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Ein Shlichus l'Koton

The *Mishnah* (*Gittin* 22b) makes a novel statement that has significant legal ramifications: “Anybody can write a *get* - even a *cheresh* (deaf-mute), *shoiteh* (mental deficient) or *koton* (minor).”

The *Gemara* immediately questions this, asking how these individuals are capable of the necessary *lishmoh* intent in writing a *get* (at least according to *R' Eliezer*). The *Gemara* suggests several solutions. One of the possibilities the *Gemara* offers, is that indeed the *katan* may write a *get* if a *gadol* is “*oimed al gabav*” – literally, standing above him.

Tosfos explain that the role of the *gadol* is to serve as an instructor and director. Without any instruction, the *koton* is incapable of having the *lishmoh* intent; if the *gadol*, however, directs his actions and informs him about the necessary intent, the *koton* would indeed be able to create the *get* appropriately.

An alternative understanding is presented by the *Rashba* in *Chulin* (12b). There he cites his *Rebbi*, *Rabbeinu Yona*, who establishes that since the writing of a *get* can be assigned to a *shliach*, the *gadol oimed al gabov* can therefore function through a similar mechanism.

The obvious problem is that a *koton* cannot serve as *shliach*, based on the principle of *ain shlichus l'koton*. How then does the *Rabbeinu Yona* claim that *oimed al gabov* operates because of, or through a system of *shlichus*? The *Imrei Moshe* explains that *Rabbeinu Yona* works with a complete split between the intent and the writing: the *koton* performs the act of writing, while the

gadol supplies the *lishma*. This answer seems difficult however, since it does not really explain how any notion of *shlichus* is employed in this operation.

The *Gedolei Rosh Yeshiva* offer other explanations to this difficult *Rabbeinu Yona*. One of their suggestions is based on *Reb Akiva Eiger* in the first *perek* of *Kesuvos*. There he claims that the *chisoron*, or failing, in a minor's ability to have a *shliach* is not insofar as a *shliach* performing a *shlichus* for a minor, nor even in the child himself functioning as a *shliach*, but rather in the initial appointment of the *shliach* by a *koton*, or of the *koton* by a *shliach*. A *koton* is not in the *parsha* of *shlichus* only because he can not appoint, or be appointed.

Reb Akiva Eiger points out that since the real flaw is a minor's involvement in the initiation of a *shlichus*, in certain cases where no *minui*, appointment, is required, even a minor can function in the world of *shlichus*. For example, a *ger koton* can be immersed for conversion through a *shlichus* of *Beit Din* for the child, since *zechia* establishes a *shlichut* with no *minui*.

According to this understanding of *Reb Akiva Eiger*, the *Rabbeinu Yona* seems clearer. The case of *oimed al gabov* is essentially a situation where the *koton* is functioning as a *shliach*, without ever being formally appointed. A *minui* is not needed here since the *koton* is not representing or serving as the agent of the *gadol*, as would be the case in classical *shlichus*, but rather performing a raw act that is endowed with legal meaning by the *gadol* working with him.

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Revision Questions

גיטין ב' א' – ג' ז'

- What is the law if the *shaliach* can only say “*befanai nechataav*”? (ב' ז')
- What if one person can only say “*befanai nechataav*” and another can only say “*befanai nechtam*”? (ב' ז')
- What special case does *R' Yehuda* permit similar to the previous question? (ב' ז')
- Which of the following invalidates a *get*: it was written at night or it was signed at night? (ב' ז')
- Who argues on the rule discussed in the previous question and why? (ב' ז')
- Is there something special about the ink that must be used to write a *get*? (ג' ז')
- Is a *get* valid if it was written on the horn of a cow while it is still attached? (ג' ז')
- Explain the debate regarding a *get* that was written on something that was attached to the ground and signed after it was detached. (ד' ז')
- Are there limitations on who can write a *get*? (ה' ז')
- Are there limitations on who can be a messenger to bring a *get*? (ה' ז')
- Complete the following phrase and explain: (ו' ז')
 "כל של _____ בדעת כשר"
- Which five women are not valid witnesses to the death of another woman's husband? (ז' ז')
- Are these women valid as messengers to bring a *get*? (ז' ז')
- If a woman brings her own *get* does she need to say “*befanai nechataav u'befanai nechtam*”? (ז' ז')
- Can a *get* that was written for another couple that had the same names be used? (ח' ז')
- Explain the debate regarding how much of a *get* can be pre-written? (ט' ז')
- If a *get* was lost, why can it not be used once it is found? In which case can it be use? (ט' ז')
- Can a *get* be given if it was sent from the husband who was ill? (ט' ז')
- What are the three cases presented in which we are concerned that the husband has died and who presented these cases? (י' ז')
- If a messenger bringing a *get* within Israel falls ill, can he hand the *get* on to another *shaliach*? (י' ז')
- Regarding the previous case, what happens if the *shaliach* was bringing a *get* from outside Israel? (י' ז')
- If someone loans money to a *kohen* on the condition that he may separate *trumah* for him and then sells it to another *kohen* and then the *kohen* travels overseas, can he continue to fulfill this condition? (י' ז')
- What is the law if the *kohen* dies prior to the person separating *trumah*? (י' ז')

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Sunday -Thursday
 Between mincha & ma'ariv
Mizrachi Shul

Friday & Shabbat
 10 minutes before mincha
Mizrachi Shul

Audio Shiurim on-line!

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Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
1 st April י"ג ניסן	2 nd April י"ד ניסן	3 rd April ט"ו ניסן פסח	4 th April ט"ז ניסן פסח	5 th April י"ז ניסן פסח	6 th April י"ח ניסן פסח	7 th April י"ט ניסן פסח
Gittin 3:8-4:1	Gittin 4:2-3	Gittin 4:4-5	Gittin 4:6-7	Gittin 4:8-9	Gittin 5:1-2	Gittin 5:3-4

