabi Yoshaya but we follow his view to be stringent. If so, this can be understood regarding *hafarah* through *shlichus*, where it is a stringency to say that *hafarah* cannot be made by a *shaliach* and the *neder* remains in place. However, regarding *hakamah*, the ruling not to allow it through a *shaliach* is a leniency and not a stringency and the stringency should be that a *hakamah* by a *shaliach* is considered a *hakamah* and results in not allowing a future *hafarah*. Rabi Akiva Eiger asks this also in his Shut⁴ and leaves the matter as requiring much further investigation. See more in the Notes and Addenda. [1]

NOTES

[1] Rabi Akiva Eiger asks further there that in Baaba Metzia daf 96a, the Gemora discusses the exemption of a guardian from paying when the owners were borrowed by the guardian for his work, as is learned from the *possuk* "im ba'alav ein imo shalem yeshalem." The Gemora asks if this is said also when the owners were working with the *shaliach* of the guardian. IT is stated there

that this is dependent on the dispute between Rabi Yonasan and Rabi Yoshaya about whether *shlichus* can be used for *hafaras nedarim*. According to Rabi Yonasan, that *shlichus* is effective for *hafaras nedarim*, it will also be effective to exempt a guardian from using the halachah of *she'elah bebaalim* whereas according to Rabi Yoshaya, *shlichus* will not be able to be used. As far as the halachah

The Shaar Mishpat⁵ also asks this question. He considers resolving it by suggesting that Rabi Yonasan and Rabi Yoshaya argue only about whether *hafarah* can be made through *shlichus* but both agree that *hakamah* cannot be made by a *shaliach*. This would be because *hakamah* is considered a *dvar aveirah* because in the same way that one who makes a *neder* is called a sinner and is as if he has built a *bamah* and brought sacrifices on it, so too a husband who upholds his wife's *neder* is also included in this. The general rule is that a *shaliach* cannot be made for something that is an *aveirah* and, therefore, *shlichus* should not be effective for *hakamah*. It emerges that the dispute between Rabi Yonasan and Rabi Yoshaya is only regarding *hafarah* but Rabi Yoshaya agrees that *hakamah* cannot be made through a *shaliach*. However, he concludes that this would be a forced approach. [The Damesek Eliezer⁶ comments that this should be dependent on the dispute among the Poskim whether the rule that *ein shaliach lidvar aveirah* cancels

the entire power of the *shlichus* or whether it merely means that there is no liability for the *meshaleach*]. [2]

The Shut Rabi Akiva Eiger⁷ discusses the Gemora in Kesubos daf 74a which states that something that cannot be done through a *shaliach* cannot be subject to a stipulation. This means that a stipulation will not be valid unless *shlichus* would also be effective. Therefore, regarding *kiddushin* and *geirushin*, which can be performed by a *shaliach*, one is able to make a stipulation that he is making the *kiddushin* or *geirushin* only on such or such a condition and, if the condition is not fulfilled, the *kiddushin* or *geirushin* will be canceled. Regarding *chalitzah*, where *shlichus* is not possible, making a stipulation is also not possible. Even if he does *chalitzah* and makes a certain condition, the *chalitzah* will be valid even if the condition is not fulfilled. That being the case, it must be investigated whether a condition can be made in *hafaras nedarim*, meaning that if one makes a *hafarah* and stipulates that the *hafarah* should be valid only on

NOTES

is concerned, this is one dispute. The Nemukey Yosef¹³ writes, quoting the Ranbar, that since there is no ruling in the Gemora whether the halachah follows Rabi Yonasan or Rabi Yoshaya, regarding *nedarim*, the stringent view must be followed and *hafarah* will not be able to be made through a *shaliach* but regarding *she'elah bebaalim*, the guardian will be exempt because of the principle that *hamotzi mechavero alav haraayah*. Both opinions are brought in the Tur and Shulchan Aruch¹⁴ as to whether the *shemirah* of the owners with a *shaliach* is considered as *shemirah bebaalim* and the Mechaber writes that he is liable to pay. The Rema there brings the opinion that holds that it is considered a *shemirah bebaalim* even through a *shaliach*.

