

## CENTER FOR MODERN TORAH LEADERSHIP

*Center for Modern Torah Leadership*



חרות ואחריות

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"Taking Responsibility for Torah"

### WEEK FOUR SUMMARY OF SBM 2017

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Who is a *shoteh*, and what is his or her level in *chivvuv mitzvot*? What is the religious or halakhic value of Mitzvot performed by an *eino metzuveh ve'oseh*, someone who is not commanded but does the Mitzvah anyway?

We began with a responsum by the Chatam Sofer (Chelek 1 Orach Chaim Siman 83). His case is of a boy who can speak but does not understand what he is saying, and in general seems to have weak *daat*. Doctors suggest that he be sent to a school where he will learn enough to be a functional member of society, but would have to eat non-kosher food. Feeding a minor non-kosher food is generally prohibited. Does sending the boy to a non-kosher institution violate this *issur*, and if so, is the acquisition of *daat* worth the violation? The questioner argued that it should be allowed, because transforming the boy from a *shoteh* to one *chayav* in *mitzvot* is a sufficiently important purpose.

The Chatam Sofer says that if the boy is a *shoteh* and is *patur* from *mitzvot*, then he could go to the school, so that in the future he would be able to keep many *mitzvot*. He initially compares the case to someone stuck in the desert who has lost track of which day is Shabbat. Such a person must observe Shabbat in full every seventh day, and for the other six can only do *melakhab* to the extent necessary for *parnassah*. Nonetheless, he may travel as far as possible each day, despite the *techum Shabbat*, in order to return to civilization and to keeping Shabbat in full on the correct day. However, he concludes that the cases are different because the child is *patur min hashamayim* so there may not be a halakhic incentive to make him *chayav*.

The Chatam Sofer qualifies his *heter*, by saying that if someone was not quite a *shoteh* and was still obligated in *mitzvot*, it would be better not to send him to the school rather than to make him a wicked person. His final halakhic statement is that the boy should leave the school once he turns thirteen, presumably because he believed the child would in fact become *chayav then*. He adds that although it's technically allowed to send the boy to the school until *bar mitzvah*, it is better not to send him, because of the

negative metaphysical impact that eating non-kosher will have on the boy, even if this means he will remain a near- or quasi-*shoteh*.

Rav Moshe Feinstein (Orach Chaim Chelek 2 Siman 88) builds on the argument of the Chatam Sofer. In his case, a girl is a *shotah* and her father's health is failing because of the stress of caring for her. Rav Moshe argues that it is even clearer to have a *heter* in her case, because she is a complete *shotah*, and the Chatam Sofer's reservations only apply to someone who is barely a *shoteh*. Additionally, because this girl is a complete *shotah*, there is no need to remove her from the institution once she physically matures. He also contends that the metaphysical argument does not apply, because she will never become *mechuyyevet* in *mitzvot*. The danger to the father is another reason to be lenient.

We then discussed the value of *mitzvot* done by a person who is not obligated. Maharam Schick (Orach Chaim Siman 269) discussed the question of whether a boy who becomes *bar mitzvah* during the days of *sefirat ha'omer* can count with a *brakhab*. He initially states that a *mitzvah* done before one is obligated cannot exempt one from an obligation that takes effect later. This is because an action done by an obligated person is greater than that done by someone who is not obligated. An action done as a minor, therefore, cannot fulfill the obligation of the same person when he becomes an adult. However, Maharam Schick continues that since a *katan* is a *bar daat*, but just isn't commanded until he's older, his actions still count as a *mitzvah* to the extent that he gets reward like an *eino metzuveh*, rather than having his actions not count for anything. Therefore his actions have enough meaning to consider his counting "complete", and he can make the *brakhab*.

We then discussed a case in the Israeli Rabbinic Court (Chelek 10 p 193) of a deaf-mute woman who wanted to convert. Rav Zimbalist argues that she cannot convert - she is categorically considered to not have *daat*, so she cannot fulfill the condition of accepting the *mitzvot*. This is unlike

the conversion of a child, which works because the child will be able to accept *mitzvot* once he/she grows older. This is also different from converting a *shoteh* slave, who only requires a lack of protest. Rav Daichovski disagrees and thinks that either this woman has *daat*, in which case she can accept *mitzvot*, or else she does not have *daat*, in which case she is the perfect convert, since she can never sin! The acceptance of *mitzvot* is not necessary for her to convert if she will never become *chayyvet*. A central point in the judges' disagreement is whether there is value in conversion for someone who will be *patur* from all *mitzvot*. The final decision of the court follows Rav Zimbalist.

