

KRIAT SHEMA 4:1-2

by Rabbi Yitzchak Etshalom

1. Women, slaves and minors are exempt from K'riat Sh'ma. We teach minors to read it in its time and they say the B'rakhot beforehand and afterwards in order to train them in [the performance of] Mitzvot.

If someone was anxious and concerned about the fulfillment of a Mitzvah, he is exempt from all of the Mitzvot and from K'riat Sh'ma. Therefore, a *hatan* (groom) who married a *b'tulah* (virgin) is exempt from K'riat Sh'ma until he consummates the marriage - since his mind is not clear as he is concerned that he won't find her to be a virgin. If he waited until Motza'ei Shabbat (Saturday night) and did not consummate, he is obligated to read from Motza'ei Shabbat onward, since his mind has "cooled off" and he is accustomed to her even though he hasn't consummated.

2. However, someone who marries a *b'ulah* (someone who has already had intercourse), even though he is involved in a Mitzvah, is obligated to read, since he has nothing which is upsetting him; the same holds true for any similar case.

THE EXEMPTION OF WOMEN FROM K'RIAT SH'MA
Yitzchak Etshalom

I.

THE MISHNAH

The Mishnah in Berakhot (3:3) states: "Women, slaves and minors are exempt from K'riat Sh'ma and from Tefillin and are obligated in Tefillah, Mezuzah and Birkat haMazon (blessings after meals)".

THE BAVLI

The Bavli (Berakhot 20b) challenges the Mishnah - on grounds of superfluity! The Mishnah in Kiddushin (1:7) teaches that women are exempt from all *Mitzvot 'Aseh shehaZ'man G'rama* - Mitzvot of commission which are time-oriented. Since K'riat Sh'ma must be said at specific times, it should be obvious that women are exempt from it! The Bavli then justifies the need for our Mishnah; since K'riat Sh'ma involves *Malkhut Shamayim* (the acceptance of God's rule), we would have thought to obligate them; therefore the Mishnah teaches us that they are exempt.

THE GROUPING

Why are women and slaves thrown into one category?

[There is a huge debate among the Rishonim about the "minors" mentioned here. It could be referring to minors who are of an educable age (Rashi), who are, nevertheless, exempt from these Mitzvot - or it could be specifically referring to younger children (Rabbenu Tam); in which case the second clause of the Mishnah only refers to women and slaves. See the Rishonim here (Berakhot 20) for the various approaches.]

This will be easier to answer once we analyze the reason(s) for the exemption.

TWO KINDS OF SLAVES - A THUMBNAIL SKETCH

Before proceeding, it is important to note that there are two types of *'avadim* (slaves) in the Halakhic universe. An *'eved ivri* (lit. Hebrew slave) is a fellow Jew who is either sold into indentured servitude because he stole and cannot pay back, or who was so poor that he sold himself into such servitude. This is the slave who goes free after 6 years, whose ear is pierced if he chooses to stay after 6 years and who, in any case, goes free at the Yovel (Jubilee year). An *'eved ivri* is 100% Jew and is bound by all of the Mitzvot - with the exception of one marriage/procreative law. (You can read up on the *'eved ivri* at Shemot [Exodus] 21:1-6, Vayyikra [Leviticus] 25:8-24,39-43, Devarim [Deuteronomy] 15:12-18 and in MT, Hilkhot Avadim, Chapters 1-3). The institution of *'eved ivri* went the way of the Yovel, with the destruction of the first Temple (586 BCE) and has been "out of practice" since then.

On the other hand, a non-Jew who becomes enslaved to a Jew is called an *'eved k'na'ani*. Such an *'eved*, when he/she enters the master's house (whether through purchase or through conquest), goes through a phase of conversion which gives him/her the status of a member of B'nai Yisra'el - albeit without **Kedushat Yisra'el** (the sanctity of Yisra'el). After being freed, the *'eved k'na'ani* goes through another conversion (just ablution) process (the nature of this second ablution is subject to a debate among the Rishonim - see MT Issurei Bi'ah 13:12 and Magid Mishneh ad loc.).

An *'eved k'na'ani* is obligated to refrain from all Halakhic violations and to fulfill some Mitzvot *'Aseh* - the same ones which women are obligated to do. This is argued as follows: There is a corollary between some rules affecting the bill of emancipation of an *'eved k'na'ani* and a divorce write, based upon the common word "lah" used in both contexts in the Torah (**gamar lah-lah me'ishah** - Kiddushin 23a). The Gemara in Hagigah (4a) extends this comparison to obligations of Mitzvot - that any Mitzvah which is obligatory for women is incumbent on slaves. Rambam (MT Hagigah 2:1) rules this way.

