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## GAMBLING IN THE SYNAGOGUE

In recent years, the craze to build bigger and better synagogues has resulted in a crucial problem. Synagogue leaders have had to face deficit budgets and in their quest to meet their financial obligations have had to find other avenues by means of which funds could be raised to meet their synagogues' needs.

Some form of gambling has always been used to help support synagogues, day schools, *yeshivot*, Jewish hospitals, and other institutions. Organizations sold raffles of many kinds, offered prizes of all sorts, conducted card parties and the like. Recently a rash of more sophisticated forms of gambling have appeared. Bingo games, sporting event pools, Monte Carlo nights and carnivals have become "essential" sources of congregational income in order to balance their budgets. Some congregations' zest for these activities is phenomenal and they have even earned for themselves alias "Congregation Bnai Bingo."

One national organization of synagogues reacted sharply to the increase in gambling activities. Individual member congregations were called to task; some were given outright ultimatums to cease and desist from all such projects, and a few were actually expelled for not complying with "the laws of Judaism."

What has Judaism to say on this matter? Is gambling in synagogues and in Jewish circles a 20th century phenomenon or not? Historically, how have the Jewish communities reacted to gambling?

Upon examination of rabbinic and other literature of the Talmudic, Geonic and the Middle Ages we find that gambling may be divided into three major categories: namely, that of the professional and compulsive gambler, that of the occasional gambler, and gambling for charitable purposes.

## TRADITION: *A Journal of Orthodox Thought*

The Jewish attitude to gambling was not clearly defined until Mishnaic days. The Mishnah states: "And the following are disqualified from rendering testimony or from serving as judges . . . the dice player . . ." <sup>1</sup> Here the Mishnah disqualifies the gambler from rendering testimony and thus declares dicing infamous. However, the Mishnah continues with R. Judah b. Ilai drawing a distinction between the professional gambler and the occasional one. "When are they disqualified? If they have no other occupation but this. But if they have other means of livelihood, they are eligible." <sup>2</sup>

The Talmud offers two views to explain the disqualification of the professional gambler. One sage, Rami b. Hama, cited the concept of *Asmakhta* <sup>3</sup> which renders the gambling transaction void and considers the monetary benefits derived from such a transaction robbery. <sup>4</sup> The second view was stated by R. Sheshet. "All such matters do not come under the category of *Asmakhta*. However, the dicers are disqualified since they are not engaged in a constructive occupation." <sup>5</sup>

Two facts emerge. First, that the professional gambler was disqualified for either of the above mentioned reasons. Second, that the occasional gambler and perhaps even the frequent gambler who was also engaged in another profession from which he earned his livelihood were not disqualified. What we call "social gambling" was not considered a violation. <sup>6</sup> On the other hand, the professional or compulsive gambler was always considered a pariah of society. In mid-eleventh century, Joseph Tob-Elem ordered a winner of no less than 30 *dinars* at a game of "nuts" to return his winnings. Winner and loser were placed under the ban because "they forsake life eternal" for "temporary existence and nonsense." <sup>7</sup>

Similarly, Judah the Pious, cautioned: "Do not show pity to the gambler who pleads, 'pity me in order that I may not be shamed and disgraced by him who has won a gulden.' Better he be disgraced and furthermore, be not one who assists a transgressor of sin." <sup>8</sup>

The rabbis and community leaders understood the plight of the compulsive gambler. They recognized his difficulty in controlling his passion for the game. <sup>9</sup> Nevertheless, the au-

## *Gambling in the Synagogue*

thorities did not permit the compulsive gambler to transgress a vow he accepted upon himself in order to curb his appetite for the game. The common practice of taking an oath prohibiting all games of chance usually resulted in a dual violation, that of gambling and breaking an oath. Many rabbis discouraged such oaths, but refused to annul them once taken.<sup>10</sup> Many authorities of the Geonic period<sup>11</sup> and of the Middle Ages accepted this view and ruled accordingly.<sup>12</sup>

The popular yen for gambling led the communities to enact communal restrictions to suppress it. Most communities lifted these restrictions for special days or auspicious occasions. In fact, the numerous exceptions to the restrictions in themselves show how popular gaming was and how difficult it was for the communities to enforce their edicts.

