KATAN PART 4: INCAPACITATION AND EXECUTORS

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A TRANSCRIPTION OF THE YORUCHA CURRICULUM WEEKLY SHIUR VIDEO

THE STATUS OF A DRUNKARD

In the previous shiurim, we focused mainly on the halachos of a *katan* related to Choshen Mishpat. In this final shiur, we will look at the Choshen Mishpat guidelines for a *cheireish* and *shoteh* as well, in addition to a brief discussion of the rules of an *apotropos*, an executor of the estate of an incapable party.

First, though, we should note that one who is drunk is generally considered to have *da'as* with respect to commerce. The only exception is for one who is inebriated to the point known as "shichruso shel Lot," meaning that he has no awareness of his actions whatsoever (Shulchan Aruch, C.M. 235:22). At that point he is considered to be a shoteh. Even then, though he is patur from mitzvos, he is still responsible for damages he causes (except if he got drunk for a mitzvah such as on Purim), since he should not have gotten so drunk.

THE DEFINITION OF A CHEIREISH

A cheireish is usually translated as a deaf-mute, who cannot hear or speak. According to halacha, a cheireish has the same status as a katan older than the age of peutos in that he can buy and sell movable items on a derabanan level if he can communicate in some form with others. However, even this takanah derabanan does not permit him to sell real estate, as we saw previously with respect to a katan (Gittin 59a).

A cheireish differs from an ilem, one who can hear but cannot speak. An ilem is treated as a regular individual. Thus, an ilem is chayav in mitzvos and can engage in commerce if others can understand him in other ways, such as through writing. Conversely, one who can speak but cannot hear at all is viewed in most respects as a normal individual according to many Rishonim, except with regard to commerce, for which he has the status of a cheireish. One who can hear but with difficulty is not considered a halachic cheireish at all (Shulchan Aruch, C.M. 235:17-19).

What is the status of a *cheireish* who was taught to communicate and knows how to conduct business transactions normally, such as through sign language? The Tzemach Tzedek discusses such an individual who

was a tailor and effectively supported himself and communicated with others. Although the Tzemach Tzedek notes that this individual was clearly as sane and knowledgeable as other people, he still treated him as a safek cheireish and therefore did not allow him to marry normally (but only in the manner that Chazal enacted for a cheireish).

Recent *poskim* have discussed the status of an individual who can only hear with a hearing aid or a cochlear implant. Rav Moshe Feinstein suggests that such a person is treated as one who can speak but cannot hear, since hearing through a machine is not defined as halachic hearing. Consequently, he is *chayav* in mitzvos, but he has the status of a *cheireish* with respect to commerce, as discussed above, and he cannot sell real estate. We can, however, establish an *apotropos* for him, similar to a *katan* above the age of *peutos*.

DETERMINING A SHOTEH

The shoteh is the third individual excluded from commerce due to a lack of da'as. Who is defined as a shoteh halachically? The Gemara (Chagigah 3b) asks this question, and Rashi explains that the Gemara seeks to define the halachic shoteh who is exempt from mitzvos and incapable of effecting transactions. The Gemara gives three defining characteristics of a shoteh: one who walks outside at night alone, one who sleeps in a cemetery, and one who tears his clothing. All of these refer to actions done in an illogical and inexplicable way. The Gemara cites a machlokes whether a shoteh is defined as one who engages in all three actions or even a person who engages in only one of them. The halacha follows the latter approach, which Tosafos explain to mean that he engages in one of the three activities mentioned on a consistent basis and for no apparent reason.

Some Rishonim, such as Rabeinu Simcha, understood the requirements of the Gemara literally, in the sense that a *shoteh* is limited to one who engaged in one of these three specific actions. However, the Rambam (Edus 9:9) writes that anyone who is "da'ato meshubeshes tamid b'davar min hadvarim" (his mind is always nonsensical concerning a particular matter), is defined as a *shoteh*, even if he acts normal otherwise. The Rambam adds that one who is foolish to the extent that he does not comprehend when

things are contradictory the way regular people would or one who is abnormally agitated or crazed, is included in the category of a *shoteh*. The Kesef Mishneh explains that according to the Rambam, the examples given in the Gemara to define a *shoteh* are not limited to those specific cases, but are merely examples of an individual who acts in ways that are incomprehensible to others.

