

THE CRIMINAL AGENT

"אין שלים לדבר עבירה"

According to Jewish law, a person may appoint a *shaliach* (agent) to act on his behalf in carrying out various tasks. Through an agent one can conduct business (for example buying and selling property and objects), perform many mitzvos (such as circumcision), and could even theoretically (though not advised) get married by means of an agent!

What about performing a transgression on behalf of somebody else? What if someone tells you to do a crime for him and you do it – who is the guilty party? The person who desires and asks that the crime be done, or the one who actually accomplishes the misdeed, or both?

To complicate matters, someone might inadvertently find himself doing a criminal act on behalf of another **without even knowing it**, such as installing stolen software on to a computer on an employer's behalf. Who then is held responsible?

In this session we will delve into a few passages in the Talmud and look into what commentators and contemporary halachic authorities say about an issue that we will discover **can often hit close to home**.

Key Issues:

- When one person orders another to do something wrong – and he goes and does it – who is the guilty party?
- Does it make a difference if the agent does the action reluctantly or willingly?
- What if one person got another to **unknowingly** do something wrong on his behalf? Who then is guilty?
- Are there some transgressions for which we hold the **agent** culpable and others where we hold **the one who ordered him** responsible?

1 - THE CRIMINAL AGENT?

Jewish law recognizes *shelichus* (agency) as a legal means of representing someone else. Person A can request Person B to do an action on Person A's behalf, and Person A is considered as having done it. The following passage is the Talmudic source for this halachic principle:

Source 1. Gemara Kiddushin 41b – Halachah recognizes agency.

A person's agent is considered like himself.	שְׁלִיחוֹ שֶׁל אָדָם כְּמוֹתוֹ.
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The Gemara bases this principle on biblical verses. It applies to a range of different areas of halachah, such as selling and purchasing, divorce, sacrifices, tithes, circumcision (most people don't circumcise their own children, but use an agent – the *mohel* – for performing the mitzvah), and others. An appointed agent, a *shaliach*, can sell on a person's behalf, and the sale is legally binding. A divorce can be executed through an appointed agent, and so on.¹

What about a transgression? What about a crime?

If one asks another to do something wrong on his behalf, is it considered the agents act or does the act relate back to the person who requested it?

Consider the following Mishnah:

Source 2. Mishnah Bava Kamma 59b – Who is liable for damages when someone has another person light a fire?

If one set a fire by placing it in the hand of a deaf-mute, an insane person, or a child, he (the healthy adult) is exempt from liability in a human court (the victim cannot claim damages through the legal system), but he is held responsible by the "Heavenly Court" (the healthy adult has a moral obligation to pay the damages). If (however) he set a fire by sending a healthy adult agent, the agent is liable.	הַשּׂוֹלֵחַ אֶת הַבְּעֵרָה בְּיַד חֵרֵשׁ שׁוֹטֵה וְקֵטָן, פְּטוּר בְּדִינֵי אָדָם. וְחַיֵּב בְּדִינֵי שָׁמַיִם. שְׁלַח בְּיַד פֶּקֶחַ הַפֶּקֶחַ חַיֵּב.
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In the second case of the Mishnah we learn that if a person asks another to light a fire, and the fire damages the property of a third party, the agent is liable. Why should this be; isn't the agent acting on behalf of the one who sent him??

What do you think??

In truth, the Gemara raises this question:

¹ By contrast, certain mitzvot are required to be performed by the individual himself, and an agent *cannot* be appointed on one's behalf to do these mitzvot, such as putting on tefillin, eating matzah, dwelling in a Sukkah or waving a lulav during Sukkos.

Source 3. Kiddushin 42b – The Gemara raises a difficulty in the Mishnah vis-à-vis the principle of agency.

