**Shaliach regarding mila and to what extent is mila a mitzvah shebegufo regarding the shaliach**

Moshe Yosef – Questions

We learned in the mishna / gemara that an av is chayiv to give his son a bris, question 1- is he allowed to appoint a shalich to fulfill his obligation?

2 – even if u want to say that he can appoint a shaliach, is it better that the father performs the mila on his son himself, based on principle mitzvah bo yoser mbishlucho? (see gemara kidushin 41)

3- and furthermore, is the answer to this Q dependent on, if the chiyuv for the father to give his son a bris, is a vort in maseh mila or that he just needs to be someone who has a bris?

4- if you hold that the father cannot appoint a shalich, why would this be so?

5- is there a difference in the din of the father appointing a shaliach if he’s capable in giving his son a bris?

The rama writes in 382 sif 1 that if the father had a son to curcumsize and another person beat the father to this moyzva, hes obligated to pay 10 zehuvim. However, if the father gave the mitzvah of mila to reuven, and then shimon came and did the mila, shimon is exempt from paying (rabeinu yeruchum)

The Shach (choshen mishpat siman shin pay bet sif katan 4)

Quotes the rosh –

If a father wanted to give his son a bris, and someone else beat him to it, and gave the son a brit, this guy needs to pay back the father 10 zehuvim. This is similar to covering up the blood – the one who spilled the blood, needs to cover it up- however if the father gave the mitzvah to reuven to be mahal his son, and then shimon beat reuven and did the mila, shimon doesn’t need to pay back the father 10 zehuvim. (if you ever steal someones mitzvah, you owe them 10 zehuvim – chulin -)

Someone who is obligated to be mahal his child cant transfer this obligation to someone else (similar to covering the blood) and the rambam (beginning of hilchos mila) says that the obligation of mila is placed upon the father 1st

Implied from our sugya on 29– the av is obligated to be mahal his son. Shach says that I wrote all this bc I saw other people who were giving the Kavod to others to be mahal their own son, even though the father was capable in doing the mila himself. Acc to my opinion, the fathers are losing out on this great mitzvah (bet din should stop this terrible practice from occurring)

Kitzot hachoshen siman shin pay bet sif katan 2

The tevout shor – really you can appoint a shalich to cover up the blood and so too by mila. So why is the shach bringing a proof from the rosh that just like covering up blood you cant appoint a shalich, so too by mila you cant appint a shalich?

Or zeruah – if the father is capable in doing the mila, he is not allowed to honor someone else with the performance of the mila…

Darchei moshe (asks on or zeruah and on shach) ---

What about the principle of shluch shel adam kimoto?

Kitzot – really the shach is bringing a good proof from the rosh, that the father cannot appoint a shaliach – the first case – if father wanted to do the mila, and another person came and beat the father to it , he has to pay the father 10 zehuvim bc he took away the fathers mitzvah. 2nd case – if father “appoints shalich” (reveun) to do the mila and shimon beats reveun to it, shimon doesn’t need to pay the father or reuven…

This proves (From the fact that shimon doesn’t need to pay back the father, this shows us that he didn’t steal the fathers mitzvah bc hes not really a shalich) that you cannot appoint a shalich to do mila.

And he doesn’t need to pay back the shaliach, bc he wasn’t zocheh the mitzvah yet.

Q- according to the darchei moshe, who holds shlichut works for Mila, in the second case shimon should pay back the father, but we know that that’s not the din?!

A – darchei moshe holds that shlichut works in all cases, just that in the second case shimon doesn’t need to pay because shimon has the din of shliach of the dad. ( father isn’t makpid who does the Mila, unlike teruma where he is makpid)

In first case the guy needs to pay back because the father is makpid about mitva bo yoter mbishlucho.

Rejection on darchei moshe

Q1 – how can shimon be called a shaliach, if the father never appointed him explicitly (even if the father isn’t makpid)?

Q2 - usually the father is makpid to honor a shaliach to do the mila (like a friend, relative etc) if so, shimon is not called a shaliach and needs to pay back money?

Maskana - shlichut doesn’t work for mila (in second case shimon doesn’t need to pay because he’s not called a shaliach, if you say that shlichut works then he would need to pay back, but we know that that’s not the Halacha)

What about the darchei moshe who says shlichut works for mila?

We are gonna say like the tos rid..

The gemara in kidushin mem bet amud bet says ein shliach ldvar aveira - this means that if reuven sends shimon to kill levi, shimon is responsible

Q – tos rid asks - this Implies that shlichut works for any mitzvah?!

But we know that shlichut doesn’t work for mitzvoth shebigufo, (for example tifilin/sukka, he can build it for you, but can’t sit in it on your behalf)?

