*Shaliach*: Independent Actor or Extension of the Sender

**Introduction**

The *gemara* in Kiddushin 41 - 43 analyses the concept of *sh’lichus* (agency). This is the idea that one person (the *shaliach*) can act as the agent of another (the *m’shaleiach*) in certain cases and within certain parameters.

There is a basic question we can ask in order to help us to clarify our understanding of the relationship between the *shaliach* and the *m’shaleiach*. To what extent is the *shaliach* acting independently and with his own will, with only the results of his actions being attributed to the *m’shaleiach*? Conversely, to what extent is the *shaliach* acting as a robotic extension of the *m’shaleiach*, with the knowledge and will required for the act being inputted by the *m’shaleiach*, and the *shaliach* performing the dry, physical act alone?

We will examine four areas where the *rishonim* seem to have quite different approaches to answering these questions, and thus different understandings of the precise nature of the *shaliach-m’shaleiach* relationship.[[1]](#footnote-1)

**1. Where the *m’shaleiach* is mentally incapacitated**

The Rambam writes:

אמר כשהוא בריא, כתבו גט ותנו לאשתי, ואחר כך נבעת, ממתינין לו עד שיבריא, וכותבין ונותנין לה ... ואם כתבו ונתנו קודם שיבריא, הרי זה פסול.

If a healthy man instructs that a *get* be written and delivered to his wife, and he subsequently becomes mentally incapacitated, we wait until he recovers, at which point we write and deliver the *get* to her… If the *get* is written and delivered before he recovers, it is unfit.[[2]](#footnote-2)

It is important to note that in the Rambam’s terminology, there is a major distinction between a *get passul* (an unfit *get*) such as in this case, and a *get bateil* (a worthless *get*). A *get passul* is only unfit *mid’rabbanan*, whereas a *get bateil* is utterly meaningless, even on a *d’oraisa* level.

What this means in our context is that, according to the Rambam, when a healthy man instructs that a *get* be delivered to his wife, and it is subsequently delivered while he is mentally incapacitated, *mid’oraisa* the *get* is valid.

The Tur disagrees:

היה בריא בשעה שצוה לכותבו ואחר כך אחזו החולי אין כותבין אותו בעודו בחוליו, ואם כתבו ונתנוהו בחליו אינו כלום.

If he was healthy when he instructed that the *get* be written and he subsequently became [mentally] ill, we do not write it while he remains ill. If it was written and delivered while he was ill, it is worthless.[[3]](#footnote-3)

We see that in the opinion of the Tur, a *get* delivered while the husband is mentally incapacitated is worthless, a *get bateil*, even *mid’oraisa*.

The Pri Chadash explains the Rambam’s view as follows: The *shaliach* takes the place of the husband, so we are no longer concerned with the state of the husband at the point of delivering the *get*, at least *mid’oraisa*.[[4]](#footnote-4) Thus, the Rambam seems to hold that the *shaliach* has power independent of the *m’shaleiach*, such that he is able to deliver the *get* when the *m’shaleiach* is in no fit state to do so due to his incapacitation.

We can understand that for the Tur, on the other hand, the *shaliach* is no more than an extension of the *m’shaleiach*. Since the *m’shaleiach* does not currently possess the *da’as* necessary to deliver a *get*, his *shaliach* is unable to do so on his behalf.

**2. Where the *m’shaleiach* is deceased**

Rav Meir Simcha HaKohein of Dvinsk quotes an intriguing comment by Rashi, which seems to indicate that he follows Rambam’s view that the *shaliach* is operating under his own independent power.

The *gemara* in Gittin 9b states that if one instructs that a *get shichrur* (bill of manumission) be written and given to his slave, and the owner then dies, the *get shichrur* cannot be delivered after his death. Rashi explains that the *get shichrur* cannot be delivered after the death of the owner, not because of any problem with a *shaliach* acting on behalf of a *m’shaleiach* who is no longer alive, but rather because the slave is no longer owned by the owner but is instead owned by his inheritors.[[5]](#footnote-5)

