

אין שליח לדבר עבירה Getting someone else to do your dirty work

In halakhah, the excuse, “But she told me to do it!” or “But it was his idea!” does not pass muster. Only the person who committed the wrong gets punished, not the person who suggested the idea or even sent the other person to commit the wrong on their behalf! While it is perfectly sensible to punish the person who actually committed the act, should the person who suggested it, who told that person to do something wrong really be let off scot free?

Questions? Comments? Email Elana Stein Hain at dinanddaf@gmail.com

1. בבא קמא עח: - עט.

תנו רבנן: גנב, ונתן לאחר וטבח; גנב, ונתן לאחר ומכר...משלם תשלומי ארבעה וחמשה.

The Sages taught in a *baraita*: If one stole an animal and gave it to another and that person slaughtered it, or if one stole an animal and gave it to another and that person sold it...the thief is liable to pay the fourfold or fivefold payment.

מאי קא משמע לן? אשמעינן רישא גנב ונתן לאחר וטבח – דיש שליח לדבר עבירה. אף על גב דבכל התורה כולה אין שליח לדבר עבירה, הכא יש שליח לדבר עבירה.

What is this *baraita* teaching us? All of the *halakhot* it states are obvious. The first clause teaches us, through the case of one who stole an animal and gave it to another and that person slaughtered (or sold it), that in this case there is agency for transgression. Even though in the entire Torah there is a principle that there is no agency for transgression, here there is agency for transgression.

מאי טעמא? “וטבח” ו“מכרו”; מה מכירה – דלא אפשר דלאו על ידי אחר, אף טביחה על ידי אחר – מחייב. What is the reason that this case is an exception to the principle? It is because the verse states: “And slaughters it or sells it” (Exodus 21:37): just as one becomes liable for selling, which by definition is impossible without another party, i.e., the buyer, so too one becomes liable for slaughtering even when it is by means of another party.

2. קידושין מב:

השולח את הבעירה ביד חרש שוטה וקטן – פטור מדיני אדם, וחייב בדיני שמים. שילח ביד פיקח – פיקח חייב. (Mishnah *Bava Kamma* 59b): In the case of one who sends an item that causes a fire in the hands of a deaf-mute, one who is mental incoherent, or a minor, the one who sent it is exempt according to human laws but liable according to the laws of Heaven. If one sent it in the hands of a halakhically competent person, only the halakhically competent person is liable.

ואמאי? נימא: שולחו של אדם כמותו! שאני התם דאין שליח לדבר עבירה. דאמרין: דברי הרב ודברי תלמיד – דברי מי שומעים?

But why is the halakhically competent person liable? A person’s emissary is as oneself! There it is different, as there is no agency for transgression, as we say: When there is a conflict between the words of the Master, i.e., God, and the words of the student, i.e., a human being, whose words should be listened to?

3. משנה בבא קמא ז:

נתנו לבכורות בנו או לבעל חובו, לשומר חנם, ולשואל, לנושא שכר, ולשוכר, והיה מושכו, ומת ברשות הבעלים, ...
פטור. הגביהו או שהוציאו מרשות הבעלים, ומת, חייב

...If the thief gave the animal as payment for the redemption of his firstborn son, or as payment to a creditor, or conveyed it for safeguarding to an unpaid bailee, or lent it to a borrower, or conveyed it for safeguarding to a paid bailee, or leased it to a renter, and he was leading out the animal and it died in the owner's domain, the thief is exempt from payment. If that individual (i.e., the kohen, creditor, etc), following the thief's instructions, lifted up the animal or led it out of the owner's domain, and it subsequently died, **the thief is liable for the theft.**

4. תוספות קידושין מב: ד"ה אמאי

...לא שייך למימר דברי הרב ודברי תלמיד דברי מי שומעים כיון שהוא שוגג דהכי נמי משמע בפ' מרובה (ב"ק דף עט.) דקאמר הרי שגג טלה מן העדר ואמר לכהן טול טלה זה שהוא שלי או נתנו לכהן לבכורות בנו והראה לו בטלה של חבירו ומסיק דמיד שהוציאו הכהן מרשות בעלים נתחייב הגגב במשיכת הכהן והקשה ר"י התם אמאי חייב הגגב נימא אין שליח לדבר עבירה ותיירץ כיון שאין הכהן יודע שהוא בא מגניבה לא שייך למימר דברי מי שומעין...

...It is not relevant to say: "the words of the master and the words of the student, whose words should one heed?" because the emissary is acting unwittingly. And so it sounds in Bava Kamma 79a, which says: if one stole a lamb from the flock and told the kohen, "Take this lamb which is mine," or gave it to the kohen to redeem his firstborn son, but showed the kohen someone else's lamb (to take); and it concludes that immediately when the kohen takes the lamb out of the domain of its owners, the thief is obligated (in compensation) by the pulling of the animal by the kohen. And Rabbeinu Yitzchak challenged there: But why is the thief obligated? We should say that there is no agent for a sin? And he answered that because the kohen does not know that the animal is stolen, it is not relevant to say "whose words should one heed?"

5. תוספות ב"ק נו. ד"ה אלא

ודוקא שוכר אבל אמר פטור מדיני שמים דסבור שלא ישמעו לו...דבפירקין תנן (דף נט:) השולח את הבערה ביד חש"ו פטור מדיני אדם וחייב בדיני שמים שלח ביד פקח הפקח חייב משמע דשולח פטור אף מדיני שמים
And only in the case where someone hired (false witnesses is that person obligated by the laws of Heaven to compensate), but one who simply told people to bear false witness is exempt even from the laws of Heaven because the person can argue that s/he did not think people would listen to her/him...For in our chapter we learn in a mishnah (BK 59b) "One who send forth fire with a deaf-mute, someone mentally incoherent or a minor is exempt from human law but obligated by Divine law. If one sent it with a mentally cogent adult, that adult is obligated," suggesting that the one who did the sending is exempt even by Divine law!

6. ש"ך (שפתי כהן R. Shabtai HaKohen, 17th c. Europe חושן משפט לב ס"ק ג

נ"ל עיקר דלעולם חייב בדיני שמים היכא דגורם היזק לחבירו אפי' לא שכן והא דקתני השולח את הבערה ביד פקח הפקח חייב ולא קתני דהשולח חייב בדיני שמים היינו כיון דפקח משלם תו לא שייך דיני שמים על המשלח...

...I think that the sender is always liable by Divine law where the sender causes damage/harm to their fellow, even if the sender did not hire them (=the witnesses). And that which the mishnah states, "One who sends fire in the hand of a mentally cogent adult, that adult is liable," but it did not state that the sender is liable by Divine law, this is only because the cogent adult who did this will pay, and therefore there is no further obligation by Divine law upon the sender.