

Nafshi BiShe'elati
The Halakhot of Mental Health



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Dr. Shmuel Harris

NAFSHI BISHE'ELATI

The Halakhot of Mental Health

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In memory of

Yosef Hirsh

יוסף טוביה ז"ל

בן ישראל אריה יבלחט"א

(1978–2003)

Beloved son, brother, and friend
Dedicated servant of God and the Jewish People

*In his merit and memory may this book
bring health and peace of mind to those in need*

תנצב"ה

**Len & Faye Hirsh
and Family**



*Yair Givati and Sari Nossbaum Givati
are proud to support this publication
and do so in loving memory of*

Haim Givati z"l

who overcame many moments of adversity with strength
and resilience and truly embodied “אמר מעט ועשה הרבה”.

Sari and Yair are also proud to support the work of
Rav Yoni Rosensweig and מעגלי נפש and the notion of adapting
Halakha – with sensitivity – in a rapidly evolving world.



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Preface

With God's help, I am delighted to present to the public the fruit of four years of strenuous labor, a volume that my colleague Dr. Shmuel Harris and I have titled *Nafshi BiShe'elati*. The idea for this book was conceived when I was serving as a communal rabbi in Beit Shemesh and received halakhic questions about mental health, to which, I discovered, definitive answers did not exist. Despite the rising profile of mental health in the public eye, as of the writing of this volume there is still no compilation of rulings on the halakhic questions and crises that arise daily from the experiences of those living with mental illness. Moreover, it is difficult for rabbis to keep current with scholarship on mental health and the changes that occasionally occur in that field, as well as with the therapeutic realities facing mental health practitioners. The wavering hand of the *posek* needs encouragement and strengthening for the pen to inscribe an informed and fitting ruling.

Writing this book wasn't easy, breaking new ground never is. Naturally, there will be missteps – misplaced emphases, contested facts, genuine errors. While we have done our best to eliminate such blots, pathfinding is unavoidably linked with a process of trial and error.

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The book first took shape in Dr. Harris's office in Jerusalem, where we would learn together every week. When it came to Halakha, I was the teacher and he the student, but when it shifted to mental health, our roles reversed. This went on for two years. During that time, I searched out every written shred of information I could find on mental health in Halakha, and began composing the Hebrew appendices that constitute the analytical and halakhic basis for the rest of the volume. After Dr. Harris and I finished our study of the material and determined how to best translate longstanding halakhic concepts into current clinical terms, I began drafting the individual chapters of the book for practical halakhic application.

After I worked all the written halakhic material I had found into the book, and wrote chapters that formulate the halakhic definitions and parameters of mental illness based on my *havruta* with Dr. Harris, we made the decision to ask the great *posekim* of our time to review our treatment of the various issues. To this end, we approached *posekim* across the entire Orthodox spectrum for two reasons. First, mental health is virgin ground in Halakha and it requires the subtle judgment of the most seasoned *posekim*. Second, ideas that have little precedent require the backing of esteemed halakhic authorities to be accepted by the public and by other rabbis. Since this book is intended to be a halakhic aid – and not, God forbid, a source of halakhic conflict – we asked prestigious *posekim* for their opinion on the halakhic decisions rendered in this volume. We hope that every reader, whatever their affiliation, can rest assured of their veracity and reliability.

We also asked mental health experts to review sections of the volume and give their professional opinion on some of its working assumptions about mental health and psychotherapy. We solicited the opinions of psychiatrists, psychologists, social workers, dietitians, physicians, and university professors. We recognize that not everyone will be satisfied with our choice of mental health

experts, but there is unfortunately a limit to how many people one can consult, and those who agreed to weigh in are ultimately the ones who informed the reasoning and decisions of this book. We anticipate that professional views will be aired that disagree with the findings of the volume and we would be delighted to include them in the second edition.

In producing this book, we set out not only to create an authoritative work that would supply up-to-date, accurate knowledge for rabbis and mental health professionals, but also to bring mental health into the spotlight and make it a topic of communal discourse. As Dr. Harris articulates so well in his introduction below, those living with mental illness are the most important readership of this volume – it was written with them in mind. If the publication of this book has one significant effect, I wish it to be the removal of the stigma from mental illness. The disparity between those living with physical and mental illnesses is glaring: the former receive unconditional support the entire time, whereas the latter must contend not only with their illness but with the judgment it attracts, sometimes even from family and friends. It is my hope that this book will facilitate the recognition of mental illness as “legitimate” illness within the religious community, so that we can embrace those in our midst who are living with it and give them the maximum support possible.

