The Chicago Center
Digest
Mishna Berura
THE DAILY RESOURCE FOR MISHNA BERURA YOMI
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סימן ע"ו סעיף ז'-ח'

Halacha Highlight

Concern for the presence of waste

Shulchan Aruch Siman 76 Seif 7

ספק אם צואה בבית מתר לקרות

If one is uncertain whether there is waste in one's house it is permitted to read *shema*

Shulchan Aruch (סע' ז') writes that if one is uncertain whether there is waste in a house one has the right to be lenient and read *shema* since a house is presumed to be clean of waste. Mishnah Berurah (ס"ק כ"ג) adds that when there are children in the home one is required to search his house to assure that it is clean from waste. The age at which one has to be concerned about the presence of the waste of a child is when children that age have the ability to eat an olive's volume of grain within the time period of *k'dei achilas pras*. Mishnah Berurah also mentions that it is preferable for one to be stringent and distance himself from the waste of even an eight day old child (מ"ב סי' פ"א ס"ק ב'-ג'). Accordingly, if one *davened* in his house without searching beforehand and after *davening* discovered waste he would be required to *daven* again. This is based Shulchan Aruch (סע' ח') who rules that if one should have checked the area where he was going to *daven* and later discovered waste he must repeat his prayers (ע"ע מ"ב ס"ק ל"א).

Poskim write that nowadays even a house with children is assumed to be clean since parents are generally particular that their home should be free of waste and babies wear diapers to catch and contain their waste. Even the dirty diapers are generally disposed of in a manner that has them covered and does not allow the smell to emanate. Additionally, although in the time of Chazal there was a concern that streets were not clean since there were animals that would relieve themselves in the street, nowadays, there is no such concern since it is not common for people or animals to relieve themselves in the street. Furthermore, municipalities keep the streets clean so one need not be concerned that there is waste there (ע' פסקי תשובות אות י').

Stories to Share

Sound Advice?

ש"ע , ע"ו, ח': "קרא במקון שראוי להסתפק..."

A certain man was in the hospital. Since he couldn't move around he would go to the bathroom in a disposable vessel. The staff would clear these away at set intervals or upon request. When visitors came to this man, bringing food and drink, he explained that making a blessing was somewhat problematic. One of the visitors had a idea that he thought would help.

"Why not just close the curtain around your bed?" he posed. "We can make our berachos and then you can open it. This is presumably a good mechitzah which renders different spaces into separate domains. Since we will be considered to be in another domain, why can't we make a berachah?"

But the other visitors were a bit wary of taking his advice. It is exceedingly easy to come up with an apparently compelling argument which is halachically unsound. All you need is one unnoticed detail and an otherwise solid-seeming argument becomes irrelevant.

When this reasoning was brought before Rav Yosef Shalom Eliyashiv, zt"l, he rejected it out of hand. "In the Mishnah Berurah in 315:10 we find that a mechitzah must extend to within three tefachim from the ground. It is clear from this that hospital partitions are not a halachic mechitzah since such curtains are specifically designed not to hang sufficiently low. Therefore if there is a receptacle holding excrement or urine on one side of such a curtain, it is forbidden to say a berachah or learn Torah on the other side of such a curtain."

שו"ת ציץ אליעזר, ח"כ, ס' ב'

Overview

Siman 76 Seif 7:

If it is uncertain whether there is waste in a house it is permitted to read *shema* since the presumption is that a house does not contain waste. If it is uncertain whether there is waste in a garbage dump one may not read *shema* since the presumption is that there is waste there. If it is uncertain whether there is *mei raglayim* one may read *shema* even if the uncertainty is in a garbage dump since the Torah's prohibition regarding *mei raglayim* is limited to the stream of *mei raglayim* and after it hits the ground it is no longer prohibited, therefore Chazal did not impose their stringency in circumstances of doubt.

- If one finds waste and does not know whether it is from an animal or a person Magen Avrohom rules that the origin of the waste is assumed to come from that which is more common. (M.B. 22)
- If children frequent a home one is required to examine a house to assure that there is no waste. (M.B. 23)
- Shulchan Aruch means that since it is common to find waste in a garbage dump it is prohibited to read *shema* until one searches for waste. (M.B. 24)
- If one knew that *mei raglayim* was present and the uncertainty is whether he poured water over it Chaye Adam rules that one must be stringent but if it is a circumstance in which the time for *davening* may pass one may be lenient since the prohibition is Rabbinic. (M.B. 25)
- If there was solid waste and one is unsure whether it was removed he must be stringent. (M.B. 25)
- There is a disagreement whether dripping *mei raglayim* is the same of the stream. (M.B. 27)

Siman 76 Seif 8:

If one read *shema* in a place that could contain waste and later discovered that there was, in fact, waste present he must reread *shema*. If, however, it is a place where there is no reason to suspect that there is waste and later discovers waste he is not required to reread *shema*. Regarding *mei raglayim* one is never required to repeat *shema* even if he was in a place where there was reason to be concerned about its presence.

- Shulchan Aruch refers to where one discovered that the waste was within his four *amos*. (M.B. 29)
- The same *halacha* applies if one discovered after *davening* that his clothing was dirty in a circumstance in which he should have checked his clothing before *davening*, meaning he must *daven* again. (M.B. 30)
- He must repeat *shema* with the *berachos* as well as *shemone esrei*. If he does not realize until the time for *davening* has passed he may not make up the missing *tefila*. (M.B. 31)
- If one knew there was *mei raglayim* and he *davened* there anyway he must reread *shema* and *shemone esrei* since he violated a Rabbinic enactment. (M.B. 33)