

## Who is a Shotah/Shoteh? Bava Kamma 88a

We frequently read of the categories of the שוטה וקטן, חרש, one who is both deaf and mute, one who is non compos mentis and one who is still a minor, none of whom are halakhically considered בני דעת. As such, their participation as halakhic actors is limited. In this session, we will examine specifically the category of שוטה.

Questions? Comments? Email Dr. Elana Stein Hain at [dinanddaf@gmail.com](mailto:dinanddaf@gmail.com)

### 1. משנה בבא קמא ח:ד

חרש, שוטה וקטן, פגיעתן רעה. החובל בהן חייב, והם שחבלו באחרים פטורין...

With regard to one who is deaf-mute, a שוטה, or a minor, an encounter with them is disadvantageous: one who injures them is liable, but if they injured others, they are exempt...

### 2. חגיגה ג:

תנו רבנן: איזהו שוטה? היוצא יחידי בלילה, והלך בבית הקברות, והמקרע את כסותו. איתמר, רב הונא אמר: עד שיהיו כולן בבת אחת, רבי יוחנן אמר: אפילו באחת מהן.

The Sages taught: Who is considered a שוטה? One who goes out alone at night, and one who sleeps in a cemetery, and one who rends his garment. It was stated that Rav Huna said: One does not have the halakhic status of a שוטה until there are all of these signs present at the same time. Rabbi Yohanan said: One is considered a שוטה even due to the appearance of one of these signs.

היכי דמי? אי דעביד להו דרך שטות — אפילו בחדא נמי, אי דלא עביד להו דרך שטות — אפילו כולהו נמי לא.  
What are the circumstances of the case under discussion? If one performs them in a deranged manner, then even the appearance of one sign should be enough to classify a person as a שוטה. If one does not perform these actions in a deranged manner, but has a reason to act this way, then even if one performs all of them one should not be deemed a שוטה.

לעולם דקא עביד להו דרך שטות, והלך בבית הקברות — אימור כדי שתשרה עליו רוח טומאה הוא דקא עביד.  
והיוצא יחידי בלילה — אימור גנדרפס אחדיה, והמקרע את כסותו — אימור בעל מחשבות הוא, כיון דעבדינהו לכולהו, הוה להו כמי שננח שור חמור וגמל, ונעשה מועד לכל.

Actually, the *baraita* is referring to one who performs these actions in a deranged manner, but each action on its own could be explained rationally. With regard to one who sleeps in the cemetery, one could say that one is doing so in order that an impure spirit should settle upon them. And with regard to one who goes out alone at night, one could say that perhaps a fever took hold of the person and they are trying to cool down. And as for one who tears their garments, one could say that the person is engaged in thought, and out of anxiety tears the clothing unintentionally. Despite these possible explanations, since one performed all of these together they are considered like the actions of a forewarned ox that gored an ox, a donkey, and a camel. Since this ox gored three different animals on three separate occasions, it is considered predisposed to gore and becomes forewarned for every type of animal. Likewise, if

someone performs three different deranged actions, it is assumed that there is no logical reason for their behavior and that person is classified as a שוטה.

אמר רב פפא: אי שמיע ליה לרב הונא הא דתניא: אי זהו שוטה — זה המאבד כל מה שנותנים לו, הוה הדר ביה.  
Rav Pappa said: If Rav Huna had heard that which is taught in a *baraita*: “Who is a שוטה? This is one who destroys whatever is given to them,” he would have retracted his statement..

### 3. בבלי ראש השנה כח.

עתים חלים עתים שוטה, קשהוא חלים — הרי הוא כפקח לכל דבריו, קשהוא שוטה — הרי הוא כשוטה לכל דבריו!

With regard to someone who is at times *compos mentis* and at times *non compos mentis*, during the *compos mentis* periods, that person is considered halakhically competent for all purposes (and is obligated in all the *mitzvot*). And during the *non compos mentis* periods, that person is considered a *shoteh* for all purposes (and is therefore exempt from the *mitzvot*).