<p>[How can we understand] the Mishnah in Baba Kama 59b that teaches us, “If one set a fire by placing it in the hand of a deaf-mute, an insane person, or a child, he is exempt from liability in the human court but is obligated in the ‘Heavenly Court,’ but if he set a fire by sending a healthy adult agent, the agent is liable”? Why do we rule this way? Should we not say, “A person’s agent is considered as the sender himself,” [and the person who sent him will be liable]?!?</p>	<p>וְהָא דִּתְנִין "הַשּׂוֹלֵחַ אֶת הַבְּעֵרָה בְּיַד חֵרֵשׁ שׁוֹטֵה וְקֵטָן, פְּטוּר בְּדִינֵי אָדָם. וְחַיֵּב בְּדִינֵי שָׁמַיִם. שְׁלַח בְּיַד פֶּקֶחַ הַפֶּקֶחַ חַיֵּב": וְאִמְרֵי? נִימָא שְׁלִיחוֹ שֶׁל אָדָם כְּמוֹתוֹ?</p>
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The question of the Talmud is very clear: Based on the principle of *shelichus*, the act of lighting the fire should be related back to the person who ordered it. Why then is the person who lit the fire (the agent) liable, rather than the person who ordered its lighting?

The Gemara answers this question and establishes a foundational principle:

Source 4. Ibid.

<p>[In general, agency is effective,] but we treat the case of damage differently because “agency is ineffective concerning transgression.” [The reason for this is that] we say (rhetorically, to the one who actually lit the fire), “You heard both the words of the Teacher (G-d, who forbids damaging) and the words of the student (the person who instructed you to do something wrong) – whose words do you listen to?”</p>	<p>שְׂאֵנִי הֵתֵם דְּאִין שְׁלִיחַ לְדַבֵּר עֲבִירָה דְּאִמְרֵינָן דְּבָרֵי הָרַב וְדְבָרֵי תַּלְמִיד דְּבָרֵי מִי שׁוֹמְעִים?</p>
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The Gemara presents us with a foundational principle concerning agency:

**“אין שליח לדבר עבירה”
There’s no such thing as agency concerning a transgression.**

The excuse of "I was only following orders" is not acceptable concerning transgression or wrongdoing.

The **reason** behind this is solid logic: “You were already given prior orders *not* to do that by the Highest Authority. You should not have listened to a human authority, but to G-d who told you not to do it!”

2 – TOTALLY OFF THE HOOK???

Let's clarify: *Is the sender getting off scot-free? Does this principle meant to suggest that someone who ordered a crime or wrongdoing to be perpetrated should not get away unpunished?!*

According to Torah law, the sender is indeed exempt from financial liability. Yet, we cannot ignore the fact that he has helped facilitate another to transgress, at least to some degree. Perhaps², therefore, this is included in the biblical instruction of "do not place a stumbling block before the blind":

Source 5. Vayikra 19:14 – Do not place a stumbling block before the blind.

You should not curse a deaf man nor place a stumbling block before a blind man, and you should fear your God – I am God.	לֹא תִקְלַל חֵרֵשׁ וְלִפְנֵי עִוֵּר לֹא תִתֵּן מְכַשֵּׁל וְיִרְאֵת מֵאֱלֹהֶיךָ אֲנִי ה'.
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According to the Oral tradition, this verse teaches that we must not cause others to trip up in a metaphorical sense. The Rambam summarizes this aspect of the mitzvah:

Source 6. Sefer HaMitzvos of the Rambam, Negative Commandment #299

The Sages also explained that this prohibition includes someone who aids a person in sinning or brings him to do so by blinding him with desire, so that he is considered visionless. He ensnares him and assists him in completing the sin, or prepares the cause of the sin.	וְלֹא זֶה אָמְרוּ שֶׁהוּא כּוֹלֵל גַּם כּוֹן מִי שֶׁיַּעֲזוֹר עַל עֲבִירָה אוֹ יִסְבֵּב אוֹתָהּ כִּי הוּא יָבִיא הָאִישׁ הַהוּא שֶׁעוֹנֶה תַּאֲנוּתוֹ עֵין שְׂכָלוֹ וְחִזֹּר עוֹר וְיִפְתְּהוּ וְיַעֲזֹרְהוּ לְהִשְׁלִים עֲבִירָתוֹ אוֹ יִכִּין לוֹ סִבַּת הָעֲבִירָה.
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The Meiri, in his commentary on the Gemara's discussion of murder through an agent, thus cautions:

Source 7. Meiri Kiddushin 43a – One who sends an agent to sin is an accessory to a crime.

Even though agency is not effective in areas of sin, one must nonetheless avoid causing another to stray. For a sin that one causes is referred to as his own.	אִף עַל פִּי שְׂאִין שְׁלִיחַ בְּדַבַּר עֲבִירָה מְכַל מְקוֹם רְאוּי לְהִזְהַר שְׁלֵא לְגָרוֹם תִּקְלָה שְׂכָל הַגּוֹרֵם תִּקְלָה נִקְרָאת הִיא עַל שְׁמוֹ
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The Beis Yosef³ goes a step further and writes that although the sender is not punishable by a human court, he *is* liable in the Heavenly Court – “חייב בידי שמים”.