While no book is simple to write, mental health poses a particular challenge for the halakhist. It is not standardized in the way that the rest of medicine is. New halakhic terms therefore had to be “coined” to speak about mental health productively and precisely. The reason for this lack of standardization is inherent to mental healthcare itself. Put a question to any expert about this or that disorder and they will invariably respond, “It depends on the specific case.” Unlike physicians of the body, physicians of the mind struggle to formulate a set of accepted principles from

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which one can produce rulings. This is a real challenge for crafting a halakhic guide, which requires the distillation of general rules from individual cases.

After extensive deliberation and numerous false starts, we decided on a style that is case-based but rule-minded. That is, each paragraph describes a highly specific case or situation, but by considering it carefully one can discern the underlying principles relevant to a halakhic decision. A rule is prized from the specificity of the case that can then *potentially* be applied to slightly different sets of facts that arise daily with the morning sun. I must emphasize here, and rabbis especially would do well to take note: *Do not draw direct analogies between cases*. What can be taken away from the discussions in this book are the relevant halakhic principles that ought to be considered in the final analysis, which should be made only after consulting with both the person asking the question and their mental health professional (with the patient's consent, obviously). We trust that this book will encourage cooperation of this kind between rabbis and mental health professionals.

Two additional points of which the reader should be aware. First, it is a great privilege to share the halakhic rulings of contemporary *posekim*, and I try to quote them directly and provide their reasoning when it was offered to me. Beyond that, the responsibility for the reasoning and analysis in the footnotes is mine alone. Second, this book contains material that is relevant to the subject matter of more than one chapter. For ease of reference, it has been included in each place. Although this has generated slight redundancies, the reader should still read the accompanying footnotes in full, as material specific to the subject at hand is sometimes added. And one final note: Due to the size of this volume, we decided to omit most of the appendices that appear in the original Hebrew work of the same name. The avid reader will be able to refer to Hebrew edition for halakhic analyses.

Acknowledgments

This book could not have been written without the gracious assistance of many people, and I would like to take this opportunity to express my profoundest gratitude to them.

I would like to begin by thanking my teacher and guide in the field of mental health, my dear colleague and old friend Dr. Shmuel Harris. The lengths to which he went to ensure every detail in this book is correct knew no bounds. At times, he would set me straight on what seemed a triviality, a word here or there, so that mental health professionals could effectively use this book. Dr. Harris dedicated hours upon hours of his private time to this project and reviewed every chapter of the book. Without him, this book would have remained but a gleam in my eye. I am deeply indebted to him for his enduring friendship and his unparalleled contribution to making this book a reality.

Next, I must give thanks to my rabbis and teachers, leaders and *posekim*, who devoted so much time and energy in spite of the enormous responsibilities that already weigh on them. I have merited fulfilling the dictum of Yosei b. Tzereida: “Sit in the dust of their feet, and thirstily drink their words” (Avot 1:4). In order to make the footnotes easier to read, I have eliminated all well-

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deserved honorifics, and to avoid discomfort, I thank them here in alphabetical order:

R. Eliyah Abergel, R. Yaakov Ariel, R. Yuval Cherlow, R. Baruch Gigi, R. Re'em Hacoen, R. Yehuda Herzl Henkin *zt"l*, R. Dov Lior, R. Eliezer Melamed, *mori verabbi* R. Hershel Schachter, *mori verabbi* R. Yitzchak Sheilat, R. Asher Weiss, R. Mordechai Willig, and R. Yitzchak Zilberstein. I would also be remiss not to mention R. Ilai Ofran, who offered wise counsel about the book.

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The mental health professionals, the men and women who enabled me to better understand certain psychological disorders and their effects, also have my sincere gratitude. I pray that I am not leaving anyone out and, in the event that I have, that they will forgive me and let me know so that I can include them in the second edition. The following made a valuable contribution to this volume, listed in alphabetical order:

Dr. Esther Altman, Dr. Rachel Bachner, Dr. Tal-Li Aviv Cohen, Naomi Dessauer, Dr. Meir Eckstein (psychologist), Alumah Florsheim, Dr. Victor Fornari, Rachel Horwitz (psychotherapist), R. Matan and Elisheva Levi (therapists certified in TAT), Prof. Yossi Levi-Belz, Gloria Mosenkis (social worker), Judy Krasna, Dr. Sinai Oren (psychiatrist), Rabbanit Amira Raanan, Tali Rosenbaum (sex therapist), Dr. Mordechai Schiffman, David Schwartz, Prof. Rael Strous, Dr. Elisabeth Wajnryt, Chana Waysman (dietitian), Dr. Gidon Winter, Shani Engel Yanover (clinical dietician)

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Special thanks go to Miriam Friedman-Zussman, Gitti and Ari Wertenteil, and Jeff Rubin for the substantial support they have graciously extended me over the years, and without which I could never have brought this book to fruition.

