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Center for Modern Torah Leadership



חירות ואחריות

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"Taking Responsibility for Torah"

WEEK TWO SUMMARY OF SBM 2017

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The category “shoteh” can be used to cover all beings whose bodies are halakhically human and Jewish but who are halakhically limited because of mental illness, disability, or deficiency. We set out this week to refine this halakhic category by analyzing the term’s appearances in the Tosefta, Talmud Yerushalmi, and Talmud Bavli. The resultant taxonomy shows that the category of shoteh applies differently to various classes of halakhic actions with diverse results.

We identified four classes of halakhic requirements relating to the shoteh. Note that in most circumstances halakhah puts the shoteh, the katan (halakhic minor), and the cheresh (deaf-mute, whom most Rabbis regarded as presumptively lacking full mental capacity) in the same legal basket. These four classes are:

1. Actions that he/she can perform simply because his/her body is deemed halakhically human and/or Jewish
2. Actions regarding which a shoteh can be granted independent halakhic credibility
3. Actions regarding which a shoteh can be granted halakhic credibility if performed under the surveillance of a fully competent person
4. Actions from which a shoteh is entirely excluded.

An example of a halakhic action that seems to only require having a Jewish body and thus can be performed by a shoteh (Tosefta Yevamot Chapter 11) is yibum (levirate marriage). It is clear from the mechanics of yibum that no mental capacity is necessary for the fulfillment of this mitzvah. This contrasts with kiddushin (betrothal), which indeed requires da’at (intellectual capability) and thus cannot be performed by anyone who lacks this quality. This example raises the moral question of how halakhah conceives of and structures the ideal sexual life of a shoteh, given their effective inability to marry outside of the context of yibum.

An example of a different class of actions that can be accomplished by a member of one of the categories of disability is the supervision of the processing of taharot (ritually pure items) by charashim (deaf-mutes). The

opening chapter of Tosefta Terumot cites the case of the cheresh children of R’ Yochanan ben Gudgeda, who were charged with the preparation of all of the taharot in Yerushalayim. Although it is unclear what may be extrapolated from this case due to the possibly exceptional status of these particular charashim, it remains evident that there are some circumstances in which a cheresh may be halakhically trusted with responsibility. Might there be shotim who could be similarly entrusted?

Another class of halakhic actions consists of those actions whose mechanistic performance by all three of the cheresh, shoteh, and katan is allowed under supervision. These include shechitah (kosher slaughter) and the sanctification and sprinkling of the ashes of the parah adumah (red heifer). This category of action requires only oversight, and it is unclear how much, if any, da’at the slaughterer needs. However, the fact that we trust those lacking in da’at to perform certain actions (if only under supervision) shows that these people do have some degree of responsibility and trustworthiness.

Classification of actions into the final category can be quite difficult. For example, how are we to determine what level of da’at certain actions require, as well as how much da’at we can attribute to someone in the three “disabled” categories? Additionally, should we exclude such a person from all halakhic categories in which they are not explicitly included, or include them in those from which they aren’t explicitly excluded?

For example, Tosefta Terumot cited by the Yerushalmi records a dispute between R’ Yehudah and the Chakhamim as to whether we can extrapolate from the case of preparing taharot to that of separating terumah. Rabbi Yehudah draws the analogy, invoking the aforementioned case of the cheresh children of R’ Yochanan ben Gudgeda, but the Chakhamim reject it. The key issue appears to be that separating terumah, as opposed to preparing taharot, involves not merely carrying out directions that are relevant to the halakhic status of an object, but imposing that status on the object. R’ Yehudah may hold that a cheresh is just

like a pikei'ach (halakhically capable Jew), and therefore capable of establishing halakhic statuses. Alternatively, R' Yehudah might require less da'at to designate terumah than do the Chakhamim. He makes the same argument regarding a katan, but not for a shoteh.

