



לע"נ ברוך בענדיט וברכה גרוס ע"ה  
by Mr. & Mrs. Duvy Gross

# The Hakuk Edition English Topics on the Daf

*Dedicated V'refuah sheleima for Yaakov ben Victoria*

By Rabbi Mordechai Papoff

THE SIXTH PEREK OF YEVAMOS IS DEDICATED:

לע"נ גרשון בן החבר מרדכי



YEVAMOS DAF 53 IS DEDICATED:

L'Zecher Nishmas Yaakov Zev ben Baruch Leibish

## Yevamos Daf 53

### Making a Condition in Chalitza

Rav Ashi says the dispute between Rebbi and the Chachomim is whether a stipulation is effective in chalitza. Ravina explains them as both holding that a tenai works, but differing in one aspect within.

The problem with both options is that a later Beraisa clearly states that it does not take effect! The rule is that an Amora (Sage of the Talmud) cannot argue with a Tanna (author of Mishnayos and Beraisos), so how could our Gemara suggest a position conflicting with the Beraisa?

Rashi writes that Rav Ashi and Ravina understand the Tannaim in

our Mishnah as arguing on that Beraisa.

Tosfos is evidently not satisfied with this, and instead makes a differentiation. The chalitza will be effective even if the condition isn't fulfilled to permit her to marry other men, but if they do maamar afterwards it would still take effect. The zikah is not fully removed by such a "chalitza pesulah."

To elaborate on why a tenai does not work in chalitza, the Gemara in Kesubos (74a) says it's because one of the prerequisites of tenaim is lacking. All halachos of tenaim are derived from the episode in the

Torah in which Moshe Rabbeinu stipulated with the tribes of Gad and Reuven that they must cross over the Yarden and fight with the rest of Klal Yisroel to conquer Eretz Yisroel. Otherwise, they would not be granted their request to acquire the territories on the eastern bank of the Yarden. Chazal examined those pesukim and composed the laws of tenaim from them. One of them is that a tenai is valid only if it could be carried out by a shaliach. By chalitza, however, it is not possible to send an emissary to do it, so no tenai can apply to it.

That chalitza must be done only by the yovom is because he needs to remove the yevama's shoe and carry out the rest of the halachos involved (Rosh on daf 106). But Tosfos (in Kesubos) wonders, what is the logic that shlichus must be possible? After all, not every detail of tenaim is derived from the Torah's story – for instance, a tenai can be valid even for things other than land. So why is this aspect mandatory? Tosfos explains that the ability to make a shaliach displays control over the acquisition in question; one can delegate it to others. If so, he can also make any condition he wants to control its veracity, as well.

Not every halachic effect lend itself to a tenai, though. Rav Elchonon Wasserman (Kovetz Hearos Siman 76) identifies two categories of activities. Certain things are dependent upon one's intention, like kiddushin or gerushin. The husband decides if they should take effect. On the other hand, some are automatically valid even without particular kavana – for example, shechita.

He lists off many ramifications of these two classifications, the first being if a tenai works. Kiddushin can be done with a tenai, and if it is not fulfilled the kiddushin isn't valid. But one cannot say he's slaughtering an animal subject to a certain condition! It is a shechita no matter what he says. Another difference is if one wants to set a kinyan in motion to be effective at a later date. Only if it's of a nature that requires his input is this feasible. However, you can't slaughter an animal with the declaration that it will not take effect until next week.

What about chalitza? Rav Elchonon argues that since the Gemara (in Kesubos) has to debate whether a tenai works and bring proof from its lack of shelichus, it must be that it

falls into the first category. If it is like shechita, it goes without saying that no tenai could be applied!

A fascinating application of this sugya relates to sefiras ha'omer. The Shulchan Aruch (O.C. 489:2-3) rules that it must be done at night; if one counted by accident during the day he must count again at night (with a bracha). Then he adds that if someone is davening maariv with a minyan before shkiyah he counts along with them (without a bracha), and then counts again at night with a bracha.

The Magen Avraham records the tumult of the Rishonim and Acharonim about how and why he would count during the day and then again with a bracha. Was he yotzei the first time? Then he can't make a bracha on the second counting! If he was not yotzei the first time, why bother counting then?

The Magen Avraham offers an original resolution: he counts with the tzibbur with a tenai that if he remembers to count again when it gets dark, he will not have been yotzei the first time, and can thus make a bracha. If he doesn't remember, he will rely on the lenient

opinions which allow counting before nightfall.

Many poskim take issue with this reasoning. As we said from the Gemara, if something cannot be done with a shaliach, a tenai can't be made on it. You can't have someone else count sefiras ha'omer for you, so how can you make a tenai in it?

The Oneg Yom Tov (O.C. 3) argues with the Magen Avraham because of this. The tenai isn't effective and he will have been yotzei already. He refers us to the Taz who offers that he counts with the tzibbur just so they won't suspect him of refusing to count the Omer!

Others defend him with reasons why the standard rules of tenaim don't apply here. Some explain with the logic of Tosfos we mentioned, that shelichus demonstrates control. Sefiras ha'omer is a mitzvah which by essence must be done by each person, so the lack of shelichus doesn't show less control. Or, it's something private, *bein odom laMakom*, so the rules aren't relevant. And some say mitzvos which are merely an utterance are excluded (see Devar Yaakov on Kesubos 74). Indeed, the Mishnah Berurah cites his tenai.

