

אילימא חרש - If you will say we are discussing a deaf mute

OVERVIEW

The גמרא quotes a משנה in an attempt to refute רבה. The משנה states that if the שליח cannot say בפ"נ, then קיום is required. The גמרא continues to analyze the phrase: 'ואינו יכול לומר', and comments, 'can it mean a חרש'? The גמרא continues in this vein and concludes that it refers to a שנתחרש. Our תוספות will explain why the גמרא did not choose other, simpler, options to explain the phrase, 'ואינו יכול לומר'.

תוספות presents (negatively) the anticipated question:

ולא בעי למימר כגון אלם או שלא ראה כתיבת הגט -

And the גמרא did not attempt to mention other options to explain the phrase: 'and he was not able to say בפ"נ', **for instance a mute¹, or one who did not see the writing of the גט.** In these two cases, the גמרא could not have asked (as it subsequently does): 'are they eligible to bring a גט?!' Why then does the גמרא assume that we are discussing only a חרש, and not these two cases that תוספות mentions?²

תוספות responds:

דאם כן הוה ליה למימר ולא אמר:

For if it was so; that the משנה is discussing an אלם or הגט or ראה כתיבת הגט, **מי שלא ראה כתיבת הגט or אלם, there is a possibility of them saying בפ"נ.** The אלם may write his testimony; the other could have seen the כתיבת הגט had he chosen to³. It is only the חרש who is incapable of testifying.

¹ A mute is considered a 'normal' person and is fit to be a שליח as opposed to a חרש, who is unfit to be a שליח,

² Seemingly that which would be gained if the גמרא chose תוספות options is that we would have avoided some of the ensuing discussion, and more importantly we would not be forced to establish that משנה in the very unusual and unlikely situation of a שנתחרש. However, see מהרש"א (הארוך) ש, מהרש"ש, מהרש"א (הארוך) ש, מהרש"ש and תוספות הרא"ש, מהרש"א (הארוך) ש, מהרש"ש. The אלם would be able to write בפני נכתב, for the testimony concerning לשמה כתיבה is not considered הגדת עדות; however, he cannot write בפני נחתם, for the testimony concerning קיום העדים is הגדת עדות. For הגדת עדות, writing is not acceptable on account of the rule of מפייהם ולא מפי כתבם. The משנה would then be understood according to רבה; that the שליח write בפני נכתב and then יתקיים בהותמו. Therefore, תוספות explains that אלם (and ראה) are no options since the משנה states 'ואינו יכול לומר'. We are therefore forced to say that we are discussing a חרש. The writing of a חרש is not acceptable; therefore, there is a refutation of רבה. See (however): 'Thinking it over'.

³ See מהר"ם for a different interpretation.

SUMMARY

The phrase 'ואינו יכול לומר', leads the גמרא to understand that we are discussing only a חרש, not a mute nor one who was not present at the writing of the גט.

THINKING IT OVER

If we are to interpret תוספות הרא"ש etc⁴., why would תוספות mention the case of כתיבת הגט? That case would seemingly not remove the refutation of רבה. Our תוספות should only have mentioned the case of אלם.⁵

⁴ See footnote # 2.

⁵ See סוכ"ד אות ג'.