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YESHIVAS IYUN HALACHA
HILCHOS AVEILUS PROGRAM

HILCHOS AVEILUS SHIUR 1

יורה דעה סימן ש"מ סעיפים א-ד

Kri'ah (Tearing): Who, When, How

The Hilchos Aveilus program is sponsored
l'ilui nishmas Avraham Yechezkel
ben Yaakov Halevi z"l - 16 Av 5774
Mr. Alfred Haft a"h
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לעילוי נשמת
ר' אברהם יחזקאל
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Mr. Alfred Haft a"h

ט"ז אב תשע"ד
ת.נ.צ.ב.ה.

*"Rabbi Shimon says there are 3 crowns -
the crown of Torah,
the crown of priesthood
and the crown of sovereignty,
but the crown of a good name surmounts
them all."*

HILCHOS AVEILUS SHIUR 1

מראה מקומות

סעיף א

Gemora Mo'ed Katan from אמר רב כד ע"א

תחליפא בר אבימי

Tosefos ד"ה הא

Ramban Toras Ha'adam ד"ה והא (Mosad

Harav Kook pg. 62-63)

Gemora אמר רמי בר חמא from כא ע"א

Gemora end of שכיב ליה from כ ע"ב

Tur, Bais Yosef

Shulchan Aruch (here and סי' שעד סעיף ד

Pischei Teshuva ס"ק א

סעיף ב

Gemora והקורע מלמטה from כו ע"ב

Pischei Teshuva ס"ק ב

סעיף ג

Gemora ת"ר תחילת קריעה from כו ע"ב

Gemora א"ר אבהו from כב ע"ב

סעיף ד

Gemora end of שכיב ליה from כ ע"ב

Tur

Written by Dayan Yitzchok Oshinsky Shlit"א
Av Beis Din Rabbani Haifa

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HILCHOS KRI'AH INTRODUCTION

The laws of mourning begin with the rules of kri'ah (tearing the clothing) in mourning for the deceased. The dinim of kri'ah are lengthy and consist of many details. The opening shiurim of hilchos aveilus will focus on kri'ah and all its halachos.

The source for the laws of kri'ah is found in the third perek of Gemora Mo'ed Katan.

◆ Reasons for Kri'ah

Gesher Hachaim (a three volume encyclopedic work on aveilus) cites several reasons for kri'ah in mourning for the deceased.

1. To bring out painful feelings.
2. To distract the mourner, so he should think about the loss of his clothing and thus partially divert his attention from the heavy loss of his relative.
3. Some say that there are esoteric reasons, as found in the Zohar.

◆ Is the Obligation of Kri'ah Mid'oraissa or Mid'rabbanan?

The Gemora in Mo'ed Katan (כד ע"א) quotes: "Rav Tachlifa bar Avimi said in the name of Shmuel that a mourner who did not let his hair grow or did not tear [his clothing] is liable to a [heavenly] death penalty, as the passuk (addressing the Kohanim) says (ויקרא י, ו) "You shall not let your hair grow, and you shall not tear your clothing, and you shall not die," implying that a non-Kohen who doesn't let his hair grow or who doesn't tear his clothes (when in mourning) is liable to die.

The face-value of the Gemora's wording suggests that the obligation of kri'ah is derived from this passuk, so it would seem to be a Torah obligation. However, the Ramban (Toras Ha'adam, Mosad Harav Kuk ed. p. 62-63) states that the obligation is mid'rabbanan, and the passuk is only an asmachta (an allusion which is not obligatory without a rabbinic injunction).

You may ask: If the obligation is only rabbinic, how can the Gemora say that one who doesn't tear is liable to die? The Ramban explains that there is a general heavenly death penalty on violating rabbinic injunctions, as mentioned in the Gemora (Brachos ע"ב ע"ד).

Tosefos (Mo'ed Katan ibid ד"ה הא) also explain like the Ramban, that although the Gemora derives the obligation of kri'ah from a passuk, still the obligation is only mid'rabbanan, and the passuk is just an asmachta. See Tosefos who brings a proof for this. The Shach (ס"ק ב) as well rules that the obligation is of rabbinic origin.

♦ SIMAN 340 - THE AMOUNT, PLACE, FOR WHOM AND TIME OF K'RIAH (39 SEIFIM)

א סעיף א - FOR WHICH RELATIVES ONE TEARS, AND STANDING WHEN TEARING

The Shulchan Aruch writes:

If one's relative died, and he (the deceased) is one of the relations for whom one mourns, he (the surviving relative) must tear (his clothing in mourning) for him. He must also tear while standing, and if he tore while seated, he did not fulfill the obligation.

The Rama adds:

And he must tear again. L'chatchila one must tear before the deceased's face is covered (with earth).

♦ For Which Relatives One Tears

The mitzvah of kri'ah applies to a person when one of his seven closest relations for whom he is required to mourn passes away. These relations are: his father, mother, son, daughter, brother (from his father), sister (from his father) who never married, and his wife (or husband). Chachamim added that one is obligated to mourn for his brother from his mother, his sister from his mother and even if the sister is married, and his sister from his father even if she is married.

