



לע"נ ברוך בענדיט וברכה גרוס ע"ה
by Mr. & Mrs. Duvy Gross

The Hakuk Edition English Topics on the Daf

Dedicated l'refuah sheleima for Yaakov ben Victoria

By Rabbi Mordechai Papoff

THE SIXTH PEREK OF YEVAMOS IS DEDICATED:

לע"נ גרשון בן החבר מרדכי



YEVAMOS DAF 61 IS DEDICATED:

IN HONOR OF RABBI ZACHARIA ADLER

Yevamos Daf 61

Graves of Non-Jews and Kohanim of Today

Rabbi Shimon bar Yochai begins our daf with a ruling that the graves of non-Jews do not make people *tomei*.

Is this the halacha? Are Kohanim allowed to pass over such graves? Do Kohanim have to be careful not to become *tomei* at all, in our days?

The Rambam paskens like Rashbi. "A Kohen is permitted to enter [a structure in which a non-Jew is buried] and to step on their graves. All that is forbidden is to touch or carry them" (Hilchos Eivel 3:3).

On the other hand, Tosfos rules like Rabbon Shimon ben Gamliel that they are considered *tomei*. In a Mishnah in Ohalos (18:9) he states that ruins of cities where *goyim* lived are not suspected of *tumah* because we can assume that wild animals would already have ferreted their bodies out and taken them away. Implied from

here is that generally, their graves would create *tumas ohel*. Tosfos invokes the rule that we always hold like R' Shimon ben Gamliel (Kesubos 67a – except in three cases).

Why, indeed, does the Rambam go like Rashbi? Kessef Mishnah cites the Gemara in Bava Metzia (114b), an episode in which Eliyahu Hanavi was standing in a gentile graveyard. He was asked, "Aren't you a Kohen?" based on the opinion in Chazal that he was earlier known as Pinchas. He responded, "Don't you know that non-Jewish graves are not *metamei*?" Clearly, Eliyahu paskened like Rashbi, and even acted upon his *psak*.

Tosfos did not miss that Gemara, but insists (in Bava Metzia) that he was merely rebuffing the questioner. The real reason was that graves generally have a space of a *tefach* above them, which should prevent the *tumah* from rising from the ground. In certain cases this is a

cause for leniency. He notes another, similar story where Eliyahu avoided revealing his real reason. Secondly, Tosfos brings a Midrash that Eliyahu was not a Kohen.

There's another debate – if Kohanim have to avoid tumah nowadays or not. The Raavad (Nezirus 5:15) declares that since everyone today is assumed to be *tomei meis*, since we lack the *parah adumah* to purify ourselves from it, a Kohen doesn't have to avoid additional tumah. On the other hand, Rambam *paskens* (Eivel 3:4), "If a Kohen touches a corpse, is then warned not to, lets go of it and touches it again – even a hundred times – he'll receive lashes for each time." This is even though he was already *tomei*! So too, Kohanim in our era should avoid *tumas meis*.

The Mishnah L'Melech asks on the Raavad's logic that we find in several Gemaras that Amoraim were stringent for Kohanim not to go near graves. Weren't they all *tomei meis* anyway, hundreds of years after the Churban? He defends the Raavad that perhaps they did retain some *parah adumah* water even in that age. In Niddah 6b it says that some Amoraim prepared wine and flour in anticipation for the rebuilding of the Beis Hamikdash. It must have been *tahor*, then.

Either way, he concludes that "all the sages of Israel argued with him."

One more topic of discussion surrounds the final line of our sugya, that all agree that to touch or carry it is forbidden. One of the Rishonim, the Yereim, ruled leniently even for this, based on a Midrash. However, the majority opinion is as our Gemara.

The Shulchan Aruch (Y.D. 372:2) advises to follow Tosfos' opinion, and a Kohen should be careful not to step on non-

Jewish graves. The Rema adds, "although some are lenient." These are the two opinions of Tosfos and Rambam.

A practical application is for a Kohen medical student – is he allowed to gain practice on a non-Jewish corpse? Rav Yehoshua Neuwirth zt"l ruled that he is forbidden. Additionally, as the Shulchan Aruch says, he shouldn't even be in a room with such a body, as an observer (Nishmas Avraham Vol. 2:372).

If there is a human skeleton in the next room, the Har Tzvi allowed it if need be. He stresses that the door to that room must be closed. Part of his reasoning is that we can assume the owner of the bones was not Jewish (Shu"t Y.D. 283).

The question was posed to the Noda B'Yehuda about autopsies for medical research – perhaps they can be deemed *pikuach nefesh* since they can save other people's lives? (And consequentially, a Kohen may be permitted as well.) The case there was of a man who had gallbladder stones; they operated on him but he died. The doctors wanted to examine him to try to understand better the root of the condition, in order to improve treatment for the future.

However, the Noda B'Yehuda did not agree to consider this *pikuach nefesh* to override the halachos of *kavod hemeisim*. If we would, he pointed out, almost everything in medicine would be permitted on Shabbos, such as fashioning equipment and preparing medicines – just in case someone may need them! *Pikuach nefesh* is only where there is an immediate situation of danger. He asserted that even in the gentile world they did not do autopsies except on those condemned to death or if the subject agreed to it previously (N.B. Y.D. 2:210).

Interestingly, the Ben Ish Chai reports the custom in Bagdad to be lenient about Kohanim walking on graves in order to do a mitzvah. Examples he gives are walking to shul and passing over a goyish cemetery to get to a tzaddik's grave to daven nearby (Od Yosef Chai, Tetzaveh 12).