Someone who orders others to commit a crime does **not** “get off scot-free”! True, the **human** the human court only punishes the actual sinner, but Jewish law relies on the **Heavenly** Court to mete out ultimate justice. And the Beis Yosef goes further and concludes that in Heaven's eyes the sender himself has done damage! The human court only punishes the first-degree sinner, but the facilitator of sin and crime is dealt with by G-d.

² הסתפק בזה מו"ר הרה"ג ר' שלמה מילר שליט"א, והסביר דבלאו של לפני עור יש ב' חלקים (חורן מנתינת עצה שאינו הוגנת) א' לאפשר את המצב של העבירה כגון להושיט כוס יין לנזיר, וב' לעורר את הרצון של השני לעבור כמו"ד לגבי מכה את בנו הגדול [מו"ק יז.], ואכן בענינו לגבי החלק הראשון הרי כבר הגדירו חז"ל דזה שייך רק בכגון ב' עברא דנהרא וזה לא שייך הכא, אבל לגבי החלק השני דהיינו לעורר את הרצון של העובר הרי יש לפלפל בנידון דידן לגבי השליח אם זה דומה, והשאייר הוא שליט"א את זה בצ"ע.

³ Bedek Habayis, Yoreh De'ah 157

3 – THE UNKNOWING CRIMINAL AGENT

Let's take things a step further. Question:

What about an agent who is unaware that they are performing a transgression?

The sages do indeed deal with this issue, but some background information is necessary. To help determine the liability of an "unknowing" criminal agent, we will examine an unusual example of agency discussed in the Gemara: a courtyard ("חצר").

In a number of areas of halachah, a person's property (*chatzer* in Talmudic parlance, meaning a "courtyard") can act on his behalf – for instance, a person can acquire an item by having it placed on his property. This is called a "*kinyan chatzer*".

The Talmudic Sages ask an important conceptual question about *how* this acquisition works: Is a *chatzer* an extension of the person himself (so that the person directly acquires the object), or does the *chatzer* serve as his "agent" (and acquires the object on his behalf)??

(A *chatzer*, of course, is a completely unknowing agent, and we can thus extrapolate from the concept of its function as an agent to the nature and liability of a human but unknowing agent)

As it turns out, this question is in fact of point of contention between two Talmudic-sages in Bava Metzia 10b, Reish Lakish & R' Yochanan. This having been established, the Gemara raises a serious difficulty with the approach that sees a *chatzer* as an agent:

Source 8. Bava Metzia 10b – How can a "courtyard" be considered an agent?

<p>Is it possible to view the courtyard mechanism as agency? Do we not learn in the following Baraisa: “<i>In his hand</i>’ (Shemos 22:3) – a stolen object is found in the thief’s hand – if the Torah had not written anything else I would assume that the Torah liability refers only to theft by means of the thief’s hand; what if he stole by means of his courtyard, roof, or storage area? The Torah therefore adds the words, ‘If it is found found,’ (Ibid.), teaching us that he is liable in any circumstance”</p>	<p>מי איכא מאן דאמר חצר משום שליחות איתרבא? והתנא: "בגידו" (שמות כב:ג) אין לי אלא ידו, גגו חצרו וקרפיפו מנין? תלמוד לומר "המצא תמצא" (שמות כב:ג) מקל מקום.</p>
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There are many ways of stealing, one of them being locking somebody else’s property in one’s own “courtyard.” Imagine that someone’s dog wanders onto Bob’s estate through an open gate and Bob locks the gate behind it, stealing and adopting the dog as his own. His courtyard facilitated the theft – all *he* did was lock the door!

But now there’s a problem, as the Gemara continues:

Source 9. Ibid. – How can one steal through a courtyard-agent?

