

KRIAT SHEMA 3:6-9

by Rabbi Yitzchak Etshalom

[since there are four Halakhot here and a lot of questions, we'll skip the shiur format and just address the questions directly. mod]

[*K'zayit*, *K'beitza*: measurements of volume - a *K'zayit* - lit. "like an olive" - is 1/2 or app. 1/3 of a *K'beitzah* - lit. "like an egg"].

6. It is forbidden to read K'riat Sh'ma while facing human *tzo'ah* (feces), or *tzo'ah* of dogs or pigs while they have hides in them or any tzo'ah which has a foul smell like these. Similarly, it is forbidden to read [facing human urine. However, it is permissible [to read] while facing animal urine.

Regarding a minor who is unable to eat a *k'zayit* of grain within the time it takes an adult to eat three *k'beitzot* of grain; we do not need to distance ourselves from his tzo'ah or from his urine.

[RABD: This Rabbi's method is usually to rely on the Yerushalmi, however, here he did not rely on it, since there it says that it is forbidden to read facing urine of a donkey which has come from the way - and the same regarding the tzo'ah of a red chicken...]

7. If there was tzo'ah that was as dry as pottery, it is [still] forbidden to read facing it. If it was drier than pottery, such that if it were thrown it would shatter, then it is like dirt and it is permissible to read facing it.

Urine that was absorbed in the ground - if it could still wet the hand [that touches it], it is forbidden to read facing it; if not, it is permissible.

[*Amah* (pl *Amot*) - lit. "forearm" - a measure of length, between 18-24 inches]

8. How far does a person have to distance himself from tz'oah or urine and then to read? 4 Amot. When does this apply? When it was in back of him or at his sides; however, if it was facing him, he must distance himself until he can no longer see it and then read.

[*Tefach* (pl *Tefachim*) - lit. "handbreadth" - a measure of length, between 3-4 inches. There are 6 Tefachim in an Amah]

9. When does this apply? When it was in the same room, on the same level; however, if there was a place there higher than it by 10 Tefachim or lower than it by 10 Tefachim, he may sit right next to that place and read, since there is a barrier there - as long as the foul smell doesn't reach him. Similarly, if he covered the tzo'ah or urine with a vessel, even if they are in the same room as he is, it is as if it is

buried and it is permissible to read facing it.

now, to the questions:

Q1: Is the prohibition of reading K'riat Sh'ma near tzo'ah on account of the smell or the sight?

A: It seems to be basically a problem of awareness, chiefly focussed on sight - but dependent on the "smell" factor. In other words, the problem seems to be saying K'riat Sh'ma with visual awareness of *tzo'ah* - but *tzo'ah* is defined not only by its source (human waste) - but also by its smell (disgusting). For example, the Gemara states that if *tzo'ah* is covered with a transparent covering, it is permissible to read facing it - however, the reason provided is that *tzo'ah b'kisui talya milta, v'ha m'khas'ya* - "the issue is one of 'covering' and it has been covered" - the Gemara could have just said "the smell is gone" (which would have been a more straightforward argument). This seems to indicate that *tzo'ah* is defined, for these purposes, as feces which has a (strong(?) and) bad smell, is presently uncovered and is in a place which is visible. (The Yerushalmi (Berakhot 3:5) entertains a discussion about speaking words of Torah at night in the vicinity of tzo'ah which would be seen, from that vantage point, during the daytime - the result of the discussion is that it is prohibited.

Q2: What is the relevance of having hides in the animal tzo'ah?

A: See Ginzburg's Perushim v'Hiddushim baY'rushalmi, vol. II, p. 287, where he points that the text of the Gemara (and, along with it, Rambam) should be reversed - instead of *biz'man shenatan letokhan 'orot* - "when he put hides in them" (Tosefta Berakhot 2:17, BT Berakhot 25a), it should read *uv'sha'ah shehu notein l'orot* - "when he puts them in hides". Ginzburg explains that tanners would sometimes put animal feces onto their hides as part of the process of tanning.

In any case, it seems clear from Rambam that when animal feces are put together with animal hides, the smell becomes more pungent - and that, without that mixture, the smell isn't that noticeable.

Q3: Why the distinction between human and animal urine?

A: As Rabbeinu Manoach (Sefer haMenuhah K'riat Sh'ma 3:6) points out in the name of Rabbeinu Meshulam (Sefer Hashlamah) - if the Gemara permits words of Torah/K'riat Sh'ma in the presence of animal tzo'ah (unless they are immersed in hides) - how much more so that animal urine does not smell pungently.

Q4: What is behind the digestive ability of a child and how that affects the status of his feces?

A: The source for this Halakhah is the Tosefta in Hagigah (1:3), which lists developmental stages for a child - at what point different Halakhot apply to him/her. The particular phrase of the Tosefta which is relevant to us also appears in the Tosefta of Berakhot (2:17). This Tosefta is quoted in Sukkah (42a-b) and Arakhin (2b). Rashi in Sukkah (42b s.v. Marhikin) maintains that it is specifically when grain is introduced into the digestive tract that the excrement smells. Therefore, if the child can only eat a small amount of grain, that reduces the smell factor. As per my proposal above at Q1, that defines

this waste as non-tzo'ah for these purposes.

