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FREE AGENT: WHEN A PROXY GOES ROGUE

Adapted from the writings of Dayan Yitzhak Grossman

Last week's article on Citibank's $900 million wiring error[1] considered the question of whether a transfer of money made in error is binding. In this article we consider the question of whether the erroneous action of an agent binds his principal.

"I SENT YOU TO ACT FOR MY BENEFIT AND NOT TO MY DETRIMENT"

While the secular law of agency will generally allow an agent to bind his principal even in the absence of actual authority, as long as mere apparent (ostensible) authority is present, the halacha is that a principal cannot be bound by the actions of even an actual agent who deviates from his instructions, because the principal may say "I sent you to act for my benefit and not to my detriment (*letikunei shedartich velo le'ivusei*),"[2] absent an explicit stipulation that the agency is valid "for either benefit or detriment (*bain letikun bain le'ivus*)."[3]

In the context of an agent authorized by his principal to purchase something, there is an opinion that unless the agent's principal can prove otherwise, the seller is entitled to claim that the appointment may have included such a stipulation of *bain letikun bain le'ivus*.[4] The Shach rules that this is limited to errors that are not of sufficient magnitude to have granted the principal himself the right to void the sale, but it does not extend to egregious errors, such as selling something for a hundredth of its true value, "for [the principal] is presumably not such a fool as to stipulate that even if

1 More recently, Charles Schwab Corp. accidentally transferred $1.2 million to an account of Kelyn Spadoni, rather than the $82.56 she had requested. Chris Dolmetsch. Schwab Accidentally Puts $1.2 Million Into Customer's Fidelity Account. Bloomberg. https://www.bloomberg.com/news/articles/2021-04-13/schwab-accidentally-put-1-2-million-in-woman-s-fidelity-account.

2 Kesubos 85a and 99b and Kidushin 42b.

3 Shulchan Aruch C.M. 182:2-3.

4 Ibid. *se'if* 4.

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Bring the Parsha to Life!

PARSHAS ACHAREI MOS-KEDOSHIM

NIXED BLESSING

Excerpted and adapted from a shiur *by Rav Ari Stauber*

And in the fourth year, all its fruit shall be holy, a praise to Hashem.

Vayikra 19:24

The Gemara (Brachos 35a) attempts to derive the obligation to praise Hashem by reciting *brachos* from this *pasuk,* though it eventually concludes that the source is logic. Among the principles of *hilchos brachos* are not reciting a *bracha* (or Hashem's name at all) unnecessarily and not reciting a *bracha* in cases of doubt.

According to the Gemara (Temurah 4a), there are multiple levels of violation involved in saying Hashem's Name unnecessarily. One who does so in a *shvuas shav* (swearing in vain) has violated the prohibition of *lo sisa* (Shmos 20), while one who simply mentions the Name for no reason violates the positive mitzvah of *es Hashem Elokecha tira* (Devarim 10). Tosafos (Rosh Hashanah 33a) adds that one who recites a *bracha levatalah* has violated *lo sisa* Rabbinically. But the Rambam compares that case to *shvuas shav*, which many *Acharonim* *(continued on page 2)*

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Doorbuster

Q My son was climbing on the fridge door on Shabbos night and the fridge began to tip over. My wife put herself in front of it to protect our son and began screaming. I ran over and lifted the fridge off her, but the door was mostly off. Not thinking carefully, I reattached the door without considering that it might be a problem. Was this repair permitted?

A The Shulchan Aruch (O.C. 314) says that a *kli shel prakim* (a utensil with multiple segments) that came

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[the agent] acts extremely detrimentally, it should be valid."[5] But the Nesivos Hamishpat challenges this, arguing that the (putative) stipulation is that "he has made him like himself," which should be interpreted to mean that he has full authority to act as though he were the principal himself.[6]

PARTNERS

The above discussion refers to an agent. The Shach maintains that a partner is different, and is able to bind his partner even where he is acting detrimentally, because

> with partners, where it is customary that each has the power to do whatever he wants, it as though they stipulated with each other "*bain letikun bain le'ivus*."

