

גליון מס' 874

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בס"ד, י"ב אדר א' תשע"ו

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### Deaf People in Halacha

דף עא/א חרש שיכול לדבר

In our sugya, we learn that a deaf-mute person has the halachic status of a mentally incompetent person (*shoteh*), who is exempt from mitzvos. The Chachomim, whose opinion is cited in halacha (*Shulchan Aruch* E.H. 120:5), hold that even if he can express himself clearly in writing, this is not enough to prove that he has the presence of mind necessary to be obligated in mitzvos.

**Educating the deaf:** In the time of the Gemara, a person who was born deaf lived in a vacuum, unable to communicate with the world around him. Hence, his understanding of the world was very limited. However, great advances have since been made in this field. 170 years ago, Prof. Victor August Yagar headed a school for the deaf. The Rashash in our sugya refers to a school in Vienna, in which the deaf are taught to write.

Once, if a person was born deaf, it was impossible to help him advance to the point where he could express his thoughts in writing. Accordingly, the Maharshal explains that our *sugya* refers to someone who learned to write when he was a child, and then went deaf before he reached adulthood. As such, although he learned how to write, his mind never had a chance to develop to the point where he would be obligated in mitzvos. This seems to imply that if a deaf-mute person learned to express himself in writing as an adult, the Maharshal would view him as a fully competent person. However, as we shall see, other Poskim argue.

**Deaf people in our times:** Today, deaf and mute people can fully communicate with those around them, through the use of sign language, lip reading, and the like. They can advance to a level of intelligence equivalent to those who can speak and hear. R' Yoel Deitsch, who managed an institute for the deaf in Vienna 150 years ago, said of one his students who wrote articles for newspapers: "I doubt if there is anyone with use of all his senses, who can express his thoughts more cleverly" (*Teshuvos R' Azriel Hildsheimer* II, E.H. 58). As such, the Poskim question whether a deaf person who is interactive with his surroundings, and is clearly of full intelligence, has the same halachic status as a person who can hear.

**Classifying a *shoteh*:** The Gemara gives signs by which a *shoteh* (mentally incompetent person) is classified according to Torah law. If a person goes out alone at night, sleeps in a graveyard, and tears his clothes, he is considered a *shoteh*, who is exempt from all mitzvos (*Chagiga* 3b; see *Teshuvos Chasam Sofer* E.H. 2). These classifications were necessary, since many people have a certain peculiarity of thought, which is tempered by their being fully functional in other areas.

However, our Sages gave no criteria to classify which deaf people are mentally competent and which are not. Rather, they made a sweeping generalization that all deaf people are mentally incompetent, since in their times, deaf people were all unable

### דבר העורך

#### Fifty Dollars

"If anyone ever tells you he has given up hope and feels like there is no where left to turn for help, I suggest you tell him my story," said a Rosh Kollel from Bnei Brak. Here's how it all happened:

"Please fasten your seatbelts before takeoff," announced the El Al pilot over the PA system. I fumbled with the seatbelt, trying to get it tightened. It was my first trip abroad. This was not a pleasure trip. It was my responsibility to ensure the members of my kollel received their monthly stipend. Until recently I had always been able to manage somehow, but lately many contributors had been unable to continue providing support or had decided to finance other Torah institutions instead. I borrowed money for the monthly stipends, but those loans had to be paid back eventually. "Why not try my luck in America?" I thought to myself. "Other people are able to raise funds for their institutions in the US. Why shouldn't I?"

Before setting off I paid a visit to the Steipler Gaon zt"l to ask for a beracha. After reading my note (he was hard of hearing) in which I wrote that I was about to fly abroad to raise funds for the kollel, the Steipler reached into his pocket and fished out a \$50 bill. He wanted to be the first contributor to this worthy cause. His gesture was very heartening and



נר ה'

נשמת אדם

IN MEMORY OF

הר"ר שלום ז'יטניצקי (בודה) ז"ל ב"ר יצחק ז"ל

נלב"ע פורים, י"ד באדר תשמ"ג תנצב"ה

הונצח ע"י ידידינו בני המשפחה שיחיו





buoyed my spirits as I set out for the airport.

Every stage of the trip had been planned down to the last detail. Several friends with experience in this type of venture had helped me put together a well-organized date book in which I had listed appointments with prospective contributors.

My first appointment was at nine a.m. in a plush office on Fifth Avenue. I got up early, eagerly anticipating the meeting with this important potential contributor. The phone rang at 7:00 a.m. On the other end of the line was the driver I had arranged to pick me up. He explained to me that things hadn't worked out according to schedule and he wouldn't be able to pick me up that morning.

