

# KRIAT SHEMA 4:3-6

*by Rabbi Yitzchak Etshalom*

- 3.** If someone experienced the death of someone for whom he is obligated to mourn, he is exempt from K'riat Sh'ma until he buries him, since his mind is not clear enough to read. If he was guarding the body, even if it wasn't one of his relatives, he is exempt from K'riat Sh'ma. If there were two people guarding the body, the one watches while the other one moves to another place and reads and then returns to watch, while the first one moves away and reads. Similarly, someone who is digging a grave is exempt from K'riat Sh'ma.
- 4.** We do not take a body out for burial around the time for K'riat Sh'ma unless [the deceased] was a great person. If, however, they did take him out and the time for the reading arrived while carrying the corpse: As long as they are needed for the bier, such as they are carrying it, or are standing in stead of those who are carrying it or in their stead, whether they were in front of the bier or following it, they are exempt. All others who are accompanying the body - who are not needed for the bier - are obligated [to read].
- 5.** If they were involved in eulogizing the deceased and the time for K'riat Sh'ma arrived; if the body was in front of them, they walk away one at a time and read - and then return to the eulogy. If the body was not in front of them, everyone sits there and reads K'riat Sh'ma and the mourner sits silently, since he is not obligated to read until he buries his dead.
- 6.** Once they buried the body and the mourners returned to receive consolation, as the people walk behind them from the graveside to the place where the mourners stand in order to make a line to receive consolation; if the people can begin and complete even one verse before they get to the consolation-line, they should begin and, if not, they should not begin. Rather, they should console the mourners and, after they move away, they should begin reading. Regarding those who are standing in the line: Those who are on the inside - who see the faces of the mourners - are exempt from K'riat Sh'ma and those on the outside - since they cannot see the mourners - are obligated to read K'riat Sh'ma in their place. [RABD: This only refers to those for whom it is necessary to see the mourner, who are called "those inside", i.e. those who are close to him.]

## **THE EXEMPTION OF AN "ONEN" FROM K'RIAT SH'MA**

Yitzchak Etshalom

I.

## THE PRIMARY SOURCE - MISHNAH BERAKHOT 3:1

The Mishnah in Berakhot (3:1) rules that: Someone who has his dead body in front of him (i.e. someone he is required to bury and he hasn't done so yet), is exempt from K'riat Sh'ma, from Tefillin, from Tefillah and from all Mitzvot in the Torah.

The reason for this exemption/restriction is not given in the Mishnah; we will try to clarify the logic behind it.

Before doing so, I would like to outline the various places in the Torah where mourners are legally restricted from participating in certain worship-acts.

There are three places where the Torah relates to someone in the circumstance of Aninut (to be explained below) and places certain restrictions on him. One of these sources explicitly mentions the word \*Oni\*, another refers to the state of mourning and the consequent [implied] restrictions and the third alludes to it.

II.

### **SOURCE #1: DEVARIM 26:14 - \*LO AKHALTI V'ONI MIMENU\***

There is a seven-year cycle of agricultural taxes in Eretz Yisra'el. When the Jewish farmer reaps his bounty and threshes it in the granary, he separates between 1/60 to 1/40 (depending on his generosity), which he declares to be "Terumah" and goes to whichever Kohein he wishes. He then separates 1/10 of the remaining produce, declaring it to be "Ma'aser", and gives it to whichever Levi he chooses. (The Levi then takes 1/10 of his Ma'aser, separates it and designates it as "Terumat Ma'aser" and gives that to the Kohen.) These two "taxes" apply during all six working years of the seven-year cycle (remember, the seventh year is Shemittah - the Sabbatical - and produce becomes public property).

The farmer then separates another 1/10 (of the remaining produce) and declares it to be "Ma'aser Sheini" (lit. "second tithe"), which is taken to Yerushalayim to be enjoyed there. In lieu of taking it to Yerushalayim, it may be redeemed on coins, which are then taken to Yerushalayim to purchase food and drink and to celebrate there. Ma'aser Sheini operates during the 1st, 2nd, 4th and 5th years of the cycle. During the 3rd and 6th years, this second tithe is designates "Ma'ser 'Ani" and goes to the poor.

As we are commanded in Devarim [Deuteronomy] 26:12, on Erev Pesach of the 3rd and 6th years, all tithes which are due or overdue are given to the proper recipients, and the farmer/landowner makes the following declaration:

"I have removed the sacred portion from the house, and I have given it to the Levites, the resident aliens, the orphans, and the widows, in accordance with your entire commandment that you commanded me; I have neither transgressed nor forgotten any of your commandments: \*Lo akhalti v'oni mimenu\* (I have not eaten of it while in mourning); I have not removed any of it while I was

unclean; and I have not offered any of it to the dead. I have obeyed the LORD my God, doing just as you commanded me. Look down from your holy habitation, from heaven, and bless your people Israel and the ground that you have given us, as you swore to our ancestors "Na land flowing with milk and honey." (Devarim 26:13-15).

