



Shlichut and a Shoteh

The *Mishnah* (7:1) discusses a case regarding a person who was afflicted by *kordeyakos*. In essence, this is a person who is in a state of temporary confusion such that he is not considered having halachic *da'at* at that time – like a *shoteh*. The *Mishnah* teaches that if he instructs someone to write a *get* while he is in that state, then we disregard it. If however, he appointed someone to write the *get* while he was healthy, then, while in that state, instructed him not to write the *get*, we disregard the retraction. The *Bartenura* explains that once the husband recovers, the *shaliach* can then write the *get* relying on the original instruction. Nevertheless, while the husband is in that state, he is not able to write the *get*. We shall try to understand this *Mishnah*.

The *Ketzot HaChoshen* (188:2) cites a debate regarding if the *get* was written and delivered while the husband was a *shoteh*. According to the *Rambam* (*Geirushin* 2:15) the *get* is *pasul* on a rabbinic level. In other words, the *shelichut* is still good. Nevertheless, people may confuse this case with another and permit a *get* to be delivered that was instructed by a *shoteh*. Consequently, the *Chachamim* invalidated the *get*. The *Tur* (*Even HaEzer* 121) however understands that the *get* is invalid on a biblical level.

The *Ketzot* explains that according to the *Rambam*, since the appointment as *shaliach* (*minui*) was done properly, the *shaliach* takes the place of the person that sent him. Consequently, on a biblical level, even if the husband is now a *shoteh*, the *shaliach* can operate independently as if he was the healthy husband. If so, even if the husband died, he should be able to deliver the *get* – which is not the case. The *Ketzot* explains, citing *Rashi*, that once the husband died, the connection between the husband and wife is severed such that a *get* cannot be given. To be clear, the *shaliach* continues to be the *shaliach* even after the husband died; he would still be able to operate as the husband. It is simply that once he died, divorce is no longer relevant or possible.

How do we understand the position of the *Tur*? The *Achiezer* (1:28:8) notes that some explain that once the husband becomes a *shoteh* it cancels the *shelichut*. He however argues that if that were the case, once the husband recovers, the *shaliach* would need to be nominated again. As we saw above, that is not the case.

Instead, the *Achiezer* explains that when a *shaliach* is appointed, he does not acquire the full power of the husband such that he can act independently. Instead, it is only at the time that he carries out the task that he adopts that power, but it is a power that the husband must have at that time. The *Achiezer* then puts it differently, that *Tur* understands that when the *shaliach* hands over the *get* it is as if the husband is handing over the *get*. The *shaliach* only helps however such that it is as if the husband performed the action. Nevertheless, the *kritut* (halachic severance) comes directly from the husband. Consequently, if the husband becomes a *shoteh*, the *shelichut* is indeed intact. Nevertheless, when the *shaliach* acts, it is as if the husband is acting and at that time the husband is unable to do so.

The *Kehillot Yaakov* (20:2) however argues with the *Ketzot* that one could understand that the *Rambam* understands that the *shaliach* is not acting independently, but instead acts as an extension (*yad*) of the husband. How then would the *get* work at the time the husband is a *shoteh*? He explains the debate between the *Rambam* and *Tur* is how we understand the issue of a *shoteh*. One way is that there is a technical deficiency in his actions since they lack *da'at*. If however the action had *da'at* then the *get* would be effective. Alternatively, the issue is that *shoteh* is simply outside the world of *kinyanim*. The *Kehillot Yaakov* explains that the *Rambam* maintains the first understanding. Consequently, in our case, the action can have *daat* by way of the *shaliach* that was appointed when he was healthy. The *Tur* however would maintain that a *shoteh* is excluded from the world of *kinyanim*. Consequently, since the *shaliach* is only acting as an extension of the husband, the *get* would not work.

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Revision Questions

גיטין ו' – ח' – ג'

- Describe the case in which anyone that hears the husband holler “write a *get* for my wife” can both write and hand her the *get*? (ו': ג')
- What is the difference if the husband said “give a *get* to my wife” in front of two or three people? (ז': ג')
- Regarding the previous question, who argues that there is no difference? (ז': ו')
- What is the law if the husband said “all of you write a *get* for my wife”? (ז': ו')
- If someone became a mute, how do we confirm that he wished to give his wife a *get*? (ז': א')
- If two people were directed to write a *get* by the husband, can they get a *sofer* to write the *get* and get other people to sign it? (ז': ב')
- Can a man give his wife a *get* on the condition that it takes effect after he dies? (ז': ג')
- What is the law if a husband gives his wife a *get* saying “this is your *get* from today and after death”? (ז': ג')
- What is the law regarding a woman who receives a *get* from her husband on the condition that it takes effect now if in the future the husband dies? (ז': ד')
- Can a man give his wife a *get* on the condition she gives him a sum of money? (ז': ה')
- What does *Rabban Shimon ben Gamliel* rule in a case where a man gives his wife a *get* on the condition that she gives him a particular item, yet that item was lost? (ז': ה')
- If a man gave his wife a *get* on the condition that she cared for his father, yet he died before she was able to care for him, when do we say that the *get* is invalid? (ז': ו')
- What is *Rabban Shimon ben Gamliel*'s rule regarding a woman's inability to fulfill a condition in a *get*? (ז': ו')
- Which two cities lie on each side of the border of *Yehuda* and *Galil*? (ז': ז')
- If a husband gives his a wife *get* on the condition it will take effect if he does not see her for a period of thirty days, is the *get* valid if he consequently did see her frequently prior to disappearing for thirty days? (ז': ז')
- With what wording of the condition would a *get* be valid if it was given on the condition that the husband would not return within twelve month and died during that period? (ז': ח')
- If the husband directed two people to write and hand a *get* to his wife if he did not return within twelve months, and the witness wrote the *get* immediately and handed the *get* to the wife after twelve months, is the *get* valid? (ז': ט')
- Is a *get* valid if it is thrown: (ז': א')
 - Into the wife's *chatzer*?
 - Into the wife's bed?
 - On to the wife's lap?
- Is a *get* valid if it was handed it to the wife on the presumption that it was a financial document? (ז': ב')
- Can a woman be handed a *get* while she is sleeping? (ז': ב')
- Is a *get* valid if it was cast at the wife's feet while she was standing in the public domain? (ז': ב')
- For which two other areas does the law dealt with in the previous question apply? (ז': ג')
- If a *get* was thrown to a woman while she was standing on a roof and was destroyed prior to landing, when do we say that the *get* is valid? (ז': ג')

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Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
7 July א' תמוז	8 July ב' תמוז	9 July ג' תמוז	10 July ד' תמוז	11 July ה' תמוז	12 July ו' תמוז	13 July ז' תמוז
Gittin 8:4-5	Gittin 8:6-7	Gittin 8:8-9	Gittin 8:10-9:1	Gittin 9:2-3	Gittin 9:4-5	Gittin 9:6-7

