

THE PIRCHEI SHOSHANIM SHULCHAN ARUCH PROJECT

Hilchos Aveilus 1

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The Laws of *Kriah*

Siman 340: 1–4

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¹ *Kriah* – the tearing of the clothing for mourning

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⁴ shiur – a measurement used in Halocho to determine the law

The Laws of Mourning

The laws of mourning commence with the laws of *Kriah* (the tearing of the clothing) for someone who has deceased. The law of *Kriah* in the *Halacha* is long and complied from many details. The opening summaries of the laws pertaining to mourning concern the laws of *Kriah* and their particulars.

The *seifim* in the *Shulchan Aruch* and of the *RAMA* (including notations of the *Shach* and the *Taz*):

SIMAN 340:1-4

Siman 340 – Concerning the Kriah; measurements, place of tear; For whom Kriah is done; the time for Kriah. This Siman is made up of 39 seifim.

SIMAN 340:1

Kriah is done in a standing position

If one has had someone pass away, and that deceased 1 was one which requires him to mourn for him 2 it is necessary to tear Kriah for him, and the tearing of the clothes must be done whilst standing; and if he made the tear while sitting it is not considered that he did the mitzvah.

RAMA: and he needs to go back and tear. To begin with one should do Kriah 3 before the deceased is buried.

Preferably before burial

SIMAN 340:2

where does one tear

The place that Kriah is done is everywhere in the neck area in front; but if he tore in the back RAMA: or the edge of the clothing or at the sides, it is not considered that he performed the mitzvah.

RAMA: and there are those who say that he is Yotzeh⁵ (it is considered that the mitzvah has been performed) if he tears the edges of the clothing, and it has been the custom to be more lenient in tearing at the edges 4 when one tears on a person deceased upon whom one is not commanded to mourn; but on those deceased who are his close kin upon whom one is commanded to mourn then it is not considered he has performed the mitzvah of Kriah if he tears in this manner and he must tear at the neck, and this has been the custom.

In what cases is the Halacha more lenient

⁵ yotzeh – when it is considered that the obligations of the commandment have been fulfilled and therefore the mitzvah is performed

SIMAN 340:3

The measurement
for Kriah – how
much does one tear

The measurement for the Kriah is a Tefach⁶, and if he made a tear for someone who died and then he wishes to add to that tear on another deceased person, 5 if it is after the Shiva⁷ then it is considered; but if it is in the midst of the Shiva he needs a Tefach. Upon his mother or father even if it is after the Shiva he tears till he reveals (the area of) his heart.

SIMAN 340:4

Kriah for a relative
that another mourns

Just as one tears Kriah on a relative that he mourns so too does he tear in front of a relative that is now mourning someone who died. How is that? If his son's son has died or the brothers of his son (1) or the mother of his son, he is obligated to tear Kriah before his son. Likewise, he tears 6 on his father-in-law and on his mother-in-law and the wife tears on her father-in-law and on her mother-in-law.

RAMA: and at present this custom is not adhered to, as will be explained further on in Siman: 374 regarding the laws of mourning

Today this custom
is not upheld

The Reasons for Kriah

Reasons for Kriah

The following reasons are brought in the sefer "*Gesher Hachaim*" (Part 1, beginning of chapter 4) as to why one tears the clothing (Kriah) when someone has passed away.

1. To induce grief.
2. To sidetrack the mourner's thoughts, so that he will think about the loss of the garment and that will help alleviate somewhat the tragedy of losing his close relative.
3. There are those who say that the act of *Kriah* is explained in spiritual terms based on hints and secrets from the *Zohar*.