These bans were lifted on days when *Tachanun* was not recited,<sup>13</sup> *i.e.*, days such as Chanukah, Purim, the intermediary days of Passover or Sukkot, on days of the New Moon, etc. However, on major festivals gaming was prohibited except for women and children.<sup>14</sup> The fasts also were days when the communities relaxed their restrictions against gambling. The *takkanot* of Bologna 1416-18 specifically stated: “. . . on fast days, too, one may play cards in order to forget the pain, provided one wagers no more than one *quattrino* at a game per person.”<sup>15</sup> The same reason permitted women in childbirth and those who were sick to engage in gambling activities so that they might distract their minds from pain they might otherwise experience.<sup>16</sup>

Special family occasions also received communal approval for gambling. The entire wedding party was exempt from any restriction and was permitted to indulge in games of chance.<sup>17</sup> The day of a circumcision and the night preceding it, called the *Wachnacht*, were also excluded.<sup>18</sup> Permission was also granted to Jews to engage in gambling activities on Christmas Eve, called *Nittel-nacht*.

However, on days other than these, numerous *takkanot* were enacted to limit gambling practices. Severe penalties accompanied these regulations. Excommunication and flagellation were common penalties for those who transgressed.<sup>19</sup> Fines were usually imposed. At times, transgressors were forbidden to per-

form certain honorary functions in the synagogue or were even excluded from the *minyan*.<sup>20</sup>

A number of conclusions may now be reached. The professional and compulsive gambler was always chastized. He was called a sinner.<sup>21</sup> It was said of him that he forgets God,<sup>22</sup> that the lust for the games robs him and his family of clothing,<sup>23</sup> and that the allurements of games of chance made a happy family life impossible for him.<sup>24</sup> He is unstable and the consequence of his vice will lead him to poverty and starvation.<sup>25</sup> His home will always be filled with arguments, disputes, and strife.<sup>26</sup> It is an ugly, loathsome and abominable habit.<sup>27</sup> The gambler wastes his time<sup>28</sup> and it is the height of moral impurity.<sup>29</sup> One should not even watch the game for although it is called a game it has dire consequences.<sup>30</sup>

The non-professional gambler fared somewhat better. He was not considered a sinner.<sup>31</sup> His vows to curb his gambling were absolved by the rabbis.<sup>32</sup> In fact, many authorities felt it was permissible for the occasional gambler to indulge in these games.<sup>33</sup> Nevertheless, gambling carried with it a stigma. Public opinion looked down upon it and often gamblers indulged in their games in secrecy. Some played out of town. The name *Kartovnick* was a derogatory term that was attached to him who was caught gambling. In Adrianople after a *takkanah* was instituted in 1555 prohibiting all gambling, Jews continued the practice but in secrecy and hiding.<sup>34</sup> The folksong expressed this abhorrence of gambling even on the so-called permitted days.<sup>35</sup> Chanukah was referred to as the New Year for card players.

Despite the efforts of the communities through their rabbinic and secular leaders to stem the tide of gambling, Jews engaged in gambling activities with great frequency. The community enactments against gambling themselves are evidence of the prevalence of this vice.<sup>36</sup>

The rabbis of the Middle Ages recognized the lure of gambling. The feverish temptations were so great that they urged leniency towards those caught up in this dilemma. One scholar urged that all decrees against gambling should be abolished on the grounds that men cannot withstand such temptation.<sup>37</sup> Some