I went straight to my handy appointment book, found the home phone number of the potential supporter, and called him up to postpone the meeting. After 5 or 6 rings I heard a yawn and a groggy "hello." I tried to apologize for calling so early, but before I was able to get a word in, my would-be benefactor told me there was no need to apologize and that our appointment was cancelled, not postponed. "You woke me up from my sleep! I have no further interest in meeting with you!" said the magnate irritably. I heard a clanging of hard plastic and then silence.

When I recovered my composure I decided to try my luck with the next name on my list.

"Sorry, Rabbi," said the receptionist, "we meant to call you. The boss had to leave the country on an urgent matter of business. He'll be back in another four weeks, at which time I'm sure he'll be happy to meet with you."

With this second failure, my composure was destroyed. I had no more patience to deal with financial matters. Instead, I immersed myself in a daf of Gemara, as if I didn't have a single care in the world.

My gracious host prepared a stately dinner in honor of "our guest from Eretz Yisrael," as he explained to his children. In the middle of the meal the phone rang. The call was for me. At the other end of the line was the secretary of the man who

to communicate with the world around them, and were thus denied the opportunity to develop their minds (see Rashi, *Chagiga* 2b, s.v. *Hachersh*). Today, since this is no longer true, we must question whether they are still exempt from mitzvot, and if not, what level of mental development is required to obligate them in mitzva observance.

**Sign language:** Our *sugya* distinguishes between a deaf-mute, who is exempt from mitzvot, and a deaf person capable of speech, who is obligated in mitzvot. As such, the Poskim unanimously rule that if a deaf person learned to talk normally, to the extent that he can express himself through speech alone without any assistance through sign language, he has the halachic status of a fully intelligent person, and is obligated in mitzva observance.

In contrast, if a deaf person is mute, even if he can express himself through sign language, this is not enough to prove that his mind has developed enough to be obligated in mitzvot. This is true, even if his actions seem to indicate that he is extremely intelligent. The Tzemach Tzedek (77) wrote about a tailor from Krakow who was born deaf, but distinguished himself for his great intelligence, and presented himself before Beis Din to prove his mental competence. Nevertheless, the Tzemach Tzedek ruled that he is exempt from mitzvot, as we find in our *sugya*, that even if a deaf person can express himself intelligently in writing, he is still exempt.

The Poskim debate the case of a deaf person whose speech is clumsy, but can express himself in verbal speech with the help of sign language. According to the Divrei Chaim (E.H. 72) he is considered halachically competent. According to the Levushei Serad (*Neos Desha* E.H. 132) he is not.

דף עג/א אונסא דלא שכיח הוא

## Breaking an Engagement

R' Papa and R' Huna once hired boats to carry their wares down the river. The boatmen accepted full responsibility for any damage or mishap that might occur to the wares along the way. After they struck the deal, the local authorities put a restriction on river travel, forbidding the boats to continue to their destination. The boatmen were forced to unload the wares, load them onto donkeys, and continue the trip by land.

R' Papa and R' Huna demanded that the boatmen pay the extra expense of hiring the donkeys, since they had agreed to accept responsibility for any mishaps. However, Rava ruled against them, and exempted the boatmen from paying. When a person accepts responsibility for damages, this includes only likely, foreseeable damages. It is uncommon for the authorities to suddenly close the river, and the boatmen never intended to accept responsibility for such a remote contingency. Therefore they are exempt from paying. This is the accepted halacha in Shulchan Aruch (C.M. 225:5).

**Unforeseeable complications:** Although "unforeseeable complications" is sufficient excuse to exempt the boatmen from their obligation, a similar excuse would not be enough to obligate a person to pay for a service that was not provided. For example, if Reuven offered to accompany Shimon to a certain place for a set amount of money, and "unforeseeable complications" then prevented Reuven from fulfilling his task, he could not demand payment from Shimon, by claiming that he is like the boatmen in our *sugya*. Shimon agreed to pay for services provided. If the services were not provided, no matter how justified the excuse, there is no need to pay (Shach, C.M. 21 s.k. 3).

**Prolonged engagements:** In the course of World War II, entire communities were destroyed and the survivors were scattered across the world. Often, political boundaries prevented families from reuniting. The Poskim discussed the common occurrence of marriage engagements that were made before the war broke out, but could not be fulfilled, since the couples were separated and unable to reunite. Occasionally, people desired to break the prolonged engagement and marry someone else, but were afraid to transgress the *cheirem* against breaking a *shidduch* without the consent of both sides.