This book is dedicated to the memory of *mori verabbi*, Rabbi Nachum Eliezer Rabinovitch *zt"l*. In early 2020, when the coronavirus was claiming victims left and right, my master and teacher, who shaped my entire approach to and methodology of *pesak*, was taken from us. I cannot even begin to describe the immense pain I felt when he passed away and the gaping void I still feel today. The loss is irreplaceable. Were he still with us, every single question in this book would have been submitted to his scrutiny and the book would have been all the better for it. Just a few months before his passing, I was able to visit him at home, and I told him about this book I was writing. He told me that this undertaking is very important and wished me success. I requested that he write some prefatory remarks with their customary blessing, and he said he would be happy to when the book was finished. Unfortunately, I did not merit receiving his blessing. His absence is so keenly felt. It is some consolation that beyond the rulings I have included in his name, I know for certain that the entire book could not have been written if not for the time spent learning at his feet. May the Torah in this book cause his holy *neshama* to have an *aliya*.

To my wife Ilana, my children Batzion, Yitzchak, Hadas, Ariel, and Navah – you are the foundation of my life. Whatever I have accomplished is because of you. Thank you for your unwavering support and encouragement.

May God's blessing rest on our handiwork.

Yonatan Rosenweig
Tishrei 5783, September 2023, Beit Shemesh

Introduction

From the very first day of medical school, physicians are both educated and enjoined to treat not just disease but more importantly, the human being who is suffering.

Nowhere is this more relevant than in the field of mental health, where the individual's personality, upbringing, beliefs, relationships, and outlook on life determine how they experience, deal with, and ultimately overcome this mental anguish.

This is especially true for the Torah community, where it not just a question of philosophical faith but equally practical application – Halakha is the language and medium through which observant Jews relate and react to the ever-changing circumstances of life, helping us to both understand and navigate the joys and challenges that the Creator presents us with.

This *sefer* is the product of a *havruta* with my teacher and close friend, R. Yonatan Rosensweig, and seeks to address an area of Halakha that has been relatively overlooked. There are understandable reasons for this – the field of mental health is not an exact science, and for all the progress the field has witnessed in recent decades, its conceptualizations remain imprecise, making it very difficult to formulate halakhic definitions and confidently arrive at

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halakhic determinations. Additionally, the stigma associated with mental health has perhaps dissuaded many from paskening in an area that is challenging, feared, and ultimately misunderstood.

By addressing halakhic issues from across the spectrum of mental health, our hope is that this *sefer* will be of immediate practical value to *rabbanim*, mental health professionals, and most of all to those suffering with mental illness and those who support and care for them.

Beyond this, however, it was our intent to give validation to those suffering by acknowledging that these issues are real and that the Halakha recognizes and relates to them as such. In doing so, this would not only be a contribution to the world of Halakha, but also to reducing the stigma that is associated with mental illness. We would be especially gratified if it were to encourage others to join and continue this important discussion – one that unfortunately only becomes more relevant with time.

I would like to first and foremost thank R. Rosensweig for a friendship that extends back for the better part of two decades. The opportunity to be involved in such an undertaking is a privilege that I do not take for granted. I hope that this is the first of many such joint endeavors in being of service to *Klal Yisrael*.

To my wife, Ilana Aviva, who has always lent me the staunchest support in all of my undertakings, and especially those involving Torah, holiness, and helping others – may we continue building a home together that embodies these values.

Finally, I would like to thank God for blessing me every day with the ability to help His creations understand his Torah.

Dr. Shmuel Harris
Nisan 5783, April 2023

Chapter 1

The *Shoteh* and *Shetut* in Halakha

In many areas, Halakha addresses the status of the *shoteh*, someone not in total control of their mental faculties.¹ This chapter presents the halakhic conclusions of the primary *sugya* on the definition of the *shoteh* in Tractate Ḥagiga,² as filtered through the discussions of the *Amora'im*, *Rishonim*, and *Aḥaronim*.

It is important to state clearly at the outset that the analysis below pertains *only* to the *shoteh's* obligation in mitzvot, and not

1. The references in rabbinic literature are too numerous to list here. To give a sense of the variety of contexts in which the *shoteh* appears, all references in the Mishna are listed here: Terumot 1:1, Eiruvim 3:2, Rosh HaShana 3:8, Megilla 2:4, Ḥagiga 1:1, Yevamot 4:6 and 7:5, Gittin 2:5–8, Bava Kamma 4:4, 6:2–4, 8:4, Shevuot 4:6, Menaḥot 9:8, Ḥullin 1:1 and 6:3, Bekhorot 7:6, Arakhin 1:1, Me'ila 6:2, Para 5:4, Teharot 3:6, 5:8, 8:6, Nidda 2:1, and Zavim 2:1.