Accordingly, it can be asked why it is written in Shulchan Aruch in Hilchos Nedarim¹⁵ that *shlichus* is not effective for *hafaras nedarim* or for *hakamah*. According to the opinion that is brought in the Rema in Choshen Mishpat that *shlichus* can lead to *shemirah bebaalim*, *hafarah* and *hakamah* should also be able to be made through a *shaliach*. In Babba Metzia, it is apparent that these two halachos are dependent on each other and, if so, since the Rema in Choshen Mishpat brings the opinion that *shemirah bebaalim* can be done through *shlichus*, he should have also brought that *hakamah* can be made by a *shaliach* because the ruling regarding *hakamah* should be stringent and not allow a *hafarah* after a *hakamah* by a *shaliach*.

[2] The Erech Shai¹⁶ resolves Rabi Akiva Eiger's question. He also follows this approach that the dispute between Rabi Yonasan and Rabi Yoshaya is only concerning *hafarah* and not concerning *hakamah*. His reasoning is based on the Shut Maharit¹⁷ that a *shaliach* cannot be made to dedicate something to *hekdesh* because *mili* cannot be given to a *shaliach*, meaning that *shlichus* is not possible for something that is mere words. However, the Birkei Yosef¹⁸ questions this because the dispute in the Gemora is about *hafarah* through *shlichus*, with Rabi Yoshaya learning from a *possuk* that *hafarah* cannot be done by a *shaliach*. It seems clear that if not for a *possuk*, it would have been possible for a *shaliach* to make a *hafarah* and clearly, *shlichus* can be made even on something that is based on words alone. The Erech Shai writes that the words of the Maharit are said only about words such as *hekdesh*, which can be retracted by petitioning a *chacham*. This is considered *mili* because the entire *shlichus* is to speak. Moreover, the result of the words is not considered an act because it can be easily nullified through a *chacham*. *Hafarah*, however, although the *shlichus* is on words, these words bring an outcome that cannot be cancelled because *hafarah* cannot be revoked by a *chacham*.

It emerges that *shlichus* will not work for *hakamah* because it is classified as *mili* because one may petition a *chacham* to release a *hakamah*. In the same way as *shlichus* is not effective for *hekdesh*, it is not effective for *hakamah* either and, about this, there is no dispute between Rabi Yonasan and Rabi Yoshaya. Therefore, the Rambam and the Shulchan Aruch rule that *hakamah* cannot be made by a *shaliach*.

*Hakamah of a neder is classified as mili, which cannot be performed
by a shaliach*

- ערך שי -

such and such a condition. This should be dependent on the dispute between Rabi Yonasan and Rabi Yoshaya. According to Rabi Yonasan, who holds that *shlichus* is effective in *hafaras nedarim*, a stipulation should also be able to be made whereas according to Rabi Yoshaya, who holds that *shlichus* is not effective in *hafaras nedarim*, a stipulation should also not be able to be made because the general rule is that a stipulation cannot be made about a matter that cannot be done through a *shaliach*.

He cites the Tur and the Shulchan Aruch,⁸ where it is apparent that a stipulation can be made in a *hafarah* and that if one made a *hafarah* on such and such a condition, the *hafarah* will not take effect if the stipulation

is not fulfilled. He explains that although, according to the halachah brought in *siman* 334⁹ that *hafarah* cannot be made by a *shaliach*, it should emerge that one is not able to make a *hafarah* with a condition. Nevertheless, it is ruled that a stipulation can be made in a *hafarah* because the ruling that *hafarah* cannot be made by a *shaliach* is only because the stringent ruling is followed in a case of uncertainty and regarding a stipulation, the stringency would be to say that the stipulation is valid. That way, even if the stipulation is not fulfilled, the *neder* will remain in its place. Therefore, the ruling should be that *shlichus* should be effective, which will allow also a stipulation to be made.