## *Gambling in the Synagogue*

were so enthusiastic in their desire to gamble that they would even sell a Torah Scroll in order to use the money for gambling purposes.<sup>38</sup> Even educators were victims of gambling fever. One tutor was lured with the stipulation that should he gamble he would forfeit his wages. However, when temptation became too much for the tutor and he succumbed to his vice, Meir of Rothenberg ruled in his favor and allowed him to receive his wages.<sup>39</sup>

In 16th century Turkey, one moralist spoke strongly against those "who yearn for the long winter nights and who gather every night to gamble from nightfall to dawn." His examples were taken from actual episodes in lives of Jews of the East. Gamblers lost not only their own money but even the money which they had borrowed. When they were penniless, they fled their cities and wandered from place to place, leaving their wives and families without any means of support and with no one to take pity on them. Others purposely began arguments with their wives in order to establish an excuse to take their wives' clothing and jewelry which they sold in order to pay their debts.<sup>40</sup> Still others did not even bother with such a ruse. They merely stole or forcibly took their wives' belongings and sold them. Inevitably, the result was divorce.<sup>41</sup>

The 16th century collector of curiosities, Tommaso Garzoni told how Leone Ebreo of Mantua once gambled away the garter for his socks. That night he had to look after the curtain of a theatre and he had to hold up his socks with one hand and work the curtain with the other.<sup>42</sup>

One famous legend tells of two yeshivah students who strongly desired to play cards. They fell victim to their desires on the day preceding Yom Kippur (*Erev Yom Kippur*). They wanted to play only for a brief period. They went down into a cellar taking with them a deck of cards and a small candle that would burn no longer than an hour. They intended to play only as long as the candle would give them light.

Thus, they sat in secrecy and played in deep concentration. Sometimes one would win; at other times, his opponent. There they sat, without eating. Hunger was not noticed. All their powers of concentration were centered upon the card game. If

## TRADITION: *A Journal of Orthodox Thought*

one suggested they end their game in order to eat, the other, who was losing at the time, did not allow them to stop.

Absorbed in their game, they did not notice that the night had quickly passed and so had the entire day following and still the small candle continued to burn. The two Yeshiva students thought that the limit of one hour which they had set at the start of the game had not yet ended. After all, the candle was still burning. They were so engrossed in their game that they failed to notice how Satan had trapped them in his net and engulfed them in his evil game. Instead of one hour, the candle had burned for more than twenty-four hours.

When the candle went out, the students emerged from the cellar and saw that night had fallen. "Master of the Universe," called one, "surely they must all be at Kol Nidrei and we played all of *Erev Yom Kippur*. We had not eaten all day and we even missed the *concluding* meal prior to the fast." "We must hurry and go immediately to the synagogue even though we are hungry," said the other, "in order not to miss Kol Nidrei."

When they approached the synagogue, they met groups of Jews coming from there. Their pale and gaunt faces evidenced their having engaged in a day of fasting, prayer, and repentance. Only then did the youths realize that they had played for an entire day and desecrated the Day of Atonement. They had sacrificed the holiest day to Satan's game."<sup>43</sup>

In another version, the legend ends with both youths coming to the synagogue asking the rabbi to find a remedy for the situation. The rabbi advised them to quickly find another seven people who, together with them were willing to initiate a second Yom Kippur and they would begin with Kol Nidrei immediately.<sup>44</sup>

The moralists' constant attacks against gambling gave evidence as to how prevalent the game was and how infectious the fever to gamble could be. In the 17th century, one German moralist complained of the masses who were so removed from the higher things in life that in all their spare time, and even on fast days and during the Penitential period (*Selichot*) they engaged in gambling activities.<sup>45</sup>

It is quite evident that even though there may not have been

## *Gambling in the Synagogue*

a strict prohibition against occasional gambling and even though the rabbis and community leaders recognized the strong temptation the game held for many Jews, still, the overwhelming moral opinions ran against the gambler and against engaging in such activities.

