

OVERVIEW of the Daf

1) A deaf-mute divorcing

R' Kanaha in the name of Rav teaches that a deaf-mute who can communicate in writing can instruct agents to write and deliver a גט to his wife.

R' Yosef claims that this teaching is unnecessary since it could be derived from the Mishnah.

R' Zeira demonstrates that one who is mute is different since he is considered mentally competent.

The sources for the meaning of the terms חרש and אלם are identified.

R' Zeira presents a challenge to Rav's ruling.

Abaye answers this challenge.

Two unsuccessful challenges to Rav's ruling are recorded.

A challenge to Rav's ruling is presented.

The Gemara is forced to recognize that there is a dispute whether writing is proof to mental competence.

The position of R' Shimon ben Gamliel in the Baraisa is unsuccessfully challenged.

Two explanations were given to defend R' Shimon ben Gamliel but the Gemara concludes that the second explanation can be refuted and the first explanation is more reliable.

R' Yochanan asserts that R' Shimon ben Gamliel's colleagues disagree with him and maintain that writing does not demonstrate mental competence.

Abaye suggests proof to this assertion but it is refuted by R' Pappa in two different ways.

2) MISHNAH: The Mishnah teaches that the husband rather than an agent must instruct the scribe to write the גט and the witnesses to sign on that גט.

3) Clarifying the Mishnah

The Gemara draws an inference from the Mishnah that indicates that had the husband used the right language it would be possible for an agent to instruct the scribe and witnesses to perform their jobs. This leads the Gemara to conclude that the Mishnah reflects R' Meir's opinion that words can be transferred to an agent.

An unsuccessful challenge to this assertion is presented.

Abaye offers a second resolution to this assertion that the Mishnah follows R' Meir.

This explanation is successfully challenged and alternative explanations are suggested and rejected. ■

Today's Daf Digest is dedicated
 By Mr. and Mrs. Michael Allen
 In loving memory of their father
 יעקב בן יוסף ע"ה

Gemara GEM

The legal status of one who can speak but cannot hear

מדבר ואינו שומע זהו חרש

The Poskim discuss the halachic status of a person who can speak but cannot hear.

Rambam writes (Hilchos Mechira, 29:2) that a person who speaks but cannot hear is not considered competent to buy and sell land. The Pri Chadash (E.H. 120;#5) understands that the opinion of Rambam is that one who speaks but cannot hear is also unqualified to give a גט to his wife. ר"ן writes that one who can speak but not hear is legally fully qualified, and he can divorce his wife if we can test him and determine that he understands the consequences of his actions. This is done by using three different tests to prove the clarity of his mind. Beis Yosef goes so far as to say that this deaf person is competent and may divorce his wife even without being tested.

Maggid Mishnah (Hilchos Mechira, ibid.) questions how Rambam would explain our Gemara. The Baraisa states that one who speaks but cannot hear is considered to be fully competent, while Rambam rules that he is incompetent. Beis Yosef (C.M. 235:18) explains that although the Baraisa states that a person who can either speak or hear is fully competent, the Baraisa should not be understood unqualified. In fact, another Baraisa notes that one who cannot speak must be tested before his actions have any legal significance. Similarly, one who can speak but not hear is actually a חרש and is not considered competent, except in regard to the specific areas in which the Baraisa states that he is qualified (through testing, as indicated).

Another answer Beis Yosef gives is that Rambam learns that the Baraisa which deems one who speaks but does not hear as competent is only dealing in a case where he can hear, but with difficulty. This person is competent, as opposed to one who cannot hear at all. ■

REVIEW and Remember

1. Is a deaf-mute mentally incompetent?
2. How does someone who was born deaf communicate that he wants to marry?
3. How did R' Yochanan know that R' Shimon ben Gamliel's colleagues disagreed with him?
4. What is the dispute between R' Meir and R' Yosi?

HALACHAH Highlight

Is writing the same as speaking

אם לא יגיד פרט לאלם

"If he does not speak out," to exclude one who is mute

Teshuvos Chavos Yair¹ writes that if someone makes a vow or an oath in writing, he is bound by what he wrote. Similarly, a person who writes a false oath (שבועת שקר) is obligated to offer the offering that is brought for taking an oath that is a lie. He cites as proof to this principle our Gemara that excludes someone who is mute from giving testimony. The exposition is from the word "מפיהם—from their words," from which we infer that testimony is only acceptable if it is transmitted by their words but not when it is transmitted in writing – מפיהם ולא מפי כתבם. The implication of this exposition is that it is specifically in the context of testimony that the Torah teaches that writing is not the same as orally transmitting the testimony but in other contexts where there is no exposition it would seem that we would treat speaking and writing the same. Taz² disagrees with this conclusion and writes that once the Torah teaches in the context of testimony that writing is not the same as speaking we apply

this principle to all other areas of halacha as well.

Teshuvos Shev Yaakov³ agrees with Taz that writing is not the same as speaking but asserts that the source is not the exposition about testimony because there is a different reason why it is necessary for the Torah to emphasize that written testimony is not acceptable. One may have thought that since testimony only involves transmitting what occurred in the past rather than doing something new (e.g. taking an oath in writing) perhaps writing should be sufficient. Thus the Torah teaches that written testimony is not accepted. Tumim⁴ suggests another reason why the Torah was compelled to teach that written testimony is not accepted, even though as a general rule writing is not the same speaking. Since the Torah allows a document to be used for the purpose of betrothal or divorce one may think that other types of testimony are also acceptable in writing. To dispel this notion the Torah emphasizes that testimony must be transmitted orally rather than in writing. ■

1. שו"ת חוות יאיר סי' קצ"ד.
2. ט"ז או"ח סי' מ"ז סק"ב.
3. שו"ת שב יעקב יו"ד סי' מ"ט.
4. תומים סי' צ"ו סק"ה. ■

STORIES Off the Daf

The unspoken oath

"אמאי הא יכול להגיד מתוך הכתב..."

There was once a man who borrowed a large sum of money hoping to turn around his failing business. Sadly, it was not enough. So the man borrowed from a number of different sources to keep afloat. Finally, his business went bankrupt and he was forced to sell off his property to pay back what he could of the loans. The unfortunate man owned no land. The only thing they could collect from him was what little goods and money remained to him. When creditors collect goods and money, it

makes no difference when they lent him the money; each has equal rights even when there is not enough to cover of all the loans, as in this case.

The creditors went to beis din and were told that they all needed to swear to each other that they had not received payment for their debt at some earlier time. One of the creditors was mute, so the question arose as to what they should do. Presumably he could not swear, yet the halachah is that one must.

The beis din was flummoxed and decided to consult with the Shvus Yaakov, zt"l. "This is no problem at all," he responded. "Although a mute cannot say the words of an oath, he can nod his head after someone else says the oath for him since this is as if

he had said amen. Another option is for him to make an oath in writing.

"The proof to this is found in Gitin 71. There we find that the verse, "If he will not testify," teaches that a mute may not testify. The gemara asks why he can't testify by writing. Rashi and Tosafos both explain that this teaching excludes the mute from having to bring a sacrifice for having falsely affirmed the testimony of another by nodding. The obvious question here is why don't they say simply that we learn that an oath on paper is not a valid oath? The answer is that the verse only teaches that a mute cannot testify...because his oath is indeed valid." ¹ ■

1. שו"ת שבות יעקב, חלק א', סימן קנ"ו