



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

לע"נ אסתר אביגיל בת חיה רבקה וציפורה רחל בת אסתר מחלה THE DIMONT FAMILY EDITION

THE DAF **SHABUOT** MATTERS

שבת קודש פרשת חוקת | מסכת יבמות דף קי"ב

IYUN ON THE DAF

By Rabbi Yizchok Gutterman

The חרש and גמרא discuss the concept of a חרש and why the חכמים instituted marriage for them. A חרש is defined by the משנה in 'א משנה ב' as a שומע אינו מדבר. The assumption is that the person has no דעת and is similar to a שוטה. The modern application of this הלכה is quite unclear. Today, we have hearing aids and cochlear implants that allow people to hear as well as sign language which allows people to communicate. Assuming the deaf person of today can do this, do they still have a דין of a חרש? The מהרש"ם in סימן ק"מ says that if the person was born deaf but learned to talk in a special school (albeit imperfectly) such that people can understand them and they can understand others, they are considered a פקח and can have חליצה done to them assuming they appear to understand what is going on around them. Rav Moshe זצ"ל in סימן ל"ג says that if the person uses a hearing aid and through that they can communicate with people, they are considered a פקח. His למדות is interesting: he says the hearing aid makes the person a מדבר but not a שומע (which is still good enough). The reason is that the person cannot hear sound with their ear and is just hearing through a microphone (the hearing aid) which is not considered a קול. However, if the deaf person cannot speak even with the use of a hearing aid but can only communicate via sign language, then Rav Moshe זצ"ל says they have a status of a regular חרש. The reason is that גמרא in ע"א ע"ב says that if a deaf person can't speak but can write, they are still considered a חרש. The נאות דשא in לכושי שרד says that if the deaf person has a very unclear voice such that it sounds like a "קול הברה", that is not called being able to speak. The other פוסקים seem to disagree with that.

PARSHA CONNECTION

In this week's daf the Gemara discusses whether a woman who made a נדר while she was married, also included the יבם in her נדר. The ultimate example of someone who failed to consider all possible outcomes when making a נדר is יפתח whose story we read in this week's Haftorah. יפתח made a נדר that the first thing to greet him upon his return home would be brought as a sacrifice to ה' הקב"ה. When he came back home his daughter came out to greet him, which meant that the נדר applied to his daughter. His daughter responded with the following ורעייתי אני בתולי ואבכה על בתולי. ותאמר אל אביה יעשה לי הדבר הזה הרפה ממני שנים חדשים ואלכה. She asked for two months, in order to go down to the mountains. How does one "go down" to a mountain? Isn't a mountain high? The סנהדרין writes that הרים is a reference to the תנחומא. She wanted to try and get from the סנהדרין פתח for her father's vow. Unfortunately she was unsuccessful. We should always be very careful and consider all possibilities when making a promise or a נדר.

STORIES OFF THE DAF Making Change

שני אחין אחד חרש ואחד פקח נשואין לשתים... פקחות

On this week's daf we find the situation of two brothers, only one of whom is considered a חרש, who marry two sound women. Should the sound brother die childless, Chazal taught that the brother who is a חרש cannot do chalitzah.

Once, a childless widow from Lithuania found herself tied to a brother-in-law who was known to be insane and seemed unable to perform chalitzah. After consulting many great Rabbonim, she was finally steered toward the Tzemach Tzedek, זת"ל, by the Rada"l of Bichov, זת"ל. "The Tzemach Tzedek is a true genius and is also a great tzaddik. If he can find a way to permit chalitzah, I would accept it. Furthermore, perhaps he will even be able to cure your brother-in-law!"

The Rada"l of Bichov provided the poor woman with traveling expenses and asked her to return to him after receiving her response. When the widow arrived, however, the Rebbe was inundated with visitors and she had no opportunity to speak with him. Her funds soon ran out, and she repaid the Rebbetzin the kindness of maintaining her by helping in the kitchen. Days passed, and finally the Rebbetzin herself approached her husband and appealed on the woman's behalf. The Tzemach Tzedek immediately said, "Send for the brother-in-law."

As soon as the man arrived, the Tzemach Tzedek asked, "Will you follow my instructions?"

"Certainly!" he said.

"Here I have ten kopeks. Go and buy me a pen worth one kopek, one kopek worth of paper, three kopek's worth of ink, and a pencil worth two kopeks. How much change will you have to bring back?"

"Three kopeks!" answered the man.

"Then go ahead!" The man jumped through the window and went on his errand. When he returned, the Tzemach Tzedek asked the man to review the bill with him. He did this accurately, and the tzaddik immediately sent a message to the local Rav to arrange for chalitzah. It was carried out the next day. Before the widow left, she asked the Tzemach Tzedek to write down his solution:

"It says in the Yerushalmi (Sanhedrin 42a) that an insane person who can make a purchase and calculate the change is not considered insane." When the Rada"l saw the note, he exclaimed: "How great is true Talmud Torah! All of the other Rabbonim knew this fact, yet none of them applied it to this case!"

