

PIRCHEI SHOSHANIM SHULCHAN ARUCH PROJECT

# Hilchos Aveilus Lesson 1

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## Shiur Subjects:

1. Seifim of the Shulchan Aruch and the Rama (including Seif Katan numbers of the Shach and Taz).
2. Introduction
3. Reasons for tearing Kriyah
4. Is the obligation of Kriyah from the Torah or Rabbinical
5. For whom does one tear
6. The obligation of tearing while standing
7. When is the time of Kriyah
8. How does one tear Kriyah
9. Must one take care not to tear more than the allotted amount (a tefach)
10. Where is the place of Kriyah (on the garment)
11. What is the length of tear which one tears on the garment
12. Kriyah in front of a relative who has lost a family member

The Hebrew version of this lesson was written by  
Rabbi & Dayan Yitchak Zvi Oshinski Shlita

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Israel - 164 rabbi akiva st. Bney brak 03.6166340  
164 Village Path, Lakewood NJ 08701 732.370.3344 fax  
1.877.Pirchei (732.367.8168)



## Laws of Kriyah

The Laws of Aveilus<sup>1</sup> begin with tearing Kriyah<sup>2</sup> for a deceased. The laws and Halachos of Kriyah are lengthy and are comprised of many details. These first Shiurim of Hilchos Aveilus will be devoted to the detailed laws of Kriyah.

### *Siman 340 (Seifim 1-4)*

The issue of tearing Kriyah, its length and place, for whom one tears Kriyah, and at which time.

1<sup>3</sup> One whose close relative died, and this is one of the deceased relatives 1) for whom it is befitting to mourn, 2) is obligated to tear Kriyah for him. The Kriyah

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<sup>1</sup> This is the first Shiur in a series of 83 Shiurim on Hilchos Aveilus by Rabbi Yitzchak Tzvi Oshinsky of Jerusalem. Rabbi Oshinsky is an expert in the subject, having published a book on Hilchos Aveilus and he is also an examiner in the subject for the Jerusalem Beis Din.

<sup>2</sup> “Kriyah” means tearing. Somewhat tautologically, the expression in common use is “tearing Kriyah.”

<sup>3</sup> The text in bold print is that of the Shulchan Aruch which was written by Rabbi Yosef Karo (1488-1575) of Safed. Rabbi Karo's work was written for Sefardim. The text in italics is that of Rabbi Moshe Isserlis (1525-1572) (the Rama.) of Cracow. He wrote glosses to the Shulchan Aruch which gave the Ashkenazi psak or customs where these differed

must be done while standing and if he tore while sitting he has not fulfilled his obligation *(and must tear again.) (Ideally [L'Chatchila] one must tear 3) before the face of the deceased has been sealed [in his coffin or the grave covered over].*

2 The place of tearing Kriyah can be anywhere on the neckline at the front, but if one tore at the back *(or the hem of the garment)* or at the sides [of the garment] he has not fulfilled his obligation.

*Rama: and some say that he fulfills his obligation if he tears the hem of the garment and it has been the custom to be lenient to permit tearing the hem of the garment 4) when tearing Kriyah for all other deceased persons for whom one is not obligated to mourn. But for deceased relatives for whom one is obligated to mourn, he does not fulfill his obligation with this type of Kriyah, and one must tear on the neckline, and so has been the custom.*

3 The length of the tearing is a Tefach<sup>4</sup>, and if one tore Kriyah for a deceased relative and wanted to add on to that tear for another deceased relative, <sup>5</sup>) then if it is after the Shiva<sup>5</sup> he may add on any amount he wishes, but if it is during the Shiva he [must add on] a Tefach. For one's father or mother, even after the Shiva one tears Kriyah until his heart is revealed.

