



The Status of a Person with Dementia

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שאלה

My congregant's father has middle stage Alzheimer's dementia. He has no awareness of date, location, season, but he can converse with intermediate fluency about older topics. He will not daven on his own, but he sometimes davens fluently if prompted, depending on the day. Must I prompt him regularly? Can he be counted in a zimun, a minyan, have an aliyah, and daven from the amud?¹

שוטה and פתי

The halakha recognizes two different statuses of cognitive disability: שוטה and פתי (see Rambam and Shulchan Arukh (ח"מ ל"ה ס"ח וס"י). The שוטה as defines שם ס"ק כ"א defines שוטה as 'דעתו היא משובשת ומטורפת לגמרי בדבר מהדברי, that is, they do not perceive reality conventionally (roughly equivalent to psychotic disorders). About the פתי, however, he writes, הוא שאין לו שכל, in other words, their intelligence is lower than average and therefore, so is their understanding of the world (severe intellectual disability). The שוטה represents a disability in perception whereas the פתי has a disability in intellect.

Regarding Alzheimer's dementia, we have understood from conversations with a geriatrician that there are essentially three stages: early, middle, and late. It is our understanding that in the middle stages, a person experiences severe memory lapses and may be confused about their location, or time, date, etc. They may also experience personality and behavioral changes including delusions, paranoia, etc. However, we have also learned that memory loss seems to follow the principle of "first in last out," meaning that their earliest memories are the last to leave them. Based on the description of the father's symptoms, it seems that, unless he is experiencing delusions, he should fall into the category of פתי.

In the following exposition, we will describe the halakhic parameters of a פתי. However since there are situations where a person with dementia might suffer delusions and other symptoms that would mark them as a שוטה, we'll take some time to discuss the status of a שוטה as well.

¹ The following articles provided important background information for this teshuva:

- פרופ' אברהם שטינברג, אנציקלופדיה הלכתית רפואית, בהוצאת המכון ע"ש ד"ר פליק שלזינגר ז"ל לחקר הרפואה על פי התורה ליד המרכז הרפואי שערי צדק, ירושלים תשנ"ט, כרך ד', עמ' 241.
- הרב נץ בר-אילן, תחומין ח', תשמ"ז עמ' 103.
- הרב יצחק זילברשטיין, מעמדו של הלוקה בנפשו ביחס לענישה ומשא ומתן, עמק הלכה א', עמ' 189-201, <https://www.medethics.org.il/article/rm011189a/>.
- הרב משה מרדכי פרבשטיין, עיתים חלים ועיתים שוטה, והחלמה חלקית, משפטי הדעת : עיונים וברורי הלכה בגדרי הדעת ובהלכות שוטה, פ"ה, [עיתים חלים ועיתים שוטה, והחלמה חלקית](https://www.medethics.org.il) (medethics.org.il).

Parameters of a פתי

The use of the term פתי to refer to people with intellectual disabilities was first coined by the Rambam. He writes, ולא יבינו ענייני הדבר כדרך שמבינין שם. ודבר זה, לפי מה שיראה שאר עם הארץ, וכן המבוהלין והנחפזין בדעתם, והמשתגעים בדעתן ביותר--הרי כל אלו בכלל השוטים. According to this Rambam, at least in the case of testimony, there is no distinction between a פתי and a שוטה, and both are פסול לעדות.

Whether this position of the Rambam extends beyond מחלקת הפוסקים is a מהרי"ט ח"ב אה"ע. סי' ט"ז argues that this status for a person with intellectual disabilities is specific to the laws of עדות; in other areas, a פתי may be considered the same as a פיקח. He writes,

נר' דלא אמר כן אלא לענין עדות שצריך להעיד על מה שעבר כבר ויש לחוש שמא נדמה לו באותה שעה שהדבר כן ואינו ונתחלה לו דבר בזולתו מאחר שלפעמים אין מכירין דברים שסותרים זה לזה ואיך יעיד עכשיו על מה שראה בתחלה אבל כשאנו באים לקיים דבר עמו במק' וממכר או בגיטין וקידושין ומסברו ליה וסבר ואנו מכירין שהבין הדברים כגון זה לאו שוטה הוא והרי הוא כפקח לכל מה שהוא עושה בדעת שפוייה לפנינו.

The Gemara attempts to prove this position from the gemara in Bava Batra 155b. The Gemara says, "הוא פחות מבן עשרים דאזל זבין נכסי [אבוהו כגידל בר מנשיא] אתא לקמיה דרבא אמרו ליה קרוביה זיל אכול תמרי ושדי ביה קשייתא בי רבא עבד הכי אמר להו זביניה לאו זביני כי קא כתבו ליה שטרא אמרו ליה לקוחות זיל אימא ליה לרבא מגלת אסתר בזוזא שטרא דמר בזוזא אזל א"ל אמר להו זביניה זביני אמרו ליה קרוביה לקוחות אגמרוהו אמר להו מסברי ליה סבר כיון דמסברי ליה וסבר מידע ידע והאי דעבד הכי חוצפא יתירא הוא דהוה ביה The Gemara appears to understand that Rava's ה"א was that the young man was a שוטה, assuming that throwing date pits indicated a generalized lack of mental competence. However, after the the young man showed capability of learning basic economic principles, Rava realized that he was not, in fact, a שוטה, but only a פתאי, and therefore, his sales stood. Based on the Gemara's understanding, this gemara says nothing about עדות, and therefore, the Rambam must figured out the פסול of עדות on his own or have a different source. The Gemara therefore holds that פתאי is a specific category for עדות but does not have relevance in other areas.

In contrast to this, the Vilna Gaon (באור הגר"א חו"מ שם ס"ק י"ט) claims that פתי is a general category that applies even to areas other than עדות. In fact, he claims that the gemara in ב"ב is the source

² See ב"ב יאורים ס"ק ב who argues that the basis for Rava's conclusion was not solely that the young man was educable, but also that his behavior could be attributed to causes other than *שטות*, namely *חוצפה*. The Maharit, on the other hand, holds that the educability is the essential point, and once that is established, alternative explanations for unusual behavior can doubtless be offered. Rabbi Dov Linzer argues that the *תורת גיטין* misunderstood the *מהרי"ט* and that they are actually consonant with one another. However, we agree with the *תורת גיטין* that there is a *מחלקת* between them.

for the Rambam.³ Since the GR"A asserts that the פסול לעדות can be learned from a גמרא that is not talking about עדות, it must be that he sees פתי as extending to other halakhic areas.

Thus, while this seems to point to a major נפקא מינה—if פתי applies outside of עדות—there really is none. For מהרי"ט, you need מסבר ליה וסבר to rise to the level of פתי (as opposed to a שוטה) and be considered competent in other legal areas. For the GR"A, however, once you are מסבר ליה וסבר, you are not a פתי and, thus, considered competent in other legal areas. Therefore, this disagreement is moot for practical matters because both sides agree that if you're מסבר ליה וסבר you're competent in other legal matters and if you're not מסבר ליה וסבר, you're not competent in other legal matters. It emerges that with the exception of הל' עדות, this disagreement is largely semantic.⁴ It should be noted that the זכרון יוסף אה"ע סי' י suggests that there are positions that equate the פתי with the שוטה in all cases. The אבני נזר אה"ע ח"ב סי' קכ"א also insists, based on the סמ"ע חו"מ ל"ה ס"ק כ"א that פתי and שוטה are identical.⁵

Once someone is masbir, they are either not a peti and not excluded (Gra), or a peti and not excluded (Maharit). It would thus seem in our case that such a person can do halakhic acts, and prima facie is chayav in mitzvot. For all intents and purposes פתי is not the operative category in our discussion. מסביר is the operative category instead. For the remainder of the discussion, we will use the term peti to refer to someone with limited intellectual capacity, but who is at the level of masbir, and whom both the Gra and the Maharit agree can do halakhic acts.

פתי for a חיוב מצות

However, the issue of חיוב מצות may be different from the validity of one's halakhic acts. Note that neither the מהרי"ט nor the גר"א discuss the חיוב in מצוות for such a person. This issue is discussed by, among others, by Rav Shomo Zalman Auerbach, Rav Moshe Feinstein.