⁶ Tefach – the specific measurement which is considered the shiur in the case of Kriah

⁷ Shiva – the name given to the seven days of mourning

Is the source of the obligation of *Kriah* from the Torah – (*De'Oraissah*) or from our sages- (*DeRabbanon*):

The Ramban : *Kriah* is
DeRabbanon – the verse
in the Torah is only
an *asmachta*

In the *Gemora* in *Moed Katan* page 24:a it says: "Said Rabbi Tachlifah the son of Avimi, said Shmuel: A mourner who did not repay or did not unstitch deserves the death penalty since it says (*Vayikra* 10:6) "Your heads do not make bare neither shall you unthread your clothing's, and you shall not die." From here we learn that if someone who did not do the above deserves death. From the words of the *Gemora* it seems that we can learn from this *Posuk* that one is obligated to do *Kriah*, and if so then *Kriah* is from the Torah. Except the Ramban (*Sefer Haadam, page 63*) writes that the whole *din* of *Kriah* is only *DeRabbanon* and the Verse in the Torah comes only as an *Asmachta*⁸ (something one can rely on).

And it should be asked, if this obligation is only from *DeRabbanon* then what is this *din* of death that our Sages mention on someone who has not torn *Kriah*? and the Ramban explains there that this is like the death penalty of someone who does not obey the words of our sages as is brought in the *Gemora* in *Brachos* 4:b.

Tosfot ; The Shach –
their opinions are in
concurrence with the Ramban

Tosfot in the *Gemora* in *Moed Katan* 24:a there (words starting with Ha) wrote like the Ramban, that although the *Gemora* brings a *Posuk*⁹ for the obligation of *Kriah*, the commandment itself is from our sages –*DeRabbanon* and the verse is only an *Asmachta Bealma*, and he proves his explanation there. Likewise, the Shach (*Siman 340 se'if koton 2*) writes that the whole obligation of *Kriah* is only *DeRabbanon* – from our sages.

⁸ *Asmachta* – when one relies on a phrase or verse as supporting his opinion of what the law is yet the phrase or verse are not the source of the commandment.

⁹ *Posuk* – a sentence in the Scriptures

Explanation of the *seifim*:

SIMAN 340:1

Seven close relatives

On whom does one do *Kriah*?

The obligation of the mitzvah of *Kriah* falls upon a person when one of the seven relatives a person mourns for has died; and these are: his father, his mother, his son, his daughter, his brother, his sister from his father (unmarried), and his wife. Our sages have added several relatives that one must mourn, and therefore, one must tear *Kriyah* on them; and these are his brother from his mother's side, his sister from his mother whether married or not, and his sister (married) from his father.

In *Siman 340 se'if 1* the *Shulchan Aruch* is *Posek* (and the *Tur*, as well):

"If someone dies and the deceased is one whom you must mourn, then you must do *Kriah* on him." But it is not clarified there who the deceased are that one must mourn. Yet, the details upon whom one must mourn and tear the clothes (that has been mentioned above) is brought in the *Shulchan Aruch Siman 374, se'if 4*.

The Obligation to do the *Kriah* While Standing:

The basis for standing during *Kriah*

The *Gemora* in *Moed Katan 21:a* writes that the tear must be done while standing. The *Gemora* basis its proof on the Posuk brought in *Iyov* (*Iyov 1:20*) "And *Iyov* stood up and tore his coat" Yet after rejecting this proof the *Din* is proven from the Posuk concerning *Dovid Hamelech* (*Shmuel Beit, 13:31*) "And the king stood up and tore his clothes."

Be'dieved – What if one sat while tearing *Kriah*?

Yet, what is the *din*¹⁰ if he tore while sitting, *be'dieved*¹¹ (when something already has been done)? The *Tur* brings a dispute amongst the *Rishonim* in this issue. The *Raved* and the *Rif* both hold that he is *Yotzeb* (he has fulfilled the mitzvah), *be'dieved* if he did the *Kriah* while sitting and did not stand. (The *Beit Yosef* holds that it seems there was no final decision as to the *din* and that it was left in doubt). Contrary to these are the views held by the *Rit*ז

¹⁰ *din* – the law

¹¹ *be'dieved* – when something has already occurred or has been done yet to begin with should not have been so.