4 Just as one tears Kriyah for his relative for whom he is mourning, so does one tear in the presence of a relative whose close relative died. How so? If his grandson or the brother of his son<sup>6</sup> (1) or the mother of his son died<sup>7</sup>, he is obligated to tear Kriyah when in the presence of his son. Similarly, one is obligated <sup>6</sup>) to tear Kriyah for his father-in-law or mother-in-law, and a wife tears Kriyah for her father-in-law or mother-in-law.

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with those brought in the Shulchan Aruch. By doing so, he ensured that the Shulchan Aruch gained universal acceptance.

<sup>4</sup> Tefach means a handbreadth, which is approximately 4 inches or 10 centimeters.

<sup>5</sup> Shiva – the first 7 days of Aveilus.

<sup>6</sup> The brother had a different father.

<sup>7</sup> He was not married to the son's mother.

*Rama: But nowadays this is not our custom, as will be explained in Siman 374 regarding the Laws of Aveilus.*

## Introduction

The source of the laws of Kriyah is in the Gemara Mesechtas Moed Katan, the chapter entitled “Eilu Megalchin.”

## The Reasons for Kriyah

In the Sefer Gesher HaChayim<sup>8</sup> (Volume 1, the beginning of Chapter 4) several reasons are brought for tearing Kriyah for a deceased:

1. To arouse grief
2. To take the mourner’s mind off things, so that he will think about the loss of the garment, thereby enabling him in some small way to take his thoughts away from the tragedy of his relative’s death.
3. Some say that there are spiritual hints about it from the Zohar.

## Is the Obligation of Kriyah from the Torah or only Rabbinical?

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<sup>8</sup> A fairly recent book on the Laws of Aveilus by Rabbi Yechiel Michel Tukachinsky of Jerusalem.

The Gemara Moed Katan Page 24a says: Rav Tachlifa bar Avimi said in the name of Shmuel, “A mourner who did not let his hair grow long or did not tear his clothing is liable to death, as is written (Vayikra 10, 6), “[The hair on] your heads you shall not grow long and your garments you shall not tear and you will not die<sup>9</sup>,” implying that any [other mourner] who did not let his hair grow or did not tear his clothing is liable to death.”

The language of the Gemara clearly implies that the obligation of Kriyah is learned out from the Pasuk [verse] just mentioned. If so, then the obligation is from the Torah. However, the Ramban<sup>10</sup> (in Sefer Toras Ha’Adam Page 63) writes that the whole Din of Kriyah is only Rabbinical and the Pasuk which is brought in the Torah is only a support [*Asmachta*]. But one might ask, if this obligation is Rabbinical only, what is the death sentence mentioned in the Gemara for one who does not tear Kriyah? The Ramban explains there, that this death sentence is like the Din of one who transgresses the words of the Chachamim [Sages], for which he is liable to the death sentence, as is brought in the Gemara Brachos 4b<sup>11</sup>.

Also Tosefos in Moed Katan (which begins with the word “*Ha* - And so”) wrote like the Ramban, that even though the Gemara brings the Pasuk for the obligation of Kriyah, however, the whole obligation of Kriyah is only Rabbinical, and the Pasuk is only a mere support, and he proves his words there. The Shach too (in Siman 340 Seif Katan 2) writes that the whole obligation of Kriyah is only Rabbinical.

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<sup>9</sup> This instruction was specifically to Aaron the High Priest and his sons, Elazar and Isamar.

<sup>10</sup> Rabbi Moshe ben Nachman (1194-1270), also known as Nachmanides. Unless otherwise indicated, references to the Ramban in these Shiurim are to his Sefer on Hilchos Aveilus entitled “Toras Ha’Adam”.

<sup>11</sup> “Anyone who transgresses the words of the Sages deserves to die.”

## For Whom Does One Tear?

The Mitzvah of tearing Kriyah falls upon a person one of whose seven close relatives for whom one is obligated to mourn passed away. The 7 relatives are: his father, his mother, his son, his daughter, his brother, his unmarried sister from his father, and his wife. The Sages have added several more relatives for whom one should mourn and, it follows, one should tear Kriyah for as well. They are his brother from his mother, his sister from his mother whether married or not, and his married sister from his father.