Rav Shlomo Zalman Auerbach (מנחת שלמה ח"א סי' ל"ד) makes this extension explicitly: נראה דכל שהוא מבין ויש לו דעת כמו פעוטות ויודע שהקב"ה נתן לנו תורה ואנחנו מקיימים מצוותיו דשפיר חשיב כבר דעת לענין קיום מצוות, ובהגיעו לגיל י"ג שנה הרי הוא חשיב כגדול... ומיהו לענין עונשין שפיר נראה דכמו דחס רחמנא על קטן כך גם מפגר כקטן הוא דחשיב לענין זה אע"ג שהוא גדול, דלא מסתבר לומר דלאחר שהגדיל דינו רק כשווגג ואם ישתפה יתחייב בחטאת, ולכן נראה שרק לענין קיום מצוות שמבין בהם כפעוטות דינו כגדול. He adopts a surprising position. On the one

³ The GR"A must understand that Rava's initial assessment was that the young man was a פתי, and therefore, his sales were not valid. After he realized that the young man could learn basic economics, Rava concluded that the young man was not, in fact, a פתי, but rather, a פקח לכל דבר.

⁴ It is not entirely semantic in that, according to the מהרי"ט, there may be a category of דעת that is both פתי but also מסבר ליה וסבר. And even though he argues that this is specific to the case of עדות, it opens the possibility that there may be other cases that resemble עדות.

⁵ Our reading of the סמ"ע is consonant with the מהרי"ט.

hand, if such a person does mitzvot they are valid, however if he does not do mitzvot, or does aveirut, he is not held responsible.

Why, according to Rav Shlomo Zalman, is a person with intellectual disabilities **פטור** from **עונשין**? One possibility is that this person is **חייב** in **מצות** but **אנוס**, because, despite their **דעת** that allows them to understand what they are doing, their disability prevents them from reliably fulfilling them. The other possibility is that this person has no **חייב** at all, for the same reason as above. However, because of their **דעת**, when they do take on a **מצוה**, that action has meaning as a **קיום** of said **מצוה**.⁶ Rav Shlomo Zalman's use of 13 years as the age at which a person with **פעוּטוֹת** is **חשיב כגדול**, suggests the first explanation because even before age 13, he agrees that this person is able to **מצות** **מקום**.⁷ In any case, from Rav Shlomo Zalman, we can clearly see that **דעת פעוּטוֹת** is sufficient to allow **מצות** **קיום** (and possibly even **חייבים**).

Bottom line: According to our understanding, a person who has דעת פשוטת is chayav if they have the intellectual capacity to do a mitzvah like tefillin. In this situation, if they don't do the mitzvah, they have transgressed. This suggests that there may be an obligation to remind them or help them do the mitzvah (see below, where we argue that even in this case, there is no obligation). If they have intellectual capacity but lack of willingness to engage in the mitzvah, if the lack of willingness is a result of their dementia, then it is still part of their status as אנוס. In that case they are not held liable. So, as a general rule, it is a good idea (although not a strict obligation) to prompt or encourage them to put on tefillin, and what follows is up to them.

Rav Moshe Feinstein on חיוב מצוות for a פתי

Rav Moshe Feinstein (אג"מ יו"ד ח"ד סי' כ"ט) takes a similar approach. He writes:

⁶ Rav Asher Weiss (<https://minchasasher.com/he/shiur/%d7%a4%d7%a8%d7%a9%d7%94-%d7%a9%d7%99%d7%a2%d7%95%d7%a8%d7%99%d7%9d/%d7%91%d7%99%d7%a1%d7%95%d7%93-%d7%9e%d7%a6%d7%95%d7%aa-%d7%97%d7%99%d7%a0%d7%95%d7%9a/>) writes that he is convinced that there *is* חייב מצוות for a פתי, but that because there are opinions that the פתי is the same as a שוטה, we are מחמיר on ourselves not to punish them for failing to keep mitzvot.

7 On the other hand, his argument that יתחייב בחטאת ואם ישתפה suggests that there is no חיוב at all, because otherwise, why wouldn't this person be חייב חטאת for חלבים which are חייב חטאת even in cases of מתעסק? It must be said that this argument is only true according to the suggestion of Rav Elchonon (קוב"ש ח"ב סי' כ"ג אות ו) that the מחייב for עריות and הנאה is עריות rather than הנאה. This appears to us, to be the פשט of the סוגיא in ע"ב ס"ב ע"ב. However, רש"י שם says explicitly that the הנאה creates a situation where it is as though there were עריות. If we hold like Rav Elchonon, we could say that if the פטור of a פתי is אונס, we'd expect that יתחייב ואם ישתפה because they still had הנאה. And since Rav Shlomo Zalman rejects this possibility, it sounds like there is no חיוב at all. However, if we hold like רש"י, then even if a שוטה regained their דעת, they would still be פטור from a חטאת at this time because at the time of the act, they were still אונס. And thus we can't learn a נ"מ between אונס versus the lack of חיוב entirely.

והנה שודאי חייבים במצוות כשהביאו שערות והם בני י"ג ובנות י"ב ויש חיוב על האבות ללמדם מה שאפשר להם מקטנותם. בזמן ששייך שיבינו לפי כוחם... כשיש לו דעת במידת פעוטות הוא ודאי חייב בכל המצוות.

Rav Moshe's language unambiguously embraces the position that a person with dementia is, in fact, חייב במצוות. In addition, he emphasizes that their חיוב הינוך (which is equivalent to their חיוב once they become גדולים) is restricted to what is אפשר להם. This indicates that for other mitzvot that are not אפשר, they are אנוסים and there is no punishment. However, in contrast to Rav Shlomo Zalman, we don't see any indication that the failure to fulfill a mitzvah that they understand לפי כוחם is exempt from punishment. Rav Moshe's approach is entirely different than the interpretation of Rav Shlomo Zalman that argued that a פתי has no essential חיוב in מצוות but the act of fulfilling one has meaning as a קיום. Rav Moshe certainly embraces the fundamental chiyuv framing. This might imply that you do need to urge a person with dementia to do mitzvot like davening, while Rav Shlomo Zalman might argue that this is not necessary. However, the other interpretation of Rav Shlomo Zalman (which we find more compelling), that the פתי גדול is a בר חיובא but is אנוס in cases where they do not fulfill mitzvot seems to be more consonant with this approach of Rav Moshe.

Criteria for Chiyuv Mitzvot – Masbir or Peutot?

Rav Moshe and Rav Shlomo Zalman use the criteria of peutot rather than masbir. This emerges from the Gemara in נ"ט ע"א. גיטין נ"ט ע"א. The criterion of דעת פעוטות that emerges there is a developed enough intellect to understand matters of buying and selling. The mishna (גיטין פ"ה ה"ז) tells us that children (פעוטות) can buy and sell chattel⁸ even below the age of maturity. The gemara there (נ"ט ע"א) explains that there is no specific age where this privilege begins, rather it is dependent on the דעת of the child.⁹ However, the gemara says explicitly that this privilege is enacted in order to make sure that children can buy and sell food for their own subsistence.

⁸ The Mishna makes a distinction between minors buying and selling chattel versus land. Rabbi Dov Linzer has suggested that the distinction is based on the fact that chattel tends to be a cheaper and lower stakes business deal than land. For this reason, though we can allow children with their less developed judgement to make choices in matters of chattel, we reserve the right to deal in land for adults.

⁹ However, the gemara says explicitly that this privilege is enacted in order to make sure that children can buy and sell food for their own subsistence. This suggests that the significance of the דעת in question (דעת פעוטות) is confined to rabbinic תקנות. Nevertheless, the Gemara in ע"ב ע"ה brings a position that a קטנה can do חליצה if she has דעת פעוטות. Rav Elchonon Wasserman (קובץ הערות סי' ס"ו) argues that this indicates that this level of דעת has significance even at a דאורייתא level (note that the gemara explicitly paskens against this position and demands physical maturity for חליצה).

