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Yevamos Daf 113

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Daf Notes is currently being dedicated to the neshamah of

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May the studying of the Daf Notes be a zechus for his neshamah and may his soul find peace in Gan Eden and be bound up in the Bond of life

The *Gemora* asks: Why did the Rabbis allow a minor girl (*who is married to a Kohen*) to eat Rabbinical *terumah*, but they did not give this allowance to a deaf woman? (*The Gemora proves from a Mishnah that this distinction is indeed correct.*) for it was taught in a Mishnah: Rabbi Yochanan ben Gudgada testified about a female deaf-mute whose father gave her in marriage (*which constitutes a Biblically valid marriage*), that she goes out with a *get* (*since the woman’s consent is not necessary by a get*). He also testified regarding an orphaned minor girl, the daughter of a *Yisroel*, who married a *Kohen* (*after her father died, either by her mother or her brothers, which is Rabbinically valid*), that she is permitted to eat (*Rabbinic*) *terumah*, whereas a deaf-mute woman does not eat *terumah*!?

The *Gemora* answers: This is a preventive measure against the possibility that a deaf man might feed a deaf woman [with such *terumah*].

Well, let him feed her, [since she is only in the same position] as a minor who eats *neveilah*¹ - It is a preventive measure against the possibility that a deaf husband might feed his mentally competent wife with *terumah*.

The *Gemora* asks: Why don’t we allow a deaf husband to feed his wife with Rabbinical *terumah*?

The *Gemora* answers: A preventive measure was made against the possibility of his feeding her with Biblical *terumah* (*and this is not a concern by a minor girl*). (113a1 – 113a2)

The *Gemora* asks: Why did the Rabbis institute that a minor girl is entitled to her *kesuvah*, but a deaf woman is not?

The *Gemora* answers: If the husbands would be obligated in the *kesuvah* payments, they would not marry the deaf women in the first place.

And from where do we know that a minor is entitled to her *kesuvah*? For it was taught in a *Mishnah*: A minor girl who has refused her husband (*A girl whose father had died could be given in marriage while still a minor (under the age of twelve) by her mother or older brother. This marriage is only valid Rabbinically. As long as she has not attained the age of twelve, she may nullify the marriage by refusing to live with her husband. This act of refusal, referred to as mi’un nullifies the marriage retroactively.*); a woman who is a secondary *ervah* (*Rabbinically forbidden to marry this man*); and the *aylonis* (*a woman incapable of procreating*) do not have a right to a *kesuvah* payment, but they do go out with a bill of divorce, whereas a minor does have a right to a *kesuvah*.

And from where do we know that a deaf woman does not *get* a *kesuvah*? For it was taught in a *Baraisa*: If a man who was deaf or an imbecile married women of sound senses [the latter], even though the deaf man recovered his faculties or the imbecile regained his intelligence, have no claim whatsoever on [either of] them. But if [the men] wished to retain them [the latter] are entitled to a *kesuvah* of the value of a *maneh*. If, however, a man of sound senses

¹ Neither he nor she is subject to any punishment for the eating of forbidden food,

married a woman who was deaf or an imbecile, her *kesuvah* is valid, even if he undertook in writing to give her a hundred maneh, since he himself had consented to suffer the loss. The reason, then, is because he himself consented; had he not consented, however, she would receive no *kesuvah*, since otherwise, men would abstain from marrying her.

The *Gemora* asks: If we are concerned that the men will not marry deaf women, and that is why the Rabbis instituted that the deaf women do not receive a *kesuvah*, then, the Rabbis should have instituted a *kesuvah* for a competent woman who marries a deaf man, for otherwise, she would not marry him?

The *Gemora* answers: A woman's desire to be married is stronger than the man's desire to marry; it was not necessary to entitle her to a *kesuvah*; she would marry anyways.