Of great interest are the lotteries run during the 18th and 19th centuries in various European countries. Jews were heavily involved in these. The participation of individuals as well as communities as a whole and the resultant attitudes developed, may shed much light upon our present discussion.

In 18th century Holland there was no prohibition against participating in a lottery. Azulai noted in his travelogue on 26 Sivan 1778 that "the *Parnas* of Rotterdam, R. Moshe Springer, said he won 12,000 gulden in the lottery thanks to the blessing he (Azulai) bestowed upon him the previous winter."<sup>46</sup>

One rabbi ruled in accordance with the decision rendered in the Talmud<sup>47</sup> that he who wins at a lottery should pronounce the blessing *Shehecheyanu*; should one win together with a partner, one must also pronounce the blessing *Hatov ve Hametiv*,<sup>48</sup> It seems hardly likely that blessings of any sort should be required if the winnings are the result of a sinful act. It is doubly emphasized by the choice of blessings expressing joy and praising the goodness of the Almighty in bestowing this "good."

In one of the communities a wealthy man left a will in which he stipulated that the principal of his property belongs to charity but could not be used. On the other hand, the profits earned by this principal were to be divided among the poor on the day of his Yahrzeit. The question arose — to which do the winning of a lottery belong, the principal or profit?<sup>49</sup>

Again, it would be quite unlikely that such questions be discussed should the original winnings be considered the fruits of sin.

In Bresova, Hungary, each year the *kahal* would purchase lottery slips with any money left over in excess of their budget. The members of the *kahal* even inquired if they were able to divide their winnings among the members of *kahal* in proportion to the contributions made or must the winnings go back to the community treasury.<sup>50</sup> It is inconceivable that the *kahal*

## TRADITION: *A Journal of Orthodox Thought*

itself would invest their money in a venture which was outlawed. The *kahal* would not flaunt rabbinic authority in so flagrant a way.

There were many instances of communities and rabbis joining in lotteries,<sup>51</sup> accepting lottery slips as substitutes for annual charity donations.<sup>52</sup> One rabbi went through 20,000 rubles won in a lottery because his salary was so meagre that he had to constantly dip into these winnings. The winning slip had been given to the rabbi as a gift by his sister.<sup>53</sup>

A multitude of responsa cite instances where the winnings of lotteries, cards, dice, or any other game of chance were not considered the fruits of sin.<sup>54</sup> One of the clearest statements was made by R. Benjamin Aaron Slonic who differentiated between gambling for private gain and gambling where the winnings, at least in part, went to charity. He saw no violation in the latter case and demanded full payment of debts to charity incurred by gambling devices.<sup>55</sup> We could go on and on, listing one responsum after another, to substantiate the same thought expressed above.

Let us then summarize our findings. There is no doubt that professional and compulsive gambling is outlawed by Jewish law. Secondly, although legally speaking the occasional gambler does not violate any specific prohibition, still, the overwhelming attitude of the Jewish communities condemned such acts when they were engaged in for private gain. Finally, occasional gambling where part or all of the winnings went to charity certainly did not arouse condemnation and frequently had the approval of the Jewish communities.

### NOTES

1. Mishneh, Sanh. III, 3 — ואלו הן הפסולין המשחק בקוביא . . .  
אלו הן הפסולין המשחק בקוביא . . . זה הכלל כל  
עדות שאין אשה כשירה לה אף הן אינו כשירין לה  
Comp. Mishneh, R. H. I, 8
2. Mishneh, Sanh. III, 3 — א"ר יהודה אמתו בזמן שאין להן אומנות אלא  
הוא אבל יש להן אומנות שלא הוא כשירין

## Gambling in the Synagogue

3. A term denoting a contract wherein each promises to pay the other should a certain condition prevail. The condition, however, is not expected to be fulfilled. Such a promise is not binding since the obligation was assumed with definite hope that the failure to fulfill the condition would render the promise void.