**A shidduch is more than a business deal:** It would seem that since the *shidduch* agreement includes a deadline by which the marriage must take place, if the deadline has passed the agreement is annulled, and either side can abandon the *shidduch* to marry someone else. This follows the principle of the Shach, discussed above, that even with the best excuse, one is held accountable for failing to fulfill his obligations.

The Taz (Y.D. 236 s.k. 13) argues, presenting an interesting distinction between a marriage engagement and a business agreement. When a person sells a possession, his only intention is to receive payment in return. If the buyer fails to pay as agreed, the deal is broken. However, when a chassan and kalla agree to a *shidduch*, they both essentially want to get married. The deadline is not meant as a vital condition of the



engagement, but simply to ensure that the marriage occurs on time. Therefore, if some uncontrollable contingency delays the marriage, this is not considered a breach of contract, and does not permit either side to break the *shidduch*.

Thus the issue of what to do when an "unforeseeable complications" delays the wedding past the deadline, is the subject of debate among the Poskim.

**Separated by the war:** However, in the case of *shidduchim* that were prolonged as a result of the Holocaust, the Minchas Yitzchak (I, 15) made a special exception, for two reasons. Firstly, we must distinguish between a wedding that was delayed temporarily past the deadline, and a *shidduch* that is delayed indefinitely with no resolution in sight (as was the case with couples separated by the war). Secondly, the war was a totally unpredicted calamity. When they committed themselves to the *shidduch*, they did not intend to take responsibility for such a remote contingency, as we learn from our *sugya*.

## Refusal to Accept Payment

דף עד/ב הרי זה גיטך על מנת שתתני לי מאתים זוז

Our *sugya* discusses the case of a husband who gave a *get* to his wife, and stipulated that it would take effect only if she gives him two hundred *zuz*. The Gemara asks whether he meant that the *get* will take effect if she gives the money, or if he receives it. What will be the halacha if the husband then changes his mind and refuses to receive the money, to prevent the *get* from taking effect. Can she force the money upon him against his will? If his stipulation meant that she must give the money – she gave the money, and the *get* is valid, even if he refuses to accept it. If his stipulation meant that he must receive the money, the *get* is invalid if he refuses to accept it. The accepted halacha is that the *get* is not valid, unless he willingly accepts the money (Rambam, *Geirushin* 8:21; *Shulchan Aruch* E.H. 143:4).

**When a Kohen refuses to perform *pidyon haben*:** The mitzva of *pidyon haben* entails redeeming a firstborn son, by giving five *sela'im* (coins) to a Kohen. The Poskim discuss the case of a man who lived in an isolated village in which there was only one Kohen. When his wife gave birth to a firstborn son, he approached the Kohen to offer him the five *sela'im* for *pidyon haben*, but to his great surprise the Kohen refused to accept it. Does he fulfill the mitzva by forcing the money upon the Kohen, even if the Kohen does not accept it? Perhaps this question depends upon our *sugya*. Just as a wife cannot force money upon her husband to fulfill the terms of the *get*, so too a father cannot force money upon a Kohen to fulfill the mitzva of *pidyon haben*.

**Gifts for Kohanim:** The Pri Chadash rejects the comparison between the two cases (*Teshuvos Mayim Chaim* 4, cited in *Pischei Teshuva* Y.D. 61 s.k. 1). He explains that our *sugya* is based on an assumption that the husband intended to increase his personal wealth. If the husband does not accept the money, his wealth does not increase, and therefore the *get* is invalid. However, when the Torah commands us to give gifts to Kohanim (such as *pidyon haben*, *teruma*, *challa*, etc.) we are not obligated to ensure that the Kohen's wealth increases. We need only offer him these gifts. If he refuses to accept them, we still fulfill our mitzva. Other Poskim argue that one does not fulfill his mitzva of giving gifts to a Kohen, by forcing them upon him against his will (*Teshuvos Agura B'Ohalecha*, cited in *Sdei Chemed* V – *Nun*, 20-21. *Ketzos HaChoshen* 243 s.k. 4 leaves the matter as requiring further investigation.)

**Paying a debt:** The discussion of the Poskim on this subject focuses only upon these two points – fulfilling the terms of a *get* (a *get* performed improperly entails disastrous results, therefore our Sages were unusually strict to ensure it is performed properly); and giving gifts to a Kohen (since the Torah uses the word "*nesina* – giving" in this regard, perhaps an unaccepted gift is not considered giving). In all other areas of monetary law, one fulfills his obligation to pay a debt, even if the recipient refuses to accept (*Beis Shmuel* on *Shulchan Aruch* E.H. 143:4, s.k. 7).