Is this a different criterion than masbir, which was the focus on Maharit? In our opinion these criteria operate on different axes. דעת פעוטות is the level of intellect a פתי must attain in order to be able to enact certain halakhic acts. מסביר is the way we check whether a פתי has דעת פעוטות, that is, by explaining the meaning of the act and then checking for understanding.

How significant does this understanding have to be? The Gemara in גיטין, which talks about buying and selling says that it is a basic understanding of buying and selling. Rav Shlomo Zalman says that for the purpose of מצוות, it is knowing that God gave us the Torah and commanded us to keep certain מצוות.

מסבר states that a person may not have דעת פעוטות at all times. However, if an explanation can bring a person who, at present, does not have דעת פעוטות to the level of דעת פעוטות, that is sufficient to then assume that this person has a מצות חיוב (according to Rav Moshe and one possible read of Rav Shlomo Zalman) or that they can מקיים מצוות even if they have no חיוב (based on the other possible read of Rav Shlomo Zalman).¹⁰

Conceptual basis for דעת פעוטות in adults

Up to this point, we've only discussed דעת פעוטות in actual children. The ראבי"ה סי' תתקכ"א makes the jump to adults who have limited intelligence, but do have דעת פעוטות. He writes, "נראה דגדולה" He writes, "נראה דגדולה" [ש]יש לה דעת פעוטות הרי היא כפיקחת לכל דבריה.¹¹ This indicates that even adults with intellectual disabilities can be considered competent so long as they have דעת פעוטות. Based on the sources we've seen, Rav Elchonon Wasserman claims that there are two דינים of קטן. One is that the קטן lacks the minimum level of דעת, that is, דעת פעוטות. However, even once the קטן has achieved this

¹⁰ Regarding confusion about location, date, and season, we should consider the Gemara (גי' ע' ע"ב) that concludes that we check דעת by asking questions about which fruits are available relative to the season. Rashi gives the example of offering cherries in the winter. This is paskened להלכה by the Rema (אה"ע). Rabbi Linzer has suggested a plausible read of this סוגיא, that we're simply checking to see if the person has enough דעת to recognize the different realities of summer and winter, even if they are unaware of which of those is the present season. However, another possible read is that we are checking the person's awareness of their surroundings. If so, someone who doesn't know the season may be considered to lack דעת. However, the Yerushalmi (גיטין פ"ז סוף ה"א) offers a different method of checking דעת. It says, נכתוב גט לאשתך והוא אומר הין לאמך והוא אומר לאו, דעת. In other words, we check to see if he understands the nature of divorce and גט. This test seems to resemble what we saw in ב"ב, that is, we check to see whether the person understands the details of the matter at hand. The סמ"ג עשין נ, קל"ב ע"א, as cited by the ב"י אה"ע קכ"א ד"ה ואיכא למידק and the הג"מ הל' גרושין פ"ב ס"ק ק, both agree that either test would be sufficient in this case. We conclude from this that if the father can understand the mitzvah that he is doing (at least at the level of דעת פעוטות), the fact that he doesn't know where he is or the season of the year, should not prevent him from being חייב.

¹¹ For transparency's sake, we should note that this sentence in the ראבי"ה ends with the following words: תולה. We have not been able to understand the full force of the last word (תולה) and it is possible that it reduces the power of the statement as we have presented it.

level of דעת, they are still not חייב in מצוות because of a גזירת הכתוב that demands that a person reach a certain age before they are חייב. Thus it follows that anyone who is an adult by the second standard is חייב במצוות so long as they have reached דעת פעוטות. The Chatam Sofer (שו"ת (חת"ס ח"ב סי' קפ"ד) similarly argues that although שיעורים, such as age of majority, do not apply to בני נח, a בני נח must have a certain minimum דעת (he doesn't say דעת פעוטות) in order to be liable. This position is supported by the statement of the ראבי"ה. The upshot of all of this is that an adult with דעת פעוטות should be considered to be totally חייב במצוות.

Summary of Status of פתי

A פתי, once מסביר has confirmed them to have דעת פעוטות, can do halakhic acts, and their mitzvot count. Regarding whether they are חייב, we've seen the position of Rav Moshe and one possible read of Rav Shlomo Zalman that they are, indeed חייב, but when their dementia prevents them from doing a מצוה, they are considered אונס. We have also seen a different interpretation of Rav Shlomo Zalman which claims that a פתי, even with דעת פעוטות, is not a בר חיובא at all, but if they perform mitzvah acts, they can still achieve the level of קיום. We adopt feel that the first of these positions is the more compelling textually and halakhically.

In our case this would mean that a פתי can count in a minyan if they have דעת פעוטות. Furthermore, they are חייב in מצוות like ברכות and תפלה and there is certainly a strong value (though we argue no obligation) to encourage them to fulfill every mitzvah that they understand.

שוטה of a דין

What has been written so far refers to a situation of פתי, that is, a person whose perception of reality is not altered. Rather, their intelligence is impaired. This would usually apply to a patient with Alzheimer's dementia in the early and middle stages. However, it is possible that even in the middle stages and almost certainly in the late stages the patient's understanding of reality is significantly affected by their dementia. This being the case, there may be times when a dementia patient has the status of a true שוטה.

ומסתבר שזקן שדעתו מבוטלת הוא בכלל " , in his תשובה pp 189-201 writes, "רב יצחק זילברשטיין נטרפה דעתו", ואם אינו מתמצא היכן נמצא ואינו מכיר את קרוביו, הרי דינו כשוטה. ופסול לכל. אולם אם יודע את ההווה, אלא Rav Zilberstein distinguishes here between simply having memory issues and being totally adrift in reality. In the second case, Rav Zilberstein argues, the patient is a true שוטה.

If a person has reached the point of not even recognizing their own relatives, their memory may have deteriorated so far that they should indeed have the status of a שוטה. This being the case, we should take a moment to consider that status of a שוטה who still understands some mitzvot. In other words, what is the דין of a שוטה who doesn't know their own name, but can still say קריאת שמע?

Position of the מהרי"ט, the סמ"ע and Rav Moshe Feinstein

The מהרי"ט makes a careful distinction between the שוטה and the פתי. He asserts that the פסול that the Rambam attributes to a פתי is specific to עדות. This is in contrast to a שוטה who he agrees is סיים וכתב. The סמ"ע חו"מ ל"ה ס"ק כ"א also makes a similar assertion. He writes: דבכלל שוטה יחשב והיינו לדין פסול אבל לא שם שוטה עליו וק"ל.¹² This means that when the שו"ע compared שוטה and פתי, that was only in reference to the פסול לעדות. But a פתי is not an actual שוטה, who presumably has a much wider פטור.

Rav Moshe Feinstein goes further and references a person who is only detached from reality in one area, a שוטה לדבר אחד (see ח"א סי' ק"כ) in reference to the Rambam's language: "כל מי שנטרפה דעתו, ונמצאת דעתו משובשת תמיד אפילו בדבר מן הדברים--אף על פי שהוא מדבר ושואל כעניין בשאר דברים--הרי דכיון שהוא שוטה לדבר אחד עכ"פ ופטור ממצות שנוגעות בעבירתם." Rav Moshe writes: ובקיומם לשטותו מחמת שאינו בן דעת לזה פטור גם מכל המצות אף בדברים שיש לו דעת ויכול לקיימם דהתורה לא חייבה במצות לחצאין. It is not possible, according to Rav Moshe, that one would be categorically פטור from some mitzvot and not others. This Rambam is paskened by the שו"ע חו"מ ל"ה ס"ה and therefore, Rav Moshe holds it to be authoritative. In other words, even though a person may understand certain mitzvot perfectly well, if they have at least one area where they are incapable of perceiving reality, that is enough to make them פטור to all of the מצות in the Torah.