In Siman 340 Seif 1 the Shulchan Aruch was posek<sup>12</sup> (as well as the Tur<sup>13</sup>), “One whose close relative died, and this was one of the deceased for whom he was obligated to mourn, is obligated to tear Kriyah for him.” However, he does not give any detail there as to who those deceased relatives for whom one mourns are. However, the listing of these close relatives, for whom one is obligated to mourn and tear Kriyah, (as brought previously), is brought by the Shulchan Aruch in Siman 374 Seif 4.

## The Obligation of Tearing Kriyah in a Standing Position

The Gemara in Moed Katan 21a writes that one must tear Kriyah while standing. The Gemara proves its words from the Pasuk which is brought in Iyov (1, 20), “And Iyov rose and tore his coat.” After this proof has been rejected, it proves this Din from the Pasuk which is brought regarding King David (Shmuel II 13, 31), “And the King rose and tore his garments.”

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<sup>12</sup> The word “posek” will be used several times in each Shiur. It means, “to make a decision on what the Halacha is.”

<sup>13</sup> The Tur, or Arba'ah Turim ("Four Columns"), by Rabbi Jacob ben Asher (1269-1343), whose father was the Rosh. Rabbi Yosef Karo, the author of the Shulchan Aruch, wrote a commentary on the Tur called the Beis Yosef. He then wrote the Shulchan Aruch using the same volume and chapter arrangement as the Tur.

## What if One Tore Kriyah While Sitting?

However, what is the Din if one tears Kriyah while sitting, after the fact [*B'Dieved*]? The Tur brings the argument of the Rishonim<sup>14</sup> on this.

The view of the Raavad and the Rif<sup>15</sup> is that he has fulfilled his obligation, after the fact, even if he tore Kriyah while sitting and not standing (and in the Beis Yosef it is brought that perhaps they did not actually decide like this, but rather it remained for them as a questionable Din [*safek*]).

However, the view of the Ritz Giat and the Rosh<sup>16</sup> is that even after the fact he did not fulfill his obligation if he tore Kriyah while sitting, and he must tear Kriyah again while standing (they prove their words from the Gemara in Moed Katan 20b, regarding Ameimar who tore when sitting and when he realized that he had not stood, he stood up and tore a second time while standing. But the view of the Rishonim who disagree with this is that Ameimar was being stringent with himself in this matter).

The Beis Yosef writes that also the view of the Rambam<sup>17</sup> is like the opinions that hold that if one tore Kriyah while sitting, he must tear a second time.

The Shulchan Aruch himself decides, as he usually does, like the opinions of most of the Halachic Authorities [*Baalei Hora'ab*] (the Shulchan Aruch is generally posek according to the three main Halachic Authorities: the Rambam, the Rif and the Rosh), and he was posek in Seif 1 that one must tear Kriyah while standing, and if he tore while sitting he has not fulfilled his obligation (like the opinion of the Rosh and the Rambam). The Rama adds to this, “and one must tear again.”

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<sup>14</sup> The earlier Rabbinical authorities who lived from around the middle of the 11<sup>th</sup> Century to around the middle of the 15<sup>th</sup> Century.

<sup>15</sup> Rabbi Isaac Alfasi (1013-1103) whose abridgement of the Laws of the Talmud is to be found in almost every edition of the Talmud.

<sup>16</sup> Rabbi Asher ben Yechiel (1250-1327) who wrote a commentary on the Talmud and also wrote extensively on Jewish Law. He was the father of the author of the Tur. Of these three *Baalei Hora'ab* only the Rosh was Ashkenazi.

<sup>17</sup> Rabbi Moshe ben Maimon (1138-1204), otherwise known as Maimonides. Unless otherwise indicated, references to the Rambam in these Shiurim are to his compendium of Jewish Law known as the Mishneh Torah.

