

13 Adar I 5776  
Feb. 22, 2016



Gittin Daf 71

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Daf Notes is currently being dedicated to the neshamot of

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May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

### ***Deaf-mute Divorcing***

Rav Kahana said in the name of Rav: If a deaf-mute (*who married a woman before he became deaf*) can communicate his meaning by writing, a *get* may be written and given to his wife.

Rav Yosef asked: What is the novelty of this teaching? We have learned in our *Mishna*: If a man became mute, and they said to him, “Shall we write a *get* for your wife?” and he nodded his head, they test him three times: If he said “no” for no, and “yes” for yes, they write the *get* and give it.?

Rabbi Zeira replied to him: You have quoted a ruling regarding a mute! A mute is different (*than a deaf-mute*), as it has been taught in a *braisa*: One who can speak but cannot hear is called a *cheresh*, and one who can hear but cannot speak is called an *eleim*, and both are considered to be in possession of their faculties for all purposes. [*Rav was adding that we would write a get even for a deaf-mute, providing that he wrote his instructions to us; this could not have been derived from the Mishna, which was only discussing a mute.*]

Rabbi Zeira asked on Rav: it was taught in a *braisa*: *If he does not tell*: This excludes a mute who cannot tell (*he would not be liable to bring a chatas offering for swearing falsely (by nodding in agreement) that he does not know anything regarding the case*). Now, according to Rav, why should this be? Isn’t he able to testify by writing?

Abaye replied to him: You are speaking of testimony, and testimony comes under a different rule, because it is written in the Torah: *Out of their mouths*. Their testimony must come from their mouths, but not out of their writing.

The *Gemora* asks on Abaye from the following *braisa*: In the same way we test a mute in connection with a *get*, so too, we test him in connection with business transactions, with testimony, and with inheritances. Now the *braisa* mentions testimony here!?

Rav Yosef bar Manyumi said in the name of Rav Sheishes: This applies only to the testimony regarding the death of a woman’s husband, with which the Rabbis were lenient.

The *Gemora* asks: But it also says inheritances!?

Rav Avahu said: It refers to the inheritance of his eldest son. [*The father, who is a mute, wants that his firstborn son should only receive a single share of his property; he is tested to see if he is competent enough to accomplish this.*]

The *Gemora* asks: But it also says business transactions, and this presumably means anyone’s?

The *Gemora* answers: No! It refers only to his own.

The *Gemora* asks on Rav from the following *braisa*: The directions of a deaf-mute given by gestures, by lip-movements, and by communicating through writing are

to be followed only in regard to the transfer of movables, but not with respect of a *get*!?

The *Gemora* answers that it is indeed a dispute between the *Tannaim*, as it has been taught in a *braisa*: Rabban Shimon ben Gamliel says: This is the case only with one who was a deaf-mute from the outset, but if he was originally competent and became a deaf-mute after marriage, he can write a *get* for himself and others can sign it.

The *Gemora* asks: Is it true that one who was always a deaf-mute cannot divorce his wife? But we learned in a *Mishna*: Just as a deaf-mute married her through head and hand motioning, so too, he may send her away by head and hand motioning!?

The *Gemora* answers: If the *braisa* would be discussing the deaf-mute's wife, then he may divorce her in this manner (for the *kiddushin* was effective only *Rabbinically*). However, Rabban Shimon ben Gamliel is discussing a case where he is divorcing his *yevamah* (and since the marriage is *Biblically* valid, he cannot divorce her through hand motioning).

The *Gemora* explains the case: The competent brother married her (which was *Biblically* valid), and then he died childless (in which case, the deaf-mute's *yibum* will be *Biblically* recognized, for *yibum* is effective even if the *yavam* cohabits with the *yevamah* unintentionally).

Alternatively, he can be speaking about a case where the deceased brother was also a deaf-mute (in which case the *yibum* will only be *Rabbinically* recognized). However, the Rabbis decreed that the *yavam* may not divorce her through gesturing, for people might confuse her with a *yevamah* who was married to a competent man (in which case, he would not be empowered to divorce her).