- ב -

Shlichus for hearing the neder

Hearing the neder is something that happens automatically and shlichus is ineffective / Shlichus cannot be used for a mitzvah that is done with one's body because it is something that happens automatically / Is the definition of the principle that shlucho shel adam kemoso that the shaliach himself becomes like the meshaleach or that the actions of the shaliach are attributed to the meshaleach / The definition of hearing the neder

-ר"ן, רא"ש, קצות החשן, לקח טוב, מנחת שלמה-

ב. As has been mentioned, concerning the dispute between Rabi Yonasan and Rabi Yoshaya about whether it is learned from a *possuk* that *hafarah* is effective through *shlichus*, the Gemora asks how the *hafarah* of a *shaliach* could work being that the husband has not heard the *neder*. The Gemora answers that the *hafaras nedarim* takes effect when the husband eventually hears the *neder*.

The Rishonim have difficulty why *shlichus* should not be effective also for hearing the *neder*. In the same way that the *shaliach* stands in place of the one who sent him in regard to the *hafarah*, he should also stand in his place in regard to hearing the *neder* and when the *shaliach* hears the *neder*, he should be able to make a *hafarah*. Two approaches are said about this.

The Ran¹⁰ writes, quoting Tosfos, that this is because of a principal regarding *shlichus* that anything that one is unable to perform oneself can also not be performed by one's *shaliach*. If it were to be said that a husband cannot make a *hafarah* on a *neder* without hearing it,

he would also not be able to appoint a *shaliach* about the *neder*, neither to hear it nor for the *hafarah* because there is nothing on which the husband is unable to make a *hafarah* and is able to appoint a *shaliach*. It is clear from this that the husband is able to make a *hafarah* even without hearing the *neder* and can therefore appoint a *shaliach* for *hafarah*.

However, the Rosh¹¹ writes that *shlichus* is not applicable to hearing the *neder*. It is not possible to appoint *shaliach* for something that happens by itself, such as hearing the *neder*. [He then writes similar to the Ran].

To explain the words of the Rosh, the Ketzos Hachoshen cites these words of the Rosh to resolve a question of Tosfos Rid in Kiddushin daf 42b. The Gemora teaches that the mitzvah of *shechitas* Pesach can be done by a *shaliach* and the Tosfos Rid has difficulty why all mitzvos cannot be performed through a *shaliach*. For example, one could tell a *shaliach* to sit in a sukkah or to put on tefillin in his stead.

The Ketzos Hachoshen writes that the halachah that *shlucho shel adam kemoso* is said only about something that involves activity. About something that does not require anything to be done, it is not said that a person's *shaliach* is like him. He supports himself from these words of the Rosh who writes that the hearing of the *aputropus* is not like the hearing of the husband despite his being made a *shaliach* to hear because *shlichus* is not applicable to something that happens by itself. Therefore, although *shlichus* works for *shechitas* Pesach to say

that the acts of the *shaliach* are considered as if he himself has slaughtered the Pesach, tefillin, which must be placed on the head of a man cannot be performed by a *shaliach*. Although the act of tying can be considered as being done by the *meshaleach* through the *shaliach*, since the tefillin would be placed on the head of the *shaliach*, the *meshaleach* will not have fulfilled his mitzvah because the body of the *meshaleach* is not the body of the *shaliach*. Therefore, regarding tzitzis and tefillin, since the body of the *shaliach* is not that of the *meshaleach*, the mitzvah has not been done by the body of the *meshaleach* but the body of the *shaliach*. This is not similar to *shechitas* Pesach, where the act of *shechitah* is considered as if it was done by the *meshaleach*.

The Lekach Tov¹² is uncertain about the definition of the principal that *shlucho shel adam kemoso*, meaning that one can do something that he is obligated in through a *shaliach*. Is this because the Torah considered the body of the *shaliach* like the body of the *meshaleach* and it thus emerges that the *meshaleach* did the thing or is this not the case by the actions of the *shaliach* are attributed to the *meshaleach*? Thus, it is considered that the *shaliach* performed the actions. He brings proofs from Shas to this analysis.