We then looked at Rav Shternbuch (Teshuvot VeHanhagot Volume 4 Siman 233) who discusses the conversion of a blind person. He states that a person with *daat* who is *patur* from *mitzvot* is still obligated in *emunah*. An acceptance of the obligation of *emunah* is enough for the conversion of such a person.

The Lehorot Natan (Chelek 1 Siman 25) analyzes the position of Maharam Schick. He makes a distinction between a *katan* and a *shoteh*: *mitzvah* acts have significance for a *katan*, but not for a *shoteh*. However, the Lehorot Natan does not give a rationale, so we don't know how narrowly we can apply this rule and how easily we can make exceptions. He also quotes the Eglei Tal, who says that while the *machshava* of a *katan* does not take halakhic effect in regards to others, it does so in regard to the *katan* himself.

In another Teshuvah (Yoreh Deah Chelek 2 Siman 8), Rav Moshe Feinstein states that there are two possibilities for understanding the obligation for a *katan*:

1. He is in the category of those who have accepted the Torah, but his *chiyyuv* won't kick in until he becomes an adult. So he's an *eino metzveh*.

2. He is not in the category of *chiyyuv* at all, but by doing an action he shows that he's a *ben daat* for this action, and therefore he gets reward like a *mitzveh*. A *katan* is technically *chayyav*, but he's *patur* because he's an *anoos*. What comes out of Rav Moshe is that he assumes Hashem gives reward to *ketanim*. Would the same apply to *shotim*?

In an article (Kovez Torani Im HaTorah 2nd Edition Volume 2), Rav Moshe writes about children who are *peta'im*. He says that as long as they have *daat* like responsible children, there's a responsibility to educate them, although he opposes spending communal money on them disproportionately; such monies should be raised from private contributions. His opinion was likely progressive at the time. He argues that there's a category of children who have a level of *daat* such that they have a

*chiyyuv* but are *anoos* for all *mitzvot*. Therefore their parents should try to prevent them from doing *aveirot*, but they themselves are not responsible.

We concluded the week by reading the responsum on "A Community Bar Mitzvah Celebration for a Child with Cognitive Disabilities" produced by the Israeli organization Beit Hillel. It is interesting to note that this Responsum was co-authored by male and female Torah scholars.

The authors write that the climax of the Bar Mitzvah ceremony is when the boy is called up to the Torah, an act that symbolizes entry into adulthood. From then on, he also participates in communal prayer and becomes responsible for passing the Torah's teachings on to a new generation. The questions are whether a mentally handicapped boy can go through this same teaching process and whether his family feels that the 13 years of education he received bore fruit as he becomes an adult member of the community. The document uses *halakhab* and the spirit of the *halakhab* to try to respond to these questions.

The first step is to adopt a fundamental approach that states these boys have the right to celebrate their Bar Mitzvahs in our communities as part of us. When the boy's condition does not allow him to celebrate his Bar Mitzvah like other boys, a customized and meaningful solution must be found for him. There is no obligation to have the ceremony when the boy is exactly 13 years old.

Spiritual leadership should stress the important Torah value that every human being was created in God's image. The active and positive participation of a spiritual leader in the integration of an individual with mental disabilities may determine the boy's religious future and his connection to Jewish tradition and practices.

To keep the Torah commandments, one must have *daat*. This excludes the *katan* and the *shoteh*. According to the *poskim*, a *shoteh* is an adult who suffers from a mental illness that clouds his cognitive functions. A person with a mental-developmental disorder may be a *shoteh* or a *peti* (simple-minded). Is a *peti* or a *shoteh* required to keep the *mitzvot*? Rambam and the Chatam Sofer say boys should be assessed on a case per case basis.

The authors conclude by quoting an inspirational passage from Isaiah:

*Strengthen weak hands, and make firm tottering knees ... Then the eyes of the blind shall be opened, and the ears of the deaf shall be unstopped.*

It is unfortunate, however, that the passage does not mention the *shoteh*, *peti* or the person with cognitive disabilities.