שוטה is a status, Rav Moshe argues, not a local inability to fulfill mitzvot (i.e. אינס). This is what distinguishes a שוטה from a פתי. The case of a פתי really is one of אינס, if a person's intelligence is too low, it may be that they are פטור from certain מצות. A שוטה, on the other hand, by virtue of being defined as a שוטה, is immediately פטור from all מצות. His proof for this is the Gemara in Shabbat (קנ"ג ע"א) that says that if you are walking with a שוטה and a minor, and Shabbat begins,

¹² It may be the case that the מהרי"ט doesn't recognize the possibility that a שוטה might understand something if cued. He writes: וממכר או בגיטין וקידושין ומסברו ליה וסבר ואנו מכירין. שהבין הדברים כגון זה לאו שוטה הוא. In other words, definitionally, anyone who has a reasonable understanding of any one thing, may not be in the category of שוטה at all.

you should give your wallet to the שוטה. The reason, Rav Moshe writes, is that a קטן will one day be חייב in מצות whereas a שוטה is entirely פטור so long as they remain a שוטה. If the שוטה really is a בר חיובא with some areas of אונס, argues Rav Moshe, it should be אסור to give them the wallet, because they are able to fulfill the mitzvah of not carrying, so long as you don't give them the wallet! From this we learn that שוטה is actually a status and not simply an expression of אונס.

From the positions discussed, it emerges that a person whose dementia prevents them from recognizing their relatives, or other extreme forms of confusion, they are totally פטור from all mitzvot. It is possible that they get credit for the fulfillment of mitzvot when they perform them, but they have no obligation. Based on this, they will not be counted in a minyan or in a zimun, or do any of the things a בר חיובא may do for others. However, this is not the only extant opinion.

Position of the נו"ב and the חת"ס

The position of the מהרי"ט, the סמ"ע, and Rav Moshe, is opposed by other אחרונים. The נו"ב writes in אור הישר סי' ל that a person who cannot distinguish between yes or no in one specific area, but is able to distinguish in other areas, is not considered to be a שוטה in other areas. This would suggest that the opposite might be true as well, namely that a person who is confused about everything but not קריאת שמע might still have a חיוב to say קריאת שמע (although they'll be אנוס if they can't remember without help).

The חת"ס סופר ח"ד (אה"ע ב') סי' ב takes this position as well. He writes: כל זמן שאינו שוטה בכל דבריו נהי בשעת כעסו ובאותו הענין שמשתטה בו נידון כשוטה מ"מ במה ששואלי אותו ומשיב כהוגן ה"ל כפקח. In other words, even in the case of שטות, we can test instantaneously for understanding and that will be sufficient to confirm capacity in each individual case. This is certainly helpful for a person with dementia who has good days when they are alert and responsive and bad days when they are not.

This position of the נו"ב and the חת"ס echoes the דרך שטות who understand that signs of שטות in one area create a חזקה that a person is a שוטה לכל דבר. This implies that if we are able to show that a person is not a שוטה in a particular area, their actions in that area have consequence. Rav Moshe explicitly acknowledges this implication in the תוספות as well. He simply feels compelled to pasken like the Rambam and the Shulchan Arukh against the תוספות.

This begs the question, what do the חת"ס and the נו"ב do with the Rambam who seems to pasken against them? The answer is they restrict the Rambam's identification of שוטה as a שוטה לדבר אחד to cases of עדות alone. The חת"ס writes: שהוא מגזירת הכתוב אפי' יהיו כל דבריו אמת אינו ראוי להעיד כיון שאינו

במצות כמו האשה שהעידה וטעמו עפ"י ש"ס דב"ק פ"ח ע"א. Because it's a גזירת הכתוב, the פסול only applies to עדות. The נו"ב goes through a similar process. This is a strong read of the Rambam because now we don't have to say that the comparison between שוטה and פתי is דוקא. Both שוטה and פתי are formally פסולים לעדות. However, outside the realm of עדות, everything else is determined by what a person has דעת for.

We therefore understand that although Rav Moshe paskens that a שוטה is דובר אחד, the נו"ב and חת"ס both argue against this and advocate checking the extent of the person's mental illness and their understanding of the מצוה at hand. This second position would allow a person with dementia who still understands certain mitzvot, to be thought of as a בר חיובא in those specific instances. Other אחרונים, however, go even further.

A more extensive קולא from the מהרי"ל, the Rema, and the פמ"ג

The position of the נו"ב and חת"ס is addressed by the Maharil in a totally different situation. In his שאל למהר"י סג"ל על שני בני אדם הא' חרש ושוטה (הל' נטילת ידים סעודה וברכות ס"ו) (see ספר המנהגים), ואידך הוא חרש אם הם מצטרפין לזימון. ואמר מאחר שמבינים ומכוונים לזה אין לחוש אם אינם שומעין הברכה extension, it appears here, that the מהרי"ל would permit a שוטה who is מבין ומתכוון to count in a zimun, but he doesn't explain why..

Based on this Maharil, the Rema paskens (או"ח קצ"ט ס"י) that a שוטה can be counted for a זימון if they are "מְכַנְּנִים וּמְבִינִים", in other words, יודע למי מברך. The שם ס"ק ה objects that this must be a שוטה who is not a גמור. The reason, he argues, is that in his תשובות (see סימן קצו) the Maharil asserts that a שוטה can count for a minyan or a zimun only according to ריב"ל who says that babies count in a minyan (see ברכות מ"ז ע"ב). The Maharil himself states there that we don't hold like ריב"ל, and therefore, the proposition that a שוטה could count in a minyan or a zimun cannot hold. The מג"א suggests that a תלמיד טועה heard the מהרי"ל give this פסק according to the position of ריב"ל, and misunderstood it as a straightforward פסק. That is the origin, claims the (ס"ק כ"ט) The Mishna Berurah, following this approach, goes so far as to say that the Rema is not referring to a שוטה at all, but to a person with an intellectual disability (i.e. a פתי, as we quoted earlier). However, there is no hint in the Rema that he is talking about anything less than an actual שוטה who is מבין ומתכוון at this particular moment. How do we solve the קשיא of the מג"א that even the Maharil admits that we don't pasken like ריב"ל?

Earlier in the same תשובה, the מהרי"ל gives reasons why a שוטה should be considered a kind of דאי הוה כבהמה, יחשב שחיתתו אפילו אחרים עומדי' על גביו. He approaches it inductively. He writes:

כשחיסת נכרי וקוף דדרשינן מקרא דפסול מוזבחת ואכלת כדפר"י וכן לענין מצה וגט הוי מהנני שליחותיהו אלא דאין להם דעת. If a שוטה were not a Jew at all, their slaughter would not be kosher even if competent adult Jews assisted them. Similarly they wouldn't be able to be שליחים to write a גט or make מצה with guidance. Since we know that they are able to do these things with the guidance of competent adult Jews, the problem must be that they don't have דעת. Being a שוטה is not a status, claims the מהרי"ל, but a local פטור (and פסול) for things that must be done with דעת.

Building off of this, the Maharil argues that for things that don't require דעת, even a שוטה can count. He brings the example of counting a baby in a zimun or minyan, according to the position of ריב"ל. According to ריב"ל, the Maharil argues, even a שוטה can count in a zimun or a minyan.

The Maharil proves his point from the fact that the שחיטה of a שוטה with the guidance of a פקח גדול is kosher and a גט that they write with the guidance of a פקח גדול is also kosher. This indicates that, as the תבואות שור סי' א ס"ק מ"ט writes, "חרש ושוטה בני מצות נינהו ופקחים מוזהרים עליהם". The only relevance of ריב"ל is that in situations that do not require דעת (like counting in a minyan according to ריב"ל), the שוטה can count. Similarly, if the דעת can come from elsewhere (such as the case of שחיטה or writing a גט), again the שוטה's actions have legal significance. The פמ"ג (see או"ח) quotes the תבואות שור and writes himself: וגם הם בני מצות אלא דלאו בני דיעה נינהו, וגם כשעוברים על לאו אין להם עונש בעולם הזה ועולם הבא דאונס רחמנא פטריה.