## Does One Make Another Bracha?

When one has torn Kriyah while sitting and he must tear a second time, does he make another Bracha [Blessing] for this Kriyah (because for every Kriyah one must say the Bracha of “Dayan HaEmes”<sup>18</sup>)? In the Sefer Tzitz Eliezer<sup>19</sup> (Part 5, Siman 33, in Ramas Rachel) he writes that if one tears Kriyah again he does not make a second Bracha. His view is that the obligation of Kriyah is distinct from that of the obligation of the Bracha. However, in the Sefer Shevet Yehuda he writes that this Bracha is part of the Din of Kriyah and, therefore, if one tore a second time he must make another Bracha with this second Kriyah. See this discussion in the Questions and Answers [*She'eilos uTeshuvos*] of the Sefer Yabia Omer<sup>20</sup>, Volume 2, Yoreh Deah 23.

I would also like to point out that which has been stressed in the Achronim<sup>21</sup>, that one must take care not to lean on anything, for this is considered like sitting.

What about a sick person, who cannot stand, how should he tear Kriyah? See the Questions and Answers of the Kinyon Torah Part 3 Siman 108 who was posek that he may tear Kriyah while sitting, or even lying down.

## What is the Time for Kriyah?

The Rama at the end of Seif 1 writes, “Ideally, one must tear Kriyah before the face of the deceased has been sealed.” The meaning of this is that the time for tearing Kriyah is before the deceased is covered over in the grave. See the Shach there in Seif Katan 3 who writes that the time for tearing Kriyah is when one comes to the Bracha of Dayan HaEmes (quoting the Shulchan Aruch 339, 3, where it implies that the time for tearing Kriyah and reciting the Bracha is at the time when the soul departs from the body).

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<sup>18</sup> “The True Judge”.

<sup>19</sup> A multi-volume set of Responsa by Rabbi Eliezer Yehudah Waldenburg of the Israeli Rabbanut.

<sup>20</sup> A multi-volume set of Responsa by Rabbi Ovadia Yosef, formerly the Sefardi Chief Rabbi of Israel.

<sup>21</sup> The later Rabbinic Authorities who came immediately after the Rishonim.



However, one should add that the custom nowadays in many places is to tear Kriyah and recite the Bracha of Dayan HaEmes before they take the deceased out of the house. There are some who have the custom nowadays to tear Kriyah and recite the Bracha when the deceased is taken out and the people have gathered for eulogies [*hespeidim*]. This has also been brought in the Sefer Gesher HaChayim Perek 4 Seif 6, where he brings several explanations for this custom. For further understanding see the Sefer Teshuvos V'Hanhagos<sup>22</sup> Volume 4 Siman 374 Perek 1, 8.

It should be pointed out that there are some Sefardim who have the custom to tear Kriyah after the entire funeral (when the deceased has already been buried) and then they begin the Dinim of Aveilus (this has also been brought in the Sefer Gesher HaChayim Perek 4 Seif 6). See further the Sefer Yabia Omer Volume 2, Yoreh Deah Siman 23, 5.

## How is Kriyah Done?

In the Pischei Teshuva<sup>23</sup> Seif Katan 1 he brings the view of the Achronim, that it would be preferable if the whole Kriyah could be done by someone else and not by the mourner himself (because one is more ashamed from others, and the mourner has more aggravation that someone else is tearing his garment, but he keeps silent and accepts the judgment of Hashem).

It should be pointed out that the custom which is brought in the Questions and Answers of the Beis Yehuda Siman 26 is that someone else begins the tear with the small cut of a knife, and then afterwards the mourner tears the rest by himself (this has also been brought in the Sefer Gesher HaChayim Volume 1, 4), and it has become our custom.

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<sup>22</sup> A collection of Responsa by Rabbi Moshe Sternbuch of the Eidah Chareidis Beis Din in Jerusalem.

<sup>23</sup> A commentary on the Shulchan Aruch by Rabbi Abraham Zvi Hirsh Eisenstadt (1813-1868).

