

לע"נ *Yevamos Perek Gimmel is Dedicated*

מרת רבקה בת ר' אליהו ז"ל

הח"ר אברהם בן ר' מאיר הלוי ז"ל

מרת האלע בת הח"ר משה הלוי ז"ל

Yevamos Daf 31 is Dedicated

לרפ"ש נסים בן סולטנה ויפה בת מוטארם



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Daf Hashovua Yevamos Daf 31

The Gemara cites the incident with Bar Shatya to establish rules of chazaka and ownership. Let's explore the halachic ramifications of such cases.

The **Shulchan Aruch** in Choshen Mishpat 235:20-21 writes, "A shoteh (mentally handicapped) cannot buy, sell or gift anything, whether land or movables... Someone who is sometimes a shoteh and sometimes lucid: when he is lucid, all his transactions are valid. He can acquire for himself or others like any other person. Witnesses must investigate the matter very well to make sure it didn't happen at the beginning or end of a spell of shtus."

The Rema then adds our Gemara: "If two witnesses say he was a shoteh when he sold it and two say he was lucid – [if it was] land it remains in the possession of the seller, and movables remain by whoever has them."

What is the classification of a shotah? The Gemara in Chagigah gives some examples of abnormal activities, which, if done together, render the person a shotah. Additionally, if he does even one of them "in an insane

fashion,” that suffices. The activities given are walking alone at night (in dangerous circumstances), sleeping in a cemetery, and tearing his clothing.

The **Rambam** (Hilchos Eidus 9:9-10) elaborates that he doesn’t have to act in an very extreme way, like walking in public unclad, or breaking things or throwing stones randomly. Rather, it means anyone whose mind is clearly not rational in some area, even if he can speak coherently. The same is true if he cannot perceive obvious contradictions, or acts in general with excessive wildness or insanity.

Although he may seem to conduct lucid conversations, the **Chasam Sofer** (Shu”t Even Haezer 2:2) explains that he is no better than a cheresh (deaf-mute) who is compared to a shotah in halacha. Even if doesn’t do outwardly insane acts, his lack of perception of basic logic shows he lacks “daas.” (The Chasam Sofer himself seems to prefer restricting the actual term shotah to those who do perform acts of non-normalcy.)

Kesef Mishneh notes that the Rambam doesn’t delineate any specific behaviors, because the Gemara’s illustrations are just examples, and any similar action would fall under the same category. Rambam concludes that the dayanim must weigh each case carefully, since it is hard to quantify and explicate.

Thus, a shotah is defined as someone who clearly does not act in a lucid and intelligent fashion. His testimony is not accepted, his business transactions are not binding, and he is exempt from mitzvos.

However, **Rabbi Moshe Feinstein** infers from Tosfos in Chagigah unlike the Rambam (Igros Moshe Even Haezer 1:120). The Gemara there compares one who did several acts of insanity to a shor muad, an ox who gored three times and has a chazaka of doing so. How then can the Gemara say that if he did even *one thing* “in a spirit of shtus” he is considered a shotah? **Tosfos** answers that since he acted like a shotah in one thing, “we may assume with certainty that he is a shotah in every way.”

What if, ponders Rav Moshe, a person acts like a shotah in one area, but is clearly lucid in every other way? We would then not have the assumption of Tosfos, and he should not be considered a shotah!

The case in the teshuvah was of a fellow who spent a number of years in his youth proclaiming he was Moshiach. This led to many abnormal acts, such as climbing trees to make speeches about it, grabbing people's belongings and demanding money to get them back, and worse. Eventually he ceased these activities and got married. Unfortunately, soon afterwards he resumed his Moshiach delusions and abandoned his new wife. He returned to his father's house and after some time again stopped talking about it. Some years later, Rav Moshe was approached to convince him to give her a get. Rav Moshe says he spoke to him at length and he responded to everything with complete intelligence. But the man still maintained he was Moshiach...

Based on Tosfos, Rav Moshe posits that the man would not be classified a shoteh. This position seems to veer away from Rambam's psak that any sign of insanity qualifies. Rav Moshe discusses many other factors, such as evidence that the man's mental acumen never really changed all that time, so he was not a "temporary shotah," and the kiddushin would be equally valid as the get. Therefore, he could give a get.

The **Shu"t Oneg Yom Tov** (Even Haezer 153) notes a diyuk in the Rambam that if a person doesn't comprehend things in the way of normal people "he is included in shotim." He doesn't say straight out that *he is a shoteh*. Therefore, Oneg Yom Tov establishes two categories. One is what the Gemara prefaces with "what is a shoteh" – if he displays many forms of shtus, he is an unrestricted shoteh. The other is what Rambam describes, a person lacking basic intelligence, and if in some areas he clearly is lucid, he may be considered a pikeiach. (This may coincide with Tosfos' opinion.)

The story he dealt with was of a man of severely limited mental faculties, who did not comprehend much of anything. He got married and then his wife took him to a different town where nobody knew him, taught him to say "yes" when the Beis Din would ask him if he wants to give a get, and carried out her plan. She then got married to another man. The Oneg Yom Tov got wind of the scheme before she lived with her new husband. He ruled that the get was not valid since the first man had no inkling of the concept of divorce. He said that the man must be taught was divorce is, and

if he could be made to understand it, the get could work. This is an example of the second kind of shoteh.

Many Acharonim discussed and disputed which behaviors fall into the category of shoteh, such as depression, autism and other extreme psychiatric disorders (see Encyclopedia Hilchatis Refuis Vol. 7, entry Shoteh). A Rabbinic authority must be consulted in case of need, r"l.