According to this, the straightforward understanding of the Rema is the correct read of the Maharil. The מג"א and the Mishna Berurah could not fathom a distinction between a שוטה שיודע and one who doesn't, because they understand the שוטה as categorical, like the מהרי"ט and Rav Moshe. However, once we understand that it is not categorical, the reason the Rema allows a שוטה to count in a zimun is that they are יודע למי מברך (which is why he says it explicitly). Likewise, in שו"ע נ"ה where it says that a שוטה doesn't count in a minyan, that is referring to a שוטה who is not יודע למי מברך. The Maharil as well, when he says that a שוטה doesn't count in a minyan, was referring to a שוטה who isn't יודע למי מברך. Seeing as the Rema supports this approach, we feel comfortable paskening it as well.

Ultimately the Maharil, the Rama, and the Pri Megadim are in agreement with the נ"ב and the חת"ס that the status of שוטה is not categorical but rather must be evaluated wherever it seems that a person might have understanding.

In summary, the מהרי"ט, the סמ"ע and Rav Moshe all see שוטה as a categorical exemption. The מהרי"ל and the נו"ב see it as case by case just like פתי. Since this also is the position of the מהרי"ל and the רמ"א, this is the way we pasken.

עיתים חלים עתים שוטה¹³

It is common in Alzheimer's dementia for patients to have days of greater and lesser cognitive awareness. This brings up the question of עתים חלים עתים שוטה. The Gemara (ר"ה כ"ח ע"א) tells us: עיתים חלים ועיתים שוטה, כשהוא חלים הרי הוא כפקח לכל דבריו, וכשהוא שוטה הרי הוא כשוטה לכל דבריו. This is paskened in the Rambam (מכירה פכ"ט ה"ה) and in שו"ע (see אה"ע קכ"א ס"ג). The Rema there cites his own comments in קי"ט ס"ו where he argues that if a husband gives his wife a get while she is חלימה, because we don't expect her to return to a state of שטות, we do not repeal the גט. This would suggest that if we have reason to believe that a person will return to being a שוטה, their activities while חלים, are not valid. However, the ט"ז שם ס"ק י"ג explains that this is specifically a concern about גיטין, where, if she were to return to her שוטה state, she might be treated with מנהג הפקר (see also ס"ק ג). We don't need to be concerned about this פסק in other situations.

The major question of עתים חלים עתים שוטה is just how חלים do you need to be in order to be considered פקח. If a person with dementia has a "good" day, that usually means that they are more responsive and have more awareness and recognition of their surroundings. They are not, however, free of significant memory and cognitive lapses. It just means that they are better on those days than on the "bad" days.

The א"ה פ"ז ה"א and תלמוד ירושלמי תרומות פ"א ה"א teaches us that there are two stages to recovery from a status of שוטה. The first is החלמה as per the פסוק in Isaiah (38:16), "ותחלימיני והחיניני." The second is שפיות. It is reasonable to assume, based on this, that החלמה is a lesser recovery than שפיות, which refers to complete and final recovery. In the ירושלמי, Shmuel paskens that החלמה alone is sufficient for a person who is עתים חלים עתים שוטה to give a גט, while ר"ל demands שפיות. The problem is that in the בבלי גיטין ע' ע"ב, we find that ר' יוחנן uses the language of שפיות to indicate when we might write a גט for someone who requested it and then fell into a שוטה state. "אין כותבין אלא לכשישתפה". Following standard כללי הפסק we should pasken like the בבלי and say that full שפיות is required.

¹³ The sources and reasoning for this section are largely based on chapter 5 "עיתים חלים ועיתים שוטה", הרב משה מרדכי פרבשטיין by משפטי הדעת from "והחלמה חלקית" <https://www.medethics.org.il/article/rd041005a/>

The רשב"א, however, in his סי' ר"א paskens in favor of החלמה. He justifies this by noting that רבא seems to hold this way and he is בתרא, additionally, he claims that this is a false מחלקת. That is, there's just a semantic difference between Babylonian usage and ארץ ישראל usage of the word שפוי. Basically, everyone in בבל agrees that חלימה is sufficient.¹⁴ Ultimately, the רשב"א writes, ומסתברא דאפי' חלים בעלמא שאינו שפוי לגמרי הרי הוא כפקח כסתמא דמילתא דקאמרי כשהוא חלים הרי הוא כפקח לכל דבריו. ולא בבדיקה בלחוד בשנשתתק. אלא בשהוא חלים שהוא מדבר בעניניו ואינו קורע בגדיו ואינו לן בבה"ק ואינו יוצא בלילה ואינו מאבד מה שנותין לו שהם סימני שוטה כדאיתא בירושל' דגיטין ובתרומות. ואע"פ שהוא תשש ועדיין סימני חליו ניכרים בגופו שלא נתרפה לגמרי אלא כאדם המתחזק מחלייו. אפי' כן בשעת חלימתו הרי הוא כפקח בשעתו. In other words, if the standards of becoming a שוטה no longer apply, we do not demand more than this to remove a person from the status of שוטה. This is quoted in the הרשב"א and paskened ב"י קכ"ג ד"ה נשאל הרשב"א. The שו"ע קכ"א ס"ג in להלכה goes further and claims that the רשב"א would even say this with regard to דיני שמים.

The רשב"א argues that the רשב"א is talking specifically about a case where the patient is in a process of recovery rather than a temporary recovery in the middle of a longer ממילא כל שהבריא קצת ושכלו דל וחלוש, וחזר ונשתטה, הדבר פשוט דמעשיו שעשה למפרע בעודו חלים. שטות. He writes: קצת, לא מהני כלל מן התורה, אף להרשב"א. However, argues רב משה מרדכי פרבשטיין in his book תשובה תשובה, the רשב"א must have only seen the position of the רשב"א in ב"י and not in the original תשובה in which it is eminently clear that the רשב"א is referring to a case where the return to שטות is predictable. Furthermore the majority of the פוסקים support the earlier read (see נ"ב cited above and שו"ת נפש חיה אה"ע סי' כ"ז).

Based on this רשב"א and ב"י, we can reasonably pasken that a person with dementia who has good days and bad days, is חייב in the מצות they understand on the good days and פטור on the bad days. This despite the fact that even on the good days, the person is nowhere near the awareness of a person without dementia. To concretize, this indicates that if a one asks a dementia patient whether they want to daven on a particular day and they don't respond or respond incoherently, they have no obligation to daven. On the other hand, if one asks the same question the next day and feels that the patient is able to daven, they do have an obligation to daven and should be accommodated to meet that need as much as possible.

The Rambam expresses a different idea. He (הל' מכירה פכ"ט ה) writes: מי שהוא עת שוטה ועת שפוי, כגון: אלו הנכפין--בעת שהוא שפוי, כל מעשיו קיימין, וזוכה לעצמו ולאחרים, ככל בן דעת. וצריכין העדים לחקור הדבר היטב, שמא עתים חלים. This indicates that during lucid periods in an עתים חלים situation, we constantly have to check to make sure that the person is not sliding back

¹⁴ The מחלקת in the ירושלמי persists, but we pasken with the בבלי.

into שטות at any particular moment. This is paskened by the חו"מ רל"ה סכ"א in שו"ע. The distinction between the Rambam and the רשב"א is that the רמב"ם is discussing the stability of a person's state whereas the רשב"א is discussing the level of awareness necessary to consider them a פקח.

Based on this, when a person with dementia has a good day, and we are confident, based on previous experience that this is likely to last for the course of the day or longer, we can assume that they are חייב במצוות. Anything they have דעת for, they can be considered חייב in, and they can be counted in zimun and minyan. However, if their lucidity fluctuates over the course of the day, we must be constantly concerned that they are slipping back into a שוטה state. In that case, it is still reasonable to check their awareness to see if they are חייב in תפלה and zimun as outlined below. However, it cannot be taken for granted that they are aware enough to be חייב at any particular time.

There may be cases where a person's general lucidity is stable but their attention wanders. This is not a case of שוטה עתים חלים עתים where their general lucidity is either sufficient or compromised. In this case, the מהרי"ט writes: שבשעת אין צריך שיהיה בבינת לבו באותה שעה אלא אעפ"י. בדברים אחרים שפיר דמי כל שידוע שחליצה זו מתרת In other words, as long as they can be brought back to attention by מסביר ליה וסבר, it's not a problem if their attention wanders. The מהרי"ט wrote this about a פתי, however, according to him, anyone who satisfies the test of מסביר ליה וסבר is not a שוטה. Therefore, this should apply to people with dementia who we might, using other standards, categorize as a שוטה.