R. Meir Simcha infers from here that, hypothetically, a *shaliach* could deliver a *get shichrur* on behalf of a deceased slave-owner. This seems to tally with the opinion of the Rambam, that a *shaliach* acts independently of the *m’shaleiach*, even if the *m’shaleiach* is no longer in a state which would allow him to personally deliver a *get shichrur*. The only issue preventing the *shaliach* from giving the *get shichrur* is the technicality that after death, the slave is no longer in the possession of the *m’shaleiach*.[[6]](#footnote-6)

**3. Where the *m’shaleiach* is near death**

The *rishonim* debate whether a *goses* (a person at death’s door) is able to give a *get*. The Rosh records the opinion of Rabbeinu Yoel of Bonn that a *goses* is unable to give a *get*. However, R. Yoel maintains that if a person instructed that a *get* be delivered, and subsequently became a *goses*, the *shaliach* can deliver the *get* as long as the *m’shaleiach* is still alive.[[7]](#footnote-7)

The Ri (also quoted by Rosh) takes issue with R. Yoel’s approach. The Ri himself holds that a *goses* may give a *get*. However, he comments on R. Yoel’s opinion,

ואם לאו בר נתינה הוא ... אפילו שלוחו נמי לא מצי יהיב ליה

if [a *goses*] is not able to give [a *get*] … his *shaliach* should also be unable to give it.[[8]](#footnote-8)

We can understand this *machlokes* as demonstrating the two sides of the *chakirah* we have already explored. R. Yoel holds (like the Rambam and Rashi) that a *shaliach* has significant independence from the *m’shaleiach*; even if the *m’shaleiach* is a *goses* and can no longer give a *get*, his previously appointed *shaliach* is still able to do so.

The Ri cannot understand this. He holds like the Tur, that the *shaliach* is defined and limited by the powers of the *m’shaleiach*. If it is really true, says the Ri, that a *goses* cannot give a *get*, then there is no way his *shaliach* can do it in his stead.

**4. Where the *m’shaleiach* is no longer willing**

We will now consider two further instances where Rashi seems to be consistent in applying his approach which we saw in section 2, namely that we view the *shaliach* as operating independently of the *m’shaleiach* to a large extent.

The *gemara* in Gittin 32a discusses a case in which a man sends a *shaliach* to deliver a get to his wife. He then happens to come across this *shaliach* on the road before the *shaliach* has delivered the *get,* and declares to him that the *get* is *bateil*. The *gemara* has a *hava amina* that we do not take the husband at his word that he really means to cancel the *shlichus*. Rather, it is possible that *litzora ka michavein* i.e. he only intends to upset his wife. Rashi explains that this means that the husband does not want to cancel the *shlichus*. He rather wants only to upset his wife by withholding the *get* for a month or two.[[9]](#footnote-9)

The Rashba is puzzled by Rashi’s comments. What difference does it make whether he means to cancel the *shlichus* or merely delay the giving of the *get* for a month or two? In either case, the *get* cannot be given until the husband tells us that he is once again willing to grant the *get*.[[10]](#footnote-10)

While the Rashba himself suggests a *nafka mina* according to the opinion of Rav Sheishes later on in the gemara, and R. Akiva Eiger suggests further differences between the two cases,[[11]](#footnote-11) perhaps the simplest way to understand Rashi is to tackle the assumption of the Rashba head-on.

According to Rashi, we can suggest, there is a major *nafka minah* between the case where the husband cancels the *shlichus* and where he simply to wishes to suspend it for a month or two. Rashi believes that the husband, having appointed the *shaliach*, has the right to cancel the *shlichus* at any time. However, until he does so, the *shaliach* possesses power independent of the consent of the *m’shaleiach*, such that, even though the husband tells the *shaliach* to delay giving the *get*, **the *shaliach* can ignore him and deliver the *get* anyway.**

This *chiddush* of Rashi is consistent with the position we saw him taking in Gittin 9b, that the *shaliach* can act with significant independence from the *m’shaleiach*, along the lines of the Rambam.[[12]](#footnote-12)

The Rashba, on the other hand, seems to assume like the Tur, that the *shaliach* is merely an extension of the *m’shaleiach*. Since the *m’shaleiach* has indicated that he does not currently wish the *get* to be delivered, even though he has not actually cancelled the *shlichus*, there is no way for the *shaliach* to ignore the will of the *m’shaleiach* and independently deliver the *get*.

This interpretation of *shittas* Rashi is reinforced further by a comment which he makes in Kiddushin 59b.