As we see, part of his declaration involves averring that he has not eaten Ma'aser while in the state of \*Oni\* - which most commentators interpret to mean mourning (however, see Rashbam's commentary for a significantly different interpretation).

[The association of the word \*Oni\* (beginning with an Alef, not an 'Ayin) with mourning comes from Rachel's name for Binyamin - \*Ben Oni\* (Beresheet [Genesis] 35:18) - "the son of my sadness/mourning (she died while giving birth to him)].

In other words, if he partook of Ma'ser Sheini (which is the only one of these "gifts" which he himself still owns and likely eats) while in a state of Aninut - some form of mourning - he cannot make this declaration. (Sifri ad loc., Mishnah Ma'aser Sheini 5:12, MT Ma'ser Sheini 11:15). Furthermore, our Rabbis infer from this that an \*Onen\* is not allowed to partake of Ma'aser Sheini (Mishnah Bikkurim 2:2) - according to Rambam, he is punished as one who violates any Torah law if he does so (MT Ma'aser Sheini 3:5 - see also his discussion in Sefer haMitzvot at the end of Shoresh #8; see also Ramban's comments there.)

We still don't know who is included in this category of \*Onen\* - nor for how long this status obtains.

III.

SOURCE #2: DEVARIM 26:11 - \*V'SAMACHTA V'KHOL HATOV\*

Immediately before the Parashah of \*Vidui Ma'srot\* (Devarim 26:1-11), the Torah commands us to bring our first fruit - \*Bikkurim\* - to "the place where God chooses to cause His Name to dwell." We bring this fruit and recite a thanksgiving-declaration to God, after which we are commanded:

\*V'samachta v'khol hatov\* (then you shall celebrate with all the bounty) that the LORD your God has given to you and to your house; you, together with the Levites and the aliens who reside among you (v. 11).

The Rabbis understand from the command to celebrate (\*lismo'ach\*) that an \*Onen\* (who is a Kohen - who are the only ones allowed to eat Bikkurim) is not allowed to partake of Bikkurim. (Mishnah Bikkurim 2:2).

Here we see that a Mitzvah which the Torah defines as being performed as celebration cannot include an Onen - he is effectively "out of the parashah" of celebration.

IV.

SOURCE #3 - VAYYIKRA 10 - "VATIK'RENA OTI KA'ELEH"

The beautiful dedication of the Mishkan [Tabernacle] on the first day of Nissan, which was a festivity "like the creation of the world" (see Beresheet Rabbah 3:9), was marred by the death of two of Aharon's sons, Nadav and Avihu. The Rabbis disagreed as to the nature of their sin (see the commentaries at Vayyikra [Leviticus] 10:1-2 and the Sifra ad loc). Pursuant to their deaths, Mosheh warned Aharon and his two remaining sons to partake of the offerings - that they should allow the rest of the people to mourn in their place and not to disrupt the dedication ceremony. When Mosheh found that they had not eaten the expiation-offering (\*Hatat\*), he became angry (Vayyikra 10:16); whereupon Aharon answered him: "See, this day they brought their expiation-offering and their burnt offering before YHVH, and such things have befallen me! Had I eaten expiation-offering today, would YHVH have approved?" Mosheh approved of Aharon's words.

The upshot of this is that an Onen is not allowed to eat sancta; we also see that an Onen is defined as a close relative of someone who died, even if he isn't personally involved in the burial (Aharon was the father of Nadav and Avihu and his cousins were taking care of the burial) - and that the status of Onen exists on the day of death (look at Aharon's words carefully) - no longer.

V.

### **SUMMARY**

From these three sources, we have the following picture of Aninut:

- (1) It applies to all close relatives of the deceased; (the seven relatives for whom we mourn - spouse, parents, siblings, children)
- (2) It lasts for the day of the death (regardless of the status of the corpse - interred or not yet buried);
- (3) It prohibits the eating of Ma'aser Sheini (we don't know why);
- (4) It stands in perfect contradiction to "Simchah" and, therefore, disallows eating Bikkurim and
- (5) (again, for unknown reasons) it prohibits eating of sancta.

VI.

### **ANINUT D'RABANAN**

The notion of Aninut - or the status of being an Onen - was expanded in two ways and modified in one by the Rabbis.

Expansion #1 - it applies beyond the first day - until the burial is finished. (Regarding a relative who is out of town and someone else is taking care of the burial, see Tosafot Berakhot 17b-18a s.v. v'eino in the name of Rabbenu Tam. Many of the Rishonim ad loc. comment on Rabbenu Tam's ruling.)