The Shulchan Aruch here does not enumerate the relatives for whom one must mourn and tear, but does list them below (סימן שעד סעיף ד).

♦ The Obligation to Tear While Standing

The Gemora in Mo'ed Katan (כא ע"א) states that one must tear while standing. First a source is offered from the passuk (איוב א, כ) - *lyov stood up and tore his cloak.* However, the Gemora rejects this source, and instead cites the passuk about Dovid Hamelech (לא) - *The king stood up and tore his clothes.*

What is the din if one tore while seated? The Tur cites a machlokes between the Rishonim.

1. The Rif and Ra'avad rule that he fulfilled his obligation b'diavad even though he tore while sitting. (The Bais Yosef however entertains the possibility that they did not render a conclusive ruling on this.)
2. The Ritz Gaius and the Rosh rule that even b'diavad he didn't fulfill his obligation by tearing while seated, and he must tear again standing. (They prove their position from the Gemora in Mo'ed Katan כ ע"ב about Ameimar who tore while sit-

ting, and when he realized that he didn't stand up he stood up and tore a second time. The other Rishonim hold that Ameimar only did this as a chumra.) The Bais Yosef asserts that the Rambam also subscribes to the view that he must tear again.

The Shulchan Aruch, following his guiding rule of paskening according to the majority of opinion among the Rif, Rambam and Rosh, writes that if one tore while seated he didn't fulfill his obligation (like the Rambam and Rosh). The Rama adds that he must tear again.

Here we are faced with a dilemma. If one must tear again, does he again say the bracha of דיין האמת (the Truthful Judge)?

1. The Tzitz Eliezer (ח"ה סי' לג, ברמת רחל) writes that when he tears again he should not say the bracha again. The reasoning is that the kri'ah and the bracha are two independent obligations.
2. The Shevet Yehuda writes that the bracha is part of the din of kri'ah, so when he tears again he must say the bracha again. (See further ח"ב יו"ד כג.)

The later poskim emphasize that one must not lean on anything when tearing, because leaning is considered like sitting.

When a person is ill and cannot stand, the Kinyan Torah (ח"ג סי' קה) rules that he can tear sitting or lying down.

♦ The Timing of Kri'ah

The Rama states that ideally kri'ah must be done before the deceased is covered over. The implication is that the time for kri'ah is before closing the grave. The Shach (ס"ק ג) writes that the time for kri'ah is when the mourner says the bracha דיין האמת. However, the current minhag in many places is to tear and say the bracha before the deceased is taken out of the house. Some are accustomed to tear and say the bracha when the deceased is taken out and people gather for the hespedim (eulogies), see Gesher Hachaim (פרק ד סעיף ו) who gives various explanations for this custom. (See further ח"א, ח רעד פרק א, ח.)

Some Sefardim are accustomed to tear at the end of the levaya (funeral procession), and then the laws of aveilus take effect (see Gesher Hachaim ibid). (For more on this see ח"ב יו"ד סי' כג אות ה.)

♦ The Manner of Tearing

The Pischei Teshuva (א"ק א) quotes from the poskim that preferably the entire kri'ah should be made by someone other than the mourner (since that causes greater discomfort and anguish, and the mourner silently accepts the Heavenly decree).

The Bais Yehuda (כ"ו) records a minhag that someone else first makes a small tear with a knife, and the mourner completes the tear (by hand), this is also brought in Gesher Hachaim (ח"א, ד) and this is the accepted practice.

♦ Tearing Too Much

The Pischei Teshuva (ibid) quotes from the poskim that one should be careful not to tear more than the required amount (one tefach, 8-10 cm, see below), because unnecessary tearing is בל תשחית (wanton destruction which is prohibited by the Torah).

However, the P'nai Baruch (קונטרס אהל חנה) cites the opinion of Rav Yisroel Ya'akov Fisher zt"l that this not considered בל תשחית, since this item of clothing is anyways now ruined (and the Gesher Hachaim agrees).

ב סעיף ב – WHERE ON THE CLOTHING THE KRI'AH IS DONE

The Shulchan Aruch writes:

The location of kri'ah can be anywhere on the front part of the collar, but if he tore on the back (Rama – or the bottom) or on the sides, he did not fulfill the obligation.

The Rama adds:

Some say that if he tore on the bottom of the garment he fulfilled his obligation. And it is customary to rip on the bottom edge when tearing for a deceased person one is not obligated to mourn for; but for a relative for whom one must mourn one does not fulfill his obligation unless he tears the collar, and that is the minhag.

The Gemora (Mo'ed Katan כ"ו ע"ב) states that tearing on the bottom and sides is insufficient. The Rambam (פ"ח מהל' אבל ה"א) summarizes that one must tear in front and up high. This is also the opinion of the Shulchan Aruch here, who says to tear the front of the collar.

The Pischei Teshuva (ס"ק ב) quotes from the Chochmas Adam that if one made a horizontal tear (rather than vertical) he did not fulfill the obligation, because it does not look like a tear made intentionally.