Within the context of the Bavli, then, our Mishnah is clear: Since K'riat Shema is time-oriented, women are exempt from it - in spite of its religious significance. Since women are exempt, so are *'avadim k'na'anim*. The approach of the Yerushalmi (Palestinian Talmud) is not nearly as "neat".

II.

THE YERUSHALMI

Commenting on our Mishnah (Berakhot 3:3), the Yerushalmi explains:

How do I know that women [are exempt]? "You shall teach them to your sons", to your sons and not to your daughters; How do I know that slaves [are exempt]? "Sh'ma Yisr'ael YHVH is our God, YHVH is One" - this applies only to someone who has only one *Adon* (Master), excluding the slaves who has another [human] master. [See also Yerushalmi Berakhot 2:3 where this inference is expanded to include Tefillin and both are seen as direct implications of Talmud Torah.]

OBSERVATIONS

- (1) The Yerushalmi does not argue based on the "time-bound" nature of K'riat Sh'ma.
- (2) The Yerushalmi does not automatically see a corollary between the obligations of women and slaves.

Regarding the second observations, it is significant to note that nowhere is the "lah-lah" inference found in the Yerushalmi; hence, it is likely that in the Yerushalmi tradition, this equation was not known or accepted.

As far as the first problem goes - why the Yerushalmi "ignores" time-boundedness, I would like to suggest three answers.

III.

ANSWER #1: A SUPPLEMENTAL REASON

The Mishnah (Berakhot 2:2) provides a reason for the order in which we read the three Parashiot of Sh'ma, in the name of R. Yehoshua' b. Korha: First we accept God's rule (*'Ol Malkhut Shamayim* - Sh'ma), then we accept God's Mitzvot which apply day and night (Kabbalat 'Ol Mitzvot - veHaya 'Im Shamo'a) and then we mention a daytime-only Mitzvah (Tzitzit - Vayomer). The Gemara (Berakhot 14b) quotes a Baraita in the name of R. Shim'on b. Yohai, offering a different explanation for the sequence. The Gemara wonders if R. Shim'on b. Yohai rejected R. Yehoshua' b. Korha's argument - and concludes *hada v'od k'amar* - he was merely adding another reason, not invalidating the first.

We could argue the same here - although women are exempt because K'riat Sh'ma is time-bound, it is "more convincing" to find a local (to K'riat Sh'ma) reason for their exemption, rather than one borne of a general classification.

IV.

ANSWER #2 - PRE-EMPTING THE "PESHITTA"

As I noted above, the Bavli suggests that this Mishnah is *peshitta* - superfluous. Since K'riat Sh'ma is a time-bound Mitzvah, there is no need to explicitly exempt women from it. Therefore, the Bavli

concludes that due to the core-religious nature of the Mitzvah (Malkhut Shamayim), we would have thought to obligate women; hence, the need for this explicit ruling.

Perhaps the Yerushalmi is accomplishing the same thing, with greater subtlety. By framing K'riat Sh'ma in terms of Talmud Torah (see Answer #3 for more on this), the Yerushalmi takes it out of the *Malkhut Shamayim* category and provides an independent - and local - rationale for the exemption.

V. ANSWER #3 - IS K'RIAT SH'MA REALLY TIME-BOUND?

The Mishnah in Kiddushin which presents the "time-oriented" exemption does not list any examples. However, the Tosefta (Kiddushin 1: 8) lists, as examples, Sukkah, Lulav and Tefillin - and then presents a debate about Tzitzit. K'riat Sh'ma is not mentioned there. Why would K'riat Sh'ma be considered time-oriented - and why would it be considered non-time-oriented?

This depends equally on our definition of K'riat Sh'ma as it does on our understanding of "time-orientation".

Time-orientation may be seen as a function of the practical time element of fulfillment (e.g. Tefillin must be put on during the day and not at night), or of the theoretical time-base for a Mitzvah. If there is a Mitzvah which is not essentially time-based, but has timely "flashpoints", we may not want to consider this time-oriented. Even though the fulfillment needs to happen at a specific time, it is not a Mitzvah which _belongs_ to any particular time. For instance, remembering Amalek is a constant Mitzvah; yet, we actively fulfill this once a year (Shabbat Zachor) - and women are (according to many authorities) obligated to hear this reading, as they are also obligated to remember Amalek's hatred and evil.

In the same way, we might argue that K'riat Sh'ma is the daily flashpoint for one of two Mitzvot (or both):

Yichud Hashem - the constant Mitzvah we have to unify God (to declare and believe in His Unity)
AND/OR

Talmud Torah. In the Introductory shiur, I cited the Gemarot in Nedarim (8a) and Menahot (99b) which seem to present morning and evening K'riat Sh'ma as the "minimum" Talmud Torah of the day.