The Divrei Chaim cites both of these two approaches and concludes that we cannot determine which of them the halacha should follow. However, he posits that the machlokes is limited to someone who acts normally in most respects but is irrational in certain ways. Whereas, all would agree that someone who is obviously insane is defined as a shoteh, even if he does not engage in the particular actions mentioned in the gemara. In a novel ruling, Rav Moshe Feinstein suggests that the Rambam's broad interpretation of a shoteh is specifically found in Hilchos Edus because it seeks to define a person who is technically not chayav in mitzvos, and is thus unable to testify. However, he may still be a bar da'as in other respects which are not dependent upon being obligated in mitzvos, such as his ability to be involved in commerce. and if he verifiably conducts himself normally in business dealings, his transactions are valid even according to the Rambam.

This issue is extremely relevant today for elderly individuals suffering *r"I* from Alzheimer's or dementia. Every case must be evaluated independently to determine if the person is of a sufficiently sound mind to authorize decisions concerning his property. Although secular law requires a relatively high standard of knowledge and understanding for these purposes (since they are concerned these individuals may be coerced to sell or give away their property), the halacha would dictate in most cases that even if the person is feeble-minded, his transactions are usually recognized, unless he has completely lost his senses. Generally, the recommended course of action is to secure the person's assets in an irrevocable trust while the person is still certainly sane and in charge of his faculties.

EXECUTORS

Whenever a person is incapable of managing his own affairs, such as a *shoteh* or a *katan*, an *apotropos* [executor] is to be appointed to do it for them. The Rishonim seek to explain the halachic mechanism used by Chazal in order to allow an *apotropos* to have jurisdiction over the property of someone else. Although some suggest that the mechanism of *zechiyah* can be used, it would seem more likely that he is classified as a *shaliach* Bais Din. Bais Din is referred to as the "father" of orphans, and just as Bais Din has the power to buy and sell on behalf of others,

the *apotropos* conducts himself in this role as well, serving as Bais Din's messenger.

There are four different ways in which one can become a halachically recognized *apotropos* (see Shulchan Aruch, C.M. 290:1). The first is that a person appoints an *apotropos* before he dies. The limitations upon this type of *apotropos* are generally more relaxed since he was appointed directly by the owner of the estate. The second type is an *apotropos* appointed by Bais Din if the individual himself did not do so. In this case, the halacha is much more restrictive as to whom should be appointed and what the *apotropos* may or may not do with the estate.

The third case of *apotropos* is where the orphans who have inherited the estate from their deceased parent began of their own accord to rely upon a specific person to take care of their affairs. This person can be anyone, even a close relative such as the children's mother. The person becomes the de-facto *apotropos*, and is permitted to manage the estate for the benefit of the orphans. The fourth type of *apotropos* is one appointed by the secular courts. Such an *apotropos* is also recognized by halacha due to the principle of *dina d'malchusa dina*, and this person will have the legal right to buy and sell on behalf of the orphans. This is often the most common case of *apotropos* today since secular banks or other institutions will not necessarily recognize individuals appointed by a Bais Din as being the legal representative of the individual.

The halachos related to an *apotropos* are complex and one must consult with recognized experts in this particular field in cases where this is relevant. As mentioned above, this question is often relevant to the elderly, and it is recommended for such a property owner to appoint an apotropos himself while still in control of his faculties. Otherwise, the family or others must sometimes get involved and the situation becomes more complicated.

It is important to note that in all of these cases, an *apotropos* is only empowered to act in the interests of the incapable party. They may not give any property away. For example, an *apotropos* may not decide on his own to give away items that he feels the individual does not use, as his role is only to do things for the person's benefit. This often applies to a widow who decides to give away her husband's possessions. In this case as well, the possessions generally belong to the halachic *yorshim*, who must first decide what they wish to do with them. For this reason, as mentioned, it is recommended that an expert in this field be involved in the case to resolve all of the issues in a halachically and legally appropriate manner that is acceptable to all.

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