

A Text Study on Deafness

Based on the Teaching of Matan Koch and written by RespectAbility Staff and Apprentices with the assistance of Howard Blas

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# Introduction



Matan Koch speaks with an interpreter standing next to him

## Purpose of this Guide

The purpose of this unit is to have you wrestle with rabbinic treatment of deafness, and then to ask the question of how this informs our modern Jewish approach to deafness and disability.

## Content Warning/Preparation

Now, we must warn you that some of these texts are troubling. We encourage you to recognize that times have changed, as have our understanding of the condition of deafness, and the ability of people who are deaf, like so many others with disabilities, to participate most fully in our Jewish life.

## Goals of this Guide

Our goals for your use of this guide is to help you understand the distinctions the rabbis made around deafness, to unpack what those distinctions mean from a values-based perspective, and to apply them to modern circumstances, with the option of applying an approach based on Jewish values.

# A Red Herring: The Most Commonly Cited Text

## Discussing Leviticus 19:14

If we were to poll a random audience of knowledgeable Jews or Christians about the primary Biblical source on deafness, they would probably point to Leviticus 19:14.

“You shall not curse the deaf or put a stumbling block before the blind. You shall fear your God: I am Adonai.” Leviticus 19:14.

This really isn’t a discussion specifically about how to treat blind or deaf people. Instead, admonishing us not to abuse blind or deaf people is actually reminding us of something much more profound. These scenarios each present situations where the person would be taking advantage of another person’s particular vulnerability to cause them harm. Most likely, therefore, the real meaning of this text is not to use people’s weaknesses to potentially harm them, whether or not that weakness is disability. This is especially true if the weakness would help you to get away with bad action. That said, this text does not particularly help us in an exploration of the treatment of deafness in Jewish tradition. The following sources will.

# The Rabbinic Understanding of Deafness

## An Incomplete Rabbinic Understanding of Deafness

Let’s be clear – the rabbinic understanding of deafness was incomplete, and their legal stance reflected it. This was 1,500 years ago, and their knowledge was extremely limited. But the legal stance reflected the fact that they had no way to know what the average deaf person knew, especially if that person did not have an oral form of communication. If they had lost their hearing at some point but still had their speech, this gave that individual the ability to communicate what they knew. Now, let’s look at the Mishnah.

“A deaf-mute, a shoteh (“person with intellectual disabilities”) and a minor are fit to have their worth vowed, and to be evaluated, but they are not fit to vow [on another's worth] or to evaluate, because they are not considered capable of intent…” Mishnah Arachin 1:1

To understand the Mishnah, we have to know the context—they are discussing the notion that gifts to the Temple can be based on a sum that is determined to be the value of another person (though this may seem archaic, you may be interested to know that modern American tort law and the insurance industry assign values to individual lives all the time). A person making the dedication can also make a statement regarding another person’s value.

The three categories of people referenced in the Mishnah have value, but are not fit to make either a vow [of another's worth] or to evaluate, because they are considered to be of unknown intelligence. In a legal system which based all acts on informed intent it makes sense that they presumed a lack of capacity where they could not determine intelligence, a limitation that we thankfully do not have today.

Essentially, at the time, there was no way for someone who was deaf and did not verbally communicate, to be evaluated for what they knew. However, this doesn’t mean that they were inherently of less value. Rather, without being able to determine their intelligence and knowledge they were not trusted to provide input on *someone else’s* value or inherent worth.

## The Importance of Intent

Let’s remember how much Jewish tradition strongly values intent. Intent is the notion that when someone is doing a ritualistic act, prayer, or sacrifice, etc. it is equally important that you have the appropriate intention behind the words as it is that you say the words. Your actions and the intent behind your actions must match.

At first glance it appears that tradition labels the deaf and mute person incapable of intent, but it’s actually more complicated. As you will see, a lot of decisions turn upon *if* there is intent, but establishes a default rule treating those for whom they’re unable to make a determination as without intent, because they must religiously err on the side of caution.

In sum, intent is pretty much the key to ritual, agency, and legal culpability in the rabbinic world. We have to accept that in the rabbinic mindset, intent determinations were critical. In a world before systematized sign language, how would we make a case-by-case determination of intent? It was nearly impossible to do, especially in light of the generalizations and assumptions made about those who had communication barriers. We’ll discuss this more below.