Expansion #2 - it applies to all Mitzvot (clarification - it doesn't apply to Mitzvot Lo Ta'aseh, nor does it apply to many Mitzvot 'Aseh. However, all "ritual" Mitzvot, such as prayer, Tefillin, Shofar, Lulav etc.

are included.)

Modification: Even though Torah law defines an Onen as anyone who has suffered a loss - for the entire day of death, regardless of the status of interment, the Rabbis define Aninut as stopping when the burial is complete. Therefore, a person could be an Onen from the Torah - while no longer being an Onen from the Rabbinic perspective - if the burial was held on the same day as the death.

VII.

## REASONS FOR THE EXEMPTION

There are, initially, two basic approaches to take in analyzing Aninut d'Rabanan (from the Rabbis). Either it is an independent piece of legislation, with a bit of overlapping with the Torah's definition and a "borrowed" term; or else it is built upon the Torah's law of Aninut and grows from there.

The Bavli (at the beginning of the third chapter of Berakhot) does not provide an explicit reason for the exemption of Onen; however, several Rishonim (e.g. R'ah, Ritba) suggest that the reason is that the Onen is engaged in the Mitzvah of burial and such engagement exempts him from (many) other Mitzvot. This is an example of the rule \*Ha'Osek b'Mitzvah Patur min haMitzvah\* - see our discussion at K'riat Sh'ma 2:05.

If this is the case, then Aninut d'Rabanan is only tangentially related to that of the Torah - it does not directly relate to - or reflect - the emotional state of the Onen, rather his overriding obligation.

The Yerushalmi (beginning of the third chapter of Berakhot) provides an interesting proof-text for the exemption of an Onen from (at least some of) the Mitzvot:

R. Bun says: The verse (Devarim 16:3) states: "In order that you may remember the day of your leaving Egypt, all the days of your life" - [meaning] days in which you are engaged with life, not days in which you are engaged with the dead. We learned: If he wanted to be stringent [and fulfill these Mitzvot], we pay him no heed; why is this - because of \*k'vod hamet\* (honor for the deceased) or because he has no one else to carry his load (the body)? What is the difference between these two [reasons]? If he had someone to carry his load; if you say it is because of \*k'vod hamet\*, it is [still] prohibited; if you say it is because he has no one to carry his load, in this case he has someone to carry his load [and it should be permitted].

Two observations from this passage:

(1) The Yerushalmi operates in two stages - exemption and [possibly] prohibition. First, we learn from the verse that the Onen is exempt from [certain] Mitzvot, then we learn that he is not allowed to perform them.

(2) The Yerushalmi does not raise the issue of \*Ha'Osek b'Mitzvah...\* - so what is behind this inference from the verse, and the follow up with honor/burden?

A third question:

(3) If the prohibition is on account of \*k'vod hametz\*, wouldn't that reasonably apply only in the presence of the body? Why would it extend to the behavior of the Onen while away from the body?

VIII.

#### A POSSIBLE SOLUTION

I would like to propose an explanation for this passage in the Yerushalmi, which reorients our understanding of Aninut d'Rabanan and its relationship to Aninut of the Torah.

As I mentioned earlier, we might see Aninut d'Rabanan as an outgrowth and expansion upon the Torah's model. In order to understand this, let's look at the three examples given in the Torah (Ma'aser Sheini, Bikkurim, Kodashim [sanctal]).

In the cases of Bikkurim and Ma'aser Sheini, there is a level of celebration (see Mishnah Ma'aser Sheini 5:12 - \*Samachti v'Simachti Bo\* - I celebrated and elated others with it [Ma'aser Sheini].) Although there are times when we are asked to put aside our own emotional extremes in order to enter the emotional setting of a particular Mitzvah (especially holidays), there are limits to this demand. The Torah recognizes that, at least on the day of death itself, a person cannot divorce himself from the feelings of dread, desparation, blackness etc. which overcome us when we encounter the death of a close relative.

It is not only out of the bounds of Torah to require us to "steel ourselves" against these feelings and to participate in such worship which requires whole-hearted devotion - the Torah doesn't even allow it. This may be because people are generally "fooling themselves" if they think they can do this, but there may be a deeper and stronger reason: What does it say about the place someone had in your life if you are able to throw yourself full-force into a different emotion experience the same day that they died? This is surely a disgrace of the dead and a degrading of their life and the importance of who they were to this particular Onen. Therefore, the Torah forbids such behavior. "Today, you are not to put your heart and soul into celebrating in Yerushalayim - today belongs to your brother, your mother etc."

This reasoning applies with ever more vigor to Kodashim. Participation in any level of Avodah in the Mishkan/Mikdash demands total concentration and a level of Simchah. The Onen is excluded, by definition, from this type of worship.