The *gemara* there discusses a case of a woman who appoints a *shaliach* to accept *kiddushin* on her behalf, and who then changes her mind. According to the opinion of Reish Lakish, the woman is unable to do so.

Rashi comments that this is so, whether or not she communicates to the *shaliach* the fact that she no longer wishes him to act on her behalf.[[13]](#footnote-13)

Tosafos argue that Reish Lakish’s *din* only applies where the woman does not inform the *shaliach*. However,

אי אמרה לשליח אין רצוני שתקדשני פשיטא דאינה מקודשת דאטו משום דאמרה לו תיהוי לי שליח לקדשני לא מצי' חוזרת.

If she says to the *shaliach*, ‘I don’t want you to accept *kiddushin* on my behalf’, it is obvious that she would not be married [if he were to do so]. Just because she has asked him to be a *shaliach* for the purposes of *kiddushin*, does that mean that she can never change her mind?![[14]](#footnote-14)

It would seem that Rashi’s response to Tosafos’ rhetorical question would be ‘Yes’. According to Reish Lakish, she cannot change her mind. The *shaliach*, once appointed, has power independent of the *m’shaleiach,* even when the *m’shaleiach* protests.

For Tosafos, this is unthinkable. The *shaliach* derives all of his power from the continuing will of the *m’shaleiach*, as we saw proposed by the Tur and the Rashba. If the *m’shaleiach* clearly communicates that he no longer wishes for the *shaliach* to act on his behalf, the *shlichus* no longer exists, almost by definition. This is consistent with the opinion of the Ri (one of the *ba’alei tosafos*) quoted above in section 3, that were it the case that a *goses* is unable to give a *get*, his *shaliach* would similarly be unable to do so.

**Conclusion**

We have explored a fundamental concept at the heart of the definition of a *shaliach*.

The Rambam, Rashi and R. Yoel hold that appointing a *shaliach* is much like granting a power of attorney, with the *shaliach* essentially operating independently of the *m’shaleiach*, albeit acting on his behalf.

The Tur, the Rashba and Tosafos (including the Ri), on the other hand, limit the independence of the *shaliach*, viewing him as a mere extension of the *m’shaleiach*’s body, but reliant on the continuing knowledge and will of the *m’shaleiach* in order to have any authority to act.

This *machlokes* expresses itself in the positions adopted by the *rishonim* in cases where the *m’shaleiach* becomes mentally incapacitated, is deceased or near death, or simply wishes to cancel the *shlichus*.

1. I am indebted to Rav David Bagno of Ramat Beit Shemesh for bringing most of these sources to my attention, in the context of the *gemara* shiur which he delivers in Beit Knesset Mishkan Shilo. Any mistakes or misunderstandings are, of course, my responsibility alone. [↑](#footnote-ref-1)
2. Rambam, Hilchos Geirushin 2:15 [↑](#footnote-ref-2)
3. Tur, Even HaEzer 121 [↑](#footnote-ref-3)
4. Pri Chadash, Even HaEzer 121:2 [↑](#footnote-ref-4)
5. Rashi, Gittin 9b, s.v. *lo yitnu l’achar misah*. Rashi’s explanation in the original Hebrew reads

   דנפקא ליה רשותיה מיניה וחייל עליה רשות יורשין. [↑](#footnote-ref-5)
6. Ohr Sameiach, Hilchos Geirushin 2:15 [↑](#footnote-ref-6)
7. Rosh, Kiddushin 4:16. I am grateful to Moshe Steinberg for pointing this source out to me. [↑](#footnote-ref-7)
8. ibid. [↑](#footnote-ref-8)
9. Rashi, Gittin 32a s.v. *velo amrinan* [↑](#footnote-ref-9)
10. Chiddushei HaRashba, Gittin 32a s.v. *gemara higio lo katani* [↑](#footnote-ref-10)
11. Chiddushei Rav Akiva Eiger, Gittin 32a s.v. *hiksha rashba* [↑](#footnote-ref-11)
12. This Rashi was discussed in section 2. [↑](#footnote-ref-12)
13. Rashi, Kiddushin 59b s.v. *vechazrah bah* [↑](#footnote-ref-13)
14. Tosafos, Kiddushin 59b, s.v. *lo kidsha atzmah* [↑](#footnote-ref-14)