One of his proofs is from the words of the Rosh. It is clear from his words that the definition of *shlucho shel adam kemoso* is not that the *shaliach* is considered like the *meshaleach* but that his actions are attributed to the *meshaleach* and it is considered that whatever the *shaliach* does is as if the *meshaleach* has done. If it would be explained that *shlucho shel adam kemoso* means that the body of the *shaliach* is like that of the *meshaleach*, it would be fitting that the hearing of the *neder* by the *shaliach* should be considered as if the *meshaleach* has heard the *neder*. Since the halachah of *shlichus* says only that the actions of the *shaliach* are attributed to the

meshaleach, something that happens by itself without any actions cannot be done through *shlichus*.

The Minchas Shlomo explains that the reason that the Ran does not answer like the Rosh is not that he argues on the main points of the Rosh and holds that *shlichus* is effective even on things that happen by themselves. The Rosh's words are certainly correct, as the Ketzos Hachoshen wrote that this is the reason that *shlichus* is not effective for the mitzvah of tefillin. Rather the Ran and the Rosh argue about the definition of *hafarah* requiring the hearing the *neder*. The Rosh holds that a father or husband is only given the power to make a *hafarah* if they have heard the *neder* and therefore, if *shlichus* is effective for *hafaras nedarim* when the husband has not heard the *neder*, clearly the appointment of a *shaliach* is required also for hearing the *neder*. Since hearing is something that happens by itself, *shlichus* will not work.

However, the Ran holds that hearing the *neder* is not needed because, without it, he will be unable to make a *hafarah*. Rather, this is a detail of the process of *hafarah* that *hafarah* can only be made on a *neder* that had been heard by him and that he knows about what he is making a *hafarah*. It emerges that a husband who has not heard the *neder* and makes a *shaliach* for the *hafarah* will need the *shaliach* to hear the *neder* but will not need the halachah of *shlichus* for this because the main point is that the one who is making *hafarah* should know, through hearing, about what he is making the *hafarah*. Once the *shaliach* has heard the *neder* and knows what the *hafarah* is for, he is able to make a *hafarah* based on his hearing without becoming a *shaliach* for this. This is not detracted by the fact that hearing happens by itself because there is no need for *shlichus* to attribute the hearing to the husband. Therefore, the Ran had to resolve the question differently. (See more about this topic in "Lehisvada," Daf Ayin Beis).

מראי מקומות

1. פרק י"ג מהלכות נדרים הלכה ט' 2. ס' ז' 3. שם 4. מהדור"ק ס' מ"ז 5. ס' שמ"ו סק"ב 6. חו"מ שם 7. ס' מ"ח (ד"ה ובההיא, ואחר) 8. יו"ד ס' רל"ה סעיף ד' 9. סעיף ל' 10. ד"ה והא 11. ד"ה והא 12. ריש כלל א' 13. שם (דף ג"ה. מדפי הרי"ף) 14. חו"מ ס' שמ"ז סעיף ו' 15. הנ"ל 16. יו"ד שם 17. ח"א ס' קכ"ז 18. אור"ח ס' תל"ד

Learn the Daf with a special Geshmack transform your Daf HaYomi like never before



Beautiful daily pamphlets on the daf • Enlightening daily shiurim

Sign up now for the
minimal cost of \$4/month



Or 10\$ to receive
in the mail 2 weeks up front

lehisvada.com

718.298.2416

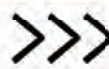
בראתי דף היומי. ובראתי לו להתוודע תבלין.

Join the Many satisfied lehisvada members around the world who are experiencing learning the daf like never before!



Beautiful daily pamphlets on the daf • Enlightening daily shiurim

Sign up now for the minimal cost of 4\$/month



Or 10\$ to receive in the mail 2 weeks up front

lehisvada.com

718-298-2416