Giat and the Rosh. They state that even *be'dieved* one is not considered to have done the mitzvah of *Kriah* if he did it while sitting; that he must go again and do the tear once again – tearing twice. They support their words by the words of the *Gemora* in *Moed Katan* 20:b concerning Amimar who tore while sitting and when he remembered that he had not been standing, stood up and tore again while standing. Yet, the views of the *Rishonim*¹² that dispute this say that Amimar was more extreme on himself (*machmir*). The *Beit Yosef* writes that the *Rambam* holds the same opinion that if he tore while sitting, he must repeat and tear again.

The decision of the Shulchan Aruch, that one must return and tear again, is based on Baale Horoah

The *Shulchan Aruch* himself decides, as he usually does, based on the majority of the (Halacha decision makers) *Baale*¹³ *Horoah*. (The *Shulchan Aruch* usually makes a *pesak*¹⁴ according to the *Deab* of three major *Baale Horoah*: *the Rambam, the Rif, and the Rosh*) and he is *posek* in *se'if* 1 that one must tear *Kriah* while standing, and that if he tore while sitting then he is not *yotzei*¹⁵ the mitzvah (as is the *shita*¹⁶ of the *Rosh* and the *Rambam*). The *RAMA* adds there "*and one must return and tear again*"

different opinions: Is the Brocho part of the Kriah or is each obligation separate

The question arises: if one tore while sitting and now he must tear again, does he have to make a *Brocho*¹⁷ (benediction) on this second *Kriah*? (Since on each *Kriah* one must recite the *brocho* of *Baruch Dayan Emet*?) In the *sefer "Tzitz Eliezer"* (*Volume 5, siman 33, Beramat Rachel*) it is written that if he goes back and tears again he does not make the *brocho* twice. His *reasoning* is that there is a difference between the obligation of tearing *Kriah* to the obligation of making a *brocho*. Yet, in the *sefer "Shevet Yebudah"* it is written that the *brocho* is part of the *Kriah*, and therefore if he tears again then he should

¹² Rishonim – The Torah scholars of an earlier era

¹³ Baale Horoah – The Sages and Rabbis who decide the Halachos

¹⁴ *pesak/posek* – *pesak* is the noun – the final halachic decision; *posek* is the verb – the act of making the decision of what the halachos are.

¹⁵ *yotzei* – when it is considered that the obligations of the commandment have been fulfilled

¹⁶ *shita* – the halachic way or opinion

¹⁷ *brocho* – a benediction

make the blessing again, as well. On this matter one may look into further references in the *shu"t "Yabia Omer", Part II, Yor Deab, 23.*

it should not seem
like he is sitting

We further wish to mention what is emphasized in the *Achronim*¹⁸, that one must be careful at the time of *Kriah* not to lean on something in any way that would make it be as though he is sitting.

During illness
or physical disability

Concerning one who is ill, and cannot stand, what is the Din then? One can refer to the *shu"t*¹⁹ "*Kinyan Torah*", Part III, *siman 108* who is *posek* that one may then tear *Kriah* while sitting or laying down.

The Time For *Kriah*:

Kriah : before burial: at
the heispedim; when
the neshama leaves
the body; before the body is
taken out of the home

The *RAMA* at the end of *se'if* 1 finishes by saying: "...and to begin with one should tear before the deceased is buried." The meaning of his words is that the time for *Kriah* is before the deceased is covered in the grave. Refer to the *Shach, se'if koton 3* who writes that the time to do *Kriah* is when one recites the *brocho of Baruch... Dayan Haemet.* (as in the *Shulchan Aruch 339, 3,* and from there one understands that the time for *Kriah* and for the *brocho* is at the time when the *Neshama*²⁰ departs.) Yet, one should add that the custom today, in many places, is to do *Kriah* and recite the *brocho of "Dayan Haemet"* before the deceased is taken out of the house. And there are those whose custom it is to do the *Kriah and the brocho* when the deceased is taken out and people have gathered for the *Hespeidim*²¹, as is written in the *sefer "Gesber Hachaim" Chapter 4, se'if 6,* and there he brings several explanations for this custom. Further reference can be found in the *sefer "Teshuvot Vebanbagot" Part IV, siman 244, chapter 1, 8.*

