The Chicago Center
Digest
Mishna Berura
THE DAILY RESOURCE FOR MISHNA BERURA YOMI
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סימן ע"ט סעיף ב'-ג'

Halacha Highlight

Waste that is in a different domain

Shulchan Aruch Siman 79 Seif 3
היתה במקום גבוה עשרה טפחים
If the waste was on a spot that is ten *tefachim* high

Even if human waste is in another domain, if one sees the waste or if one can smell the waste it is prohibited to read *shema*. However, the fact that the waste is in another domain is beneficial for the following matters (ע' פסקי תשובות אות ה'). In the event that one *davened* when he could see or smell the waste, he is only required to repeat *shema* but he does not repeat *birchos krias shema* or *shemone esrei* (ע' מ"ב סי' ע"ו סק"ח). It is permitted for one to think about *divrei Torah* if the waste is in a different domain even if he can see it. If, however, one can smell the waste, even if he can't see it, there is a disagreement whether it is considered comparable to a foul odor that has a tangible source or not. When possible one should consider it to be a circumstance of waste that does have a tangible source and he should not thank about *divrei Torah*. In such a circumstance one may spray air freshener to neutralize the foul odor and assuming that one cannot see the waste he is permitted to study Torah and *daven*.

If the waste is in a different domain and is visible from where one is sitting but he closes his eyes or if the lights are out, there is a disagreement whether one may *daven* or study Torah. Mishnah Berurah (ס"ק י"ד) writes that in a pressing circumstance when one cannot turn his head away he may be lenient. If, however, the waste is visible behind a window all opinions agree that he may *daven* and study Torah even if the waste is visible and he is not required to close his eyes. Rav Shlomo Zalman Auerbach (הליכות שלמה פ"כ אות ו') maintains that even a hanging curtain is effective to consider the waste in a separate domain. This has practical relevance in a hospital when two patients are in the same room but are separated by a hanging curtain.

Stories to Share

Nullifying the Negative

ש"ע ס' ע"ז, ב': "אם אין לו ריח יכול לקרות..."

A certain person had an upset stomach and could not stop himself from passing gas. Since he liked to learn with diligence in his study, he was extremely put out by having to wait until the air cleared ever few minutes. But then he had an idea; why not keep spices with a powerfully good odor with him that could nullify the bad odor? He knew that the Arizal explains that smelling such odors cause one's soul to retreat. The Arizal demonstrates this through the mitzvah of smelling spices during havdalah. Just as we do so to keep a hold of our extra measure of soul, smelling unpleasant odors causes our nefesh to shrink away and become more remote.

שער רוח הקודש, דף ח'

Since passing gas is a light odor which has no physical source unlike excrement, perhaps making a good smell in the room is enough?"

When this question reached the Kaf Hachaim, he ruled that it works. "Since this is a smell without a present source exuding the same odor, causing a good smell until this one is nullified will definitely work."

כף החיים, כאן, ס"ק כ'

But when someone asked a similar question of Rav Chaim Kanievsky, zt"l, he was not convinced that the odor is considered completely gone. "If you bring in spices that nullify the negative odor you may not make the brochah 'בורא מיני בשמים' in the room that had the bad odor even if it is now gone. If you want to smell the spices, leave the room and then make the brochah. Why is this different from closing your nose against the odor which is ineffective? Instead of putting your hand over your nose to hide the odor, you put the odor of the spices!"

תשובות של רבינו בסוף ספר אשי ישראל, תשבה ע"ב וע"ו

Overview

Siman 79 Seif 2:

If the waste was ten *tefachim* high, in a pit ten *tefachim* deep or in another house, even if there is a doorway connecting the two houses and he sits next to the doorway and can see the waste – as long as he cannot smell the waste it is permitted to read *shema* according to Rosh. Since the waste is in a different domain the pasuk והיה מחניך קדוש is fulfilled. According to Rashba the waste must not be visible. If the waste produces a foul odor a separation or the fact that the waste is in a different domain does not permit one to read *shema*. According to some just like a separation is effective for the waste it is also effective regarding smell.

- The same *halacha* applies if the person was elevated or beneath the waste. (M.B. 10)
- The place where the waste rests should also be four *tefachim* by four *tefachim* wide but *b'dieved* one is not required to *daven* again unless he wishes to *daven* a voluntary *tefila* since the matter is subject to debate. (M.B. 11)
- Another house is synonymous with "another room." (M.B. 12)
- There is no difference whether there is a door between the two rooms or not. (M.B. 13)
- If one puts his head into the room where the waste is located it is prohibited according to all opinions even if he closes his eyes. Similarly, if the waste is in the room with him and he merely sticks his head out of the room or the window it is prohibited to read *shema*. (M.B. 13)
- If one sees the waste behind a window it is permitted to read *shema*. If one closes his eyes or if it is night there is a disagreement since the waste is in a different domain and in a pressing circumstance where one cannot turn his head one may rely upon the lenient opinion. If one cannot see the waste it is permitted according to all opinions. (M.B. 14)
- It is prohibited to speak *devarim she-b'kedusha* if one can see a garbage dump from an open window even if the smell does not reach him. (M.B. 15)
- Later authorities follow the opinion of the one who writes that a separate domain is irrelevant if one can smell the waste. (M.B. 16)
- According to some one must be four *amos* from where the smell dissipates and according to others it is sufficient to be where the smell ends. (M.B. 17)
- If waste was taken through a room and the smell lingers one should be stringent and not read *shema*. (M.B. 19)

Siman 79 Seif 3:

If a small courtyard is breached entirely to a large courtyard and the larger courtyard is wider than the smaller one on both ends – the smaller courtyard is not considered a house to itself since it is open entirely to the larger courtyard but since the larger one extends beyond both ends of the smaller courtyard it is considered to be a separate house. Therefore, if there is waste in the larger courtyard it is prohibited to read *shema* in the smaller courtyard until he properly distances himself from the waste. If the waste is in the smaller courtyard one may read *shema* in the larger courtyard without distancing one's self as long as it does not smell.