A deaf man once lived in the neighborhood of Rav Malkiyo. Rav Malkiyo allowed him to take a wife to whom he had assigned in writing a *kesuvah* worth four hundred *zuz* out of his estate. Rava remarked: Who is so wise as R. Malkiyo who is indeed a great man. He held the view: Had the deaf man wished to have a maid to serve him, would we not have allowed one to be bought for him? How much more, so, should his desire be fulfilled here where there are two reasons for complying with his request (*marriage and service*)! (113a2 – 113a3)

Rav Chiya bar Ashi said in the name of Shmuel: One is not liable to bring an *asham taluy* (*the offering which is to be brought by one who is in doubt as to the transgression committed*) for cohabiting with a deaf man's wife. (*Apparently, Shmuel maintains that she is definitely not Biblically married to him. The alternative would be that we are uncertain if a deaf man is mentally competent or not.*)

The *Gemora* shows support for this ruling from the following *Mishnah* (Terumos 1,1): There are five people who should not separate *terumah*, and if they did separate *terumah*, it is

not valid. The five are the following: A deaf person, an imbecile, a minor, one who separates *terumah* from produce that is not his and if an idolater separates *terumah* from produce belonging to a Jew, even if he had permission. (*It emerges from the Mishnah that a deaf man is definitely not competent, for if we were uncertain regarding his mental capacity, the terumah that was separated should be prohibited and another separation would be required.*)

The *Gemora* deflects the proof: Perhaps Shmuel rules in accordance with Rabbi Elozar regarding *terumah*, for it was taught in a *braisa*: Rabbi Yitzchak said in the name of Rabbi Elozar: The *terumah* which was separated by a deaf man should not be recognized as unconsecrated because we are uncertain regarding the competence of a deaf man, and perhaps the *terumah* is indeed valid.

The *Gemora* asks: If Shmuel follows Rabbi Elozar's viewpoint, then, one who cohabits with a deaf man's wife should in fact be liable to bring an *asham taluy*?

The *Gemora* answers: One is liable for an *asham taluy* only when the offense is similar to that of eating one of two available pieces of meat (*one of which was definitely forbidden and the other definitely permitted, and it is unknown whether a person ate the one or the other; only in such a case, where the doubt is due to the existence of two objects, is an ashram taluy incurred. Similarly in the case of cohabiting with one of two women, when it is unknown whether the woman affected was his own wife or a forbidden stranger, an ashram taluy is incurred. If the doubt, however, relates to one object, it being unknown, for instance, whether a piece of fat one has eaten was of the permitted or forbidden kind, no ashram taluy is involved. Similarly, in the case of the deaf man's marriage, where the doubt relates to one woman, it being uncertain whether she has the status of a married woman or not, no ashram taluy is incurred.*)

The *Gemora* cites another version: Rav Chiya bar Ashi said in the name of Shmuel: One is liable to bring an *asham taluy* (*the offering which is to be brought by one who is in doubt as*

to the transgression committed) for cohabiting with a deaf man's wife.

The *Gemora* challenges Shmuel from the *Mishnah* in Terumos cited above.

The *Gemora* answers: Shmuel holds like Rabbi Elozar (*we are uncertain regarding the mental competence of a deaf man*). (113a3 – 113a4)

Rav Ashi inquired: What is Rabbi Elozar's reason? Is he positive that the mind of a deaf man is weak but in doubt whether that mind is clear or not clear, though in either case, his mental capacity is always in the same condition? Or, is it possible that he has no doubt that the deaf man's mind is weak and that it is not clear, but his uncertainty is due to the following: It is the nature of the deaf man to be sometimes in a normal state and sometimes in a state of imbecility?

The *Gemora* asks: In what respect would this constitute any practical difference?

The *Gemora* answers: In respect of releasing his wife by a letter of divorce. If you would maintain that his mind is always in the same condition, his divorce would have the same validity as his betrothal. If, however, you assert that sometimes he is in a normal state and sometimes he is in a state of imbecility, he would indeed be capable of betrothal; however, he would not be capable of giving a divorce.

What then is the decision? The issue remains unresolved. (113a4 – 113b1)

The *Mishnah* had stated: If she became insane etc.

