

זכין לאדם שלא בפניו - Acting in Someone Else's Interest without their Knowledge

We have seen a few mentions of the principle that one may effectuate binding transactions on someone else's behalf without the latter's knowledge. How does this work? What does this tell us about human interest and about human connection from a legal point of view?

Questions? Comments? Email dinanddaf@gmail.com

1. משנה גיטין א:ו

האומר, תן גט זה לאשתי ושטר שחרור זה לעבדי, אם רצה לחזר בשניהן, יחזר, דברי רבי מאיר. וחכמים אומרים, בגטי נשים, אבל לא בשחרורי עבדים, לפי שזכין לאדם שלא בפניו ואין חבין לו אלא בפניו. שאם ירצה שלא לזון את עבדו, רשאי. ושלא לזון את אשתו, אינו רשאי. אמר להם, והרי הוא פוסל את עבדו מן התרומה כשם שהוא פוסל את אשתו. אמרו לו, מפני שהוא קנינו...

With regard to one who says to another: Give this bill of divorce to my wife, or: Give this bill of manumission to my slave, if before the document reaches the woman or the slave the giver wishes to retract his decision, then with regard to both of them, he can retract. This is the statement of Rabbi Meir. And the Rabbis say: One can retract his decision in the case of bills of divorce but not in the case of bills of manumission. The Rabbis explain the reason for their ruling: This is because one can act in a person's interest in his absence, and therefore the agent acquires the document on behalf of the slave from the moment the owner hands the bill of manumission to the agent. But one can act to a person's detriment only in his presence. The receipt of a bill of divorce is considered to be to a woman's detriment, and therefore an agent cannot receive it for her without her consent. They explain further: The emancipation of a slave is in his interests, despite the fact that he receives sustenance from his master while a slave, as, if the master wishes not to sustain his slave he is allowed not to provide him with sustenance. This demonstrates that slavery is not in the interest of the slave, as he does not receive any guaranteed benefit. But if a husband wishes not to sustain his wife, he is not allowed to proceed in this manner. Consequently, marriage is in the interests of the woman. Rabbi Meir said to the Rabbis: But even so, it is not in the interest of a slave to be emancipated, as, if his master is a priest, he disqualifies his slave from partaking of *teruma* by emancipating him, just as a husband who is a priest disqualifies his Israelite wife from partaking of *teruma* by divorcing her. The Rabbis said to him: It is permitted for a priest's slave to partake of *teruma* not because he has a right to sustenance, but rather because he is his master's acquisition...

2. במדבר לד:יח

וְנָשִׂיא אֶחָד נָשִׂיא אֶחָד מִמֶּטֶה תִּקְחוּ לְנָחֵל אֶת־הָאָרֶץ:

And you shall also take a chieftain from each tribe through whom the land shall be apportioned.

3. קידושין מב.

ואלא הא דאמר רב גידל אמר רב: מנין ששליחו של אדם כמותו? שנאמר: "וְנָשִׂיא אֶחָד נָשִׂיא אֶחָד מִמֶּטֶה". תיפוק ליה שליחות מהכא! ותיסברא דהא שליחות הוא? והא קטנים לאו בני שליחות נינהו!

But consider that which Rav Giddel says that Rav says: From where is it derived that the legal status of a person's agent is like that of the sender? It is as it is stated with regard to the division

of Eretz Yisrael among the Jewish people: “And you shall take one prince of every tribe, to take possession of the land” (Numbers 34:18). (This indicates that the prince of each tribe acted as the agent to claim the land for each member of his tribe.) Let the principle of agency be derived from here! But is this logical that the princes claiming the land was due to agency? But minors cannot be involved in agency (, and the princes claimed the land for all members of their tribe, adults and minors alike)!

אֵלָא, כִּי הָא דְרַבָּא בַר רַב הוּנָא. דְּאָמַר רַבָּא בַר רַב הוּנָא אָמַר רַב גִּידֵל אָמַר רַב: מִנִּין שְׂזִכִּין לְאָדָם שְׁלָא בְּפָנָיו? שְׁנַאמַר: “וְנָשִׂיא אֶחָד נָשִׂיא אֶחָד”. וְתִסְבְּרָא זְכוּת הִיא? הָא חוֹבָה נִמִּי אֵיכָא, דְּאֵיכָא דְנִיחָא לִיה בְּהֵר, וְלֹא נִיחָא לִיה בְּבִקְעָה, וְאֵיכָא דְנִיחָא לִיה בְּבִקְעָה וְלֹא נִיחָא לִיה בְּהֵר!

Rather, (the distribution of the land by the princes follows a different principle,) like that statement of Rava bar Rav Huna, as Rava bar Rav Huna says that Rav Giddel says that Rav says: From where is it derived that one can act in a person's interest in their absence? It is as it is stated: “And you shall take one prince (from each tribe).” But is it logical to understand that as a benefit? It was also to their disadvantage, as some would rather a hill and not a valley, and others would rather a valley and not a hill. (The prince might claim land for members of his tribe that they do not want, and one cannot act to another's disadvantage in their absence.)

