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The Marriage of a *Cheresh*

The fourteenth *perek* opens with a discussion dealing with the *halachic* status of an action performed by a *cheresh* – a deaf and mute. A deaf and mute person is considered feebleminded, and is considered by *Torah* law to be legally incompetent. The question at hand is, if this person either receives or performs *kiddushin* do we view this process as a binding act that will leave the man and woman married. The *Mishnah* rules that a *cheresh* can indeed get married, yet this marriage is only binding on a rabbinic level.

The *Mishnah* comments and explains an interesting practical problem that if the man is a deaf and mute, how is he able to communicate to his bride that he wishes to marry her. The *Halacha* allows the man to hint to his wife, and if she is mute herself, she is allowed to hint in return to express her desire to marry.

However, to truly understand what the *chiddush* of the *Mishnah* is, we must first ask why the action of the deaf-mute is not halachically binding?

Within the *Gemara* the deaf-mute person is often grouped with two other types of people, a *shoteh* and a minor. This 'famous' group of three are often unable to perform certain halachic actions. The problem is that for an action to be considered valid, both parties need to fully comprehend what is happening. For example, a child¹ who is below the age of *bar mitzvah*, often would not fully understand that when they sell an item and receive money or goods in return that they have lost all rights and claims over the item that they have sold. However, the *Halacha* does recognise that the child

is able to purchase something since they can understand the concept of receiving.

The distinction between giving and taking forms one of the main pillars of Rav Dessler's ztz"l philosophy. Rav Dessler² explains:

The faculty of giving is a sublime power; it is one of the attributes of the Creator of all things. He is the Giver *par excellence*; His mercy, His bounty and His goodness extend to all His creatures. His giving is pure giving for He takes nothing in return.

He later explains that the action of taking is where a person aspires to draw to himself all that comes within his reach.

This principle of Rav Dessler, which is classically only used for moral teachings, can however be used to understand the *din* of the *Mishnah* and why the Rabbis allow such a marriage to take *halachic* status when the *Torah* did not.

The general problem is that the *cheresh* is unable to understand giving; that there are two parties who after the exchange will have no legal bond or relationship. However, in the case of *kiddushin* what is being created is one new entity, as the *Torah* describes in *Bereshit* (2:24) that they should leave their parent's home and become one. The *cheresh* can understand this change in status. However, a regular case of giving or buying and selling, where there are clearly two separate parties, the *cheresh* is unable to comprehend. The act of giving and losing all connection needs a mature and developed understanding, which according to the *Halacha* the *cherish* does not have.³

Rabbi Natan Rickman

¹ The same would apply for both the *cheresh* and *shoteh*, either for the same reason or another reason.

² Rav Dessler ztz"l, was Mashgiach in Gateshead Yeshiva, England and Ponevich Bnei Brak, Israel.

³ Rav Dessler ztz"l, does explain later in the article that at times taking is not just a necessary act but even the correct thing to do.

Revision Questions

במות י"ג – ט"ו: א'

- What is the law if a man marries a *pikachat* and a *chereshet* and dies (without any children) and one brother first performs *yibum* to the *chereshet* and then another brother performs *yibum* to the *chereshet*? (י"ג: י')
- What is the law if a man marries a *gedolah* and a *ketanah* (arranged by her brother) and dies (without any children) and one brother first performs *yibum* to the *ketanah* and then another brother performs *yibum* to the *gedolah*? (י"א: י"ג)
- What is the law regarding a minor that performs *yibum*? (י"ג: י"ב)
- When do we force the *yabam* to divorce the *yavamah*? (י"ג: י"ב)
- When do we request that the *yabam* perform *chalitzah*? (Include two cases) (י"ג: י"ג)
- What has happened to a man such that he can never divorce his wife? (י"ד: א')
- Is the law the same if these thing happened to the wife? Explain. (י"ד: א')
- What case does *R' Yochanan ben Gudgedah* bring to support the answer to the previous question? (י"ד: ב')
- What is the law if two brothers, one a *pikeach* and the other a *cheresh*, marry two sisters that are *chershot*, and one brother dies without children? (י"ד: ג')
- If a *yavamah* is a *chereshet*, what should the *yabam* do - *yibum* or *chalitzah*? (י"ד: ג')
- What is the law if two brothers, one a *pikeach* and the other a *cheresh*, marry two sisters that are *pikchot* and the *cheresh* dies? (י"ד: ד')
- Regarding the previous case, what if the *pikeach* dies instead (without any children)? (י"ד: ד')
- What is the law if two brothers, both *pikchim*, marry two sisters, one a *pikachat* and the other a *chereshet*, and the husband of the *chereshet* dies? (י"ד: ה')
- Regarding the previous case, what if the husband of the *pikachat* dies instead (without any children)? (י"ד: ה')
- What is the law regarding a case with two brothers, one a *pikeach* married to a *pikachat* and the other a *cheresh* married to a *chereshet*, both wives being sisters, and the *cheresh* dies without any children? (י"ד: ו')
- Regarding the previous case, what if the *pikeach* dies instead (without any children)? (י"ד: ו')
- Regarding the previous two questions, what is the law if the wives were not related? (י"ד: ז')
- What is the law if two brothers, both *pikchim*, marry unrelated women, one a *pikachat* and the other a *chereshet*, and the husband of the *chereshet* dies? (י"ד: ח')
- Regarding the previous case, what if the husband of the *pikachat* dies instead (without any children)? (י"ד: ח')
- What is the law regarding a case with two brothers, one a *pikeach* married to a *pikachat* and the other a *cheresh* married to a *chereshet*, the wives being unrelated, and the *cheresh* dies without any children? (י"ד: ט')
- Regarding the previous case, what if the *pikeach* dies instead (without any children)? (י"ד: ט')
- In what situation do we not trust a woman who returns for overseas saying her husband passed away overseas? (Include both opinions) (ט"ו: א')

Local Shiurim

Sunday -Thursday
Between mincha & ma'ariv
Mizrachi Shul

Friday & Shabbat
10 minutes before mincha
Mizrachi Shul

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Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
1 st October ט' תשרי Yevamot 15:2-3	2 nd October י' תשרי יום כיפור Yevamot 15:4-5	3 rd October י"א תשרי Yevamot 15:6-7	4 th October י"ב תשרי Yevamot 15:8-9	5 th October י"ג תשרי Yevamot 15:10-16:1	6 th October י"ד תשרי Yevamot 16:2-3	7 th October ט"ו תשרי סוכות Yevamot 16:4-5