Rabbi Yitzchak stated: According to the Biblical law, an imbecile 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? In order that people should not act immorally with her.

The *Gemora* analyzes the case that Rabbi Yitzchak was referring to. The *Gemora* asks: What kind of imbecile is he referring to? If it be suggested that it is one who is capable of taking care of her letter of divorce and who is also capable of taking care of herself, would people act immorally with her? If, however, she is one who is unable to take care either of her letter of divorce or of herself, how could it be said that in accordance with the Biblical law, she may be divorced? Surely, it was stated at the Beis Medrash of Rabbi Yannai: *And give it in her hand* (Devarim 24:1) means that one may give a letter of divorce only to a woman who is capable of accepting her divorce, but an imbecile is excluded since she is incapable of accepting her divorce? And furthermore, it was taught at the Beis Medrash of Rabbi Yishmael: *And he sent her out of his house* means that only one who, when he sends her out, does not return, but an imbecile is excluded since she returns even if he sends her out?

The *Gemora* answers: Rabbi Yitzchak is discussing a woman who is capable of preserving her letter of divorce but is unable to take proper care of herself. Hence, in accordance with the Biblical law, such an imbecile may well be divorced for, surely, she is capable of preserving her letter of divorce; the Rabbis, however, ruled that she shall not be dismissed in order that people should not act immorally with her.

Abaye remarked: This² may also be supported by deduction. For in respect of her it was stated: If she became insane he may not divorce her, while in respect of him [the statement was]: He may never divorce her. In what respect [it may be asked] does he differ [from her] that the statement [concerning him] is 'never' while in respect of her 'never' is not mentioned? The inference, then, must be that the one is Biblical, the other Rabbinical. (113b1 – 113b2)

² That the divorce of an imbecile is only Rabbinically forbidden but Biblically permitted.

The Mishnah had stated: Rabbi Yochanan ben Nuri asked etc. The question was raised: Was Rabbi Yochanan ben Nuri certain [of the law concerning] the man³ and his question related to that of the woman, or is it possible that he was certain concerning that of the woman⁴ and his question related to that of the man? — Come and hear: Since they answered him: A man who gives a divorce is not like a woman who is divorced. for while a woman may be divorced with her consent as well as without it, a man can give a divorce only with his full consent, it may be inferred that his question related to the man. On the contrary; since they said to him: The other also is in a similar position, it may be inferred that his question related to the woman! — But [the fact is this]: Rabbi Yochanan ben Nuri was addressing [them in the light] of their own statement. ‘According to my view’, [he argued], ‘as well as a man is incapable of giving a divorce, so also is a woman incapable of receiving a divorce; but according to your view, why should there be a difference between a man and a woman?’⁵ [To this] they replied: A man who gives a divorce is not like a woman who is divorced. (113b2)

The Mishnah had stated: Rabbi Yochanan . . . testified etc.

Rava stated: From the testimony of Rabbi Yochanan ben Gudgada [it may be inferred that if a husband] said to witnesses, ‘See this letter of divorce which I am giving [to my wife]’, and to her he said, ‘Take this promissory note’, she is nevertheless divorced. For didn’t Rabbi Yochanan ben Gudgada imply that [the woman’s] consent was not required? Here also, then, her consent is not required. Isn’t this obvious! — It might have been assumed that since he said to her, ‘Take this promissory note’ he has thereby cancelled [the letter of divorce], hence we were taught [that it remains valid, for] had he in fact cancelled it, he would have made his statement to the witnesses. Since, however, he did not make the statement to the witnesses he did not cancel it at all; and the only reason why he made that statement to her was to conceal [his] shame. (113b3)

³ That if he was deaf he may not divorce his wife.

⁴ That if she was deaf she may be divorced.

INSIGHTS TO THE DAF

DEFINING A SHOTAH

Generally the understanding of a "*shoteh*" in the entire Torah as one who is exempt from mitzvos is classified by the Gemora in Chagiga 3b as someone who may have a high IQ but does crazy things.