4. *Ibid.* משחק בקוביא מאי קא עביד אמר רמי בר חמא משום דהוה אסמכתא ואסמכתא לא קניא

Comp. Rashi, *ad. loc.* — והוי ליה כעין גזילה בידו

5. Talmud, *ibid.* רב ששת אמר כל כי האי גוונא לאו אסמכתא היא אלא לפי שאין עוסקין ביישובו של עולם

6. Mordecai, Sanh. 689-691 who concurs with the ruling of Jacob of Chinon. נראה דהלכה בר' יהודה אע"ג דרבנן פליגי עליה . . . וא"כ שרי לשחוק בקוביא וכן מצאתי בשיטת ר"י מקינו"ן וז"ל ונראה לפסוק דמשחק בקוביא לא הוי אסמכתא

7. *Hagohat Mordecai*, Sanh. 722-723; comp. with Adret, 25 and Meir of Rothenburg, ed. Bloch, Berlin, 94 p. 30 — . . . הלכך אותן שלשים

דינר שנמל ראובן משמעון ב"ד מוציאין מידו ומחזירין אותן לשמעון ושניהם בני נידוי שמניחין חיי עולם ועוסקין בחיי שעה ודברי תיפלות וגורמין עצמן להיות פסולין להעיד עדות ישראל

8. Judah, the Pious, *Sefer Hasidim*, Berlin, 1026, 1236; Bologna 400.

9. *Shiltei Gibborim* to Mordecai, Sheb. 757 — מצאתי בתום פ' השולח וז"ל אמנם נהג מורי הרי"ף להתיר באנשים קלים פן יכשלו לעבור על שבועתם כי יצר של קוביא גדול מאד לרגילים בו וכן היה אומר רבינו טובי' דכל נדר של קוביא עתה יש להתיר כי כל השונים בו אין יכולים להתאפק ולמשול ברוחם עכ"ל

See also Mordecai *ibid.* 787; Moses Isserles agrees and claims it requires great will power. In their day such was not found. He concludes with the famous statement: "If the early ones are like men, then we are but like donkeys."

10. They based their decision upon the Jerusalem Talmud, *Ned. V, 4*; Comp. *Tosafot*, Gittin 35b; Meir of Rothenburg, *Pesakov* 178; Cr. 124; ed. Cahana 216; Nissim Gerondi, *ad. loc.*; Mordecai, *ad. loc.* 374; Asher 10; *Semak*, *Yom Sheni* 82; Moses Mintz 46; Joseph Caro, *Bet Joseph*, Y. D. 228; Moses Isserles, *Darkei Moshe*, 10; Simon b. Zemah, 404; Joel Sirkis, Y. D. 228; Benjamin Zelb 267, 281.

11. *Teshuvat Geonim Kadmonim*, 340; Adret I, 755; *Hamyahosot*, 252, 281 —

דשחוק בקוביא עבירה היא ואין מתירין נדר לעבירה

12. Israel Bruno, 136; Isaac Lamperonti, *Pachad Yitzchak s.v. cherem*; V. Kurrein, "Kartenspiel u. Spielkarten in Jüdischen Schrifttum," *MGWJ* 1922, Vol. 30, p. 206 ff; *Shiltei Gibborim* to Mordecai Sheb. 757.

13. D. Kaufmann, *Ha-Assif* III, p. 214 cites the *takkanot* of Yeshivat Shalom in Ancona issued on the 19th of Shebat 1589 which permit students of the Yeshiva to gamble on Hanukah; I. Abrahams, "Samuel Portaleone's Proposed Restrictions on Games of Chance," *JQR* (os) Vol. V 1893, pp. 505-515, proposal 4 which doubled the stakes on these days; S. W. Baron, *The Jewish Community* II, 316-17.