The verse "...all the days of your life" redefines Avodat Hashem - Worship of God (which exists even outside of the boundaries of the Mishkan). In order for us to be included in Avodat Hashem (of which celebrating Pesach - the focus of that verse - is a central component), we need to be "engaged with the living" - involvement with death moves us away from Avodat Hashem (which, prototypically, includes Tefillin, K'riat Sh'ma and Tefillah, the three specific Mitzvot mentioned in our Mishnah. See Torah Temimah at Devarim 16:3). This verse, however, only speaks to those who are "engaged"; i.e.

mentally involved with (and unable to be distracted from) with death. What of someone who is able to detach and fulfill these Mitzvot?

Therefore, the Yerushalmi continues: on account of \*k'vod hamet\* (either direct kavod or else the need for someone to carry the bier, which is another form of the same) he has no right to detach emotionally and read. What is the meaning of this \*k'vod hamet\*?

I would like to suggest that the kavod is specifically dependent on our inability to detach from the emotions of the moment. So long as this relative is lying "in front of us" (i.e. waiting for us to perform the last kindness for him/her), it is a degradation of their memory and their honor to even be able to concentrate on something else - something as life-affirming as Avodat Hashem.

Thus, unlike the Bavli (at least according to some Rishonim; see, however, Rabbenu Yonah and Rashba at the beginning of Berakhot, Chapter 3), the Yerushalmi sees Aninut d'Rabanan as an expansion upon the Torah's version - it moves from those parts of Avodat Hashem which require a celebratory or totally focussed frame of mind to those "everyday" expressions of Avodah - and it moves from the shock of the day of death to the responsibility to see our loved one to their final resting place.

now, to the questions:

**Q1:** Why is burial more of a distraction than other things?

**A:** See the shiur.

**Q2:** Tangentially, why are marriage (Halakhot 1&2) and burial (Halakhot 3-6) the two areas of discussion for the exemption of K'riat Sh'ma due to distraction?

**A:** They may be presented here (and in the Mishnah) either as two extremes (see MT Evel 1:1 for another example of this pairing) which define joy and sadness which are so overwhelming that they may make proper focus impossible. Alternatively, they may "fly in the face of" common convention that would hold that a person should be extra "religious" at times like these and that these are propitious times for reflection and study. Halakhah is much more grounded in the realities of human psychology to allow for that.

**Q3:** Why does the other guard have to move away from the body in order to read?

**A:** There is a general principle of \*Lo'eg laRash Heref Osehu\* - (Mishlei [Proverbs] 17:5) - meaning "Those who mock the poor insult their Maker" - and there is no one so poor as the dead. Since the dead person cannot fulfill Mitzvot, it is a sort of mockery to study Torah or to recite K'riat Sh'ma in its vicinity - (see Berakhot 18b and Sotah 43b)

**Q4:** How do we define an \*adam gadol\* (great person)?

**A:** From the sugya in Ketubot (17a-b), it seems that someone who is both a scholar and a teacher

may be considered an \*Adam Gadol\* for this purpose. However, Arukh haShulkhan (Yoreh De'ah 358:3) explains that the reason the Shulhan Arukh left out this rule - the exception for the Adam Gadol - is because we do not "hold ourselves to be important" in that way, and it doesn't apply anymore.

**Q5:** Why can't those who are carrying the body read K'riat Sh'ma while they are carrying it?

**A:** Either because of the principle of \*Lo'eg laRash\* (see above, Q3) or because they have to focus properly on both of these things - escorting the body AND the Sh'ma - since that is impossible, they should not try to read.

**Q6:** Again, why do they have to walk away in order to read?

**A:** See Q3, above.

**Q7:** Why doesn't the mourner read - since everything is [presumably] prepared for burial, what is the distraction which prevents him from reading?

**A:** See the shiur.

**Q8:** Why do the consolers have to wait until the mourner moves away in order to read K'riat Sh'ma?

**A:** Possibly because as long as the mourners are in front of them, they are engaged in the Mitzvah of Nihum Avelim (comforting the bereaved) and, based on the rule \*ha'Osek b'Mitzvah Patur min haMitzvah\* (see the shiur), they are exempt from K'riat Sh'ma until such time as they are no longer involved in the Mitzvah - i.e. when the mourners move away.

**Q9:** If the people on the outside of the line cannot see the mourner, why are they there?

**A:** Likely to see "what's going on" - see Berakhot 19b and Rashi ibid s.v. mehamat atzman.

**Q10:** Is RABD in disagreement with Rambam or merely clarifying his ruling?

**A:** It seems that RABD disagrees with Rambam - see Kessef Mishneh.

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