The Yerushalmi in Chagigah specifies re'iyah (pilgrimage) as an example of a mitzvah that requires a type of da'at that the cheresh, shoteh, and katan lack. The da'at necessary in this case may be exclusive not due to its degree, but rather its type. This mitzvah, associated with the Shalosh Regalim (Three Festivals), is intended to gather everyone in Israel to Yerushalayim. In other words, the mitzvah is meant to achieve a communal effect. Thus, perhaps a special da'at is needed to that end. Conversely, perhaps mere presence is sufficient in this case. (Note that this differs from the mitzvah of tefilah with a minyan (praying with a quorum), as that is an obligation to ensure that there is a communal event, rather than to ensure that everyone from the community is present at the event.)

This Yerushalmi also provides a definition of katan that is outgrown long before the usual age of bar mitzvah. This opens up the possibility that the categories of cheresh and shoteh may be similarly narrowed.

In addition to pondering the halakhic role of the shoteh in society, we must also consider who should be included in the label.

Tosefta Terumot records four identifying characteristics of a shoteh: going out alone at night, sleeping in graveyards, tearing one's clothes, and losing or destroying all that one is given. The Tosefta does not specify whether these characteristics are meant to be interpreted descriptively or prescriptively, and is similarly vague about whether they are culturally dependent, or even intended as representative samples rather than as qualifying characteristics.

Yerushalmi Gittin, when discussing these characteristics in the context of halakhic divorce, prohibits those afflicted with the condition "kordaiikus" (perhaps epilepsy) from giving a get (divorce contract). The Yerushalmi thus implies that our previous definition of shoteh is insufficient, since one who has this illness would be considered a shoteh, yet does not exhibit any of the shoteh's aforementioned characteristics.

The Yerushalmi and the Bavli both discuss a dispute regarding whether all four characteristics are necessary for one to be a shoteh, or only one of them. The Bavli's list, however, does not include the final item of the Yerushalmi's, namely, losing or destroying what one is given. Nonetheless, the Bavli later qualifies its list to state

that this characteristic is indeed sufficient on its own, if only according to one opinion, as does the Yerushalmi (though in muddier terms).

The Tosefta in Bava Kama obligates one who hurts a shoteh in all forms of damage other than "boshet" (embarrassment). The Tosefta explains that this is because shotim lack boshet. Because of the vagueness of the term "boshet" in this context, it is unclear whether it refers to the payment for embarrassing a shoteh or to the embarrassment itself. Either way, this is the first time we have seen this quality used to describe a shoteh. How are we to understand this trait? It is possible that the description here is of one who lacks the self-awareness to be embarrassed, evoking the shoteh's lack of da'at. Alternatively, we might be describing one who is so mortified by his/her condition as a shoteh that he/she cannot be further humiliated. The ultimate humiliation may not even come from being a shoteh, but rather from being classified as one, and thereby being denied a halakhic persona.

On a related note, the Bavli on Shabbat 13b makes use of a curious idiom: "Ein shoteh nifga," "a shoteh cannot be harmed." It is unclear exactly what is meant by this phrase. For example, "harm" might refer to physical or emotional pain. There are also multiple ways to understand why the shoteh's is unable to experience said harm. On the one hand, the pain of the shoteh might be slowly dulled over time because of its magnitude. Alternatively, the shoteh might simply be unaware of external pain, either because of the intense internal pain he/she experiences as a shoteh, or simply because the shoteh lacks emotional or social consciousness. Regardless, these possibilities can again all be treated as either descriptive or prescriptive. We now have a far larger and more flexible net with which to classify the elusive shoteh.

This breakdown does not account for differences in the mental capacities of various shotim, which may affect their halakhic capabilities. Additionally, it leaves open the important question of how a shoteh relates to obligation in mitzvot, particularly those mitzvot lo ta'aseh (negative precepts) that are generally seen as morally intuitive, such as murder.

After we complete our traversal of the Bavli sources, the next step in refining the halakhic framework of a shoteh is to investigate its presence in the works of halakhic adjudicators, both old and new. Through the lenses of these revered figures, we seek both to gain an appreciation for the complexity of issues involving shotim and to better understand their perception within the world of halakhah.