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BAIS HAVAAD HALACHA CENTER
105 River Ave. #301, Lakewood NJ 08701
1.888.485.VAAD (8223)
www.baishavaad.org
info@baishavaad.org
Lakewood • Midwest • Brooklyn • South Florida

לע"נ הרב יוסף ישראל
ב"ר משה גרוסמן זצ"ל

Dedicated in loving memory of
HaRav Yosef Grossman zt"l

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CAN'T STAND: WITNESS INCOMPETENCE IN HALACHA

Adapted from the writings of Dayan Yitzhak Grossman

Reason Magazine reports:

Justice Ketanji Brown Jackson released her first opinion since taking office this June—a dissent, arguing in favor of an Ohio death row inmate.

In her dissent, Jackson argued that the court should grant a writ of certiorari in the case of Davel Chinn, an Ohio man convicted of a 1989 murder and sentenced to death. Chinn's lawyers argued that, during Chinn's trial, the state suppressed the fact that a key witness to the crime was severely intellectually disabled. By suppressing this information, they claim that the jury had an overinflated view of the witness's credibility.

While seven members of the Court agreed to deny Chinn's petition, Jackson, joined by Justice Sonia Sotomayor, dissented the denial. Jackson argued that several lower

courts pinned the outcome of the case on the testimony of Marvin Washington—whose IQ was estimated at only 48...

Further, Jackson argued that the suppression of information about Washington's disability, which "may have affected Washington's ability to remember, perceive fact from fiction, and testify accurately," constitutes a due process violation. To Jackson, this failure is significant enough to grant Chinn's petition—and for Chinn's loss at the Cincinnati-based 6th U.S. Circuit Court of Appeals to be reversed.

"Because Chinn's life is on the line, and given the substantial likelihood that the suppressed records would have changed the outcome at trial based on the Ohio courts' own representations...I would

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PARSHAS CHAYEI SARA

NIGHTTIME

Excerpted and adapted from a shiur by
Rav Moshe Zev Granek

And Yitzchak went out to converse in the field toward evening, and he raised his eyes and saw, and behold! camels were coming.

Bereishis 24:63

The Gemara (Berachos 26b) derives from this *pasuk* that Yitzchak instituted the *tfilah* of Mincha. The Gemara also cites a *machlokes* between R' Yehudah and the Chachamim whether Mincha may be recited until the end of the day or until *plag haMincha*, 1¼ *sha'os zmanios* earlier. The Gemara concludes that the halacha was not decided, so one may follow either view. This is the ruling of many *Rishonim* and the Shulchan Aruch (O.C. 233:1).

According to Rabeinu Yonah, one must choose a view and follow it consistently. The Mordechai says one may change from day to day, but he may not contradict himself by following both opinions on the same day (*tartei desasrei*), i.e., *daven Mincha* after *plag* and then *Ma'ariv* (whose *zman* begins after *zman Mincha*) before *shkiah*. Other *Rishonim*, including Rabeinu Tam, allow even that. Indeed, the Gra comments that the Shulchan Aruch, who permits

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Q&A from the
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Clothing Arguments

Q Suits produced by several high-end clothiers are often found to contain *shatnez*. May I try on such suits at the store, before the *shatnez* is removed?

A The Mishnah (Kilayim 9:6) permits a tailor to sew a *shatnez* garment for a non-Jewish client, even though the garment sits on his lap as he sews. Likewise, a clothing peddler may don his *shatnez* products for display (ibid. 9:5). How are these permitted? The prohibition of *shatnez*, Chazal explain, is to derive pleasure from wearing *shatnez* clothing (Yevamos 4b). Because in these cases there is no intention to receive *hana'ah* from the clothes, it is permitted.

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summarily reverse to ensure that the Sixth Circuit conducts its materiality analysis under the proper standard," Jackson concluded.¹

THE HALACHIC RULES OF TESTIMONY

The halachic framework governing the validity of testimony in a legal proceeding is fundamentally different from its counterpart in the secular law. In the latter, almost anyone can give testimony as an eyewitness, and it is up to the judge or jury to evaluate his credibility and determine how much weight to give his testimony. In halacha, however, there are a number of classes of people who are categorically disqualified from testifying (e.g., women, certain close relatives of the litigants, and individuals with an interest in the litigation), regardless of any assessment of the witness's credibility in a particular case.

THE SHOTEH

One class of people that is summarily disqualified from testifying is the intellectually disabled. The Rambam and Shulchan Aruch rule:

A *shoteh* is Biblically invalid as a witness, for he is not obligated in mitzvos. Not only a *shoteh* who walks about naked, destroys utensils, and throws stones, but anyone whose mind is disturbed and continually confused in a certain matter, even though he can speak and ask appropriate questions in other matters, is invalid...