In contrast to the Shulchan Aruch, the Rama rules like the Smak (צ"ו), who holds that tearing the bottom of the garment is valid. This is the accepted custom only when tearing for a person one has no obligation to mourn for (such as when one is present at the moment of death); but for relatives whose passing one must mourn (as listed above), tearing the bottom is not sufficient, rather one must tear at the collar.

סעיף ג – THE SIZE OF THE TEAR

The Shulchan Aruch writes:

The required length of the kri'ah is a tefach (four thumb-widths, 8-10 cm). If one already did kri'ah for one deceased person and now wants to add on to the existing tear for another person who died, and it is now after the shiva (seven initial days of mourning for the first person), it is sufficient to lengthen the tear by a small amount; but if it is still during the shiva, he must add a tefach. For one's father or mother, even (when tearing) after the shiva he must tear until he exposes his heart (chest).

The Gemora in Mo'ed Katan (כ"ו ע"ב) states that one must tear a tefach. The Gemora (כ"ב ע"ב) derives this from the passuk (שמואל ב א, יא) about Dovid Hamelech, "ויחזק דוד בבגדיו ויקרעם" - Dovid gripped his clothes and tore them." The Gemora explains that gripping implies the width of a tefach. The Shulchan Aruch rules accordingly.

The Gemora (כ"ו ע"ב) adds that this required length only pertains to a first kri'ah, but if one already tore for one person's death, and after the shiva of that person another relative for whom he must tear died, it is sufficient to add a small amount to the first tear. However, if the second relative died during the shiva of the first, a full tefach is required. The Shulchan Aruch rules accordingly and adds to the ruling of the Gemora that for one's father and mother a different rule applies, as we will discuss later.

סעיף ד - TEARING IN THE PRESENCE OF A RELATIVE WHO LOST A FAMILY MEMBER

The Shulchan Aruch writes:

Just like one tears for a relative for whom he must mourn, so too one tears in the presence of a relative whose family member died. For example, if his son's son or son's brother or son's mother passed away, he must tear in the presence of his son. Similarly he must tear for his father- and mother-in-law, and a woman tears for her father- and mother-in-law.

The Rama qualifies:

This is no longer the minhag, as will be explained below ש"ע' regarding mourning.

The source of the din of tearing in the presence of a relative who lost a family member is the Gemora (ibid כ"ב ע"ב) which relates that Ameimar tore in the presence of his son on the passing of his son's son.

There is a machlokes between the Rishonim when this din applies.

1. The Ramban (cited in the Tur) explains that the kri'ah must be done in the presence of the relative who became a mourner, and if not done in his presence, is not valid.
2. The Rosh understands that since the obligation is to tear in the moment of initial anguish, therefore one must tear immediately when he hears about the death, even if it is not the presence of the mourning relative.

The Shulchan Aruch adds that one should tear for his father- and mother-in-law (since his wife must tear for them), and a woman should tear for her father- and mother-in-law (since her husband must tear for them). For other relatives of his wife a man does not need to tear (Shach ו'ק"ו).

However, contrary to the ruling of the Shulchan Aruch, the Rama states that the minhag in his time (and region) was not to tear in the presence of a relative who lost a family member.

It is worth noting a parallel to this halacha in the laws of mourning (ו'ס'י שעד סעיף ו'). There the Shulchan Aruch rules that one must practice dinim of mourning in the presence of a relative who is in mourning, and the Rama comments that this is not customary. We will discuss this further when we get there BE"H.

SUMMARY

1. In the introduction we listed the reasons behind kri'ah, and the opinions whether the obligation of kri'ah is d'oraissa or d'rabbanan.
2. The mitzvah of kri'ah applies to a person who lost one of his seven closest relatives, namely: his father, mother, son, daughter, brother (from his father), never-married sister from his father, and his wife.
3. The Chachamim added a few relatives to the list of who one must mourn and tear for, namely: his brother from his mother, his sister from his mother even if the sister is married, and his married sister from his father.
4. One must stand while tearing, and if he tore while seated there is a machlokes Rishonim, and the halacha is he must tear again.
5. One must not lean on anything while tearing.

6. A sick person who can't stand up can tear while seated or lying down.
7. It is customary that another person begins the tear with a knife, and then the mourner tears (by hand).
8. The custom today in many places is to tear and say the bracha **דיין האמת** before the deceased is taken out of the house. Some have the custom of tearing and saying the bracha when the deceased is taken out and people gather for the hespedim.
9. The kri'ah can be done anywhere on the front of the collar. If one tore on the back (or bottom of the garment) or on the sides, it is not valid.
10. If one tore horizontally, it is not valid.
11. According to the Rama, if one tore on the bottom of the garment, this is valid and customary on the death of a non-relation, but for a close relative (on the above list) it is not valid unless he tears the collar (as above).
12. The required length of the tear is a tefach.
13. This length is required for a first tear, but if one tore already for one relative and after that shiva another relative died, it is sufficient to add a small amount to the first tear.
14. If the second relative died during the shiva of the first, he must tear another tefach.
15. The Shulchan Aruch rules that one must tear in the presence of a relative who lost a family member.
16. The Shulchan Aruch also rules that one must tear for his father- and mother-in-law, and a woman for her in-laws.
17. The Rama disagrees with both of these halachos, because neither is customary.