In summary, we conclude that a person suffering from dementia, whose level of awareness fluctuates depending on the day can still be possibly considered חייב in מצוות. In their moments of greatest lucidity, they do not have to reach full the awareness of a person not suffering from dementia, but only the level of awareness that would be מחייב them in מצוות, that is, מסביר ליה וסבר and יודע למי מברך. As long as we are confident that a person has met these conditions, they should be considered חייב. However, we should be aware of changes in this person's lucidity and notice if it appears that they are slipping back into a state of insufficient awareness to be חייב.

Obligation to remind a פתי or שוטה of מצוות

Based on everything we've seen so far, it appears that if a person is able to understand מצוות on the level of דעת פעוטות once reminded of them, then they are חייב. Does this mean that there is a חיוב to remind them at all times?

The assumption that we must help other Jews keep mitzvot is based on the principles of הוכח מנין לרואה בחבירו דבר מגונה " says, "ערכים ט"ז ע"ב The Gemara in כל ישראל ערבים זה לזה and תוכיח את עמיתך הרואה את חברו שחטא, או שהוא הולך " The Rambam writes on this basis, "בדרך לא טובה--מצוה להחזירו למוטב, ולהודיעו שהוא חוטא על עצמו במעשיו הרעים: שנאמר הוכח תוכיח את עמיתך". In both the Gemara and the Rambam, it sounds like the situation that demands תוכיח is one where we see somebody violating the Torah. It is not clear that this obligation would apply in cases where we see somebody passively negating a positive מצוה. Possibly the Rambam's phrase הולך הרואה לא טובה could include this, but it is more likely that this phrase is a catch-all for negative lifestyle choices rather than halakhic violations. The Shulchan Arukh doesn't address the מצוה תוכיח. However, regarding women who eat before Yom Kippur because they don't know about the תוספת (see (או"ח תר"ח ס"ב), the Rama writes, "מוטב שיהיו שוגגין ולא יהיו " (אורח חיים תר"ח ס"ב), the Rama writes, "מזידין; ודנקא שאינו מפרש בתורה, אף על פי שהוא דאורייתא; אבל אם מפרש בתורה, מוחין בידן". Here again, the situations where we are required to remind people to keep mitzvot are exclusively איסורים. The אסורים writes explicitly that הוכח תוכיח is limited to violations of negative commandments and although the ח"א ס"ס מ"ה argues against this, from the general bent of the sugya, we are inclined to agree.

This leaves ערבות. The גינת וורדים above argues that ערבות requires that we object when we see people about to nullify a positive mitzvah. This conclusion is based the position of Rashi in the sugya in Sanhedrin 43b where we learn that the ערבות that causes people to be punished for one another's actions began with the ברית at הר גריזים and הר עיבל (see Rashi there שעברו). While this could still be relating only to negative mitzvot, Rashi and the גינת וורדים refer to ע"ב סוטה ל"ז ע"ב where we learn that the ברית at הר גריזים and הר עיבל is equated with the ברית at Mount Sinai and at הר עיבל. These בריתות included מצוות עשה, therefore, the ברית at הר גריזים and הר עיבל and the corresponding ערבות must also include מצוות עשה. The גינת וורדים stops there, but it seems likely that he is also considering שבועות ל"א ע"א וע"ב where we find the statement that כל ישראל ערבים זה לזה מצות indicates that we are expected to object when we see Jews violate מצות.

Based on this whole argument, it appears that we *do* have an obligation to remind and warn other Jews whenever we see them about to nullify a מצות עשה. However, this argument is based on an extensive weaving of largely aggadic sources. Neither the Rambam, nor the רי"ף, nor the Shulchan Arukh mention a halakhic obligation of ערבות. Therefore, we conclude, though it is a highly positive thing to remind Jews to keep mitzvot in cases where they are receptive, this is not a halakhic obligation.

Accordingly, if a dementia patient will do mitzvot when reminded, while there is no strict חיוב to remind him (unless they are your child, you have no formal חיוב חינוך), it is certainly a קיום in

אב to do it. However, as stated above, if you are unable to remind him sometimes, there is no need to feel guilty. Regarding the consequences of not fulfilling the mitzvah, Rav Shlomo Zalman stated explicitly that there is no עונש for missing mitzvot even for פתאים who are חייב.¹⁵

If the patient becomes oppositional in response to these reminders, this returns us to the two possible interpretations of Rav Shlomo Zalman Auerbach above. As stated, one possibility is that a פתי גדול is חייב in all מצוות that דעת פעוטות obligates them in, however, if they fail to do these מצוות as a direct result of their disability, they have no punishment because we consider that this lack of דעת makes them אנוס. The other explanation argues that there is no חייב at any time, but only a קיום when they keep מצוות. In either case, opposition to doing מצוות would indicate that there is no חייב to do them, either because there never was a חייב or because, at this moment, the person's דעת does not reach the threshold that would obligate them. There is the possibility that a person might understand and actually be חייב in מצוות but for reasons associated with personality and mood, choose not to fulfill them. In those cases, even Rav Shlomo Zalman would presumably agree that they are still חייב and will have to answer for their opposition to doing מצוות. Regardless, in those situations, it seems unlikely that any adjurations by external parties will change their mind, and therefore, there is no further חייב of הוכח תוכיח or ערבות.¹⁶

Stated simply, while there is a value to reminding people with dementia of the mitzvot that they can possibly fulfill, there is no blanket obligation requiring one to do this at all times. There is no negative consequence for a dementia patient who has missed the opportunity to do a מצווה because they were not reminded. Either they are not חייב at all and any מצוה they fulfill is a bonus קיום, or they are אנוסים, since they cannot fulfill the מצוה without being reminded, and have no punishment. This is true of patients who refuse to fulfill מצוות, even when reminded. In this situation, it is either the case that their level of awareness is not sufficient, in which case, there is no punishment, or they are deliberately choosing not to fulfill the mitzvah, which may have consequences, but seems like a difficult thing for outside parties to address.

¹⁵ Rabbi Linzer has suggested that the following language of the Maharit: ... אבל כשאנו באים לקיים דבר עמו... might be interpreted to mean that דעת is an instantaneous category, and as such, even according to the גינת וורדים, one is not obligated to remind a person of a מצוה until that person has shown that they are actually חייב in that מצוה. This approach treats מסבר ליה וסבר as a סיבה, whereas our own understanding of the סוגיות suggests that it is a סימן and that a person's חייב is not predicated on the actual performance of מסבר ליה וסבר but rather, the fact that we can explain to them and they can understand indicates that their level of דעת has reached the threshold for the חייב all along.

¹⁶ See גינת וורדים שם.

Practical Application of the Arguments above

Based on the analyses above, if a dementia patient can perform mitzvot and understand what they're doing, when prompted, at least on a childlike level (דעת פשוטות), they should be considered חייב. Based on consultations with gerontologists and family members of people with dementia, it is our conclusion that memories of things like tefillah, berachot, etc. are complete memories including content meaning. This means that we can assume דעת פשוטות on the basis of evidence that a dementia patient retains memories of these religious practices. In other words, despite suffering from disorientation in other areas, a person with dementia can be assumed to have דעת פשוטות in the area of religion and מצוות (i.e. knowing that God gave us the Torah, and knowing that there are מצוות that we must fulfill as per the formulation of Rav Shlomo Zalman) if we find that they are still able to participate in religious ritual. This being the case, there is no need to check constantly for דעת פשוטות to see if they are חייב. It is sufficient to simply remind them, and if they're able to do it, once reminded, then we can assume that they are חייב.

The following sections are devoted to discussing the individual criteria for the specific cases mentioned in the *shaila* above.