For the range of halakhic topics to which the halakhic status of the *shoteh* is relevant, see the comprehensive but concise entry in Steinberg, *Entziklopedya*, vol. 7, s.v. *shoteh*, 575–604.

2. Ḥagiga 3b–4a, which cites the four signs of a *shoteh* from Tosefta Terumot 1:3. The Gemara clarifies a dispute between R. Yoḥanan and R. Huna:

to their capacity to effect halakhic transactions nor to their sanity for matters of marriage, divorce, and the like. Additionally, the treatment here is concise, with an emphasis on *halakha lemaase*, with some elaboration in the accompanying footnotes. For a fuller, more comprehensive account, see the appendices in the Hebrew edition of this volume.³

DEFINING THE SHOTEH AND SHETUT

1. Halakha does not define the *shoteh* essentially and etiologically, by setting forth neurological or psychological parameters, but bases its definition on observable behaviors. Designating someone a *shoteh*, therefore, does not require a diagnosis of clearly defined mental illness; certain actions reflective of *shetut* constitute sufficient grounds.⁴

according to the former, even one sign suffices to render someone a *shoteh*; according to the latter, all four signs are necessary (see the discussion there and in Y. Terumot 1:1).

3. See Appendices 1 and 8 in the Hebrew edition of this volume. See also *Mishpetei HaDaat*, and *Shiurei Torah LeRofe'im*, 3:204.
4. Rabbinic literature itself distinguishes between essential and practical definitions of *shetut*. R. Shimon Sofer takes this to be the very dispute between R. Yoḥanan and R. Huna (see above, footnote 2): “R. Huna thinks that the status of the *shoteh* is applied only to someone with an injury to the brain, the seat of the entire intellect. This is in contrast to someone who is a *shoteh ledavar ehad* due to some external cause, such as the overproduction of black bile or some other physical illness. Although such a person does things that people do not do..., since the seat of their intellect is not degraded at its foundations in the brain, they are not the *shoteh* spoken of in Halakha, who is not obligated in mitzvot and whose *kinyan* is ineffective. R. Yoḥanan disagrees, arguing that no matter the cause, the effect is the addling of the mind and intellect, to the point that one cannot make the right decision nor effectively restrain their natural impulse from doing those things that someone in their right mind would not do. Such a person is therefore a *shoteh in toto*” (*Shut Mikhtav Sofer, EH, §1*).

According to this analysis, R. Huna requires all four signs of *shetut* to be

2. The acts of the *shoteh gamur* are either: those done for no evidently logical reason,⁵ or those done for a reason that makes

present because Halakha wants to establish whether the mind of the individual in question is fundamentally impaired. One act of *shetut* does not a *shoteh* make. That said, even R. Huna would concede that an unmistakable act of *shetut*, like destroying what someone gives you, suffices on its own to establish a person as a *shoteh*. R. Yoḥanan, on the other hand, does not see the need to establish significant neurological degradation. If, for whatever reason, the person's behavior demonstrates *shetut*, clearly their mind is powerless to control it, and that is enough to apply the status of *shoteh* to them.

Consequently, even if the *shetut* is rooted in the intellect (as Maimonides writes in *Pirkei Moshe, Maamar* 23: “*Shetut* is the persistent confusion of the intellect in the absence of fever”), there is no need to verify it in every case in order to consider someone a *shoteh*. R. Moshe Mordechai Farbstein emphasizes the adequacy of acts of *shetut* without a medical pathology: “In halacha, the word *shoteh* is not synonymous with ‘mentally ill’ but refers to one whose mind is confused and whose processes of thought or conduct are adversely affected. This confusion is likely to arise from various causes: mental illness, a ‘bad spirit,’ brain damage, diseases of old age, or other causes. The cause makes no difference in halacha, which takes no account of the cause of the *shetut*, merely of the effects” (“Psychiatry and Halacha,” 257).

Examples are endless. Consider someone who does not eat for a long period of time, to the point of endangering their life. This typically indicates some mental illness, but it may not be readily diagnosable. Is it depression, an eating disorder, psychosis perhaps? Even if a differential diagnosis proves inconclusive, the halakhic fact does not change: since the person displays some degree of *shetut* in their behavior, the relevant laws of the *shoteh* are applicable.

