

HALOCHOSCOPE

Clarification on last two issues: *Achilas kva* for *sukah* is more than an egg-size. *Achilah* for *kiddush bimkom seuda* is less than this. In fact, when reciting *kiddush* between *shacharis* and *musaf*, one should eat less than *achilas kva*. [See OC 286:3, commentaries.]

This week's question:

A special needs person attends a non-Jewish school to teach him how to cook basic things. The students provide their own utensils. Is there any concern that the Jewish student's kosher utensils might be used for non-kosher food? If the student is taught by his parents how important it is to maintain the kosher integrity of the utensils, does this help? If the school has protocol in place to prevent the use of utensils by other students, does this help? Is there concern about the times that the Jewish student is absent?

The issues:

- A) Status of special needs person
- B) Credibility issues
- C) Kosher utensils in the care of a gentile

A) Special needs person

The issue with the level of competence of the person involved arises on two fronts. First, is he obliged in observing the *mitzvos*? If he is not obliged the question remains whether he may be allowed to eat forbidden foods anyhow, and whether he may be actually helped in this endeavor. The second issue is whether his level of competence might be enough to obligate him yet not enough to consider him responsible and credible. Thus, he might not be trusted to ensure that the item is *halachically* secured.

Assuming that he is left to monitor the situation himself, following the instructions given to him, another question remains. Is it possible that he is trusted on his level, to monitor the items for his own level of obligation? However, when the items are then brought home, are they still considered kosher for others on a higher level of obligation?

There are three categories of general exemptions from obligation: *cheresh*, deaf mute, *shoteh*, mentally incompetent or imbecile, and *katan*, minor. Each of these has limited capacity, but in different ways. The Torah requires *daas*, conscious knowledge of what one is doing, for an obligation or an action to be effective. A *cheresh* is considered to have reduced *daas*, mainly because he cannot fully relate to the world like everyone else. The *shoteh* is considered completely incompetent. Not every *shoteh* is equally incompetent, but once the threshold is reached, his status is *shoteh*. There is a category known as a *pessi*, a very simple person who cannot be trusted to testify, but is obliged in all *mitzvos*. Some maintain that *cheresh* in modern times might be on this level. Therapeutic measures have made it possible for them to function display a measure of *daas*.

A *katan* has some *daas*, and indeed continues to gain more as he grows. When he

reaches majority, he is considered to have basically the same *daas* as an adult, at least in terms of obligation. There are some areas in which he is considered deficient until he reaches an older age. At a younger age, he is exempt Scripturally.

There is a Rabbinical obligation of *chinuch*, training a child to perform *mitzvos*. Some say that this was imposed on the child by the Rabbis. When he is old enough to grasp the basic principles, he can be Rabbinically obligated. Others maintain that the authority of the Rabbis to impose an obligation is based on the Scriptural obligation to follow their decrees. If the child is not obliged in this matter, the Rabbis have no authority to impose it on him. Rather, the Rabbis obliged the parents to educate their child. Certain *mitzvos* involve a child specifically. The *mitzvah* to teach Torah starts when the child is old enough to start learning. He does not need to have reached the point of adult *daas* for this. *Hagadah*, relating the Exodus on *Pesach*, applies to the very young, who do not even know how to ask questions. They can be told the stories. This obligation applies to the father and mother. One may speculate whether this also applies to a minor *shoteh*. The Talmud mentions an age for *chinuch*. This is either when the child knows how to perform an act independently, or is able to understand the *mitzvah*. A child can also reach an age when he understands Hashem, Who commanded the *mitzvos*. Thus, for positive *mitzvos* this age is subjective. For negative *mitzvos* it is the same for any *mitzvah*. This is when the child can be told not to do something and he will obey. While a *shoteh* child might reach this level, he will not reach the eventual level of *daas*. Therefore, *chinuch* would not apply to him in the traditional sense. Some apply a limited type of *chinuch* to them – *chinuch bikedusha*, training them to become holy. Each person has a holy soul. Even a very young child can be sanctified through his behavior.

Making a vow, oath or ban involves understanding. The Torah recognizes the vows, oaths or bans of senior minors. This is a minor in his or her last year of minority. If the child demonstrates an understanding of the gravity of the utterance, it is binding. This shows that there is a Scripturally recognized gradual coming of age as well.

One basic difference between the *cheresh* or *shoteh* and the *katan* is that the former two are currently in a fixed state of limited capacity. If they are subsequently cured, they have changed their state from non-*daas* to *daas*. The *katan* is in a temporary state of deficiency, but will be gradually coming into a state of competence eventually. His current *daas* is developing. The Talmud debates a case where one needs to use the services of another to perform a minor Rabbinical prohibition. Which of *cheresh* or *katan* is preferred?

The person in our question is past the age of majority, but has special needs. Each type and case of special needs must be analyzed individually. The Talmud gives certain guidelines. The poskim debate whether these are specific, or are examples of types. Furthermore, it is clear from Talmudic discussion that a *shoteh* can often seem to be competent enough to perform. For example, a *shoteh* is disqualified from discharging others' obligation to hear *megillah* on Purim. Clearly, this man can perform the act in a normal enough fashion. Nonetheless, his general diagnosis disqualifies him. Conversely, there might be someone who is unable to perform certain things by himself, but is fully cognizant. He might never be classified as a *shoteh*, despite a reduced capacity. Thus, it is often hard for the ordinary person to make a determination on the status of a special

needs person. In some cases, however, insanity is patently obvious.