Counting in a minyan

Even if the congregant's father is unable to daven, and therefore is פטור from תפילה, on a particular day, he may still potentially count in the minyan. The standard for counting in a minyan is יודע למי מברך. This is based on the ruling of the שו"ע או"ח נ"ה ס"ז which states that even a sleeping person can be counted in a minyan. The strongly objects, based on the the שו"ת הרא"ש כלל ד' סי' י"ט which asserts as follows: וכשאינן תשעה בבית הכנסת המכוונים לברכת שליה צבור קרוב. הוא בעיני שברכת שליה צבור לבטלה, כי נתקנו ברכות לשליה צבור לאמרם בעשרה. וכשאין תשעה בבית הכנסת המכוונים לברכה לבטלה. That is, in order to count in a minyan, one must be listening to the תפלה of the ש"צ. The further argues that the מהר"י בי רב cited by the מה"מ as the origin of the ruling that a sleeping person can count in a minyan, bases his conclusion on the position of ריב"ל in the gemara (ברכות מ"ז ע"ב) that even a baby can be counted as the tenth man in a minyan. And this, states the ש"ט, is not accepted להלכה.

The מה"מ, however, in מ"ז שם, argues that the ש"ט misreads the מהר"י בי רב quoted in the ב"י. He notes that the מהר"י בי רב infers his position about counting a sleeping person in a minyan from the מה"מ quoted in ט"ק פ"ה ס"ק ט' תפ' הגהות מיימוניות הל' תפ' פ"ה ס"ק ט' who states that a person who is in the middle of davening can still be counted for a minyan in order to say חזרת הש"ץ. This מה"מ, points out the ריב"ל, is explicitly stated even according to the position of those who disagree with פמ"ג.

כתב מורי רבינו בתשובות דאפילו אם התחיל אחד מן העשרה להתפלל כבר מה"מ quotes the הג"מ that the rejection of ריב"ל is specific to a קטן because of their lack of דעת and חיוב במצוות. But, even according to those who disagree with ריב"ל, there is clearly no demand for attention to the תפלה, contra the רא"ש. Since the שו"ע paskens that a sleeping person can count in a minyan based on this תשובה, we learn that he paskens this standard in general for counting in a minyan. The מה"ב שם ס"ק ל"ד and the עה"ש שם עה"ש שם both agree with this psak as well.¹⁸

The Maharam's two criteria (i.e. **יודע למי מברך** and **בר מצוות**) correspond with what we've seen in **קובץ הערות** above. Corresponding to the lack of **דעת** is the demand for **יודע למי מברך** and corresponding to the **גזירת הכתוב** is the demand for **בני מצוות**. Here we have an explicit statement that **יודע למי מברך** is the standard of **דעת** necessary to count in a minyan. Based on this, a **פתי** who is **יודע למי מברך** should count in a minyan. Even if they can't actually say the entire tefillah, they are considered to be **אונס** in this particular **מצוה**, rather than **מצוות**, as Rav Moshe Feinstein writes: **למי שאין לו דעת גם בגדלותו רק כבן ד' או ה' באופן קבוע... נמי אינו פטור ממצוות מדין שוטה שלא נצטווה כלל**, And according to the way we ruled in our discussion of **שוטה** above, this is true of a **שוטה** as well.

Interim summary

Based on what we've seen above, the only thing necessary for an adult Jewish male to count in a minyan is that they have sufficient דעת to understand what prayer is. Even if they are not paying attention, even if they don't know the words of the תפילה, or cannot read the סידור, awareness and understanding are sufficient to make them count. This means that an adult male dementia patient who can say שמע ישראל, or otherwise give evidence that they understand what תפילה is, should be counted in a minyan. This despite the fact that they might not participate in the תפילה in any way.

It may occur to some to question this conclusion based on the עה"ש שם who demonstrates from the gemara in ע' ע"ב that a person who is delirious from sickness is worse than a sleeping

¹⁷ It is worth noting that the הג"מ (as it appears in the רמב"ם and in the ב"י) as well as the ד"פ all say תשובות מהר"ם ד"ל whereas the דל"ו writes תשובות המהר"ם ד"ל, indicating that lack of דעת is the only thing separating a קטן from being a בר מצות. The use of ולאו, on the other hand, could suggest agreement with the argument of Rav Elchonon Wasserman in the קובץ הערות above.

¹⁸ However, both demand that לכתחלה you should try to wake the sleeping person. And the שו"ע itself, states elsewhere that לכתחלה we should be חושש for the רא"ש (see אורח חיים קכ"ד ס"ז).

person, and cannot count in a minyan. The answer to this is: a sleeping person is not presently *יודע למי מברך*, but can be woken, at which point they will be *יודע*. However, a sick person cannot be cured of their sickness immediately, and therefore no instantaneous action we take can bring them to a state of *יודע למי מברך*. Therefore, a person who is manifestly *יודע למי מברך* is not at issue in the *עשה"ש* here.

Assessing *יודע למי מברך*

The question now becomes, how do we assess whether the father is *יודע למי מברך* at any moment? The answer is if the congregant can see that their father is able to participate in some aspect of davening, even if he is not able to participate in its entirety, this should indicate that he is *יודע למי מברך*. This conclusion is based on the claim we made above about memory retrieval including the meaning content of the memory. However, it may be uncomfortable or impractical to test their father overtly every time before bringing him to minyan. If the father has been successfully saying the first line of *שמע קריאת* or another *תפילה* for the last several days, we can simply assume that until we have evidence to the contrary, he is *יודע למי מברך*.

Problems arise when a dementia patient reaches a point where some days they are able to say *ק"ש* and some days they are not. In those situations it may be necessary to actually test them in some way. However, there is no need to demand that they recite *ק"ש* on the spot. It is sufficient to simply ask, as relatives or the chaplain wheel them to minyan, where they are going and what for. If they respond something along the lines of "to minyan" and "to daven" that is sufficient to indicate that they are *יודע למי מברך*. If they does not respond in this way, we should work with the presumption that for a man, today, we are unable to count him in the minyan.

Furthermore, because of the length of time that one must remain lucid to be counted in a minyan, if the staff or relatives of a person with dementia begin seeing signs that the "good day" is over and the person's lucidity is fading they should not count him in a minyan until they are certain that his lucidity is stable.

In summary, a person suffering from dementia who is *יודע למי מברך*, has a status no less than that of a sleeping person. Therefore they can be counted in a minyan. To assess if they are *יודע למי מברך*, one can ask beforehand or on the way to minyan "where are we going?" A response indicating awareness of the meaning of minyan or *תפילה* is sufficient, in our estimation to indicate that the person is *יודע למי מברך*. However, caretakers (and the person responsible for the minyan) should monitor the dementia patients status regularly to confirm that they are still *יודע למי מברך*. If they see signs that the person is no longer *יודע למי מברך*, they should check

unobtrusively and on the basis of that check, determine whether a minyan remains. This is especially important when we see signs that the “good day” is ending.

Zimun

Regarding zimun, the Rema (או"ח קצ"ט ס"י) writes: וְתַרְשׁ וְשׁוּטָה אִם מְכֻנִּים וּמְבִינִים מִצֵּטְרָפִין לְזִמּוּן. Based on the arguments above about שוטה למי מברך we conclude that anyone who is יודע למי מברך, whether a שוטה or a פתי can be included in a זימון.

A simple test of whether the father is יודע למי מברך in order to be included in a zimun suggests itself. At the end of the meal, one of the other two men at the table should simply say the words, רבותי נברך. If their father responds, even partially, that is sufficient to indicate that he is יודע למי מברך and can be included in the zimun. If he does not respond, they should presume that he is not יודע למי מברך at that moment, and proceed without a זימון.¹⁹

Aliyah to the Torah

The issue of aliyot to the Torah for a person with dementia revolves around the question of whether they can actually read the text of the Torah. The שו"ע או"ח קל"ט ס"ב writes: לקרות צריך למחות בידו שלא יעלה לספר תורה ואם צריכים לזה שאינו יודע לקרות לפי שהוא כהן או לוי ואין שם אחר זולתו In other words, a person who cannot independently read from the Torah can still get an aliyah, but they need to read along with the בעל קורא. Following this reasoning, the מחבר concludes in ס"ג that a blind person cannot get an aliyah, because they cannot read along with the בעל קורא. The Rema, on the other hand writes: ומִהְרֵי־לִי כָּתַב דְּעֻכְשֵׁיו קוֹרֵא סוּמָא, כְּמוֹ שְׂאֲנוּ מִקְרִין בַּתּוֹרָה לְעַם הָאַרְץ. basing himself on the argument of the ס"ב סי' משאת בנימין writes: וטעמו דכיון שאנו נוהגין שהש"ץ קורא והוא קורא מתוך הכתב טוב לא קפדינן על העולה דשומע כעונה. In other words, the "directly from the text" requirement, presented by the מחבר, is able to transfer from the בעל קורא to the עולה by way of שומע כעונה. This would still require the עולה to pay attention to every word they hear from the בעל קורא even if they are not required to repeat every word after the בעל קורא (see משאת בנימין שם).

