

# KATAN PART 4: INCAPACITATION AND EXECUTORS

Rav Baruch Fried, Dayan at the Bais Havaad

A TRANSCRIPTION OF THE YORUCHA CURRICULUM WEEKLY SHIUR VIDEO

## THE STATUS OF A DRUNKARD

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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

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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

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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