The poskim debate whether a *shoteh* is totally ineligible, meaning that he never has the obligation. Some consider him on the level of *anuss*, one who is not in control of his ability. An *anuss* can be considered obliged with a dispensation, rather than ineligible. The difference between these views is whether the *shoteh* will have fulfilled an obligation if he does the *mitzvah* in his current state. When he is cured, must he start over?

A parent may not directly feed a minor forbidden food. The Talmud debates whether the parent and/or the *Bais Din*, local Rabbinical authorities and their emissaries, have an obligation to stop the *katan* if he eats the food of his own accord. The same would apply to other prohibitions. If a *shoteh* is considered obliged with a dispensation, or perhaps even if he is exempt, is there an obligation to prevent him from ingesting forbidden food? The poskim cite sources that ingesting forbidden food has a spiritual effect on the soul. Does this apply to a *shoteh*? Should an effort be made to prevent this from happening? The poskim debate committing a *shoteh* to an institution where he will be fed non-kosher food. Let us assume that our case involves a special needs person who is either a *pessi* or a *safek shoteh*, doubtful incompetent. Thus, we would have an obligation to protect him from non-kosher food. [See Terumos 1:1 Yerushalmi Shabbos 121a 153a-b Sukah 42a Chagigah 3b-4a Yevamos 110a-114b Gitin 59a 64b-65a 70b-71b Chulin 2a-3a Erchin 2a, Poskim. Tur Sh Ar e.g. YD 1:5, commentaries. PMG OC Psicha Kolelles.]

B) Credibility

Can a special needs person be entrusted with monitoring his own utensils? Can the employees of an institution be relied on not to use the kosher utensils with non-kosher food? In matters of *halacha*, *aid echad ne'eman be'isurin*, the testimony of one witness is accepted in matters of ritual law, rather than judicial law. The witness need not meet with the requirement for a judicial witness. However, a child cannot automatically be relied on. Under certain circumstances, he is relied on under adult supervision. In other situations, testimony as such is not needed. We might have already established the facts. However, there could be suspicion that the facts changed, or were changed by man. In such circumstances, the credibility and objectivity of those involved could play a role.

If the student is a *shoteh*, he cannot 'testify' even if it seems that this area is his strong point. However, he might be relied on to observe a change and report what he saw. The gentiles involved are not obliged in *mitzvos*, and they do not appreciate the seriousness of them. Furthermore, they might sometimes try to change something for personal gain. They cannot testify directly. Their unintentional statements, however, may be taken into consideration. If they stand to lose, financially or otherwise, by a false statement or a mistake, they can be trusted, if they are afraid of getting caught. Sometimes, a gentile is religious himself, and fears G-d. [See e.g. YD 69:10 118:7-10 119, commentaries.]

C) Kosher utensils in the care of a gentile

A Jew may not use the utensils of a gentile for kosher food. It is assumed that the gentile used the utensil for non-kosher food. The utensil absorbed non-kosher flavor, which it then imparts to the kosher food being cooked by the Jew. Even if the gentile only cooked kosher food, it is Rabbinically forbidden for the Jew to eat it, with certain conditions. Therefore, the flavor of anything the gentile cooked is forbidden as well.

However, if kosher food had already been cooked by the gentile in his pot, a Jew may eat it, under normal circumstances. We are permitted to make the assumption that unless otherwise informed, the utensil was not used for the last twenty-four hours. Therefore, the flavor has deteriorated to the point that it does not contribute positively to the fresh food. If it was used more recently, it might have been used for kosher food or something with a bad flavor. Nonetheless, one may not go ahead and use the pot based on this.

Accordingly, kosher pots may not be left in the care of a gentile. A utensil left with a repairman must be marked in a way that the Jew will be able to tell whether it was used. Otherwise, if the utensil was there long enough to have been used, it must be *kashered*. The poskim debate whether one may leave it with him for a shorter time unmarked. They further debate if it was left for long enough to have become *pagum*, spoiled flavor, or if one does not plan to use it right after getting it back. Some say that the dispensation after the fact only applies in a situation where the gentile is employed in a Jewish home. He may be relied on, because he knows the rules and will not intentionally make mistakes. He also knows that he can get caught. [See Avoda Zara 36b 38b-39a 75b, Poskim. Tur Sh Ar YD 118:12 122:6 7 9, commentaries.]

In our case, the utensils are left in the care of the gentile school overnight and on days when the Jewish student does not attend. The suspicion is that the kosher utensils could be borrowed by teachers or other students on occasion. If there is an agreement made, with consequences, the question is whether the presence of the special needs student helps. Can he be considered a supervisor? Is a supervisor required, or is it enough that the staff know that the students could unwittingly reveal what happened? What about days when they know he will not be coming? Should the utensils be marked by the special needs student? Can he be relied on to follow these instructions? At the end of each use, he could wrap the utensil and seal it. What if he comes in after the weekend and finds the seal broken? Can he be relied on to report this and to take the necessary actions? Is a broken seal worse than an unmarked utensil left for longer than twenty-four hours?

Depending on how it is set up, a system could work, even with a special needs student. The staff ultimately answer to the parents. They are careful not to violate the trust placed in them. This is especially true when the students have special needs, and parents are more cautious about their treatment. The system should include explaining to the staff the issues. [Nowadays, by comparing it to a food allergy, people accept the concept of such precautions about trace flavors.] They should understand the consequences, which might include ultimately removing this student. The student should be taught how to seal and mark the utensil. If the seal is broken, he should be taught to report it to his parents before using it. The staff must be told that he is not to be pressured to use it before reporting it. If something goes wrong, a *Rav* should be consulted. Depending on circumstances, the utensil might still be usable. However, in order to protect the integrity of the agreement, the *Rav* will need to use judgment on when and how to permit it.

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