Therefore, assuming that the congregant's father can make the ברכה (which, in itself, is evidence that he is מברך למי מברך), he still needs to have the capability to listen carefully to every word of the בעל קורא. Based on the description above and our understanding of middle stage dementia, this seems unlikely. We have heard from a chaplain of an assisted living facility that the גבאים in

¹⁹ This reasoning obviously applies to a women's zimun as well (see י"ו ט"ז נ"א).

his facility occasionally call up memory care patients and assist them in saying the ברכה because they cannot say it on their own. In this case, the true עולה is the גבאי who repeats the ברכה for the person with dementia. This being the case, that גבאי should be sure to listen carefully to every word of the aliyah. As for the ברכה לבטלה of the person with dementia, because they are unable to say the ברכה on their own, we consider them to be outside the חיוב of לבטלה entirely. We cannot say whether this practice is to the maximum dignity of the person with dementia. However, the chaplain we spoke to reports that it gives great נחת רוח to their families. In this case, the leaders of the minyan should use their judgment as to what is best.

In short, a dementia patient can receive an aliyah if we are confident that they can listen to every word read by the בעל קורא. This could be reasonable in the case of early stage Alzheimer's but is unlikely in middle or late Alzheimer's. If the גבאי needs to repeat the words of the ברכה for the memory care patient, the גבאי themselves should listen carefully to every word of the aliyah since it is really their aliyah.

Leyning

It seems unlikely that a person suffering from dementia, even in relatively early stages, will have the power of concentration necessary to prepare and leyn from the ספר תורה. If they do have the ability, there is no reason why they should not leyn for the community.

A question arises, however, when we consider whether they can leyn if they have memorized some or all of the Torah. For example, a participant in a shiur on this topic noted that his grandfather, who suffered from dementia, was able to recite his bar mitzvah פרשה by heart until the day he died.

The question of reading by heart is addressed by the Rambam (תשובות הרמב"ם הוצ' יהושע בלאו, סי') (רצ"ד). He writes, "ואפי' קרא על פה יברך כי עצמה של קריאה היא המצוה שעליה אנו מברכין". In other words, since the recitation of the Torah is the actual mitzvah of קריאת התורה, one can even make a ברכה on reading by heart. This would suggest that a בעל קורא who reads by heart, could מוציא the community for קריאת התורה.

However, even the Rambam only addresses the case of what to do when there is no kosher ספר קריאה, meaning he only paskens this way בדיעבד. Furthermore, the Rashba in a teshuva (הובא בב"י) argues that the חפצא of the ספר is intrinsic to the definition of a kosher קריאה. He notes that the Rambam himself in the Misheh Torah (הל' ספר תורה פ"י ה"א) disagrees with his own position in the teshuva above. The Rashba concludes his comments as follows, "ועם סתירת ראיותיו

וטענותיו אני מורה לך הלכה למעשה שלא ראיתי מי שעשה בזה מעשה גם בכפרים שאין שם ס"ת וקורים בספרים שאינם נגללים ואין נכתבים כהלכתם לא ראיתי בעולם מי שבירך בהם לא בתחילה ולא בסוף."

The מחבר takes a middle position between the Rambam and the Rashba. The paskens that if a mistake is found in a ספר תורה in the middle of the reading, the reader should stop where they are in the reading and open a kosher ספר תורה. However, it is not necessary to say another ברכה before beginning again in the kosher ספר, since בדיעבד, we give credence to the position of the Rambam that it is the act of reading and not the הפצא of the ספר that matters. The Rema adds details (if you have already read three פסוקים, he recommends closing the aliyah there and starting the next aliyah from the kosher ספר) but in essence, he agrees that we can rely on the Rambam בדיעבד. However, if we know that we don't have a kosher ספר תורה, we do not rely on the Rambam to open our ספר פסול and read from that with ברכות (see שם ס"ג).

This implies that reading by heart, cannot constitute a kosher קריאה and, as we've seen above (שו"ע שם קל"ט ס"ב), it is necessary for the leyners to read the text from the written scroll. Therefore, a patient with dementia who can recite some of the Torah by heart but cannot be relied upon to read the words directly from the text cannot leyn from the Torah for the community.

Davening from the Amud

Based on our understanding of middle stage dementia, this seems an unlikely scenario. In any case, the halakha has a higher demand for a שליח ציבור than for someone davening on their own. In addition to being able to recite the entire תפילה which we assume contains within it the presumption of יודע למי מברך, a ש"ץ must further have the intention to מוציא the other members of the congregation. The שו"ע רי"ג ס"ג writes: אֶפְלוּ יַעֲנֶה אָמֵן, אֶלָּא אִם כֵּן שְׁמַעָה: אין יוצא ידי חובתו בשמיעת הברכה, אֶפְלוּ יַעֲנֶה אָמֵן, אֶלָּא אִם כֵּן שְׁמַעָה. ומתקלטה ועד סופה, ונתפנון לצאת בה ידי חובתו, ונתקברך נתפנון גם כן להוציאו ידי חובתו.

It may be the case that just as the ability to daven seems to correspond with an understanding of what davening is, so too, the ability to daven from the amud may indicate an understanding of the principle of מוציא אחרים. We are deeply doubtful of this, however, and therefore we would recommend that unless their father seems to clearly understand what davening from the amud is about, he should not do it.

Tefillin

Regarding tefillin, if he appreciates being reminded to put it on, they should remind him. However, because of גוף נקי issues, he should not wear them for extended periods.

לסיכום הדברים

Zimun

After your father eats in the company of two other Jewish, adult, פקח, men, one of the פקחים should say, "רבותי נברך". If the father responds appropriately, the zimun should continue. If he is not able to respond appropriately, the two פקחים should continue with בה"מ without zimun.

Minyan

If the father is aware enough to understand what davening is, that is sufficient to count him in a minyan. If he has been aware for the last several days, we can rely on the continuance of this awareness. If, however, he has good days and bad days, his relatives or the staff of his assisted living facility need to check whether he is יודע למי מברך before counting him in a minyan. This can be done simply by asking whether he wants to go to minyan, or checking to see if he can say תפלה קריאת שמע or another basic תפלה.

Tefillin

Ideally, the congregant should remind their father of any mitzvot that he is capable of and amenable to doing when he is reminded. Regarding tefillin, personal hygiene is a precondition of wearing tefilin and therefore, they should consider leaving it on him for a relatively short period of time.

Aliyot

Having an aliyah to the torah demands focus on every word of the torah being read. This seems like too high a bar in cases of middle stage dementia. However, if their father is able to do this, he may have an aliyah. If he is not, but it would give him or his relatives pleasure to be close to the Torah, etc., he may be called to the Torah and the gabbai can help him through the ברכה. At this point, the aliyah is really the gabbai's aliyah, and he should focus carefully on every word being read.

In cases where the father has good days and bad days, they should be sensitive to when his lucidity normally comes to an end and what the signs of that are. When he reaches that time, or

they recognize the signs, they may continue to check your father's awareness for short mitzvot (like zimun), but he should not be counted in a minyan.

Leyning

The leyner is required to read the Torah from the written scroll and not by heart. This being the case, a patient with dementia who can recite passages from the Torah by heart, may not read from the Torah for the community unless it is certain that they are reading from the written text.