The Yerushalmi seems to appreciate K'riat Sh'ma much for its Talmud Torah aspect than anything else (see Yerushalmi Shabbat 2:2 - *zeh shinun v'zeh shinun*). In either case, there is significant room to see K'riat Sh'ma as not time-oriented in its essence, rather in its fulfillment - and therefore to need another reason to exempt women from it. Since K'riat Sh'ma, according to the Yerushalmi, is a Talmud-Torah-based Mitzvah, and women are exempt from the Mitzvah of Talmud Torah (see our discussion at Talmud Torah 1:13), they are also exempt from K'riat Sh'ma.

now, to the questions:

Q1: Why are women exempt from K'riat Sh'ma?

A: See shiur above.

Q2: Why are "women, slaves and minors" grouped together here?

A: See shiur above.

Q3: Why is the concerned groom exempted "from all of the Mitzvot _and_ from K'riat Sh'ma". Why isn't K'riat Sh'ma included among "all of the Mitzvot"?

A: As mentioned in the shiur, the Gemara (Berakhot 20b) suggests that I might have thought to obligate someone who is otherwise exempt from K'riat Sh'ma (e.g. women) because it involves the acceptance of God's rule (Kabbalat 'ol Malkhut Shamayim). In the same way, even though a groom is exempt from all other Mitzvot (note: this "all" is not at all exhaustive; he is certainly obligated in all Mitzvot of omission (Mitzvot Lo Ta'aseh) and many Mitzvot of commission (Mitzvot Aseh), such as Tzedaka, Ahavat Re'im (loving your fellow as yourself) etc. He is generally exempted from ritual Mitzvot - but we would have every reason to think that K'riat Sh'ma, due to its "grounding" nature within the context of Judaism, would not be in the class of exempted actions.

Q4: Why is Motza'ei Shabbat given as the time by which he has "cooled off"?

A: The Mishna (Berakhot 2:5) which is the source for this Halakhah, states "is exempt until Motza'ei Shabbat..."; taking into account the Mishna's ruling (Ketubot 1:1) that virgins are married on Wednesday, that leaves four nights until Motza'ei Shabbat. (See Mishna Nidah 10:1 for the expanded version: "until Motza'ei Shabbat, four nights..." in a different context). The understanding, following Rambam, is that if he hasn't consummated by now, he probably isn't too concerned about it and his passions have "cooled off". (There is, of course, the inverse argument; that his failure to consummate stems from over-obsession and concern; this may be the reasoning behind the other Rishonim's opinions.)

Ridbaz, quoted in Shita Mekubetzet (Ketubot 6b s.v. Meitiv Rav Yosef), quotes some commentaries who rule that even past Motza'ei Shabbat he is exempt (until he consummates), and that Motza'ei Shabbat was mentioned in order to teach that it is permissible to have first intercourse with a virgin on Shabbat (since we exempted him through Shabbat, that means that he could have consummated that night) - which is the focus of the discussion in Ketubot there. RABD (quoted there), rules that until Motza'ei Shabbat (actually - four nights), he is exempt; from then on, he is obligated until the night when he actually decides to "go through with it."

Q5: With which Mitzvah is he involved here (or in the first Halakhah)?

A: Rambam, in his Commentary on the Mishnah (Berakhot 2:5 - p. 36 in Kafih edition), indicates that the Mitzvah of *pir'yah v'rivyah* (having children) is operative here; i.e. that he is concerned about his

success in initiating this Mitzvah. Elsewhere (MT Ishut 7:23, MT Gerushin 10:17), he seems to use the term "Be'ilat Mitzvah" in reference to the Mitzvah of Kiddushin. Rambam (unlike some other Rishonim), maintains that there is a Mitzvah from the Torah to perform proper betrothal - *kiddushin* - when marrying (see Sefer haMitzvot, Mitzvat Aseh #213). Tosafot (Ketubot 4a s.v. Be'ilat Mitzvah) explains that the first intercourse brings the couple much closer (sort of sealing them together) and promotes *pir'yah v'rivyah* and therefore is called *Be'ilat Mitzvah*.

Keep in mind that although this would equally apply to someone who is having first intercourse with his new wife who was once married (and is therefore not a virgin), in such a case, he is not *tarud* (distracted) for either reason that *tirda* (distraction) would apply here:

- (a) because he is not sure if he will successfully penetrate the first time or
- (b) because he is concerned about her virginity (see the first Mishna in Ketubot).

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