The *Gemora* asks: Do we in fact make such a decree? But we learned in a *Mishna*: If there were two deaf-mute brothers who married either two competent sisters, or two deaf-mute sisters, or to two sisters, one was competent and one was a deaf-mute; and also if two deaf-mute sisters were married either to two competent brothers, two deaf-mute brothers, or to two brothers, one was competent and one was a deaf-mute, they are all exempt from *yibum* and *chalitzah* (in the event that one of the husband's die). [Since either the brothers or the sisters were both deaf-mutes, their *kiddushin* is recognized in a similar vein; either by *Biblical* law, or by *Rabbinic* law. There cannot be a *yibum* in these cases because the *yevamah* is an *ervah*.] If the wives were not related, they can do *yibum* (*chalitzah* cannot be done because one of them will not be able to recite the necessary verses), and if they want to subsequently divorce them, they can (and we do not decree that this case can be confused with a case of a competent woman)!?

Rather, the *Gemora* concludes that the first answer is the correct one.

Rabbi Yochanan said: The *Tanna Kamma* disagrees with Rabban Shimon ben Gamliel. [He is not explaining the *Tanna Kamma's* opinion, but rather, he is arguing. The *Tanna Kamma* holds that a deaf-mute cannot divorce his wife, even through writing.]

Abaye said: We have learned like this in the following *Mishna*: If the wife became deranged, he may not divorce her. If he became a deaf-mute, or he became deranged, he may never divorce her. Seemingly, this would indicate that he can never divorce her, even if communicates through writing!

Rav Pappa said: If not for Rabbi Yochanan, I would have said that Rabban Shimon ben Gamliel was explaining the opinion of the *Tanna Kamma*. And when the *Mishna* said

that one who became a deaf-mute can never divorce her, it meant that he cannot divorce her even if we see that he is sharp (*however, if he can write, he may then divorce her*).

Alternatively, the *Mishna* could be referring to Rabbi Yitzchak's ruling. For Rabbi Yitzchak said: According to the Biblical law, a deranged woman may be divorced, since her case is similar to that of a mentally competent woman who may be divorced without her consent. What then is the reason why it was stated that she may not be divorced? It is in order that people should not act immorally with her. (71a – 71b)

### ***Mishna***

If people asked a man, "should we write a *get* for your wife?" and he said, "Write," if they told a scribe to write it and he wrote it, and they told witnesses to sign it and they did; even though they wrote it and signed it and gave it to the man, and he subsequently gave it to his wife, the *get* is invalid until the husband tells the scribe to write it and the witnesses to sign it. (71b)

### ***Passing on to Other Agents***

The *Gemora* infers from the *Mishna* that if the husband would have said, "Give it," they would have been able to give the *get* (*for when he only says to write the get, the husband is embarrassed and does not want anyone else involved, however, if he tells three people to give the get, he is appointing them to be a Beis Din and they can designate others to write and deliver the get*).

The *Gemora* notes that this is following the opinion of Rabbi Meir who holds that verbal instructions may be passed on to another agent (*for if they would have been told to give the get, they would be able to tell others to write the get*).

The *Gemora* notes a contradiction with the final ruling of the *Mishna*, which states: The *get* is invalid until the husband tells the scribe to write it and the witnesses to sign it. This would seem to follow the opinion of Rabbi Yosi who holds that verbal instructions may not be passed over to another agent. Is the beginning of the *Mishna* according to Rabbi Meir, and the end of the *Mishna* following Rabbi Yosi's opinion?

The *Gemora* answers: Yes, it is.

Alternatively, Abaye answers: The entire *Mishna* reflects Rabbi Meir's opinion, and the last ruling of the *Mishna* is dealing with a case where the husband did not say to give the *get*. [*Since the husband told them to write the get, they are not able to tell others to write it and sign it.*]

The *Gemora* asks: If so, the *Mishna* should have said that the *get* is invalid until the husband says to give it?