Q5: How can we defend Rambam against RABD's challenge?

A: Kessef Mishneh points out here, Rambam and RABD have differing manuscripts in the Yerushalmi in question (Berakhot 3:5). Whereas RABD reads: "*mei raglayim shel hamor haba min haderekh asoor likrot k'negdan*" - "it is forbidden to read facing urine of a donkey who has come from the way" - Rambam reads (as do most of the Rishonim - and this is how it appears in our Yerushalmi) - "*miglalei hamor..." - "from the feces of a donkey..."

Q6: What is the relevance of the distinction between "dry as pottery" and "drier than pottery"?

A: The Gemara in Berakhot (25a) states, in the name of Rav: "tzo'ah afilu k'heres asura" - "tzo'ah which is even like pottery is still forbidden". There are two explanations provided in the Gemara for this "shiur" -

(a) As long as he throws it and it doesn't shatter;

(b) As long as he rolls it and it doesn't shatter.

Which shiur is stricter? It would seem that the second one is, since it will take more "hardening" to get to the point where it would shatter by being rolled. This is how Rashi (s.v. ika d'amri) understands it. However, Rabbenu Yonah (16b in Rif pages, s.v. heikhi dami) understands the opposite - that rolling it would more easily break it - and explains Rambam's ruling as following the stricter opinion. His argument is that since tzo'ah present a Torahic prohibition - an "issur d'orayta" - (see below at Q7), we have to follow the stricter view.

The notion behind the association with pottery is that pottery is the most fragile type of material with which we generally come into contact; therefore, if the tzo'ah is more fragile than that, we can consider the component pieces as already shattered and, like Rambam says here, it is like dirt.

Q7: Again, why the distinction between "wet enough to wet your hand" and drier than that for urine?

The Torah states: You shall have a designated area outside the camp to which you shall go. With your utensils you shall have a trowel; when you relieve yourself outside, you shall dig a hole with it and then cover up your excrement. Because YHVH your God travels along with your camp, to save you and to hand over your enemies to you, therefore your camp must be holy, so that he may not see anything indecent among you and turn away from you. (Devarim [Deuteronomy] 23:13-15).

The sugya in Berakhot (25a) examines the first two phrases - on the one hand, the Torah only obligates us to go to a designated place outside of the camp to relieve ourselves. On the other hand, the Torah obligates the use of a trowel to cover up the human waste. The Gemara answers that the first phrase is referring to urine and the second to feces. In other words, the Torah only demands that we go "outside" to urinate, but doesn't make mention of anything that must be done with the urine afterwards. On the other hand, the Torah definitely commands us to cover up tzo'ah.

The upshot is that since the Torah does not obligate us to cover up urine (once it has hit the ground), it doesn't violate the "sanctity of the camp" - and it is permissible to say words of Torah, read K'riat Sh'ma etc. in the vicinity.

The Rabbis decreed that urine should also be a "distancing factor" - but, since they enacted the rule, they only did so where the urine is still wet. How wet? Wet enough to make something else wet (one possible shiur of "wetness").

Q8: Why is 4 Amot "far enough" away from tzo'ah and urine to read K'riat Sh'ma?

A: See answer to next question.

Q9: Why the distinction between back/sides and front?

A: 4 Amot is generally considered a person's place. We find this to be true with regards to carrying and walking on Shabbat (see Mishnah Eruvin 4:1), for the "property" of a corpse or grave (see MT K'riat Sh'ma 3:2); and, of course, for the *kinyan arba amot* - "automatic" acquisition of items which are within someone's 4 Amot- (see Bava Metzia' 10 and MT Gezela va'Avedah 17:8-9). Therefore, if the tzo'ah is "out of sight" (i.e. not in front of the person reading), as long as it also "out of the camp" of that person, it is permissible. However, as pointed out above (Q1), since awareness is a key factor here, if it is in front of the person reading, it must be far enough away to not be visible.

On a side note, see Rashba's discussion (Berakhot 25a s.v. hayta) about allowing a blind person to read in front of tzo'ah.

Q10: What is the upshot of this Halakhah - where does he sit, where is the tzo'ah, and what is 10 Tefachim high? (i.e. - is it a barrier, or is the tzo'ah above or below him?)

A: The Gemara (Berakhot 25a) cites a Baraita: A person should not read K'riat Sh'ma facing human tzo'ah, dog tzo'ah, pig tzo'ah, fowl tzo'ah or tzo'ah of the dunheap which smells very bad; however, if the place was 10 tefachim high or 10 tefachim low, he can sit on the side of it and read. Rashba (s.v. haya) explains that since a place of 10 tefachim height or depth is a separate domain, it is not considered in his camp.

A straight reading of this Baraita renders the tzo'ah in a place which is 10 tefachim higher or lower than the person reading

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