Reb Moshe (Even Haezer 1:120) has an elaborate and controversial teshuva explaining that if he does one of the crazy acts mentioned, we assume he is a *shoteh* until proven otherwise, but if we can prove otherwise, then he is no longer considered a *shoteh* (but he points out that the Rambam implies that we consider him a *shoteh* even if he is crazy in only one thing and nothing else, he is still exempt from mitzvos- but R' Moshe then issues a novel ruling that regarding giving a get, so long as he understands the issues, it is valid).

A man who has *shoteh* status cannot divorce his wife since he needs to be mentally competent, but a woman can be divorced against her will and therefore the *Gemora* says she can receive a get Biblically. However, the Torah requires that in order to receive a 'get', she must: 1. Be able to watch her get, which means to distinguish between the get and something else (Gittin 64b). 2. She must have enough understanding about the concept of divorce that she does not return to her husband’s house. The *Gemora* concludes that even one who is a *shoteh* for everything else, can have enough da'as to distinguish between a get and something else, and realize that she must not return. But, since people will take advantage of her and act immorally with her, Chazal do not allow him to divorce her.

Tosafos and Rashi argue about a girl who is unable to distinguish between her get and something else, and will also continue to return after the divorce, whether the father

⁵ Why shouldn’t a deaf man also be allowed to divorce his wife?

can receive the get for her. Tosafos seems to understand that the father preventing her from returning qualifies, implying that it is a practical consideration that she must be someone who will not return, rather than being an issue of da'as. Rashi seems to understand that the father preventing her from returning isn't sufficient since it is a da'as requirement and she is still missing the da'as. It is interesting to note that according to Tosafos, a woman who is sometimes a *shoteh* and sometimes healthy, can receive a get at a time where she has enough intellect not to return, even though she is likely to once again become a *shoteh* and return to her husband's house (v'dok).

Reb Moshe (Y.D. 4:29 and Even Haezer 1:164) makes a very important distinction between a *shoteh* and someone with a very low IQ, implying that many mentally retarded people do not halachically qualify as a *shoteh*. I think his approach is very meduyak in the *Gemora* and Rashi on the bottom of 113a that a low level intellect which thinks clearly and straight (rather than 'krum' qualifies as sufficient da'as). (Reb Avi Lebovitz; Heoras al HaDaf)

DAILY MASHAL

On today's daf we find that a *shotah* cannot be divorced from her husband because she keeps on returning to him. The Chidushei HaRim, zt"l, learned a powerful lesson from this principle. Just as the שוטה cannot be divorced, so too one remains "married" to spirituality as long as he "keeps coming back" by acting as a ben Aliyah would despite his shortcomings. One is only divorced from spirituality when one gives up on spiritual ascent because of his flaws.

Daf Digest relates: A young bochur once came to Rav Wolbe, zt"l, feeling very confused and frustrated. He said, "I don't know what to do with myself! Sometimes I feel very drawn to spiritual matters like learning with a fire and davening. At other times I act in ways not befitting a ben Torah. What is my avodah worth if I keep falling into the same spiritual morasses?" The Mashgiach replied, "Your feelings are the result of a simple fact: as long as one is young, one finds in

himself various contradictions. On the one hand, you may be very drawn to spiritual matters. You have a taste in davening and can literally pour out your heart to Hashem. You may feel an incredibly intrinsic identification with the Torah that you learn. On the other hand, you also might enjoy joking around and making fun of things with friends. The Mashgiach continued, "So what should you do? Just because you enjoy joking around and sometimes even wander into the realm of leitzanus, is that an excuse not to daven with kavanah? Surely this path only leads to complete estrangement from spiritual growth! Quite the contrary—since you notice this flaw in yourself and this bothers you, this should be a reason to exert yourself all the more to daven with a geshmack and seek spiritual growth in any way you can! In time you will be drawn more and more after spiritual elevation until you outgrow your spiritual immaturity altogether." The Mashgiach concluded, "Until then you must learn to bear the unflattering assessment of your peers and even consent to be the brunt of their jokes. If you persevere, however, you will overcome your weaknesses and flourish!"