



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

# *The Hakuk Edition* **English Topics on the Daf**

*Dedicated l'refuah sheleima for Yaakov ben Victoria*

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## ***Yevamos Daf 104***

A cheresh or chareshes cannot do chalitza, we learn in our Mishnah. Why not? The Gemara at first assumes it's because they lack the requisite daas, but ends off that the problem is they cannot read the pesukim required for chalitza. Even though one who omits the recital is still yotzei, he must be capable of doing it, at least.

Why does the Gemara need to say this chiddush? Why can't we stay with the first explanation, that they lack daas, a concept found throughout Shas? And as we have previously learnt, chalitza must be done with kavana?

Tosfos answers that Beis Din can instruct them in the correct procedures, and that suffices for kavana. He bases it on a similar sugya in Gittin. A get must be written "lishmoh," having in mind the husband and wife using it, and if Beis Din monitors the cheresh and guides him as he writes, it is valid.

This is not the entire picture, though. Rav Chaim Brisker asks that in many other areas of halacha this does not suffice for kavana! In order to give a get or execute kiddushin, Beis Din cannot

replace the daas lacking in cherashim. Why is chalitza different?

The same applies to a kattan, a minor performing chalitza. On the next daf there's a machlokes about it, and the only reason he wouldn't be able to do it is a possuk. Why should a kattan's chalitza have any more potency than anything else?

There's a fundamental difference in their mechanisms. Certain activities are direct results of the executor, like monetary acquisitions and kiddushin. The person must have daas, and he can control its implementation. Kovetz Hearos (76) elaborates – he can make conditions in them, such as when they will take effect, or make them dependent on something else. One can give kiddushin and stipulate that it will take effect in a month. A purchase may be qualified to depend on an external factor.

On the other hand, some other things are effected by an action and the effect is automatic. An example is shechita. We can't have in mind any conditions governing its validity; no matter what, it

takes effect! We do not control its outcome.

Kiddushin and gittin are direct accomplishments of the ones doing them; daas is necessary. Chalitzta, however, is merely generated by the parties involved, and the halachic implications follow by themselves. That is why Beis Din's intentions suffice. Since the halachic effects are not directly governed by the yavam and yevama, they do not need the daas that is necessary for direct actions (Hilchos Chalitzta Ch. 4).

We mentioned the Chacham Tzvi (Siman 1) on daf 102, that the kavana required by chalitzta is that of a kinyan, a halachic acquisition. Thus, he explains the Tosfos with the rule in kinyanim of "daas acheres makneh," that another person can employ his will and rights to create a kinyan for someone else. So too, Beis Din can infuse the chalitzta with their daas even for a kattan or cheresh.

The Rashba takes a different track to address Tosfos' question. Indeed, they do not have daas – and that is enough to invalidate their chalitzta! In actuality, the reason of not being able to read is necessary only for ilaim and ilemes, mutes.

Another outlook is the Ritva's. Usually cheresh is grouped with kattan and shoteh (mentally handicapped). Yet, our Mishnah discusses only cheresh and kattan? It must be, the Ritva says, that this cheresh is not the standard one found elsewhere. The Mishnah in Terumos (1:2) teaches that "cheresh" is not just deaf, but

also a mute; such an individual is equated with kattan and shoteh. Here, however, the cheresh in discussion is able to speak – and he is considered to have daas! The Yerushalmi hints to this, by citing our Mishnah as a question on that Mishnah. Thus, when the Gemara concludes that the reason for cherashim is they can't speak, it is not to be taken literally. It means that their speech is not effective, since they can't hear each other.

The Shulchan Aruch (Seder Chalitzta 16) does not follow the Ritva's interpretation, and rules that only a cheresh who both cannot hear and speak is possul to participate in chalitzta. Clearly, he is saying that if he is able to speak he may do chalitzta. Rabbi Akiva Eiger (E.H. 169:6) notes that the Ritva would invalidate even a half-cheresh, one who can speak but not hear.

Even so, the poskim of the last several hundred years debated this issue. The Shaagas Aryeh invalidated cherashim, as the Ritva, but the Avnei Nezer ruled like the Shulchan Aruch. As for the Ritva's proof from the Yerushalmi, the Maharsham answers that it is because of the rule that one who reads must be able to hear what he's saying. The Yerushalmi holds this is a requirement across the board, but the Talmud Bavli requires this only when reciting Kriyas Shema! We pasken like the Bavli over the Yerushalmi, so the chalitzta is be valid.

Sefer Chalitzta K'Hilchoso (18:3) cites all this and more, and advises that if there are other yevamim or yevamos who are

not deaf, certainly they should be the ones  
doing the chalitzah.