## TRADITION: A Journal of Orthodox Thought

14. *Tosafot*, Erub. 104a, 3 — ומיהו אין למחות בנשים ותינוקות דמוטב שיהו שונגין ואל יהו מזידין
- See also, *Semag* 22b; *O. H.* 338:6; *Tosafot*, Beza 12a.
15. L. Finkelstein, *Jewish Self Government*, p. 284, 291.
16. Isaac Lamperonti, *op. cit.*
17. Halberstam, "Takkanot Kadmoniyot," *Graetz Jubelschrift*.
18. D. Kaufmann, *op. cit.* p. 214; Isaac Lamperonti, *op. cit.*
19. *Adret* VII, 244, 270.
20. For a detailed discussion, see the author's articles "The Jewish Attitudes to Gambling," *J.Q.R.*, Vol. LVII, April, 1967, pp. 298-38; "The Individual & Communal Efforts to Curb Gambling," *J.Q.R.*, July, 1967.
21. *Adret*, *Hamyochosot*, 252, 281.
22. *Chemdad Hayamim* II, 73; Jonathan Eyebeshutz, *Yaarot Devash* I, 3a; II, 44b.
23. *Ibid.*
24. I. Rivkind, "Toldot Hamesahek be'Yisroel," *Horeb* I, pp. 82-91.
25. *Yalkut Shimoni*, *Ekev* 847.
26. Leon de Modena, *Sur Mera*, last page.
27. *Barfat* 432.
28. Ibn Zimra 214.
29. L. Finkelstein, *op. cit.* in the *takkanah* of Cremona.
30. Joseph Ibn Kaspi, *Sefer ha-Mussar*.
31. Meir of Rothenburg, ed. Cahana 115.
32. *Ibid.* *Pesakov* 179.
33. Mordecai, *Sanh.* 689-691; Benjamin Slonic, *Maasat Binyamin* 60; M. Trani I, 257.
34. Joshua Zunzin, *Nahlat le'Yehoshua*, 17 — כי היו משחקים בהחבא בננות בחדרים במחבאות בצורים ובמערות והמשחקים היו בכמות רבים ונכבדים . . .
35. I. Rivkind, *Der Kampf gegen Azart shpielen bei Yiden*, p. 29; see also מקור דמעה ש"ם תחנה חדשה עם מעשה אלפס ורב פנינים  
where under it is stated: א תחנה ביי'ן אנצינדען חנוכה ליכט  
אין זאלסט אונדז אויך העלפען האלמען דיא הייליקע טעג הייליק ניט מטמא זיין זיי מיט לצנות אין קארטן-שפילן
- Compare also the explanation offered as to why cards are played on Hanukah with the explanations usually offered for the game "dreidel." See also Sholem Aleichem, *Knorten*.
36. See L. Landman, "The Individual and Communal Efforts to Curb Gambling," *J.Q.R.* July, 1967.
37. Mordecai, *Sheb.* 787; *Gitt.* 374.
38. Joseph Ibn Kaspi, *Chazzozrot Kessef* to Proverbs.
39. Meir of Rothenburg, Cf. 310; I. Agus, *Meir of Rothenburg*, 749; Mordecai Chag., p. 278b.
40. R. Abraham Antivi, *Chachmah u-Musser*, p. 13b ומתוך שדוחקים אותו הבעלי חובות ואין בידו לפרוע מה עושה הולך אצל אשתו ומריב עמה כדי שיקח ממנה מלבושיה ותכשיטיה לפרוע הב"ח שעליו