A – shlichut workds for kidushin/gerushin

This pushes off the proofs of the tvuot shor because by the cases of appointing a shaliach to put up your mezuzah or build your sukka…shlichut works bc you fulfill the mitzvah with your body (by going into your house/sukka)

But by covering up the blood, the torah places obligation on whoever spilled the blood, to cover it, so you cannot appoint a shaliach to cover up the blood, because the one who spilled the blood didn’t cover it with his guf.

The ketzot Also explains, that when it comes to eating food, shlichot doesn’t work, this applies to mitzvoth and aveirot, for example someone cannot eat mataza on my behalf, since the one who is obligated isn’t getting the pleasure from the matzah.. for example if I tell someone to eat non-kosher the shaliach is chayiv, not me.

Kalbo asks a question - general rule that for mitzvoth that you cannot appoint a shaliach, you say li (for example lihaniach tefilin) for mitzvoth that you could appoint a shaliach you say al (for example al biur chametz)

Q- why is it al cisuei hadam if we just said that you cannot appoint a sjaliach?!

(the ketzot doesn’t bring an answer to the kalbos question. rather the ketzot brings this as a proof that shaliach doesn’t work for kisuei hadam - as kalbo says you can’t appoint a shaliach for kisuei hadam)

ketzot - shlichut doesn’t work for kisuei hadam, so too shlichut doesn’t work by mila. (as the rash,kalbo, tos rid, or zeruah say)

if the father is capable in doing the mila, he should do it himself.

(you can honor someone with the metziza because that’s just for healing purposes)

I saw in some places they gave the kavod to do the mila to a katan.. even if you hold like darchei moshe who says that shlichut works, you shouldn’t appoint a katan bc en shaliach lkatan, rather if the father isn’t capable in doing the mila, he should appoint a shaliach who is over bar mitzvah.

Q – (on what we just said)

The shulchan aruch holds that even a katan can be appointed to do the Mila?!

A - it means that the katan can do the mila if the father is not around (seems lichatchila), or (father was around) and it means it was bdieved and you don’t need to go back to spill more blood…

If the father was Around, the katan shouldn’t be appointed as a shailach

in all these cases a katan is defined by not having 2 hairs.

Final maskana of Ketzot –

We don’t say shsliach shel adam kmoto by Mila ie you cannot appoint a Shaliach ---(if he’s capable to do it himself then he needs to do it and he is over aseh if he didn’t do it himself. If the father is not capable in doing mila himself – hes patur like din of ones and shas hadchak, and therefore his mitzvah of mila falls upon bet din aka any gadol)

Tos Rid on hagah ot 35

Torah commands us to sanctify ourselves with the mitvot. if we could just appoint a shaliach, even on mitzvoth shebegufo then we wouldn’t be doing mitzvoth at all (we would be like non jews)

The torah Wants that we should be involved with mitzvoth especially mitzvoth shebegufo

(shelo asani isha – feminist? why are they patur from time bound mitzvahs?

Rav schwalb (iyun tefilla) - Woman make shasani kirtzono in morning - they have natural tendency to do hashems will -they don’t need the positive ripple effect that results from the performance of a time bound positive mitzvah.

Men however Need the extra time bound mitzvahs in order to recharge our battery (positive ripple effect)

This is why We recite shlo asani isha - meaning thanks that You didn’t make me an isha because now as a man I am chayiv in time bound mitzvoth and in

Talmusd torah, and greater is the one who is commanded and performs the mitzzvot, than someone who is not commanded and performs the mitzvoth (see kiddushin 31a)

Women you You made me according to your will -they already have that natural tendency to cling to hashem)

The Torah wants us to be involved in mitzvoth aka even woman it’s just that some mitzvoth they don’t need to do, in order that we won’t be like non-Jews who don’t have any mitzvahs.

Hagha continues and says that the slaughtering of the karban pesach and making a sukka or making a lulav, even though this is done by a shaliach, nevertheless he himself (the sender) is going to eat the karban pesach, sit in suka, shake lulav. However, if shlichut could be done for mitzvah shebigufo, you are mevatel from the mitzvah completely.

Second approach in shlucho shel adam cimoto that it could work even on mitvot shebigufo (mila)

Q and A chasam sofer orach chaim siman resh alef

One can appoint a shaliach for mitzvoth shenasim bigufo but cannot appoint a shaliach for mitzvoth sheal gufo

For example You can appoint a shalich to shecht animals for you because that’s not on your body, rather its done with your body, so too a father can appoint a shalaich to do the mila because obligation of the father is with his body, and not on the father’s body.. and so to a shalaich can tie and put on the tefilin of the mishalaich because the mitzvah is still on the guf of the meshalaich, its just the mitzvah wasn’t done through using his body... However, if a shaliach puts on tefilin on his own body, it is not like the meshalach is wearing the tefillin because it’s not on the body of the meshalach. Also by mila, if the shaliach did mila to himself it is not like the katan (of meshalach) had Mila because guf of katan never had Mila.