5. According to most *posekim*, the primary sign of the *shoteh gamur* is the lack of a rationale for their actions (see Rambam's *Guide for the Perplexed*, III:25). R. Alexander Sender Schor defines the *shoteh* thus: “It is plainly known that there is no reason for this action other than his *shetut*, and we do not attribute it to some very unlikely cause that we could devise” (*Tevuot Shor*, 1:47, s.v. *derekh shetut*). R. Yosef David Sinzheim similarly writes: “It seems to me that whenever someone does one act that is undoubtedly the product of *shetut* and the breakdown of reason, such that it would be irrational to everyone else, and we cannot attribute it to anything else, that

person is certainly a *shoteh* according to all opinions, there being no dispute about it at all” (*Yad David, Piskei Halakhot*, 1:167). R. Yechezkel Abramsky subscribes to the same definition: “He does so in the manner of *shetut*, i.e., needlessly” (*Hazon Yehezkel, Tosefta Terumot* 1:3). One finds the same in other *Aḥaronim* as well.

For this reason, as a rule, someone who does acts of *shetut* with a coherent view of reality is not considered acting for no reason and is not a *shoteh*. So writes R. Yoav Yehoshua Weingarten: “Certainly, if someone purposely does something that appears nonsensical and foolish, so long as we can find some intention behind it, which itself might also be nonsensical or foolish, we would not consider them a *shoteh* for it. Indeed, there is no greater *shetut* than someone who says, ‘Write a get,’ and then immediately jumps off the roof, and the Mishna rules that the get is valid. ... Why would we not consider him a *shoteh* for wanting to kill himself? Because there are some with contorted minds who, experiencing great distress, detest life and kill themselves. Although this is the greatest *shetut* of all, it does not make someone a *shoteh*, so long as some purpose can be found in it...” (*Shut Helkat Yo'av*, vol. 1, *EH*, §20).

Taking a similar view, R. Moshe Feinstein observes about someone who thinks he is the Messiah: “Someone who worships idols of wood or stone is not a *shoteh*, even though it is a great *shetut* to have faith in wood and stone; instead, we consider him a *pikke'ah* who is a sinner and therefore liable to die. Likewise, if someone thinks he is the Messiah, which is a great *shetut*, he is not to be deemed a *shoteh*; rather, his excessive self-importance has misled him into thinking he is worthy of being the Messiah. It follows that one can further reason that all his acts of *shetut* that originate from his messianic complex, which he in his wrong mind believes will heal the world, do not make him a *shoteh*. Anything that someone does according to some calculation or belief held in the mind, even if it be the greatest folly in the world, does not make them a *shoteh*...” (*Iggerot Moshe, EH* 1, §120).

R. Moshe Mordechai Farbstein concludes: “When the mental illness of a *shoteh* reaches such a degree that he does not relate to his environment and his mind is utterly confused, he is clearly in no way responsible for his actions” (“Psychiatry and Halacha,” 257). See *Shiurei Torah LeRofo'im*, 3:206.

Note that the foregoing does not apply to someone with obsessive-compulsive disorder. If such a person is asked why they repeat certain actions,

sense to the doer but clearly does not accord with objective reality, as can occur with psychoses.⁶ The vast majority of

they will concede that there is no logical reason for it, but they also know that doing so reduces their anxiety, which is a completely logical motivation. Therefore, someone with OCD is not considered a *shoteh*.

6. Dr. Rael Strous discusses the relationship between the *shoteh* and psychosis: “The concept of the *shoteh* is a difficult one to define and has been applied in relation to many different cases. The most common usage of the word has been reserved for, and most closely describes, the clinical phenomenon of psychosis, the state in which an individual lacks the ability to distinguish reality from fantasy. With gross impairment of reality testing and insight, the psychotic individual will incorrectly evaluate perceptions and thoughts and, in so doing, make incorrect inferences about external reality despite evidence to the contrary. This state is frequently associated with a severe impairment of social and personal functioning characterized by an inability to perform expected roles. While the concept of *shoteh* is associated with psychosis, a more precise description of its phenomenology and its application to contemporary clinical medicine remains unclear” (“The *Shoteh* and Psychosis,” 159).

According to this, the *shoteh gamur* is psychotic, because such a person has lost the ability “to distinguish reality from fantasy,” leading to behavior that is grossly irrational. This accords with what the Rambam writes as the prime example of a *shoteh*: “... a *shoteh* who goes about naked, breaks things, and throws stones...” (*Hilkhot Eduh*, 9:9). Such a person has lost all connection to reality and conducts themselves aberrantly, without regard for or awareness of social propriety.