<p>But if you take the position that one's property is viewed as an agent, it emerges that we find a case in which one commits a crime [of theft] by means of an agent! Do we not hold that "Agency is not applicable concerning transgressions"?</p>	<p>וְאִי סֵלְקָא דְעֵתְמָהּ חֲצָר מְשֻׁם שְׁלִיחוֹת אִיתְרַבְּאֵי אִם כּוֹן מְצִינּוּ שְׁלִיחַ לְדַבֵּר עֲבִירָה, וְקִימָא לָן אִין שְׁלִיחַ לְדַבֵּר עֲבִירָה!?!</p>
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Based on the understanding that a person's *chatzer* functions as his agent, we appear to run into trouble with the principle אין שליח לדבר עבירה – there is no agency concerning transgression. If agency doesn't work for transgressions, how can a person steal by means of his courtyard-agent!?!

- To Summarize the problem:
1. One's property functions as his **agent**.
 2. When one's yard helps him steal, **he** is liable for the theft.
 3. Agency is **not** recognized for crimes.

The Gemara cites two resolutions:

Source 10. Ibid. – Ravina's answer

<p>Ravina says: Where does the principle "Agency is not applicable concerning transgressions" apply? It applies where the agent is prohibited from performing the crime. However, in stealing by means of a courtyard, which (as an inanimate object!) is not obligated in mitzvos, the person who sent it (ie the person who locked the gate, thereby "sending" his courtyard to steal the item) <i>is</i> liable.</p>	<p>אָמַר רַבִּינָא הֵיכָא אֲמַרִּינָן דְּאִין שְׁלִיחַ לְדַבֵּר עֲבִירָה הֵיכָא דְּשְׁלִיחַ בֵּר חֵיבָא הוּא אַבְל בְּחֲצָר דְּלָאוּ בֵּר חֵיבָא הוּא מִיחֵיב שׁוֹלְחֵהּ.</p>
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The first answer is that *criminal agency applies where the agent is not obligated in the relevant mitzvah*. The logic behind this is solid: given that the whole reason we say "there's no agency for transgressions" is because of "you should've listened to The Master!", here, where the *chatzer* is not 'obligated' to listen to anyone, this reason simply does not apply!

Source 11. Bava Metzia 10b – Rav Sama's answer

<p>Rav Sama says: Where does the principle "Agency is not applicable concerning transgressions" apply? It applies where the agent had the option to do it or not to do it. Concerning theft by means of a courtyard, which has no choice in the matter and is forced to be an accomplice to the crime, the one who sent him is liable.</p>	<p>רַב סָמָא אָמַר: הֵיכָא אֲמַרִּינָן אִין שְׁלִיחַ לְדַבֵּר עֲבִירָה, הֵיכָא דְּאִין בְּעֵי עֲבִיד וְאִין בְּעֵי לֹא עֲבִיד. אַבְל חֲצָר דְּבַעַל כְּרַחֲמֵיהּ מוֹתִיב בָּהּ מִיחֵיב שׁוֹלְחֵהּ.</p>
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The second qualification is that *criminal agency applies where the agent has no choice in the matter of carrying out the agency*.

The logic behind this is similarly solid: given that the whole reason we say "there's no agency for transgressions" is because of "you should've listened to The Master!", here, where the *chatzer* does not have 'options' of how to behave, this reason simply does not apply!

What difference emerges from these 2 opinions?
 (“למאי נפקא מינה”)

The Gemara proceeds:

Source 12. Ibid

<p>What (practical difference) is between them? (For example) a Kohen who tells a regular-Jew “go, betroth to me a women who is a divorcee”, alternatively, a man who tells a woman “cut off the <i>peyos</i> of a young boy”: According to the opinion who holds that the matter is dependent on the agent having the capacity to choose, so too here the agent has the ability to choose, and, therefore, the sender is absolved of responsibility. But, according to the opinion that the matter is dependent on whether or not the agent is himself obligated (in the particular transgression at hand), here, the agent is not obligated, and, therefore, the sender is responsible.</p>	<p>מאי בינייהו איכא בינייהו פהן דאמר ליה לישאל צא וקדש לי אשה גרושה אי נמי איש דאמר לה לאשה אקפי לי קטן להך לישנא דאמר פל היכא דאי בעי עביד אי בעי לא עביד לא מיחייב שולחו ה"נ אי בעי עביד אי בעי לא עביד לא מיחייב שולחו להך לישנא דאמרת פל היכא דשליח לאו בר חיובא מיחייב שולחו הני נמי פין דלאו פני חיובא נינהו מיחייב שולחו</p>
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Next Step: Bringing it on home!