Rather, the *Gemora* answers that the *Mishna* is dealing with a case where the husband did not say to three people (*and even Rabbi Meir admits that if the husband told two people, they cannot tell a scribe to write it, and they cannot tell others to sign it*).

The *Gemora* asks: If so, the *Mishna* should have said that the *get* is invalid until the husband says to three people?

Rather, the *Gemora* answers that the entire *Mishna* reflects Rabbi Yosi's opinion, and the *Mishna* is dealing with a case where the husband did not tell the agents to tell others to write the *get*.

The *Gemora* asks: If so, the *Mishna* should have said that the *get* is invalid until the husband tells the agents to tell others to write the *get*?

And furthermore, does Rabbi Yosi truly admit in such a case? But we learned in the following *Mishna*: If a *get*

contains the scribe's writing and the signature of one witness, it is valid.

Rabbi Yirmiyah said: The *Mishna* means that the scribe signed on the *get*. And Rav Chisda said that this *Mishna* is following the opinion of Rabbi Yosi, who holds that verbal instructions cannot be passed on to another agent. [Consequently, we can safely assume that the scribe was designated to sign by the husband himself, and there is no fear that the agent told him to do so on his own authority, so as not to offend the scribe.] Now, if Rabbi Yosi admits in a case where the husband said, "Tell the scribe to write it," that the *get* would still be valid, the following disaster could occur: Sometimes, a husband will say to two people, "Tell the scribe to write a *get* and So-and-so and So-and-so to sign," and out of fear of offending the scribe (that he is unacceptable as a witness), they will agree that one of them should sign and the scribe with him, which is not what the husband said!? [The *Mishna* did not forbid the scribe from signing a *get*; evidently, Rabbi Yosi holds that the agents cannot appoint the scribe to sign on the *get* even if the husband instructed them to do so.]

Rather, it is clear that the beginning of the *Mishna* is according to Rabbi Meir, and the end of the *Mishna* is following Rabbi Yosi's opinion. (71b – 72a)

### INSIGHTS TO THE DAF

#### FROM THEIR MOUTHS AND NOT FROM THEIR WRITING

The *Gemora* states that testimony is valid only from the mouths of the witnesses, not on the basis of any documents. It is evident that writing is not the same as talking.

The *Gemora* Chagigah (10b) cites Shmuel who states that one who resolves to make a vow must express the vow with his lips; otherwise, it is meaningless.

The *Noda b'Yehudah* (Y"D I: 66) inquires if an oath that was written down but not expressed would be valid as an

oath. His underlying question is: Do we regard his written word as an expression of his lips?

This should be dependent on a dispute between the Rambam and Rabbeinu Tam regarding the validity of testimony from a written document. The Rambam maintains that testimony must be from the mouth of the witnesses and a document will not be Biblically acceptable for testimony. Rabbeinu Tam disagrees and holds that one who is physically capable of testifying may testify through the means of a document. He concludes, however, that even the Rambam would agree that writing is considered testimony and yet, a written document cannot be accepted by Beis Din. The logic for this is as follows: An act of writing can constitute speech, but only during the time that it is being written. Beis Din will only accept an oral testimony when they hear it directly; hearsay is disqualified. Witnesses who signed a document are testifying, but Beis Din is not present at that time. If they would sign in front of Beis Din, that would be considered valid testimony.

With this principle, you can answer what would seemingly be a contradiction in the Rambam. He rules in *Hilchos Eidus* (3:7) that testimony must be from the mouth of the witnesses and a document will not be Biblically acceptable for testimony; yet later in *Perek 9:11*, he writes that one is required to testify with his mouth or at least that he is fitting to testify with his mouth. This would imply that if he is fitting to testify with his mouth, he would be permitted to testify through the means of a document. According to the *Noda b'Yehudah's* explanation, it can be said that the Rambam allows witnesses to testify through the means of a document, but only if they sign the document when Beis Din is present. Accordingly, we can say that an oath taken through writing will be binding.

Reb Akiva Eiger discusses some other practical applications for this principle.