Although the *posekim* understand *shetut* behavior to be without cause or reason, this categorization doesn’t always apply to someone with psychosis, because the person does act according to a certain logic and internally consistent view of reality. Still, since we know with (near) certainty that their perception of reality is objectively wrong, everything the person does can be construed as being without cause. If they were to perceive things as they really are, they would readily admit that their actions are not only purposeless but at times even perilous. To put it another way, since one can demonstrate that reality differs from the imaginings of the psychotic, the very construction of an alternative worldview is a causeless act that put them into the category of the *shoteh*.

posekim agree that whoever performs such acts is the *shoteh gamur* referred to in the Mishna and Gemara.⁷

SHOTEH LEDAVAR EḤAD

3. If someone consistently acts like a *shoteh*, but in only one respect, the *Amora'im* disagree about their status: R. Yoḥanan considers them a *shoteh*, whereas R. Huna does not. The Rambam was the first to clearly make the distinction between a *shoteh gamur* and this type of *shoteh*, which was later called

R. Dr. Avraham Steinberg comments: “Some Rabbis state that the aforementioned difference of opinion [about the signs of a *shoteh*] relates to a person who acts perfectly normally in all respects but one. However, a person who is totally mad and performs many acts of madness is considered by all Rabbis to be a *shoteh*” (Steinberg, *Entziklopedya*, vol. 7, 555 = *Encyclopedia*, 662).

7. *Shut Mikhtav Sofer* (EH, §1) dissents, and proposes a different understanding of *shetut* behavior, based on a question about R. Yoḥanan’s opinion. His proposal is difficult in many respects; see Appendix 1 in the Hebrew edition of this volume.

There is a dispute between the Rambam and Rabbenu Simha whether the symptoms of *shetut* are limited to those enumerated in Tosefta Terumot 1:3 or can be extended to others; see Appendix 1 in the Hebrew edition. In practice, the Rambam’s position is adopted here, following the near consensus of *posekim*.

a *shoteh ledavar ehad* by *posekim*.⁸ Nearly all *posekim* follow R. Yoḥanan and consider a *shoteh ledavar ehad* a *shoteh gamur*.⁹

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8. Everything in the previous paragraph pertained to the *shoteh gamur*. As noted above (footnote 2), the Gemara also gives signs of *shetut* for those who are not completely psychotic but primarily neurotic. Such people generally form an accurate picture of reality because their *shetut* is limited to one area. Nevertheless, according to the opinion of the Rambam (which is accepted as the halakha), because their behavior in that respect is consistently aberrant and has no discernible cause other than mental illness, the *shoteh ledavar ehad* is considered a *shoteh*. (Notably, R. Eliyahu Klatzkin [*Shut Imrei Shefer*, §75] mentions the term “monomania,” which he says was a prevalent diagnosis among contemporary physicians. While used in the nineteenth century, this term has since been replaced by others. The point is that the concept of a *shoteh ledavar ehad* has also been an official medical category among non-Jews.)

- Understanding the dispute between R. Yoḥanan and R. Huna as about a *shoteh ledavar ehad* is based on the Rambam’s reading of the *sugya* (*Hilkhot Eduṭ*, 9:9) and the explicit interpretation of the Mahari Weil: “When R. Yoḥanan and R. Huna dispute the criteria for being called a *shoteh* in the first chapter of Ḥagiga, it is undoubtedly when the only observable *shetut* witnessed is rending one’s clothes and the like. For if the person does not tear their clothes, spend the night in the cemetery, and go out alone at night, but does other acts of *shetut*, would they not be called a *shoteh*?! It must be that they disagree only when this is the sole observable *shetut*, whether the person is considered a *shoteh* even though they can give intelligent answers” (*Shut Mahari Weil*, §52). The same emerges from the discussions of many other *Aḥaronim*; see at length in Appendix 1 of the Hebrew edition of this volume.
9. This is implied by the Rambam’s ruling (as read by most *posekim*): “The *shoteh* is biblically invalidated from giving testimony because he is not obligated in mitzvot. Not only the *shoteh* who goes about naked, breaks things, and throws stones, but anyone who has experienced *teiruf hadaat* and whose mind is constantly confused in some respect. Even though he can converse and answer questions intelligently about all other matters, such a person is invalidated [from giving testimony] and is considered a *shoteh*” (*Hilkhot Eduṭ*, 9:9). This is also the opinion of the Rosh (*Hullin* 1:4), *Or Zarua* (vol. 1, §367 and §778), *Aguda* (*Ḥagiga*, ad loc.), *Sefer HaIttur* (*Shaar Bet*, *Hilkhot*

The Halakhot of Mental Health

4. A *shoteh ledavar ehad* is completely lucid in every other way and appears to be of sound mind. Since most people have eccentricities and quirks – none of which make them a *shoteh* – the designation of *shoteh ledavar ehad* should only be applied in clear-cut cases.¹⁰ Many *posekim* indicate that

Shehita), the Raavya (*Sefer Raavya*, 3:805), Rabbenu Yeruham (*Meisharim*, *Nativ* 19, pt. 1; *Toledot Adam VeHava*, *Nativ* 15, pt. 1), *Sefer Yere'im* (§425), and *Teshuvot Hakhmei Provintza* (§57–§58).