We're now armed with the information necessary to handle the question regarding the case of a human yet unknowing criminal agent:

- Seemingly, the unknowing agent also "has no choice in the matter" (because he is unaware of the transgression).
- On the other hand, the agent *differs* from a courtyard in that a courtyard does not fall under the prohibition whatsoever, whereas an agent does.

Tosafos relates directly to this question. The Gemara (Bava Kama 79a) mentions a case in which a scheming borrower deviously pays back a loan. He tells the lender to take a sheep in payment. However, unbeknownst to the lender, the sheep does not actually belong to the borrower! The Mishnah makes it clear that the *borrower* is considered a thief when the *lender* takes the sheep. Tosafos asks why we do not apply the rule that agency does not apply to transgressions, and this is their answer:

Source 13. Tosafos Bava Kamma 79a (ד"ה נתנו)

<p>According to both approaches concerning why we do not recognize criminal agency; either because the agent himself is obligated (to obey G-d)...or because the agents capacity to choose is the operative factor, the principle is not applicable here. In general we say criminal agency is not applicable because the person ordering the crime does not know if the agent will commit the sin or not. In this situation (where the agent did not know any sin was involved) the sender knows that the agent will transgress, because the agent is under the misimpression that the animal belongs to the sender.</p>	<p>ובין ללישנא דמפרש בפירק קמא דבבא מציעא (דף י: ושם) טעמא דאין שליח לדבר עבירה משום דשליח בר חיובא הוא ... ובין ללישנא דאי בעי עביד אי בעי לא עביד אין שיעור לכאן דהתם אין יודע שהשליח יעבור אבל פאן יודע הוא שיקח מאחר שהוא סבור שהוא שלו.</p>
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According to the Tosafot, *an unknowing agent is not liable for the crime*, and the person sending him is: There **is** agency for transgressions, when the agent is unaware of the transgression.

The logic is quite reasonable, as Tosafos explains: The reason why there is no agency by a transgression is, as we said earlier “דְּבָרֵי הָרֵב וְדְבָרֵי תַלְמִיד דְּבָרֵי מִי שׁוֹמְעִים?” – the sender theoretically says ‘hey, I didn’t actually think you were going to go ahead with this!’. This reasoning, however, simply does not apply in the case of an unknowing agent, and, therefore, the sender is at fault!

Another Example:

Source 14. Machaneh Efraim, Laws of Property Damage 7

Levi told Shimon to break Reuven’s vessels, and he broke them because he thought they belonged to Levi – who told him to break them. Which one of them is liable to pay? It seems that Shimon is definitely exempt because he did not know that they belonged to Reuven...But regarding Levi, who told him to break them, it would at first seem that this case is the subject of a dispute (over whether agency applies where the agent does not know he is doing a crime)...However, when we delve deeper into this case, it is possible that everyone will agree⁴ that Levi must compensate. This is **not** based on agency, meaning that Shimon serves as Levi’s agent. Rather, it is because it is as if Levi broke them himself. Since Shimon did not know (they belonged to Reuven), when Levi told him to break them, it is a case of *bari hezeka*, where **damage will clearly take place** (and he is liable to pay).

וּמִי שֶׁאָמַר לְחַבְרוֹ לְשִׁבּוֹר כְּלִים שֶׁל רְאוּבֵן וְשִׁבְרָם מִחֶמֶת שֶׁהָיָה סְבוּר שֶׁהֵם מִשְׁנִיָּהֶם חַיִּיב לְשַׁלֵּם. נִרְאֶה דְּשִׁמְעוֹן וְדַאי פְּטוּר כִּינּוֹן שֶׁלֹּא הָיָה יוֹדֵעַ שֶׁהָיוּ שֶׁל רְאוּבֵן ... אֲבָל לְוִי שֶׁאָמַר לוֹ לְשִׁבְרָם אֵי חַיִּיב נִרְאֶה לְכַאוֹרָה דְּבִמְחֻלּוֹקֶת שְׁנוּי ... אֲבָל כִּד דְּיִיקִינּוֹן בְּהַ אֶפְשֶׁר דְּהִקְא כּוּלֵי עֲלֵמָא מוֹדוּ שְׁלֵוִי חַיִּיב וְלֹא מִשּׁוּם שְׁלִיחוֹת וְלוֹמַר דְּשִׁמְעוֹן שֶׁשִׁבְרָם שְׁלוּחוֹ הָוֵי, אֲלֵא טַעֲמָא הָוֵי מִשּׁוּם דְּחֻשְׁבֵיב לְוִי כְּאֵלוֹ שִׁבְרָם הוּא שְׁכִינּוֹן דְּשִׁמְעוֹן לֹא הָוֵה יָדַע כִּי אָמַר לוֹ לְוִי לְשִׁבְרָם הָרִי זֶה בְּרִיא הִזְקָא.

