

לע"נ *Yevamos Perek Gimmel is Dedicated*

מרת רבקה בת ר' אליהו ז"ל

הח"ר אברהם בן ר' מאיר הלוי ז"ל

מרת האלע בת הח"ר משה הלוי ז"ל

Yevamos Daf 32 is Dedicated

לרפ"ש נחמה איטא בת עליזה



THE HAKUK EDITION

ENGLISH TOPICS ON THE DAF

Dedicated L'Refuah Shlaima for Yaakov ben Victoria

RABBI MORDECHAI PAPOFF

Daf Hashovua Yevamos Daf 32

In this week's daf we learn about the rule which appears throughout Shas, "ein issur chal al issur." Rava tells us that even according to Rabbi Yosi it doesn't invoke another korban chatos, but takes effect only enough to bury him among more serious reshaim.

Many Acharonim and poskim discuss this fascinating concept – the second issur is not really binding, but yet has halachic effects! How do we understand this, and where else does this distinction manifest itself?

The **Pri Megadim** (Hakdama to Hilchos Pesach) comments that there are many "nafka minahs" – applications of this rule. Often, the issur is not yet in effect but is "crouching in wait" until the first issur is removed, and then it will apply.

As an example, he cites the halacha in Yoreh Deiah (238:4) that if someone makes an oath (shevuah) to not eat non-kosher items, the oath is not valid. This is similar to ein issur chal al issur – since the Torah already prohibited them, his oath will not add any further issur. What if, however, the same person finds himself in a state of pikuach nefesh, in a life-

threatening situation in which he must eat non-kosher food? Does he then need to mattir his shevuah (if there is time and opportunity to do so)? The Shach there says he does not, but the Pri Megadim is sure that he should. Now that the first issur – from the Torah – is off, the second issur from his shevuah will take effect, and he needs to annul it!

Actually, the **Avnei Miluim** (Teshuvos Siman 12) defends the Shach even while agreeing to the principle of the Pri Megadim. When the Gemara says that a shevuah to refrain from an aveirah isn't valid, it does not say it is because of issur chal al issur. Rather, it puts it as “he is already sworn from Har Sinai” to keep the Torah. Apparently, then, it does not fall into the rubric of issur chal, but a concept unique to shevuos. What is the difference? If we're dealing with two issurim that normally would apply but can't right now, they indeed both exist in potential. But here is different. Once Klal Yisroel made a shevuah to keep the Torah (see Rashi on Devorim 28:69), no Jew has a right to make his own shevuah concerning a mitzvah. Therefore, as the Shach rules, it will never be effective, even if the Torah's issur is suspended.

Another case of ein issur chal is discussed by Shu"t **Beis Halevi** (Vol. 1:44). The Gemara emphasizes that when allowing someone to eat on Yom Kippur, care should be taken to try to minimize the issurim involved. What if there is a choice between two foods, one which has one issur and the other has a second issur which is not in force because ein issur chal? According to the Pri Megadim, the first is certainly preferable.

Rav Elchonon Wasserman proves that not all Rishonim agree to this way of understanding. The **Rambam** states (on the Mishnah, Krisus 3:4) that if someone ate cheilev (forbidden fats, punishable by karess) together with milk, he will not be chayev for bossor b'cholov. This is even though bossor b'cholov has an added element of issur – it is forbidden also to derive any benefit from it – and it should fall under the category of issur mosif. Here it will not, since the two issurim of bossor b'cholov, eating and benefiting, take effect together. Now, if an issur could be chal on another issur in potential, why isn't the second issur in effect here? The Rambam permits benefit from this mixture, although bossor b'cholov usually is

prohibited! It must be that he understands ein issur chal to be an absolute exemption; the second issur *does not exist*.

The problem with this train of thought is how to explain our Gemara which says he is to be buried among bigger sinners. Obviously the second issur does exist! Rav Elchonon offers an idea that even without the actual issur, since the potential was there, it suffices to treat him in this way, as if he had done it (Kovetz Hearos 30).

Even this is subject to debate, though. **Rav Shimon Shkop** (in Sefer Hazikoron for R' Chaim Shmuelevitz p. 413) maintains that Rambam agrees to the Pri Megadim's position, and differentiates based on the context. Two issurim cannot be in force on one item or person, but there could be two admonitions of issurim together. We find many examples of multiple issurim in one situation. So too, there is no *actual* issur of bossor b'cholov because there already is an existing issur of cheilev. However, the admonition of the Torah certainly doesn't vanish, and in our Gemara he is considered a graver sinner since he ignored two of the Torah's commandments.

Practically speaking, the halacha of our Gemara – to bury him with bigger sinners – is cited in **Shulchan Aruch** (Y.D. 362:5) “A rasha should not be buried next to a tzaddik; even a lesser rasha should not be next to a more serious one.” Some poskim hold it is not mandatory, though – the Gilyon Maharsha writes that it is only lichatchila.

However, seforim stress the great gravity of these matters. **Sefer Chasidim** (705) records an incident in which a tzaddik was buried next to an “improper man” and the tzaddik came in a dream to all the people in the city complaining, “You buried me next to a toilet!” The **Yam Shel Shlomo** decries the practice of wealthy people buying burial plots in prestigious sections, adding that they are making it worse for themselves since they will be punished for the distress they cause to the tzaddikim next to them!

Many teshuvos discuss various applications of this. **Rav Moshe Feinstein** instructs that shomrei Torah umitzvos should not be buried next to mechalelei Shabbos b'farhesiah. If someone wishes to be buried near his non-observant relatives, we may honor such a request, but usually it should

not be done. If a space of eight amos cannot be left between the graves, a mechitza of ten tefachim should be made to separate them (Igros Moshe Y.D. 2:152).