

OVERVIEW of the Daf

1) The status of a disputed גט

R' Huna and R' Chisda dispute the status of a גט about which the husband and a third party disagree whether the גט was given to the third party as a deposit or for the purpose of divorce.

Each Amora explains the rationale behind his position.

R' Huna's position is unsuccessfully challenged.

Our Mishnah is cited as a challenge to R' Chisda's position that the third party should be believed.

Rabbah adds a qualification to R' Huna's position.

The Gemara challenges Rabbah's qualification and thus forces him to revise his qualification to R' Huna's position.

2) A lost גט

R' Yochanan rules that if a husband, a third party and the wife testify that a גט was given to the wife but it is lost they are not believed since the principals cannot testify to change the status of a married woman.

The Gemara explains why the third party and the husband are not believed.

Two perspectives are suggested that would allow us to consider this woman divorced but they are both rejected.

3) MISHNAH: The Mishnah discusses who has the right to accept the גט of a נערה and the age at which a minor can be divorced.

4) Clarifying the dispute between Tanna Kamma and R' Yehudah

The point of dispute between Tanna Kamma and R' Yehudah is identified.

5) Divorcing a minor

A Baraisa presents the guidelines for determining whether a minor is old enough to be divorced.

R' Yochanan suggests an explanation for the last ruling of the Baraisa.

This explanation is rejected and R' Huna bar Manoach in the name of R' Acha the son of R' Ika offers an alternative explanation.

6) The capacity of a minor to acquire possessions

R' Yehudah in the name of R' Assi cites two stages of development, one when a minor can acquire property for himself and the second when he can acquire property for others.

Shmuel commented that these two stages are one which R' Chisda explained to mean that in both cases the child may only acquire possessions for himself.

R' Chinana of Vardan challenges R' Chisda's assertion that a child may not acquire property on behalf of others.

The Gemara answers the challenge and R' Chisda notes that R' Chinana of Vardan was silent which leads the Gemara to inquire how he could have responded to the Gemara's resolution of his challenge to R' Chisda's ruling. ■

Distinctive INSIGHT

The woman's claim that the husband divorced her

ולהימנה לדידה מדרב המנונא, דאמר רב המנונא האשה שאמרה לבעלה גירשתני נאמנת, חזקה אין האשה מעיזה פניה בפני בעלה

Rav Hamnuna taught that a woman is believed when she claims to her husband that he divorced her. The reason is that we have a rule that a woman would not have the audacity to say to her husband that she is divorced unless it was true. The Rishonim discuss the nature of this halacha. Is the woman absolutely allowed to remarry based upon her claim (לכתחילה), or do we say that we have some degree of doubt in this case, and she should not remarry, but only if she already remarried (בדיעבד) she need not leave the second husband?

Rambam (Ishus 4:13) writes that the woman may go and remarry, while Ra'aved contends that this rule is only בדיעבד and it is only if she already remarried may she remain with the second husband.

Rashba and Ran bring a proof from our Gemara that the opinion of Rambam is correct. Rav Yochanan had said that if there is a question whether a גט was sent by the husband via a messenger and received by the wife, we cannot resolve the uncertainty without two valid witnesses. The Gemara questions this statement from a rule of Rav Yitzchok that we rely upon an assumption that a messenger fulfills his mission, even without relying upon two witnesses. The Gemara responds that the rule of Rav Yitzchok may be valid only to be strict, and in a case where the husband sent him to betroth a wife for him, the husband is prohibited from marrying until he determines which woman was betrothed. However, perhaps the rule of Rav Yitzchok is not to be applied for leniency, where we indeed need two witnesses.

The Gemara then continues to ask against Rav Yochanan from the law of Rav Hamnuna, where a woman is believed outright when she claims that she is divorced. Rashba and Ran note that if the law of Rav Hamnuna is only applied בדיעבד, again this would be a case of acting לחומרא, but to enable the woman to marry לכתחילה we would require the testimony of two witnesses as Rav Yochanan holds. We see, therefore, that the Gemara held that she may remarry based upon her own assertion, even לכתחילה, and even without two witnesses. ■

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HALACHAH Highlight

Who Redeems a child who is an adult?