Where somebody makes use of somebody else as a tool – just as a person might use a hammer to cause damage – the sender is most certainly culpable. Such cases are known as *bari hezeka* ("certain damage"). This term refers to circumstances where the fact that the agent is unknowing of the relevant crime creates a situation whereby the crime will be performed instantly and with certainty.

Under such circumstances, where the resultant action is immediate and certain, **there is no need for the construction of agency to find the sender liable**. He has simply used a human tool for his criminal intentions, and he alone is liable for the results.

⁴ There is a dissenting approach from the Tosafos (13), which is brought by the Shach in Choshen Mishpat 348:6, based on a Ritva on Kiddushin 42b. The Machen Efraim’s point here is that in this particular case, even this dissenting opinion would agree that the ‘sender’ is responsible. (Delving into the specifics of this opinion is beyond the scope of this session).

Practical Scenario's

1 – “My Boss Asked Me to Install This Software”

Shari recently got a job in IT at Shodeid Studios, a mid-sized web-design company. Soon after she came on board, she noticed that the number of programs installed on their computers did not correspond with the number of licenses they hold. She also found some questionable CDs, which appeared to be illegal copies, in a drawer in the office. She voiced some of her concerns to the bookkeeper but was not satisfied with the vague answers she received. In another hushed conversation, a co-worker sardonically commented that the boss is from the “one disk for the world” generation. Shari, having spent four years as a developer, is sensitive to copyright law, and now has found herself feeling trapped in a setting of...piracy.

One day Shari was fixing the computer belonging to the boss, Mr. Balin. While Shari was working, the boss pulled out a flash drive and asked her, “Can you please install the graphics software on my, Vince’s and Joe’s computers? My son got a copy at his company, and he let me borrow it.”

Shari said nothing at the moment but realized that she has a serious moral dilemma on her hands.

Can Shari perform her boss's request and install software she knows is pirated? Is the following position defensible: “I would not do this myself, but in this case my boss is really the one doing it”?

2 – “Slash my boss’s tire...”

Zeke was still bitter about getting fired from his job at MTX International, and was determined to get back at his former boss Rex, who, in his eyes, wronged him. Unfortunately, Zeke’s unhealthy and immoral side came to the fore, leading him to recruit two neighborhood ruffians – Mazik and Mashchis – to slash his boss’s tires (promising them tickets to an upcoming World Cup soccer game). Due to their unprofessional, sloppy work, they were caught in the act. Rex is sure that Zeke is behind it and claims \$2436, the cost of replacing all four tires of his 2016 Bentley Continental GT.

Zeke claims that because Mazik and Mashchis actually caused the damage, they should pay. Mazik and Mashchit, who have few assets, claim: “We were only following orders!” and that Zeke, who commissioned them, should pay. Zeke’s response: “No way! Who says you have to do everything I say? You did it, not me!” *Who is responsible?*

3 – Mrs. Heist and the Two Innocent “Criminals”

Mrs. Heist was a boutique antique importer in New York City, mostly dealing in English antiques. She cultivated a friendship with two college-aged women who stopped by her shop periodically. She spoke about antiques, and they listened wide-eyed.

One day Mrs. Heist made the students an attractive offer. She said a client in London had a collection of rare antique clothes that she wanted to purchase, but due to their importance and value, she wanted them transported in protective garment bags taken as carry-ons by couriers she knew would take care of them. Would the students be interested in a four-day trip to London and on the return, each take a garment bag? The women happily accepted the offer. After the return flight from London to NYC, they were met by three customs agents, who took them aside and asked them to open their garment bags. To their surprise and horror, the customs officers cut open the padded garment bags and revealed tightly packed plastic containers full of ecstasy pills!

What the United States government will do to them remains to be seen, but *what do you think about the culpability of an unwitting drug courier?*