HALACHA HIGHLIGHT

Deaf-Mute After Birth

חרש שנשא פקחת

A deaf-mute who married a woman with all of her faculties

Rambam¹ writes: The deaf-mute mentioned by Chazal refers to mutes who neither hear nor speak. However, one who speaks but does not hear or hears but does not speak is like any other person. The reason for this halacha is that one who can not speak or hear is lacking da'as. Poskim debate whether a person who was born capable of hearing and speaking and only later became deaf-mute is considered deaf-mute for matters of halacha.

Rav Yosef Teomim², the Pri Megadim, writes that the status of one who becomes deaf-mute is not clear. He cites the comment of Rav Ovadiah Bertinoro to a Mishnah in Terumos³ who writes that the shortcoming of a deaf-mute is that since he was born deaf he never heard a person speak and consequently, he cannot speak. The implication of this explanation is that a person who was not born deaf but became deaf later in life would not fall into this category. Rav Yoel Sirkis⁴, the Bach, however, disagrees and writes that even a person who became deaf will be included in this categorization of one who is lacking da'as.

Others⁵ disagree with the inference Pri Megadim draws from Rav Ovadiah Bertinoro. They maintain that Rav Ovadiah Bertinoro was not explaining that the reason a deaf-mute is lacking da'as is that he cannot hear and as a result he cannot learn or understand. Instead, he was explaining why Chazal chose to call him deaf (חרש) even though he is also unable to speak (אלם). The reason for this, explained Rav Ovadiah Bertinoro, is that his inability to speak is a consequence of his inability to hear and that is the reason he is described as deaf (חרש). Rambam⁶ also explains that the term חרש refers to one who is deaf but Chazal chose that term to describe a person who is mute since it is the inability to hear that prevents a person from learning to speak. Accordingly, they explain that the uncertainty of this matter is whether someone who became deaf-mute after birth is categorized as definitively lacking da'as or perhaps the matter remains uncertain. One obvious difference would be whether a get would be necessary if this person gave kiddushin to a woman.

1. רמב"ם פ"ב מהל' אישות הכ"א
2. פמ"ג אר"ח פתיחה כוללת ח"ב אות ד-ה
3. ברטנורא תרומות פ"א מ"ב ד"ה שאינו
4. ב"ח יר"ד סי' א'
5. קונטרס מלאכת חרש וספר מלאכת חרש ומובא דעתם בפניני הלכה לספר מתיבתא יבמות קיב
6. רמב"ם פירוש למשניות תרומות פ"א מ"ב ד"ה חרש

MUSSAR FROM THE DAF

The Gift of Giving

קטן, דאתי לכלל נשואין - לא תקינו רבנן נשואין

The Mahrik quotes R Y' Bar Yehuda (a Rishon) who states that a father who was mikadesh a woman on behalf of his son, the kiddushin works because of the כלל לאדם שלא בפניו of כלל we can be zoche for a person even if he is not in front of us.

What about נישואין? In נישואין a man is now responsible to provide for his wife. Would the father be able to be מזכה the son for נישואין as he can do for kiddushin? Perhaps that would be considered a חוב for the son because it obligates him in שאר כסות ועונה and therefore it would not work.

The Shagas Aryeh is מחדש that even though there are additional חובות to one who gets married, ultimately this is a זכות גדול to be married and it overshadows any specific responsibilities that are now placed on the husband.

There are people who fear getting married or having children because they don't want the responsibility of taking care of another. They feel that marriage might be too much for them and will "weigh" them down. We see from this Shagas Aryeh that when a person decides to take care of another, he is gaining far more than he may be giving up. While he now has to look out for the welfare of others and that can be difficult at times, this process uplifts a person to a new dimension. He is now a giver and will be zoche to become a more complete and fulfilled person with his new responsibilities.

POINT TO PONDER

The Gemara says the case of a married woman who made a נדר הנאה מן היהודים, and we are not sure if she had in mind the יבם as well. In case she did not consider the יבם in her נדר would she be allowed to live with him?

Response to last week's Point to Ponder:

תוס' ד"ה וחרשת write that a חליצה of a קטנה can work once she becomes an adult without doing it again. Would the same be true by a חרשת who later became a פקחת?

Some have a גירסא in the משנה that say ובכולן, meaning that רבי אלעזר is arguing in all cases. (See ברטנורא on our משנה). Others maintain that it only applies in a case where waiting will result in יבום דאוריתא. See our משנה on תוס' יום טוב.

ר' יוסף שמואל שמעלקא ב"ר יצחק מערמעלשטיין ז"ל, Shelly Mermelstien, לע"נ

For more points to ponder by Rabbi Yechiel Grunhaus, or insights by Rabbi Gutterman, please visit our website, dafaweek.org, or download the app

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