¹⁸ Achronim – Torah Scholars of a later era

¹⁹ *shu"t* – a book of halachic questions and answers

²⁰ neshama – the soul of man

²¹ Hespeidim – eulogies for the deceased

The custom
of Sephardim –
Kriah after the burial

Mention should be made that there are those *Sephardim* whose custom is to do *Kriah* after the funeral (once the deceased is buried) and then they begin the laws of mourning (*Aveilus*) (as is brought down in the *sefer "Gesher Hachaim" Chapter 4, se'if 6*). Refer also to the *sefer "Yabiah Omer" Part II, Yora Deah siman 23, 5*.

How is Kriah done?

Daas Achronim –who
does the Kriah?

*Daas*²² *Achronim* is brought at the commencement of *teshuva se'if koton 1* that it is preferable that each *Kriah* be done by another and not by the mourner himself (because one is more embarrassed from others, and the mourner has more sorrow and anguish when his clothes are torn by another, and he keeps silent and accepts upon himself the din of *Hashem Yisborach*).

The custom as
mentioned in the Beis
Yehudah

Mention should be made of the custom that is brought forth in the *shu"t "Beis Yehudah", siman 26* that another commences the tearing by cutting with a knife and then the mourner himself continues the tear (as is brought also in the *sefer "Gesher Hachayim", Part I, 4*), and this is the custom.

Should Care Be Taken Not To Tear More Than The Shiur (Tefach):

Not to be over
"Bal Tashchis"

The *Pithchei Tshuva* there brings *Daas Achronim* that care should be taken not to tear the clothing more than the *Shiur*, because otherwise he is transgressing the mitzvah of being forbidden to be "*Bal Tashchis*"²³. Yet, by referring to the *Kuntras "Obel Chana"* that is in the *sefer "Penei Baruch"* who brings the opinion of *HaGoan HaRav Fisher zt"l* that it is not considered *Bal Tashchis*, (define) since the clothing is already considered a loss. (and that is the *psak* of the *Gesher Hachayim*, there).

²² Daas Achronim – this is the halachic opinion of the Torah Scholars of a later era

²³ Bal Tashchis – when something (object, food, etc.) is still useful and yet it is thrown away or destroyed

SIMAN 340:2

Where Does One Start the *Kriah*: (on the clothing)

One is not *yotzeh* when tearing in the back or the sides

The *Gemora* in *Moed Katan* 26:b writes that if the tear is torn from the bottom of the clothing or at the sides, then one is not *Yotzeh*. Indeed, the *Rambam* concludes from this *din* (*Hilcoth Avel* 8, *Halacha* 1) that one tears in front and from the top of the clothing. This is how the *Shulchan Aruch* is *posek* in this *siman se'if* 2: "the place that one tears is everywhere in the neck area in front, but if he tore in the back (or on the edge of the clothing) or on the sides, he is not *yotzei*" The *Pitchei Tshuva* adds in *se'if koton* 2 the *din* of the *Chochmas Odom* that even if he tore to the width of the clothing, he is not *yotzei*, since it is not seen as though he tore it by doing *Kriah* but rather it would be considered as though it tore by itself.

Leniency when tearing for relatives he is not obligated to mourn

Yet, the *RAMA* there brings the words of the *Semak* (*siman* 87, 7) who says that if one tore at the edge of the clothing, he is *yotzei* (*fulfilling his obligation*), and that has been the custom to tear at the edge of the clothing. Yet, this is so when one tears on others who have passed away that he is not obligated to mourn them (and he tears at the time the *Neshama* leaves the body), but for those close relatives that it is mandatory to mourn upon (as detailed above) one is not *yotzei* by tearing at the edges, and one must tear from the neck area.

SIMAN 340:3

What Size (length) does The Tear Need To Be?