This is based on pragmatic considerations:

> for if this were not so, no one would do business with a partner until the other partner agrees."[7]

Other *Acharonim* espouse similar positions.[8]

The Urim Vetumim and the Nesivos Hamishpat, however, reject the Shach's position (at least with regard to the specific case they are discussing, that of a partner who—without authorization from the others—forgives a debt owed to the partnership), arguing that "not on this basis was the covenant of the partnership made."[9]

The Bais Meir suggests that even if we accept the Shach's basic premise that partnerships contain an implicit stipulation of *bain letikun bain le'ivus*, this applies only to actions taken in the course of normal business operations, where in the interest of generating profits, the partners agree to grant each other broad latitude to act on behalf of the partnership, "for if this were not so, no one would do business with him." It does not, however, extend to an act of debt forgiveness.[10]

THE CITIBANK CASE

Applying these rules to a bank employee who makes an erroneous wire transfer, the bank could argue that "I sent you to act for my benefit and not to my detriment." There is an opinion that the burden of proof would rest on the bank to establish that it did not explicitly authorize the employee to act "for either benefit or detriment," but given the detailed records typically maintained by financial institutions, assuming the bank did not make such an explicit authorization, it could very likely establish this with as much certainty as any principal is able to establish the negative of not having made such a stipulation.

According to the Shach, who maintains that partners are implicitly granted authorization to act "for either benefit or detriment," since otherwise business would be impossible, this might apply to employees of businesses as well. Although employees are agents and not partners, the same argument for implicit authorization to act "for either benefit or detriment" may apply to them, because once again, it would be impossible to do business if no transaction is final until endorsed by the owners. But not all *Acharonim* agree with the Shach's doctrine.

As mentioned in the previous article, these are some of the native halachic considerations involved, but standard business customs and norms are obviously relevant as well.

5 Shach ibid. *s.k.* 4.

6 Nesivos Hamishpat ibid. *biurim s.k.* 6.

7 Shach ibid. *siman* 77 *s.k.* 19.

8 Bais Hillel E.H. *siman* 86 *se'if* 2, cited and apparently accepted by Bais Shmuel ibid. *s.k.* 19.

9 Urim Vetumim ibid. Tumim *s.k.* 9 and Urim *s.k.* 20; Nesivos Hamishpat ibid. *biurim s.k.* 8 and *chidushim s.k.* 15.

10 Bais Meir E.H. ibid. Cf. Mishpat Shalom and Pa'amonei Zahav C.M. 176:14; and see Erech Shai ibid. and Shu"t Maharsham *cheilek* 5 *siman* 28 s.v. *Umah shesha'al*.

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DAYAN DANIEL DOMBROFF

apart may be put back together loosely, but not tightly, on Shabbos. The Biur Halacha suggests two possible standards for the permitted "loose" repair: a) the detached part is not secured in place, and there is still play at the joint following the repair, or b) "loose" just means that the repair requires no particular strength or skill.

But this repair is forbidden for a different reason. A refrigerator is quite large and usually holds 40 *se'ah* (approximately 20 cubic feet). A utensil larger than 40 *se'ah* is considered connected to the ground and lacks the status of a utensil, so even a loose repair would be forbidden Biblically as *boneh* (construction on Shabbos).

Ex post facto, is it permitted to use the repaired fridge? It is forbidden to benefit from *a ma'asei* Shabbos (an activity prohibited on Shabbos). Had the door been left off, the fridge would have been open all Shabbos. Perhaps, then, one should be permitted to open the fridge, because doing so just returns it to its pre-*melacha* state, which would not be considered benefiting from the *melacha*.

On the other hand, perhaps we ought to focus on the door itself and say that because the door was improperly replaced, one may not use the door.

An additional angle to consider is that perhaps the transgression is considered *shogeg*, since you were panicked and did not consider carefully whether the action was forbidden. In the case of an *issur d'Oraisa* performed *beshogeg*, the Mishnah Berurah is lenient *bish'as hadchak* (in a case of pressing need) about benefiting from the *melacha*.

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maintain is an *issur d'Oraisa* (Magein Avraham, R' Akiva Eiger, Tzlach).

The general rule is *safek brachos lehakel* (we are lenient in cases of uncertainty regarding *brachos*). According to the P'nei Yehoshua, this is due to the general rule that *safek de-Rabanan lekula* (one is lenient in cases of doubt in Rabbinic matters). But according to R' Akiva Eiger, it's due to concern about violating *lo sisa*.

In the case of *birchos hanehenin* (*brachos* on benefiting from this world, such as on food), *Rishonim* dispute whether the principle of *safek brachos* applies. The Rif holds that if one is unsure he made a *bracha*, he should not repeat it, but the Ri says he should.

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