### 4. רמב"ם משנה תורה הלכות עדות ט:ט

השוטה פסול לעדות מן התורה לפי שאינו בן מצות. ולא שוטה שהוא מהלך ערם ומשבר כלים וזורק אבנים בלבד. אלא כל מי שנטרפה דעתו ונמצאת דעתו משבשת תמיד בדבר מן הדברים אף על פי שהוא מדבר ושואל כענין בשאר דברים הרי זה פסול ובכלל שוטים יחשב...

A person who is *non compos mentis* is not acceptable as a witness according to Scriptural Law, for he is not obligated in the *mitzvot*. We are not only speaking about a *shoteh* who goes around naked, destroys utensils, and throws stones. Instead, it applies to anyone whose mind is disturbed and continually confused when it comes to certain matters although that person can speak and ask questions to the point regarding other matters. Such a person is an invalid witness and is considered to be a *shoteh*...

## 5. The Get of Cleves (<https://www.jewishvirtuallibrary.org/cleves-get>)

During 1766–67, a great controversy flared up, which was to become known as the *Cleves get* (bill of divorce), one of the causes célèbres of the 18<sup>th</sup> century. Though its focal point was Frankfurt, it came to involve most of the great scholars of the day.

On Elul 8, 5526 (August 14, 1766), Isaac (Itzik), son of Eliezer Neiberg of Mannheim, married Leah, daughter of Jacob Guenzhausen of Bonn. On the Sabbath following the wedding the bridegroom took 94 gold crowns of the dowry and disappeared. After an extensive search he was found two days later in the house of a non-Jew in the village of Farenheim and brought home. A few days later Isaac informed his wife's family that he could no longer stay in Germany because of the grave danger which threatened him there, and that he was obliged to immigrate to England.

He declared his willingness to give his wife a divorce in order to prevent her from becoming an *\*agunah* . His offer was accepted, and Cleves on the German-Dutch border was selected as the place for the *get* to be given. Consequently, on the 22<sup>nd</sup> of Elul, Israel b. Eliezer *\*Lipschuetz* , the *av bet din* of Cleves, effected the divorce.

Leah returned to Mannheim and Isaac proceeded to England. When his father learned of the divorce, he suspected that the whole affair had been contrived by the woman's relatives to extort the dowry money from Isaac. He turned to R. Tevele Hess of Mannheim who invalidated the *get* on the grounds that in his view the husband was not of sound mind when he delivered it. Hess, not relying upon his own judgment, applied to the *bet din* of Frankfurt and to Naphtali Hirsch Katzenellenbogen of Pfalz, Eliezer Katzenellenbogen of Hagenau, and Joseph Steinhardt of Fuerth, requesting their confirmation of his ruling. The *bet din* of Frankfurt, headed by Abraham b. *Ṭevi* Hirsch of Lissau, not only agreed, but demanded that Lipschuetz himself declare the *get* invalid and proclaim Leah to be still a married woman.

The rabbis of Pfalz, Hagenau, and Fuerth, on the other hand, upheld Lipschuetz, declared the divorce valid, and the woman free to remarry. Both sides appealed to all the rabbinical authorities of the time. The rabbi of Cleves received the support of almost all of the leading scholars of the generation, among them Saul b. Aryeh Leib *\*Loewenstamm* of Amsterdam, Jacob *\*Emden* , Ezekiel *\*Landau* of Prague, Isaac *\*Horowitz* of Hamburg, David of Dessau, Aryeh of Metz, Elhanan of Danzig, Solomon b. Moses of Chelm, and ten scholars of the *klaus* (*bet-midrash*) of Brody.

The *bet din* of Frankfurt was virtually alone in its opposition. The moving spirit in the dispute was the Frankfurt *dayyan*, Nathan b. Solomon Maas, on whose initiative the Frankfurt rabbis even went so far as publicly and with solemn ceremony to commit to flames the responsa of the Polish rabbis in protest against their intervention in favor of Lipschuetz. The couple finally remarried and out of deference to the opinion of Rabbi Abraham of Frankfurt, no blessings were pronounced at the ceremony. Instead the groom said that "with this ring you are still married to me."

The complete episode of the Cleves divorce was recorded in *Or ha-Yashar* (Amsterdam, 1769) by Aaron Simeon Copenhagen who had followed the events and who had himself played a part in the granting of the *get*. Israel Lipschuetz devoted no less than 37 of his responsa to the polemic in his *Or Yisrael* (Cleves, 1770).