

## OVERVIEW of the Daf

1) Does a positive command override a prohibition that carries the punishment of **כרת**? (cont.)

Two explanations are presented of the Baraisa originally cited to prove, from the prohibition against lighting a fire on Shabbos, the principle that a positive command overrides a prohibition that carries the punishment of **כרת**. The first explanation follows the alternative explanation that refuted the proof and the second explanation addresses the Gemara's initial understanding of the Baraisa.

2) Explaining the necessity for the exposition of the word **עליה**

Since the Gemara was unable to demonstrate that a positive command overrides a prohibition that carries the punishment of **כרת**, it is suggested that an exposition is necessary because one may have thought to apply the principle, "Something that was included in a general category etc." namely that the **ערוה** of a brother's wife should serve as an example that **yibum** will override **ערוה** prohibitions.

A Baraisa that teaches this principle is cited and the Gemara explains how it would apply to the case of **yibum**.

The use of this principle is successfully challenged and an alternative hermeneutical principle is applied which leads to the conclusion that **yibum** should not override **ערוה** prohibitions and we return to our original inquiry, why is an exposition needed to teach that the mitzvah of **yibum** is not performed with an **ערוה**.

A Baraisa that teaches the alternative principle is cited.

It is suggested that an analogy (**מה מצינו**) could lead one to think that the mitzvah of **yibum** will override **ערוה** prohibitions.

The use of this principle is challenged because permitting a brother's wife involves overriding one prohibition whereas

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## REVIEW and Remember

1. What is the argument that the burial of an abandoned corpse should override Shabbos?

2. Why was the prohibition against marrying a brother's wife singled out?

3. Explain **הואיל ואשתרי אשתרי**.

4. What halacha was instituted by Yehoshafat?

## Distinctive INSIGHT

*Capital punishment on Shabbos and Yom Tov*

תלמוד לומר לא תבערו

The Gemara in Sanhedrin (36a) states, as a matter of fact, that it is prohibited for the court to carry out capital punishment on Yom Tov. Rashi explains that this is evident because we know that there is no difference between the laws of Shabbos and those of Yom Tov, other than that it is permissible to prepare food on Yom Tov. In reference to Yom Tov, the verse states "all labors shall not be done," and this should therefore include this function of **Beis Din**.

Tosafos (ad loc. **ד"ה ומה יום טוב**) asks a powerful question based upon our Gemara. Had it not been for a verse to teach us otherwise, we would think that **Beis din** is allowed to execute a criminal on Shabbos. The reasoning is clear that execution can even defer the service of the offerings in the **Beis Hamikdash**, and the service itself is stronger than Shabbos, in that the laws of Shabbos are deferred when the service is necessary. This results our concluding that the function of **Beis din** is primary, and it would be permitted, had it not been for the verse of **לא תבערו**, which is written about Shabbos. Accordingly, there is no such verse in reference to Yom Tov, and the halacha should therefore allow **Beis din** to carry out an execution on Yom Yov, unlike Shabbos where we have a verse to prohibit it.

Tosafos answers that once we have a verse in reference to Shabbos, the logical approach in dealing with Yom Tov becomes interrupted. After we would conclude that **Beis din** can execute a criminal on Yom Tov, we would introduce the law of Shabbos, and say that Shabbos is a **פירכא**, where we find that the service can be done, but **רציחה** by **Beis din** is prohibited.

Aruch Laner answers that the Mishnah which Rashi quotes is the solution. The Torah associates Shabbos and Yom Tov completely, with the exception of food preparations only. This means that in all other areas, the laws are the same. Once we know, albeit based upon a special verse, that **Beis din** may not execute a person on Shabbos, we automatically conclude that this is also prohibited on Yom Tov, as well. ■

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# HALACHAH Highlight

## Allowing a woman who is a niddah to daven

ואמר עולא מה טעם הואיל והותרה לצרעתו הותר לקרוי

And Ulla said: What is the reason this is permitted? Since we allow the metzora to enter the Courtyard despite his tzaraas we also allow him to enter despite his seminal emission.