Those who are exceptionally feeble-minded (*psa'im beyoseir*), who do not understand when things contradict each other and cannot comprehend a concept as people generally would...are included among the *shotim*. This matter depends on the perception of the judge, because it is impossible to describe it precisely in words.²

The Rambam's rationale for the ineligibility of a *shoteh* to testify, that he is not obligated in the mitzvos, is curious; an apparently simpler reason would be that his intellectual disability renders his testimony unreliable. The Bais Yosef indeed asserts that the ineligibility of a *shoteh* to testify is obvious, due to this latter

reason,³ and in his Kessef Mishneh he wonders what the Rambam's source is.⁴

DEFINING THE SHOTEH

The Sma explains the difference between a *shoteh* and a *pessi* as follows:

The *shoteh's* mind is completely distorted and deranged regarding one particular matter, whereas the *pessi* is not entirely deranged regarding any matter; but on the other hand, he is worse than the *shoteh*, for the *shoteh* in all other matters is as sane as ordinary people, whereas the *pessi* does not have a totally sound mind and does not understand anything the way that ordinary people do...⁵

Halachic authorities point out that the Gemara actually gives specific diagnostic criteria for the *shoteh*:

Who is considered a *shoteh*? One who goes out alone at night, and one who sleeps in a cemetery, and one who rends his garment...Who is a *shoteh*? This is one who destroys whatever is given to him.⁶

The Rambam and Shulchan Aruch, who omit these specific criteria, apparently understand them to be mere examples, and in actuality any behavior common to the mentally disabled is evidence of such disability.⁷ There is, however, a dissenting opinion that only the behaviors specified by the Gemara constitute valid diagnostic criteria.⁸

(There is a vast literature on the application of the halachic definition and criteria of *shoteh* to various forms of mental illness and derangement, a detailed survey of which is beyond the scope of this article.⁹)

³ Bais Yosef C.M. *siman* 35. Radvaz to Rambam *ibid.* suggests this reason as well.

⁴ Kessef Mishneh *Eidus* 99. Cf. Lechem Mishneh *ibid.*; Nesivos Chaim *ibid.*, and see the sources compiled in the Sefer Hamafteiach of the Frankel edition of the Rambam.

⁵ Sma *ibid.* s.k. 21.

⁶ Chagigah 3b-4a.

⁷ Kessef Mishneh *ibid.* and Bais Yosef E.H. *siman* 121. Cf. Shu"t Mahari Weil *siman* 52 (cited in Darchei Moshe E.H. *siman* 119 os 5).

⁸ R' Simcha of Speyer, cited in Shu"t Maharam *afus* Prague *siman* 455 (cited in Bais Yosef E.H. *siman* 119) and R' Avigdor Cohen, cited in Mordechai Gittin *remez* 421 (cited in Bais Yosef E.H. *siman* 121). Cf. Shu"t Maharik *shoresh* 19 (cited in Bais Yosef *ibid.*).

⁹ In addition to the sources cited in the preceding notes, see Shu"t Bais Efraim E.H. *cheilek* 3 *siman* 89; Shu"t Divrei Chaim *cheilek* 2 E.H. *simanim* 74-76; Pis'chei Teshuvah E.H. *siman* 121 s.k. 2, among many others.

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When passing through customs, clothing importers would often wear some of their merchandise in order to evade taxes (which were not levied on personal items). The Rambam (Hil. *Kilayim* 10:18) rules that a *shatnez* garment may not be donned for this purpose. (This is not to imply that tax evasion is permitted; the case involves an illegitimate tax. See Bava Kama 113a.) The Mechaber (Y.D. 301:5) follows this ruling. Why the difference?



RAV ARVEH
FINKEL

The Kessef Mishneh explains: The tax evader is wearing the garment in the normal fashion. But the tailor and peddler don't wear the garment, they only drape it on their bodies.

The Rosh disagrees with the Rambam in the tax case, and the Rama (*ibid.* 6) follows his ruling. The Rama adds that a salesman, for the same reason, is permitted to wear the forbidden garment to show its measurements to a customer.

According to this, you may try on a suit known to contain *shatnez*. But the Chochmas Adam (106:20) says that the Rama's allowance only pertains to the seller, not the customer. The Sheivet Halevi (2:169) was asked why and suggests this distinction: When a buyer tries on a garment, aside from measuring the fit, he also instinctively assesses its texture and comfort, to see if he is satisfied with it generally. This, argues the Chochmas Adam, is akin to benefiting from the garment.

Still, the Sheivet Halevi quotes the Minchas Yitzchak, who finds grounds to extend the Rama's ruling to buyers. (He notes that the Chochmas Adam's view differs from that of the Gra.) He concurs with the Minchas Yitzchak's leniency, especially when the subject is only—as in your case—*safek kilayim*.

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davening Ma'ariv early in a *she'as hadchak*

(pressing situation), is relying on Rabeinu Tam.

The Tur (O.C. 267) seems to say that even a person who davens

Ma'ariv late on weeknights is encouraged to daven early on Shabbos. The Magein Avraham explains that this combines several factors: First, Rabeinu Tam permits davening Ma'ariv early even for someone who davens Mincha until *shkiah*.

Second, the Mordechai allows changing one's Ma'ariv practice daily. Third, Ma'ariv corresponds to the burning of the *eivarim* on the *mizbeiach*, which was done before Shabbos.

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