## Matters of Intent

“The occurrence of [injuring] a deaf-mute, a shoteh, or a minor is unfortunate. One who injures them is liable, and if they injure others they are exempt. The slave and the woman: their occurrences are unfortunate. One who injures them is liable, and when they injure others they are exempt. However, they [might] pay after some time—[if the] woman becomes divorced or the slave is freed, then they are liable to pay.” Mishnah Baba Kamma 8:4

### Questions to Evaluate Rabbinic Nuance on Intent

At first look, this appears to be absolving certain classes of people from responsibility for their actions. Why do we think that is? It might be because the ancient Rabbis made assumptions about their understanding of what they do. What types of conclusions are we coming to when we say that a category of people is not liable should they cause harm or injury to another person simply because they do not understand what they did?

This seems likely, as it also seems to include a category of individuals who lack the ability to control their own destiny. We see that when capacity is returned to the individual, they must take responsibility for their own actions. The example of the divorced woman or the freed slave suggest they are liable once their status changes—at that point, they are no longer acting under someone else's will, but on their own.

For the deaf-mute person, the rabbis weren’t sure what would ever make them liable for their actions, since they never quite knew if they were capable of understanding their actions and its consequences.

Here, we can clearly see that the slave and the woman are being treated differently than the deaf-mute person, and this allows us to look at this from a disability perspective. No one individual should be liable if they cannot understand what they have done wrong, nor if they do not have legal agency.

### Issues of Agency

Just in case there was any doubt that we are dealing with an issue of agency, we have a similar example in a Mishnah:

“If] an ox of a person of sound senses gored the ox of a deaf-mute, a shoteh, or a minor, he is obligated. [If] an ox of a deaf-mute, shoteh or a minor, gored the ox of a person of sound senses, he is exempt. [If] an ox a deaf-mute, a shoteh or a minor gored, the court appoints a guardian over them, and they testified against them in the presence of the guardian.” Baba Kama (4:4):

This is another example of unequal legal status, and not being held liable for your actions should you not understand what you did wrong.

## Desire and Intent

This relatively simple understanding is complexified by a further Mishnah it says:

“The following enactments were also made for the betterment of the world: A deaf-mute may express his wishes through gestures [romez]; that is to say, he can signal that he wishes to buy or sell a certain item, and the purchase or sale is valid. And similarly he may respond to others through gestures; that is to say, he can signal that he agrees to a transaction initiated by another party, and the transaction is valid. And ben Beteira says: Signals are not necessary, as even if he expresses his wishes to buy or sell through lip movements [kofetz] or responds to others through lip movements, the transaction is valid. These halakhot apply to transactions involving movable property. It was similarly enacted that a purchase made by young children [paotot] is a valid purchase, and a sale made by them is a valid sale. These halakhot apply to transactions involving movable property.” Gittin (5:7)

Using what we just read, if a person has no agency, or no legal status, how would such a person sell property? It seems that you don’t need to be able to hear or speak to engage in a legal transaction. What’s different here, is that the person *intended* the action, they mouthed the words, and we can clearly see the intent behind the action. The desire to engage in the transaction, itself, shows intent.

Unlike the previous texts which are about avoiding liability in the case of a person who doesn’t understand, in this case we seek not to avoid honoring the transaction of someone who appears to have intentionally engaged in the transaction. The law tends to err on the side of not assigning liability, but it also wants to be careful to not remove agency from someone who seems to be trying to engage in a transaction.

## Applying The Previous Sections to an Uncomfortable Situation

The Mishna says:

“[If] a deaf-mute marries a hearing woman, or if a hearing man marries a deaf-mute - if he desires he can remove [divorce] her, if he desires he can maintain her. Just as he marries her using signals, so too he can remove her using signals.”Yevamot (14:1)

First of all, it’s nice to know that the deaf people are perfectly okay to get married and get divorced in the rabbinic world. Secondly, it seems clear that even folks who are deaf and communicate with sign language, are still able to get married and divorced.

What does it mean that the Rabbis placed such nuances on questions of legal status and ability to give consent, but not their suitability for marriage (or divorce). There isn’t necessarily clear resolution on this question, but it merits further consideration.

In summary, it seems that Rabbinic construction presumes a lack of intent for a deaf person, but makes modifications based on the situation, most notably, capacity to understand. Since we are now able to determine this capacity conclusively for almost everyone, the most likely answer is that this Rabbinic presumption does not exist in modern times, and that all deaf people should be treated as having both intent and capacity. Note, this is not a modern gloss, merely a modern application of the standard already set up by the ancient Rabbis.