## Must one Take Care Not to Tear More than the Required Amount (a Tefach)?

The Pischei Teshuva there brings the view of the Achronim that one must take care not to tear the garment more than the required amount, because in doing so one transgresses the prohibition of “Bal Tashchis<sup>24</sup>”. However, see the Kuntruss Ohel Chana in the Sefer Pnei Baruch<sup>25</sup> who brings the view of the Gaon R’ Y.Y. Fisher zt”l, that this is not Bal Tashchis, because in any event the garment is unusable (this has also been posek by the Gesher HaChayim).

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SIMAN 340: 2

## Where is the Place of Kriyah (on the Garment)?

The Gemara in Moed Katan 26b writes that one who tears Kriyah from the bottom part of the garment, or from the sides, has not fulfilled his obligation. Therefore, the Rambam’s conclusion in this Din is (Aveilus Perek 8, Halacha 1) that one must tear Kriyah from the front top part of the garment. This has been posek by the Shulchan Aruch too in this Siman Seif 2, “The place of tearing can be anywhere on the neckline at the front, but if one tore at the back (*or the hem of the garment*) or at the sides [of the garment] he has not fulfilled his obligation.”

The Pischei Teshuva adds in Seif Katan 2 the Din of the Chachmas Adam, that also if he tore Kriyah along the width of the garment he has not fulfilled his obligation because it is not noticeable that he tore there, but rather it appears as if it tore by itself.

However, the Rama there brings the words of the Samak [*Sefer Mitzvos Ketanos*] (Siman 97 Page 70) who holds that if one tore Kriyah on the hem of his garment, he has fulfilled his obligation, and it has been the custom to be lenient to permit tearing the hem of the garment. However, all this is only when tearing for others for whom one is not obligated to mourn (and the Kriyah is done at the time when the soul departs), but for relatives for whom one is obligated to mourn (which have been mentioned above) one has not fulfilled his obligation if he tore Kriyah on the hem of his garment, and he must tear for them at the neckline.

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<sup>24</sup> “Do not destroy,” which is a prohibition against unnecessarily destroying things.

<sup>25</sup> A contemporary work on Hilchos Aveilus by Rabbi Chaim Binyamin Goldberg of Jerusalem.

## What is the Length of Tear Which One Must Tear on the Garment?

The Gemara in Moed Katan 26b brings that one must tear a tefach. This is learned out from the Pasuk in Shmuel II (1, 11) referring to King David, “And David held on to his garments and tore them,” and there is no “holding on” [to something] with any less than a tefach. The Shulchan Aruch was posek likewise.

The Gemara adds there that this amount of a tefach is only for the first Kriyah, but if one had already torn Kriyah for one deceased relative, and after the Shiva another relative for whom he must tear Kriyah passed away, it is then sufficient to add on just a small amount to the existing tear.

However, if the second relative passed away during Shiva, then he should tear another tefach for this second relative. (All this is only for all other relatives, but when adding onto the existing tear which was torn upon the passing away of a father or mother, the Halacha is different, as will be explained later). The Shulchan Aruch was posek likewise in this Seif, and he concludes that upon the passing away of his father or mother, even if they passed away after the Shiva of the first relative, he must tear Kriyah for them until his heart is revealed (which is the amount of Kriyah for a father or mother, as will be explained in more detail later).

## Kriyah in the Presence of a Relative who's Family Member Passed Away

The Shulchan Aruch in this Seif was posek, “Just as one tears Kriyah for his relative for whom he is mourning, so does one tear in the presence of a relative whose close relative died.” The Shulchan Aruch brings an example of this Din, “If his grandson or the brother of his son or the mother of his son died, he is obligated to tear Kriyah when in the presence of his son.” The source of this Din is in Gemara Moed Katan 20b, where Ameimar tore Kriyah in the presence of his son upon the passing away of his son's son.