וְאֵלָא כְּדִרְבָּא בַר רַב הוּנָא. דְּאָמַר רַבָּא בַר רַב הוּנָא אָמַר רַב גִּידֵל אָמַר רַב: מִנִּין לִיתוּמִּים שְׂבָאוּ לְחִלּוּק בְּנִכְסֵי אֲבִיהֶן שְׁבִית דִּין מַעֲמִידִין לָהֶם אַפּוֹטְרוֹפּוֹס לְחוּב וְלְזְכוּת? “לְחוּב” אֲמַאי? אֵלָא: “לְחוּב עַל מְנַת לְזְכוּת” – תִּלְמוּד לּוֹמַר: “וְנָשִׂיא אֶחָד נָשִׂיא אֶחָד מִמֶּטָּה תִּקְחוּ”.

Rather, the verse is required to teach a different principle, like that statement of Rava bar Rav Huna, as Rava bar Rav Huna says that Rav Giddel says that Rav says: From where is it derived that if orphans came to divide their father's property, that the court appoints a steward for them, both to their disadvantage and to their benefit? Why would the court appoint a steward to their disadvantage? Rather, it means to their disadvantage in order to achieve their eventual benefit. (Once a steward has been appointed to control the orphans' estate, he has the authority to act to their temporary disadvantage if they are ultimately likely to benefit from the action.) And the source of this principle is as the verse states: “And you shall take one prince of every tribe” (Numbers 34:18).

How does it work?

4. זכין מטעם שליחות - רש"י גיטין ט: ד"ה יחזור

...וזכין לו לאדם שלא בפניו דאנן סהדי דניחא ליה דניהוי האי שלוחו להכי.

...And one may act in the interest of another not in their presence, for we witness that that it is desirable for him that this other person will be his emissary for this.

זכין מטעם יד

זכין מטעם גזירת הכתוב

5. קצות החושן סימן קה ס"ק א

דעת כמה הראשונים שאמרו דזכיה מתורת יד אמרו ולא מתורת שליחות, ואפילו למאן דאמר דזכיה מתורת שליחות לאו משום אנן סהדי דעשאו שליח, אלא דגזירת הכתוב שיהא הזוכה לאחר מהני...

Some medieval commentators said that the ability to act in the interest of someone else without their knowledge is based on the principle of *yad* rather than the principle of *shelichut*. And even among those who said that the ability to act in the interest of someone else is based on *shelichut*, this is not because we witness that this person has made the second party their emissary, but rather it is based on a Scriptural decree that acting on someone's behalf works...

Who Defines Zechut?

6. רמב"ם הל' זכיה ומתנה ד:ב

המתנה לחברו במתנה על ידי אחר כיון שהחזיק בה אחר כגון שמשך המטלטלין או הגיע שטר הקרקע לידי או החזיק בקרקע זכה חברו אף על פי שלא הגיע המתנה לידי ואין הנותן יכול לחזור בו. אבל המקבל ידו על העליונה אם רצה מקבל אם לא רצה אינו מקבל שזכין לאדם שלא בפניו ואין חבין לו אלא בפניו וזכות הוא שתתן לו מתנה אם ירצה. אבל אם לא ירצה אין נותנין מתנה לאדם בעל כרחו:

The following rules apply when a person transfers ownership over an article to a colleague through the agency of a third party. Once the third party takes possession of it - e.g., he performs *meshichah* on movable property, a deed of transfer of landed property reaches his hand, or he manifests ownership over the land - his colleague acquires the gift, even though it does not reach his hand. The giver can no longer retract.

The recipient by contrast has the option in his hand. If he desires, he may accept it. If he does not desire, he need not accept it. For a positive acquisition may be made for his person without his consent, and an obligation cannot be undertaken on his behalf without his consent. If a person desires that a gift be given to him, it is considered to be a positive acquisition. If, however, he does not desire it, a person cannot be forced to accept a gift that is given to him.

7. רמב"ן קידושין כ"ג עמוד א

נהי נמי דשלא מדעתו מכדי שמעינן להו לרבנן דאמרי זכות וכו'. פירוש ה"ה דאפי' נמי בע"כ משום טעמיה דרבא דכסף קבלת רבו גרמה לו

Meaning that (a third party can by a slave's freedom) even against the wishes of the slave because of Rava's reasoning that it is the acceptance of the money by the slave (rather than the action of giving the money by the person who is acting on behalf of the slave) that effectuates the emancipation. (On the other hand, when the emancipation of the slave comes via the master handing a writ of emancipation to someone on behalf of the slave, it seems that the Ramban would not see the transaction as effective if the slave does not want it because the emancipation process relies primarily on the actions of the third party on behalf of the slave, namely accepting the writ of emancipation.)