The following *Rishonim*, however, rule like R. Huna: Meiri (*Hagiga*, ad loc.), Rabbenu Simha of Speyer (cited in *Shut Maharam MiRotenberg*, 4:455), R. Yitzchak b. Malki Tzedek (Mishna Terumot 1:1), and *Tashbetz* (2:138).

The *Tur* (*YD*, §1 and *HM*, §35) rules like his father, the Rosh, that the halakha follows R. Yoḥanan, and *Beit Yosef* (*HM*, §35) concurs. The following also rule this way: *Perisha* (*YD*, 1:26; *HM*, 35:9), *Sema* (*HM*, 35:20), *Yam shel Shlomo* (*Hullin* 1:4), *Shakh* (*YD*, 1:23), *Peri Hadash* (*YD*, 1:23), *Kereti UFeleti* (*YD*, 1:28), *Get Mekushar* (14:1). *Shulhan Arukh* adopts Rambam's language in *Hoshen Mishpat* (35:8), and in *Yoreh De'a* (1:5) explicitly rules in accordance with R. Yoḥanan. *Levush* writes the same in both places. *Arukh HaShulhan* (*HM*, 35:7) cites all of this as the halakha and rules like R. Yoḥanan.

10. The Maharik has the first discussion of this: “It seems to me that someone who does an act indicating insanity is not at all similar to the one who ate dates and threw the pits into Rava's house, or like the one in *Mi SheAḥazo* (*Gittin* 67b) who became mute on account of an illness that makes him insane.... In that case, there is a certainly a concern that [the husband's] “yes” does not mean yes and his “no” doesn't mean no; since he has become insane, he doesn't know what he's saying and doesn't choose his words carefully. [...] In contrast, someone whose head is clear and who speaks lucidly but doesn't understand things like everyone else, I think that so long as he is not considered one of those mentioned by *Hazal* in the first chapter of *Hagiga*, his deeds are entirely effective. We need some kind of yardstick to assess in what respect someone can be said to understand or not understand something, because some people understand more or less than others, some understand it at six or seven and some take longer – no two minds are alike” (*Shut UFiskei HaMaharik HaHadashim*, §20).

Similarly, the Rosh (*Shut HaRosh*, 43:3) discusses the case of a woman who seeks a *get* because, as she puts it, her husband's “idiocy grows day by

the symptoms which qualify must be quite close to those enumerated in the Gemara, in that they do injury to the body,

day” and might leave her an *aguna* forever. The other side counters that the husband is not insane, he is simply “not well versed in social comportment.” The Rosh favors the latter claim and writes that there is nothing to be concerned about. The Maharit observes: “Here illness is not the cause; rather, she says that he is insane, his idiocy is severe, and he is a hothead. Reuven counters that he is not insane just not well versed in social comportment. Even according to the wife’s account, it would not be considered a ‘blemish’ [to void the marriage] but a lack of culture and deficient judgment” (*Shut Maharit*, 1:113).

We find much the same in *Shut Beit Efrayim*, EH, §89, and in a responsum of the *Noda BiYehuda* (cited in *Or HaYashar*, §30). *Shut Tzemaḥ Tzedek* (EH, §153) argues that even the Rambam would limit the designation of *shoteh ledavar eḥad* to the primary examples in Tractate Ḥagiga, and so writes *Seridei Esh* (1:97). R. Chaim Elazar Wax writes: “The rule that emerges... is that even according to the Rambam’s approach, there is no evidence that any act of *shetut* aside from those enumerated in the *baraita* renders someone a *shoteh*, unless it is plain as day that a person is a *shoteh* in that respect. For example, when it comes to that matter, they completely lose their mind and cannot distinguish yes from no. Otherwise, even if someone does an act of *shetut*, perhaps they are being foolish about the matter. And even if they are always this way, they might be an inveterate fool whose folly is irremovable and not a *shoteh*” (*Shut Nefesh Ḥayya*, 1:27). And so in *Beit Yitzḥak*, EH 2, §4 and §6.

Cases like these illustrate vividly how challenging it is to diagnose someone as a *shoteh ledavar eḥad*. Many people behave aberrantly for a spell, whether in the heat of the moment or out of ignorance about social comportment in certain settings and situations. There isn’t even a thought that they might actually be a *shoteh*. One must be exceedingly careful not to make too much of emotional outbursts or atypical behavior and elevate it to the level of *shetut*. For this very reason, both the Rosh and the Maharit did not consider the husband in the cases before them as mentally ill. If we combine this interpretation of the Rambam’s opinion with the possibility that *Tosafot* disagree and consider a *shoteh ledavar eḥad* to be sane in all other respects, and with the opinion of Rabbenu Simha and Rabbenu Avigdor that a *shoteh ledavar eḥad* is limited to the bizarre behaviors listed in the Gemara, then there’s even more cause to exercise extreme caution in applying this

property, mind, or dignity of the doer, and attest to the loss of a healthy sense of judgment.¹¹

designation in any but the most painfully obvious cases. It turns out that even though most *Aḥaronim* codify the Rambam's opinion, they interpret it in a way that heavily restricts its practical application.