The Ramban (and this is also brought in the Tur) learned out from this Din that this Kriyah must be done specifically when in the presence of the relative who is mourning, and if one tore Kriyah when not in the presence of the relative, he has not fulfilled his obligation. However, the view of the Rosh is that since this Kriyah is at the actual first moments of grief, therefore one tears immediately upon hearing the news, even when not in the presence of the relative who is mourning.

The Shulchan Aruch adds there that a person should tear Kriyah also for his father-in-law or mother-in-law (because his wife is tearing Kriyah for them), and a woman must tear Kriyah for her father-in-law and mother-in-law (because her husband is tearing Kriyah for them). For any other relatives of his wife, he is exempt from tearing Kriyah (Shach Seif Katan 6).

## The Psak of the Rama...

However, in contrast to this psak of the Shulchan Aruch (where one is obligated to tear Kriyah in the presence of his relative who is mourning), the psak of the Rama is “that this is not our custom.” It was not customary to tear Kriyah in the presence of relatives who are tearing Kriyah for their relatives who have passed away.

It is important to note that a Seif parallel to this one is found in the Shulchan Aruch Siman 374 Seif 6, where he mentions the mourning of someone in the presence of his relative who is mourning. There exists a similar argument between the Shulchan Aruch (that one is obligated to observe Aveilus in the presence of his relative who is mourning) and the Rama (who holds that this Aveilus is not observed in the presence of the relative who is mourning). G-d willing, we will go into further detail on this subject in Seif 374.

## Summary: Questions and Answers

**1. At the beginning of this Shiur we brought the reasons for tearing Kriyah and the various views of whether Kriyah is from the Torah or Rabbinical.**

**2. For whom is one obligated to tear Kriyah?**

For the seven relatives for whom he is obligated to mourn – father, mother, son, daughter, brother, sister, unmarried sister from father, and wife.

**3. Which other relatives have the Sages added on?**

The brother from his mother, sister from his mother, whether married or not, and married sister from his father.

**4. In what position must the Kriyah be done?**

Standing, and if one tore while sitting, the Rishonim differ in their opinions, and according to Halacha he has not fulfilled his obligation and must tear again.

**5. What must one take care not to do while tearing Kriyah?**

Not to lean on anything.

**6. What about a sick person, how can he tear?**

If he cannot stand, he can tear while sitting or even lying down.

**7. How is the Kriyah actually done?**

Another person begins the tear with a knife, and the mourner continues the tear by himself.

**8. When is Kriyah customarily done, in our times?**

The custom is to tear and say the Bracha of “Dayan HaEmes” before the deceased is taken out of the house. There are those who have the custom to tear Kriyah and say the Bracha when the deceased has been taken out and when the people have gathered for eulogies.

**9. Where is the place of Kriyah?**

Anywhere on the front neckline, but if one tore on the back of the garment (or on the hemline) or from the sides, the Kriyah is unsatisfactory.

**10. What if one tore along the width of the garment?**

The Kriyah is unsatisfactory.

**11. According to the Rama, is it satisfactory if one tore on the hem of the garment?**

Yes, but this is only when tearing Kriyah for all other deceased (not relatives), but for relatives he has not fulfilled his obligation if he tore on the hemline, and he must tear again at the neckline.

**12. What is the length of the tear?**

A tefach.

**13. What if one wants to add onto the original tear, must he also tear a tefach again?**

No, this tefach is only for the first tear, but if wants to extend that tear for another deceased, then if it is after the Shiva it is sufficient to tear just a small amount.

**14. What happens if the other relative passed away within the Shiva?**

Then he must tear another tefach.

**15. Is one obligated to tear Kriyah in the presence of his mourning relative?**

The Shulchan Aruch was posek that he is.

**16. What else was the Shulchan Aruch posek on this?**

That one must tear for his father-in-law and mother-in-law, and a woman must tear for her father-in-law and mother-in-law too.

**17. Does the Rama agree with these two Halachos?**

No, for that was not the custom.