# The Heart of Rabbinic Thinking: Deafness and Ritual Obligation

The Rabbis enjoyed legal discussions, talking for hours about a goring ox, or personal injury law, but clearly in the hierarchy of their world, ritual held top billing. Given that, we can see the purest expression of the way that they thought about the place of deaf people in society based on the way they spoke of deaf people and ritual obligation.

## Ritual Validity Through Intent

The Mishnah teaches:

“Five [types of people] may not set aside Terumah [produce consecrated for priestly consumption], and if they did set aside Terumah, their Terumah is not [valid] Terumah: the deaf-mute, and the shoteh, and the minor, and one who sets aside Terumah from what does not belong to him. … A deaf person who can speak but cannot hear may not set aside Terumah. But if one did set aside Terumah, one's Terumah is valid Terumah. A deaf person that the Sages refer to in all cases can neither hear nor speak.”Terumot 1:1-2

Let’s look at the validity of one’s Terumah. The Terumah Offering was a specific separation of one’s goods into a present made to the Tabernacle or Temple for the use of the priests. The text above says that people who cannot demonstrate proper intent cannot do the all-important work of separating the Terumah offering.

A deaf person who can speak but cannot hear is able to give a valid gift. This could lead us to believe that the individual was not always deaf, but all we really know for sure is that it means that they found some way to learn how to speak, they could be educated. There’s nothing about their deafness or disability that prevents them from setting aside Terumah.

The person with a disability is still not required to set aside terumah, but if they do it, and they do it right, then it’s valid. What this means, is that there is no benefit of the doubt here, and also no meaningless restriction. If it’s been done, and done right, then there’s nothing inherently wrong with it just because it came from a deaf person.

## In the Context of Today

How might this inform our world today? Let’s evaluate an excerpt from the writings of Rabbi Azriel Hildesheimer, a 19th century German Orthodox rabbi and consider its implications in the modern world.

“In the case of a deaf person who has been taught to speak … the leading authorities of our generation are in disagreement. Some say that such a person is like a hearing person in every way, and has the legal status of one who speaks but does not hear. Others categorize him as [without intent]…, giving him the same status as one who neither speaks nor hears. Others are undecided and judge strictly in each case, because of the doubt.    
…  
This, however, was the prevalent attitude to deaf people at that time … Medical writings from that period upheld the same views, and it is only later on that the doctors’ opinions were amended, until they reached the conclusion that deaf people have mental powers (and only a difficulty in bringing this potential into full expression) and this view has been borne out in the experience of our own times. There is no contradiction here with the words of our sages, who only referred to deaf people with no opportunity to access their own intellectual potential. In my humble view we must not follow these great minds in deciding that a deaf person’s education has no significance. …There is no doubt that research in the natural sciences has no authority to contradict the traditions received from the sages. Here, however, we are simply interpreting the sages, to determine whether they made no distinction between one deaf person and another, or whether their intention was only to rule on a deaf person without education.”**[[1]](#endnote-1)**

While this text is a bit complex and confusing, what it seems to be saying is that there was a Rabbinic disagreement regarding whether or not the special legal status of deaf people still existed when he was living. Rabbi Hildesheimer seems to accept the fact that, since in their modern 19th-century understanding, any deaf person could be educated, they could now “access their own intellectual potential.” He suggests that the Rabbinic category only referred to people that could not access their own intellectual capacity—and that this type of person that no longer existed.

# Conclusion

In sum, these are some of the main takeaways from this guide:

* The rabbis had an incomplete understanding of the phenomenon of deafness and were unable to properly educate deaf people.
* The rabbis always extended some rights, like marriage and the sale of property, to deaf people.
* Where the rabbis removed rights and obligations, it was because they could not be certain that the person in question had the requisite understanding to exercise those rights or discharge those obligations.

When that person demonstrated otherwise, the rabbis changed the person’s status.

It seems likely that, since deaf people are now able to communicate in a variety of ways, there are no longer cases where rabbinic prohibitions concerning deaf people remain in effect. Essentially, this means that a deaf person can now be treated like everybody else

1. The work of Rabbi Azriel Hildesheimer. Provided with grateful thanks by Ed Frim (z”l) and the United Synagogue for Conservative Judaism's Ruderman Inclusion Action Committee for identifying and sharing this text. [↑](#endnote-ref-1)