## Gambling in the Synagogue

41. *Ibid.* — גם לפעמים שרואה שלא נשאר עוד בידו כדי לשחוק ואין מי שילווה אותו גונב תכשיטי אשתו או לוקחם בחזקה ושוחק בהם ומפסידם ומתוך זה יבואו לידי גירושים
- It was a common occurrence that men sold their wives' clothing and their children's belongings in order to stake themselves. See I. Abrahams, "Portaleone," *J.Q.R.* (o.s.), Vol. V, 1893, pp. 505-515, who relates that the purchaser of such clothing was fined one-fifth which he had to give to charity. See prop. 10 —
- ... ואם יתברר שמכר בגדי אשתו או בניו או בנותיו או כלי הבית לצחוק הקונה יחוייב לתת חמישית לקופה של צדקה . . .
42. L. Roth, *The Jews in the Renaissance*, p. 26.
43. The same legend is told concerning many cities. Some believe it to have occurred in Eisenstadt, Burgenland and thereby explain the strict *herem* placed against gambling by R. Meir the author of *Ponim Meiroth* in 1780. The *takkanah* is cited by Wachstein, *Urkunden and Akten zur Geschichte der Juden in Eisenstadt*, pp. 148-9 No. 131; also see, pp. 378-9 No. 259 that Jews were excluded from the *Kahal* because of gambling. Comp. Heinrich Loewe, *Der Jüdische Spieler*, 1930, p. 8, who mentions the prohibition against gambling enacted in Dobzin because of the same legend.
44. I. Rivkind, *Der Kampf gegen Azart Shpielen bei Yiden*, p. 102.
45. Elhanan Kirchen, *Simhat Hanefesh II.*, pp. 16, 18, 21. צדקה צו געבען  
אפילו מחצית השקל איז אים שווער  
אונ' נאך קארטין שפילין זיינין אייפריג זער  
אפילו אם תענית אונ' תשעה באב אונ' סליחות טעגין  
לוזין זיא קארטין שפילין ניט אונטר וועגין
46. Azulai, *Magel Tov Hasholem*, p. 160.
47. Ber. 59b.
48. R. Benjamin David Levin, *Shemen Sasson*, p. 27.
49. R. Leib Brode, *Mezapeh Aryeh*, p. 29.
50. R. Mordecai Leib Winkler, *Lebushei Mordecai*, p. 174 — אם מותר  
לשנותו לדבר רשות כלומר לטול חלק בחלק לכל אשר באו בחברת . . .
51. I. Rivkind, *op. cit.*, pp. 285-7.
52. R. Mordecai Leib Winkler, *op. cit.* 176, dated *Toldoth* 1910.
53. Yitzhak Nissenbaum, *Hadat ve'Hatchiya Halumit*, p. 88, cites the case and names R. Shmuel Mohilever of Bialistok as the rabbi involved.
54. Meir of Rothenburg, ed. Cahana, Vol. II, 115. The case involved the promise of a man to give one *Zakuk* to charity should he continue to gamble. Subsequently, he requested permission to gamble by proxy. R. Meir forbade the proxy to gamble for him since the act of an agent is ascribed to the one in whose behalf he acts. The rule אין שליח לדבר עבירה that the concept of agency has no validity when a sinful act is to be committed is not applied to this situation. The vow against gambling does not apply to the agent. If gambling were considered a sinful act, the conclusion reached by R. Meir would have to be revised.
- שבכל דבר שלוחו של אדם כמותו כיון ששחק בשבילו כאילו שחק הוא בעצמו ונהי נמי דאין שליח לדבר עבירה הא מסיק פ"ק דב"מ י"ב: דה"מ (היכה)

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דשליח בר חיובא הוא אבל היכה דשליח לאו בר חיובא הוא כגון שאמר לו . . .  
וה"נ שליח לאו בר חיובא הוא שאינו נדור שלא לשחוק ומחייב (שולחן)  
Com. L. 211, 212; P. 493; C. 299, 300; A. 269.

. . . ולא דמי — 55. R. Benjamin Aaron Slonic, *Maasat Binyamin*, 60 —  
לאסמכתא דקני בצדקה ואע"ג דכהדיוט לא קני אפ"ה בצדקה שאני דאמירה  
לגבוה היא . . . ובהדיוט הוא דאמרו' הכי אבל בצדקה לא שייך למימר לא  
גמר ומקני דצדקה אינה צריכה קנין רק באמירה בעלמא סגי . . .