**Refusal to accept payment:** This question was once relevant, when someone signed a contract to buy a storage room. The contract entailed that payment would be divided into six installments, and the buyer would not take possession of the property, until after the last payment.

Before the last payment was made, the seller regretted the sale. He refused to accept the last payment, hoping thereby to prevent the buyer from taking possession. However, as we have seen, this method is ineffective. The buyer may place the money before the seller. Whether he accepts it or not, the buyer has fulfilled the terms of the contract, and may take possession of the storage room (*Piskei Din Rabbanim Yerushalayim, Dinei Mamonos* III, p. 99).

דף עה/ב הרי זה גיטך על מנת שתשמשי את אבא

## Fulfilling a Humiliating Condition

The Gemara presents a debate concerning a husband who gave his wife a *get*, but stipulated that it is valid only if she takes care of his father. According to R' Ashi, she

was supposed to accompany me to a meeting with a well-known rav who had far-reaching connections. The secretary told me that my would-be companion had just lost his mother, and would be unable to accompany me.

As unbelievable as it may sound, over the next three weeks I was unable to accomplish anything in the US. I didn't even collect enough money to cover my plane ticket. Everywhere I went I ran up against insurmountable obstacles. Thoroughly disgruntled, I waited impatiently for the date of my return flight to Israel to arrive.

But even my effort to go back home was unsuccessful. To this day I don't know what went wrong. Although I have always been extremely punctual by nature, somehow I managed to miss my flight.

The El Al check-in agent took me to the window and showed me a small dot disappearing into the clouds. "See that dot? Well, Rabbi, that's your plane. If you want to try to catch it, feel free."

The next flight was much later and I couldn't take it anyway, since its arrival time was Friday afternoon and I was afraid that any delay could result in chillul Shabbos. I had nowhere to go. I was too embarrassed to call up my generous host, who by now must have been busy moving his kids back into the room I had occupied.

With no other alternative I retrieved my appointment book and called up a friend who had studied with me in yeshiva many years before. I had heard that he was still studying in kollel and was living hand-to-mouth. I overcame my discomfort and dialed. He was as kindhearted as ever. He picked me up at the airport right away and brought me to his apartment for Shabbos.

During Shabbos I recounted everything that had happened to me over the previous few weeks. "Not only did I not raise a cent, but I didn't even manage to make a graceful exit," I told him, with an edge of frustration in my voice. On Motzei Shabbos my friend sat down next to the phone and began dialing non-stop. "Maybe I can help you out," he said. "Let me see what I can do."

Within a few hours' time my friend



had rallied dozens of acquaintances who were now seated in his cramped living room. The living room was jam-packed and everyone was staring straight at me. Suddenly I was tongue-tied. I didn't know what to say. It was utterly embarrassing.

"I would like to ask my friend to honor us with a few words," my friend announced. I didn't know what to do. I stood up, buttoned my jacket, tightened my tie and straightened my hat, but I didn't know how to begin.

Suddenly I had a flash. I pulled out my wallet and before their bewildered eyes, took out a \$50 bill. "My dear friends," I said. "I realize there is no need to explain to you at length about the importance of Torah study and the great reward promised to those who support Torah scholars. However, I would like to show you this bill that I received from the Steipler Gaon before I left Eretz Yisrael. He wanted to be the first person to make a donation. Surely you can understand that I am raising money for a very important and noble cause."

I placed the \$50 bill on the table and sat down. An hour later I had \$32,000 cash in my pocket. As part of the fundraising effort, my friend had held a spirited auction for the Steipler's \$50 bill, and the lucky winner had contributed much of the very respectable sum I had collected. My kollel was saved!

Upon my return to Eretz Yisrael I hurried to the Steipler's house to tell him what had transpired. The Steipler was a very humble man. "Nu, nu, if this is what you got for fifty dollars, I'll give you another fifty dollars," he said with a smile.

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fulfills this condition by caring for the father for just one day. According to Rava, she must take care of him for the rest of his life, in order for the *get* to be valid. The Poskim debate which opinion is accepted in halacha (see *Shulchan Aruch* E.H. 143:8).

**A house in return for service:** The Rashba (76a) asks if this debate would also apply, in the case of a person who offered someone else ownership of a house, in return for supporting his father. Would R' Ashi also rule in such a case, that it is enough to support the father for just one day? Perhaps not. When a husband divorces his wife, essentially she does not owe him anything. Therefore, R' Ashi interpreted the husband's intent as a lowly ploy to humiliate his ex-wife, by forcing her into the service of his family. Serving the father for just one day, is enough to satisfy the husband's cruel humor.