Rema<sup>1</sup> mentions different customs concerning the issue of whether women who are menstruating enter shul and daven. He adds, however, that even according to the strict position it is permitted for women who are menstruating to enter shul on Rosh Hashanah and Yom Kippur. The Magen Avrohom<sup>2</sup> adds that since they are permitted to enter shul they are also permitted to daven. The rationale for this ruling is based on Ulla's statement in our Gemara, namely, once we override one prohibition we can override others as well.

The Chasam Sofer<sup>3</sup> challenges the parallel. The case of the Gemara involves two different prohibitions; both a metzora and one who experienced a seminal emission are prohibited from entering the Courtyard, but there is only one act of entering into the Courtyard. Consequently it is understood that since we override the restriction against entering the courtyard for the metzora we override a second prohibition, one who experienced a seminal emission, with the same act. In the case of Magen Avrohom, on the other hand, entering the shul and davening are two different activities. Our Gemara does not indicate that once one prohibited activity is permitted a second activity will

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all other עריות involve overriding two prohibitions.

The Gemara answers that one may have thought that once we are removing prohibitions we can remove even multiple prohibitions.

An example is cited of the principle that once one prohibition is removed we can remove multiple prohibitions. ■

also be permitted.

Rav Yosef Chaim of Baghdad<sup>4</sup>, the Ben Ish Chai, suggests an answer to Chasam Sofer's challenge. He writes that the same prohibition, the tumah of being a niddah, restricts a menstruating woman from entering the shul and restricts her from davening. Therefore, once that restriction is lifted, to allow her to attend shul on Rosh Hashanah and Yom Kippur, she is also permitted to daven since she is davening in the same place at the same time she is permitted to sit there. Rav Ovadiah Yosef<sup>5</sup> cites an alternative resolution to Chasam Sofer's challenge. The reason to permit menstruating women into shul on Rosh Hashanah and Yom Kippur is that they would be embarrassed and saddened if they were barred from entering shul when everyone else is there. Along the same lines if they were restricted from davening when everyone else was davening there would be the same concern, therefore, once they are permitted to enter shul they are permitted to daven there as well. ■

1. רמ"א אר"ח סי' פ"ח סע' א

2. מג"א שם סק"ג

3. הגהותיו לשו"ע שם וע"ע בשו"ת חת"ס אר"ח סי' ס"ה

4. שו"ת רב פעלים אר"ח ח"א סי' כ"ג

5. שו"ת יביע אומר ח"ו יו"ד סי' מ"א ■

# STORIES Off the Daf

## Pocketing pennies

שדוחה עבודה ואין דוחה שבת

On today's daf we find that Shabbos is so stringent that even a מצוה מ"ז does not override it.

The Chofetz Chaim, ז"ל, was very emphatic about the importance of keeping Shabbos. He helped many people who had difficulty with understanding the absolute inviolability of this mitzvah to be able to put things into their true perspective.

Once, when the Chofetz Chaim was in Moscow to attend to yeshiva business, he heard about a certain observant Jew who owned a factory that unfortunately did not close down until several hours

into Shabbos and which began work again the following day while it was still daylight. When this wealthy factory owner came to greet him, the Chofetz Chaim related the following parable:

"A certain non-Jewish peasant would sell the sacks of grain he had grown to a Jewish wholesale merchant. The way they kept track of how much grain had been brought in was to fill the scale over and over again to its maximum capacity, as they marked a line on the wall to keep track of how many times the scale had been filled.

The scale held a total of sixteen kilograms, and when they multiplied this number by the number of lines on the wall, they would determine the exact weight of the grain being sold.

He continued, "One day, the peasant realized that if the Jew wanted to cheat

him, all he would need to do would be to erase some of the lines while he dragged in his sacks! So he insisted that they change their method; the Jew would give the peasant a small coin to hold after each scale-full.

The Jew readily agreed. However, as the coins passed into the peasant's hands, he foolishly looked on it as an opportunity to pocket a little spare change at the Jew's expense. Without thinking, the peasant cheated himself out of the value of several scales-worth of grain!

The Chofetz Chaim concluded, "Chazal tell us that in the merit of keeping Shabbos, Hashem blesses our endeavors. When one steals an hour or two from his Shabbos observance in order to make money, he is just like this foolish peasant. It's like pocketing pennies and throwing away thousands!" ■