Achizah – the concept that teaches us that the measurement is at least a *Tefach*

In the *Gemora* in *Moed Katan* 26, side 2 it is said that one tears a *Tefach*, and that this is learned from the *Posuk* in *Shmuel Beit* (1:11) concerning *Dovid Hamelech* "And Dovid held on to his clothes and tore them" – and the concept of *Achizah* – holding on is not less than a *Tefach*. The *Shulchan Aruch*, in this *se'if* is *posek* the same.

Tefach – is the shiur only in the first Kriah but not in the case of his mother or father because then he tears till the area of his heart is revealed

The *Gemora* adds there, that this *Shiur* (*Tefach*) is only in the first *Kriah*. If he already tore on one relative that died, and after the *Shiva* another relative died and he needs to tear on him *Kriah* as well, then it is enough to add somewhat on the first *Kriah*. If the second relative passed away while he is still sitting *Shiva*, then one is obligated to tear for that second relative *Kriah* of another *Tefach*. (And all this is in regard to other close relatives, but when coming to add on a tear made for his father or mother, the *din* is different and will be explained later.) This is how the *Shulchan Aruch* is *posek* in this matter, and the *Shulchan Aruch* finishes by saying, that in the case of the passing away of one's father and mother, even if they passed away after the *Shiva* of a first close relative, one does *Kriah* on them till his heart is revealed (which is the *Shiur of the Kriah* for one's father and mother, as will be explained later).

SIMAN 340:4

Doing *Kriah* before a Relative Who Has Lost a Family Member:

Tearing *Kriah* before a relative who is in mourning

The *Shulchan Aruch* in this *se'if* is *posek* that **"just as one who tears *Kriah* on a relative whom he must mourn, so he tears before a relative who has lost a family member whom he mourns"**. The *Shulchan Aruch* brings as an example to this *din* **"that his son's son has died or his son's brother or the mother of his son, he needs to tear before his son."** The source of this *din* is in the *Gemora* in *Moed Koton* 20 side 2 where *Amimar* tore *Kriah* before his son because of the death of his son's son.

The opinions of the Ramban and the Rosh as to when to do this kind of *Kriah*

The *Ramban* (brought in the *Tur*) learns from this *din* that this kind of *Kriah* must be done specifically in front of the relative who is in mourning, and if he tore not in front of this relative, he was not *Yotzei*. Yet, the *Deah* of the *Rosh* there states that since this *Kriah* is done in the moment of the first anguish, then he tears immediately upon hearing of the death, even if it is not in front of his relative that is mourning.

The *Shulchan Aruch* there adds that one must tear *Kriah* for his father-in-law and mother-in-law (since his wife tears *Kriah* on them). Likewise, the wife tears for her father-in-law and mother-in-law (since her husband tears *Kriah* on them). Regarding the rest of the wife's relatives he is *potur*²⁴ from tearing. (The *Shach se'if Koton 6*)

The Rama: it is
not the custom

Yet, contrary to this *pesak* in the *Shulchan Aruch* (that one must tear *Kriah* before a relative who is in mourning) the *RAMA* is *posek* there "*and this is not the custom now*". It has not been the custom to tear before a relative who does *Kriah* on a relative who has passed away.

Controversial opinions:
The *Shulchan Aruch* –
The *Ramah*

It is important to state that the *se'if* parallel to this one is found in the *Shulchan Aruch siman 374, se'if 6*. There it discusses the laws of *avelut* when a relative is in front of a relative who is in mourning. There too, we find controversial opinions between the *Shulchan Aruch* (who claims that the laws of *avelut* are relevant when standing before a mourning relative) and the *RAMA* (who claims that this type of *Avelut* is not the custom before one's relative). *Im Yirtze Hashem*, we shall elaborate on this topic later on, in *siman 347*.

Summary – Shiur 1

In this shiur we have put down the basis for the act of *Kriah* – the tearing of one's clothes when one is in mourning. Our learning has given us more insight into the why, how, when, where and for whom that *Kriah* entails. Shiur 2 will further elaborate on the concept of *Kriah* and will explain particulars on this issue in more detail.

²⁴ *potur* – being exempt from doing the halachic obligation