However, when a person offers a valuable house in return for supporting his father, even R' Ashi might agree that he intended to receive the full value of his house, by having his father supported for the rest of his life.

**Forgiving a debt on condition:** The Ben Ish Chai discusses the case of a person who owed someone money. The lender was possessed by a cruel sense of humor, and agreed (in the presence of witnesses) to forgive the entire debt, if the borrower would wear an "Arab cloak." In discussing this question, the Ben Ish Chai describes this as a "lowly, coarse garment, like those worn by the Arabs. It was filthy and covered with patches." The poor borrower preferred humiliating himself by wearing the garment, rather than paying the weighty sum. He donned the filthy cloak, and walked around the city dressed in it, thinking that he had thus ridded himself of his debt.

Some time later, the lender died, and his children inherited the debts owed to him. To the borrower's surprise, they then claimed that he still owed them money. They claimed that their father had intended to forgive the loan, only if the borrower would wear the Arab cloak for the rest of his life.

The Ben Ish Chai ruled in favor of the borrower, that he fulfilled his obligation by wearing the cloak once. He explains based on the Rashba, that R' Ashi distinguishes between a case in which the person making the stipulation intends to humiliate the other party, and when he intends to receive a real benefit. In this case, the lender intended only to humiliate the borrower, by making him wear an Arab cloak. Therefore, it was sufficient for him to wear it only once (*Teshuvos Torah L'Shema*, 338).

דף ע"ב/כ כי הווי מיפטרי רבנו מהדדי - בעכו הווי מפטרי

## Is it a Mitzva to Visit Eretz Yisroel?

The Gemara tells the story of Amoraim who ascended from Bavel to study Torah in Eretz Yisroel. When they returned to Bavel, their peers from Eretz Yisroel accompanied them until Acco. There they bid farewell, rather than leaving the borders of Eretz Yisroel.

**Why did the Amoraim not move to Eretz Yisroel?** The Tashbatz (561) writes that the Amoraim in Bavel did not move permanently to Eretz Yisroel, since it was harder to earn a living there. They would have been forced to curtail their Torah study, in order to make ends meet. Since the Gemara permits moving from Eretz Yisroel to study Torah (*Eiruvim* 47a), they were certainly permitted to remain in Bavel to study Torah without distraction.

**A vow to perform a mitzva:** This leads us to an interesting question, whether or not it is a mitzva to visit Eretz Yisroel temporarily. The Maharit (*Teshuvos* II, Y.D. 28) discusses this question, regarding a Jew who lived in Turkey, and swore a *neder*, that if his wife would give birth to a son, he would make a journey to visit Eretz Yisroel. His prayers were answered, and his wife had a boy. He then realized that the expenses of traveling to Eretz Yisroel were beyond his reach. He was also afraid of the dangers inherent in traveling by sea. When he wished to annul his *neder*, he was confronted with the question of whether or not visiting Eretz Yisroel is a mitzva, in which case the *neder* cannot be annulled, accept in extenuating circumstances (*Shulchan Aruch* Y.D. 203:3).

**Visiting Eretz Yisroel:** The Poskim debate this point. According to the Maharit himself, although it is a mitzva to settle in Eretz Yisroel, there is no mitzva to visit. Therefore, the *neder* may be annulled. However, the Tashbatz (248 s.k. 14) argues that the primary mitzva of settling Eretz Yisroel, is to perform the special agricultural mitzvos that are dependent on the Land of Israel. If a visitor performs these mitzvos during his stay, he fulfills the mitzva of coming to Eretz Yisroel. Therefore, the *neder* cannot be annulled.

The Tashbatz's student, author of *Knesses HaGedola* (cited in Tashbatz), brings a proof for this from the Gemara, in which R' Yochanan states: "Anyone who walks four cubits in Eretz Yisroel, is assured a place in the World to Come" (*Kesubos* 111a). We see from here that the mitzva is fulfilled even without settling there.

**Meorot HaDaf HaYomi**

Main Office: משרד ראשי: רח' ווגמן 1  
Wagman street 1 ת.ד. 471 בני-ברק  
P.O. B. 471 Beni-Brak ISRAEL טל: 03-5775333  
tel: +972-3-5775333 פקס: 03-7601020  
Fax: +972-3-7601020 אימייל: [meorot@meorot.co.il](mailto:meorot@meorot.co.il)  
E-mail: [meorot@meorot.co.il](mailto:meorot@meorot.co.il)

**in U.S.A. call: 212-738-9425**