You cant appoint a shaliach for davening (al gufo) unless he listens, it’s okay because of shomeha keoneh. (also assuming that he is not a bukey)

Csav sofer yoreh deah teshuva 121

Q – why didn’t the shach mention the opinion of darchei moshe …?

The father can appoint a shaliach to do the Mila on his behalf, however he cannot be mecaved someone with doing the Mila (because the father never officially appointed him)

Pshat in or zeruah – when the or zeruah said if the father is capable in doing the Mila he cannot give it to someone else - meaning the father cannot be mecaved someone else to do the Mila, however the father can appoint a shaliach to do the Mila

The Father is over mitzvat aseh and he’s doing an issur if he’s mecaved someone to do the Mila. However, he is allowed to appoint a shaliach to do the Mila (shlucho shel adam cimotoo). Best case- father does Mila himself (bc mitzvah bo yoyer mibishlucho).

Csav sofer is holding like his dad (chasam sofer) regarding shenaseh bigufo/ she’al gufu.

Csav sofer - the father can appoint a shaliach to do the Mila whether he is or isn’t capable to do Mila himself (you would think that if the father is unable to do the Mila himself then he cannot appoint a shalaich, because the shaliach would be acting on behalf of dad, but dad doesn’t know how to do Mila- not kimoto. Ka mashma lan - it would be okay for father to appoint a shaliach even if the father is not capable to do Mila himself)

(this is unlike the ketzot - the ketzot said that if the father is capable in doing the Mila he cannot appoint a shaliach)

A father that is mal his son is like he slaughtered a sacrifice and sprinkled its blood on mizbeach.

It’s harder for the father to do Mila to his son than a stranger doing it on his behalf. Why? Because it’s his son and he needs to conquer his mercy more..

( mishna avot 5th perek – acc to pain/effort, is the reward - - -- - ie no pain, no gain)

and this is why the father should do mila himself - he will be getting more reward ((“you did this and you didn’t withhold” double lashon in pasuk by Avraham by akeida - more reward bc he did it himself rather than using a shaliach))

chagiga 12 – mashal

king with servants – 2 tyepes – 1) always there 2) miss/late .. the king is happier when he gets served by #2 – bc its harder for them and they overcame it, hashem is very happy when we overcome whats holding us back from what we are supposed to be doing

Q – why does pasuk need to say “kasher tziva oto alokim”?

A – Avraham did mila himself as he was commanded to do, even though it was very difficult (100 yrs old and only son) and he could have appointed a shaliach to do it.

Q and A bet efraim (choshen mishpat siman 67)

He attacks our ketzot, and says that he is wrong. You can appoint a shaliach to do kisuei hadam ( and we learn this from karban pesach)

the csav and chasam sofer reg mitvot sheal gufo/ mitzvoth shnaseh bigufo hold like bet efraim

Acc to chasam sofer, csav sofer, bet efraim:

The father can appont a sahliach to do the mila whether or not the father is capable to do mila himself (unlike ketzot)

Rabbi akiva eger (avoda zara 27a)

Mila can be done by anyone/anyway (don’t even need a shaliach), so even a non jew can do it

Rabbi akiva eger is differnet than ketzot, csav, chasam, bet efraim. He holds that shlichot works, and not only that but you don’t even need official shlichut and it will still work.

Answer to five Q…

1. ketzot – father can appoint a shaliach if he is not capable to do mila himself, if he is capable to do it himself, he cannot appoint a shaliach.

chasham, csav, bet efraim- yes, the father can appoint a shaliach whether or not he is capable to do mila himself.

Rabbi akiva eger – you don’t even need to appoint a shaliach, and it still works.

1. ketzot – no inyan of mitzvah bo yoter mibishlucho in case when father can appoint a shaliach.

chasham, csav, bet efraim – the csav sofer says mitzvah bo yoter mibishlucho in any case.

rabbi akiva eger – no inyan of mitzvah bo yoter mibishlucho.

1. If you hold mila is a din in the maseh mila, then mitzvah bo yoter mibishlucho. (csav sofer)

If you hold mila is a din in hu sheya nimul then mitzvah bo yoter mibishlucho wont apply (rabbi akiva eger).

1. Ketzot – the father cannot appoint a shaliach if he is capable to do mila himself bc we don’t say shaliach shel adam cimoto by mila bc it’s a mitzvah shebegufo.
2. Ketzot – if the father is capable in giving his son a bris, he needs to do it himself.

Csav – technically the father can appoint a shaliach whether or not he is capable to do mila himself (but better himself in both cases)

Rabbi akiva eger- no difference and mitzvah bo yoter mibishlucho doesn’t apply

Thank you Rafi Thalheim for writing this after many chavrusa sessions with me.