

OVERVIEW of the Daf

1) A floating sheretz (cont.)

The Gemara suggests an explanation for the positions in dispute between Tanna Kamma and R' Shimon regarding the capacity of a dead floating sheretz to convey tumah.

Another Baraisa is presented that presents additional halachos related to floating tumah.

2) Tumah resting on an object that is floating

Rami bar Chama begins a series of questions that relate to the capacity for a source of tumah that is at rest on an object that is floating to convey tumah.

After the Gemara concludes presenting all the different questions the Gemara leaves the questions unresolved.

3) Tumah of the deep

R' Hamnuna rules that a nazir and someone making a Korban Pesach who pass over tumah of the deep on their seventh day of purification are both tehorim.

Rava challenges this ruling and forces R' Hamnuna to retract his ruling as it relates to the nazir.

Rava agrees to R' Hamnuna's ruling as it relates to the one making a Korban Pesach.

Abaye unsuccessfully challenges Rava.

It is noted that Abaye retracted his ruling.

This assertion is demonstrated from Abaye's response to R' Kahana's comment to a Baraisa.

Beis B

4) **MISHNAH:** The Mishnah begins to present the halachos related to finding graves and under what conditions does the discovery of graves create a presumption of the presence of a cemetery. ■

REVIEW and Remember

1. Explain וכל דבר שמטמא מלמעלה כלמטה.
2. What is the essence of Rami bar Chama's inquiry?
3. At the end of the discussion, is there a dispute between Rava and R' Hamnuna?
4. How close to one another must the bodies be found to render the area a cemetery?

Distinctive INSIGHT

When is body considered "found"?

המוצא צת בתחילה מושכב כדרכו נוטלו ואת תפוסתו

In explaining the details of this case, Tosafos notes that it is dealing in a situation where a body was found "בתחילה—just now, for the first time." This means that the body was found in a place where no one knew that a grave was located. The halacha, therefore, is that the body may be exhumed, together with the surrounding soil. The Mishnah is also teaching us that if it was known that a grave was located there, the body may not be relocated. Rabbeinu Obadiah of Bertinoro explains that this detail is evident from the first word of the Mishnah, "המוצא—If it was found..." This excludes a case of where a known grave was exposed. It is noteworthy that Rambam, in his Commentary to the Mishnah, explains that the word "המוצא" indicates that if a grave is discovered and it is to be exhumed, it must be completely removed—מוצא, and the remains and the surrounding soil must be dug out totally. This is as opposed to a case where a body is found on the surface of the ground.

אליה רבה (to Oholos 16:3) writes that the Gemara derives from the Mishnah that not every body which is found may be exhumed and reburied. The word "המוצא" teaches that a known grave may not be relocated, and the word "מת" teaches that this halacha applies to someone who died, as opposed to a case of a person who was killed. However, the Gemara does not teach a halacha based upon the word "בתחילה". אליה רבה suggests that it means that if this is the first body found in an area, it may be relocated, as opposed to a case where two other bodies were found in this area before this third body. Here, the area is deemed a "neighborhood of bodies—שכונת קברות," and none of them may be moved.

Tosafos explains that although it is prohibited to move a grave from one place to another (see Sanhedrin 47b), if we find a body which was not known to anyone we can assume that it was buried here just temporarily, and the intent was for the body to be relocated in a proper cemetery. Rosh adds that we may assume that the body was placed here without the consent of the owner of the land, and in this case the dead body does not acquire its spot. This opinion is cited as the halacha by Shach, Yoreh De'ah 364:5. ■

HALACHAH Highlight

Taking the earth that surrounds the body when exhuming a corpse

המוצא מת בתחילה מושכב כדרכו נוטלו ואת תפוסתו

One who finds a corpse for the first time [in this area] lying in the usual fashion may remove it together with the earth that surrounds it

Different reasons are given why it is necessary to take some of the earth that surrounds the body of a corpse when it is reburied. One explanation¹ is that there is a concern that some of the blood or other body fluids seeped into the ground and out of consideration for the honor of the deceased it is necessary to take some of the earth. A second approach² maintains that it is not an issue of honor for the deceased; rather it is to assure that the entire body was removed so that in the future the land could be used for tahor food without concern for any remnants of the corpse.

Although this halacha is cited in Rambam³ it is not cited in Shulchan Aruch. Sefer Erech Shai⁴ suggests that Shulchan Aruch follows the second explanation

that the purpose of taking some of the earth is out of taharos considerations and since those halachos are not relevant in our times it is unnecessary for Shulchan Aruch to mention it. Rav Moshe Feinstein⁵ writes that since this halacha is not mentioned in Shulchan Aruch, the Noda B'Yehuda or the Chasam Sofer when they discuss exhuming bodies, it is an indication that it is unnecessary to take anything more than the bones of the deceased. Teshuvos Mahariaz Enzil⁶ suggests that the halacha only applies in Eretz Yisroel.

Teshuvos Maharsham⁷ and Chazon Ish⁸ maintain that this practice should be observed even in our times and Maharsham explains that the rationale for the halacha is that the deceased acquires the ground that surrounds its body thus making it prohibited even if the body is removed. Therefore, when possible the earth should be taken together with the body. ■

1. ריטבי"א לבי"ב ק: ד"ה נוטלו.
2. רשב"ם שם קא. ד"ה
3. רמב"ם פ"ט מהל' טומאת מת ה"א.
4. ספר ערך ש"י יו"ד סי' שס"ד.
5. שו"ת אג"מ יו"ד ח"א סי' רנ"ט.
6. שו"ת מהרי"א ענין סי' ל"ו.
7. שו"ת מהרש"ם ח"ג סי' ר"ב.
8. חזו"א יו"ד סי' ר"ט-ר"י. ■

STORIES Off the Daf

"...This, Then, is a Burial Ground..."

"...הרי זו שכונת קברים וקונה מקומו"

The immense difficulty involved in financing and building a Torah institution is well known. If this is often true even in our generation of Torah, how much more was it true regarding earlier generations. In those times, very few had a real belief in Torah and Yiddishkeit and finding donors for institutions was a very hard endeavor.

After much effort, the Vizhnitzer Rebbe, shlit"a, raised

enough money to build his Beis Medrash in Bnei Brak. He purchased a tract of land, drew up plans, found a frum contractor, and started to build. As they dug deeper and deeper, they discovered a corpse. Understandably, this brought to light two simple questions. First of all, could they remove the body and build as planned at the site or did they have to leave it there and either scratch the plans or sell the land at a loss? Secondly, even if one corpse doesn't disqualify, did they have to search for more bodies or not?

The Rebbe and the contractor, Reb Avraham Wertheimer, shlit"a, went to the Chazon Ish, zt"l, to ask

his halachic opinion. After describing the problem, the Chazon Ish replied, "If I am not mistaken, this is a sugya in Nazir 64b. The gemara states that if one finds three bodies this is a burial site. If one found one or two however, he may remove the corpse along with the underlying soil. The Mishna continues to say that if he found three bodies, he must search twenty amos for more.

The Chazon Ish concluded, "Clearly, you may remove the body and you have no obligation to search for more." The Gadol blessed them with success, and the Vizhnitzer Beis Medrash was built in all of its grandeur! ■