11. According to *Turei Even* (Ḥagiga, ad loc.), going out alone at night is an act of *shetut* because it reflects a basic lack of concern for one's own wellbeing, given that demons frequent the areas outside heavily populated areas. An explanation of this sort is attributed to R. Moshe Natan Kahana-Shapira, a disciple and *mehutan* of the *Avnei Nezer*: "About this did they say in the *baraita*, 'Who is a *shoteh*?' because someone is considered a *shoteh* due to the dysfunction of their faculty of judgment.... The sign is that the person does not have the sense to protect themselves, i.e., their body, soul, or money. Therefore, [the Gemara lists] someone who goes out alone at night, when people with common sense are afraid they may be physically harmed...; someone who sleeps in the cemetery, where people fear that an unclean spirit might attach itself to their soul; and someone who tears their clothing, causing themselves a financial loss and neglecting their own dignity. R. Huna is of the opinion that all must be present..., whereas R. Yoḥanan thinks even one of them is enough. As long as there is no observable reason why such a person has exposed their body, soul, dignity, or possessions to harm, they are no longer considered mentally sound" (cited in *Or Yesharim*, §25).

Thus, before applying the status of a *shoteh ledavar eḥad*, one must make absolutely certain that the person's *shetut* is actually *shetut* and also similar to the behaviors mentioned in the Gemara. R. Ephraim Zalman Margulies (*Shut Beit Efrayim, EH*, §89) writes that according to the Rambam's opinion, the examples in the Gemara guide us in applying *shoteh ledavar eḥad* to "all similar kinds of *shetut*." In other words, the character and severity of the *shetut* are derived from this gemara too. For this reason, R. Margulies is hesitant to apply the label of *shoteh* to someone who suffers from paranoia and wants to divorce his wife, and he arrives at the following decision: "The bottom line: If the man in question is of sound mind in all respects and has no deficiency whatsoever except that he is fearful and has no dealings with people; and if he is examined a few times by a *beit din* on separate days and is found to speak intelligently, with nothing in his words pointing toward *shetut*; and if he understands everything about the *get* perfectly well and he is acting deliberately with the proper intent – then he can divorce. One

5. If someone acts in a way that can be interpreted as *shetut* in one respect but can also be attributed to some other reasonable motive, the application of *shoteh ledavar ehad* will turn on whether one can find an ad hoc explanation or a broader one with more explanatory power. In the case of the former, if the explanation is devised solely to make sense of this bizarre act and there is no supporting evidence for it, then the interpretation of *shetut* is preferred. In the case of the latter, if it is joined with other data points to form a pattern or there is a broader logic to it and there is supporting evidence for it (e.g., well-known behavior), then the non-*shetut* interpretation is preferred unless otherwise demonstrated with overwhelming evidence.¹²

may not rely on the fact that he can make calculations, because a minor at the age of *paotot* can sometimes do math but is not considered *compos mentis* for purposes of divorce. Due to the severity of potential adultery, a thorough investigation is necessary, and the judge can only rely on his own two eyes” (ibid.).

R. Moshe Feinstein also writes that someone who thinks he is the Messiah can effect a divorce: “But if... no *shetut* is evident and he just considers himself the Messiah..., that certainly doesn’t make him a *shoteh*. His excessive self-importance has led him to a foolish line of thinking.... As such, he is considered healthy now and can divorce” (*Iggerot Moshe, EH 1, §120*).

12. Some *Aharonim* write that if someone behaves like a *shoteh*, we do not think up other potential explanations for the behavior, but others think that sometimes circumstances warrant doing so (*Ezrat Kohen* [§67] says this even within R. Yoḥanan’s opinion). R. Yechezkel Abramsky explains that R. Huna requires all of the *shoteh*’s behaviors to be present because otherwise one could find some other explanation for one of the acts. When the Gemara says that someone might go out alone at night because they were seized by *gandrifas*, Rashi (Ḥagiga 3b, s.v. *gandrifas*) gives two explanations: an illness that seizes a person out of worry, or a fever that makes a person go out to cool off. R. Abramsky explains why Rashi was unsatisfied by the first interpretation:

“Since he goes out alone at night on a constant basis and he is ‘always’ irrational about this.... We have to attribute this frequent spectacle to an enduring cause: he has become a *shoteh* or is sick with melancholia – which