ושאינה יודעת לשמור את גיטה

And if she does not know how to take care of her גט

Beis Yosef¹ cites a dispute between Rashba and Rivash concerning the question of who has the right to do the mitzvah of pidyon haben if a father did not perform the mitzvah while his son was a minor. Rashba maintains that the mitzvah still belongs to the father, whereas Rivash holds that once the child becomes an adult the father no longer has the obligation to redeem his son. It was once suggested² that the rationale behind Rivash's position is that the mitzvah of pidyon haben is an obligation that rests upon the child but since the child is unable to do the mitzvah by himself the Torah appoints his father to do the mitzvah on the child's behalf. However, once the child becomes an adult and can perform the mitzvah himself the father loses the right to do the mitzvah. Chasam Sofer³ challenged this approach based on the principle of agency that one is unable to appoint an agent to perform a task that he himself may not perform - כל דאיהו לא מצוי עביד לא מצוי לשויי שליח. Even though it is the Torah that appoints the father as the agent, nonetheless, he must still conform to the parameters of agency. Proof to this principle is found in the Gemara Kidushin (23b) that argues that kohanim serving in the Beis Hamikdash must be agents of Hashem because if they were agents of the people how could they offer korbanos when we could not offer them ourselves. This would violate the principle that one may not appoint an agent to perform a task that could not be performed by the principal. This clearly demonstrates that

REVIEW and Remember

1. What is the point of dispute between R' Huna and R' Chisda?

2. Why did agents tear the גט after it was delivered?

3. What is the issue debated by Rabanan and R' Yehudah?

4. What are the two stages of development related to acquisitions identified by R' Yehudah in the name of R' Assi?

even if an agent is appointed by the Torah it must still conform to the parameters of agency.

Teshuvos Avnei Tzedek⁴ cites our Tosafos⁵ as precedent to the fact that a minor can have an agent act on his behalf even though the child could not perform the task himself. Tosafos writes that if a girl is too young to accept a גט on her own the גט can be given to her father who acts as her agent to accept the גט. This clearly demonstrates that it is possible for an adult to act as an agent for a child even in a case where the child is unable to perform that task personally. Teshuvos Avnei Tzedek then suggests another explanation for the principle of כל דאיהו לא מצוי עביד וכו' ■

1. בי"י יו"ד סי' ש"ה.
2. מובא דבריו בשו"ת חת"ס יו"ד סי' רצ"ג.
3. שו"ת חת"ס הנ"ל.
4. שו"ת אבני צדק יו"ד סי' קכ"ב.
5. תוס' גיטין ס"ד: ד"ה וכל. ■

STORIES Off the Daf

A Strategy

"בעל אומר לפקדון ושליש אומר לגירושין..."

Years ago, in much of the world, the only people who had a right to make a living comfortably and safely were non-Jews. Jews were prohibited from owning land and often had to pay a high tax simply for the right to live. Higher education was virtually impossible for a Jew to attain and rights for Jews were virtually non-existent. The crushing poverty often drove people to go to wild lengths to try and make ends meet. Some people could not stand the pressure and converted. Aside from the many monetary benefits, one felt as though he never needed to worry about

being banished or killed for who he is ever again.

This phenomenon was rare but it did happen, especially to ignorant Jews who didn't understand the magnitude of what they were giving up. One aspect of the fallout from their defection was how difficult it was to procure a valid divorce for their wives. Often they refused to divorce out of spite. Some didn't bother out of indifference. Either way, it could be hard or impossible to force a meshumad to divorce.

One such meshumad finally agreed to divorce his wife. The problem was that she didn't live close to his city and the only messengers available were very expensive. The distraught wife couldn't possibly afford the price but also couldn't travel to receive the document. Meanwhile, the

Rav who had convinced the meshumad to give the divorce in the first place was afraid that he would have a change of heart. He conceived of an idea: why not suggest to the meshumad that he give the document to a messenger to await his wife's convenience? She could then come and take it anytime. But this Rav was afraid that there might be a halachic objection to this plan, so he consulted with the Shavus Yaakov, zt"l.

The Shvus Yaakov replied, "I cannot think of any possible reason to prohibit this. Sadly, we have also had to pursue such a strategy in a few similar cases here in Prague. On Gittin 64 we find clearly that one may give a גט to a third party to divorce his wife..."¹ ■

1. שו"ת שבות יעקב, חלק ג' סימן קלב