

OVERVIEW of the Daf

1) Clarifying the position of Rabanan (cont.)

The Gemara continues to explain the rationale behind the decree of Rabanan in the Mishnah.

Rava rules that if the first brother's wife received ma'amar and a get before the second brother died, his wife could do yibum but yibum may not be done to the first brother's widow.

According to an alternative version Rava ruled that even the first brother's wife could do yibum.

2) MISHNAH: The Mishnah rules that if two sisters were married to two brothers and the first brother died and then the wife of the second brother died the first widow remains prohibited.

3) Clarifying the Mishnah

The Gemara explains why our Mishnah was taught when it seemingly echoes the halacha taught in a previous Mishnah.

4) Doing yibum on one's wife's sister

A Baraisa presents a dispute between R' Yosi and R' Shimon whether one who does yibum to one's wife's sister violates two prohibitions, namely, marrying one's wife's sister and marrying a brother's wife, or one, the prohibition against marrying one's brother's wife.

A second Baraisa records R' Shimon as holding that the single prohibition violated is the prohibition against marrying one's wife's sister.

The Gemara resolves the contradiction by differentiating between a case where the brother who died married first and a case where the surviving brother married first.

R' Ashi explains why, according to R' Shimon, in the case where the deceased brother married first it is not permitted for the surviving brother to do yibum.

The Gemara questions whether R' Yosi follows the opinion that one prohibition can take effect on another prohibition.

R' Avahu suggests that R' Yosi maintains that one prohibition can take effect on another in a case where the second prohibition is more extensive.

This resolution is successfully challenged.

Rava suggests that R' Yosi meant that it is considered as if he violated two prohibitions even though he is only liable for one.

The Gemara explains the significance of being considered as if one violated two prohibitions.

5) Inclusive prohibitions איסור כולל

Three disputes between R' Chiya and bar Kappara concerning inclusive prohibitions are presented. ■

Distinctive INSIGHT

Three examples of the dispute of Rebbe Chiya and Bar Kapara

זר שאכל מליקה רבי חייא אומר חייב שתיים, בר קפרא אומר אין חייב אלא אחת

The Gemara brings a series of three disputes between Rebbe Chiyan and Bar Kapara which illustrate the concept of **איסור כולל**—whether a more inclusive prohibition can be applied and be added to a pre-existing prohibition.

The first case is that of non-kohen who performs the service in the Beis Hamikdash on Shabbos. Rebbe Chiya holds that he is liable for two prohibitions, for being a non-kohen who officiates and for violating Shabbos. Bar Kapara holds he is liable only for one sin, that of being a non-kohen who officiates.

The Gemara brings a second example of this dispute. A kohen who has a blemish officiates while he is ritually impure. Rebbe Chiya holds he is liable for each infringement, officiating while impure and while being blemished. Bar Kapara holds he is liable for one sin.

The Gemara then presents a third and final example of this dispute. A non-kohen eats the flesh of a bird of a chattas which was "slaughtered" by **מליקה**. Rebbe Chiya holds he is liable for two sins—a non-kohen who eats kodesh, and for eating flesh which was not slaughtered properly. Bar Kapara holds he is liable for one sin.

What is the purpose of illustrating this dispute in three different ways? Hagahos Rabbi Meir Horowitz notes that the first case is an example of **כרת** (violating Shabbos) being added upon a case of a non-kohen doing the service, which is liable for death from heaven (**מיתה בידי שמים**).

The next case illustrates the service of a blemished kohen who is liable for **מיתה בידי שמים** adds upon a **לאו**, the case of service while impure. Finally, the third case shows eating an improperly slaughtered bird, which is a **לאו**, being added upon another **לאו**, the case of a non-kohen eating from a chattas.

Accordingly, Rebbe Chiya who holds that he is liable for two sins, each case is increasingly more novel than the one preceding it. According to Bar Kapara, the person is liable for one sin in each case. Here, the style is **זו ואין צריך**—he is liable for one in the first case, and it could go without saying that he is only liable for one in the successive cases. ■

HALACHAH Highlight

Moving the body of a Jew buried next to a non-Jew

מאי נפקא מינה לקברו בין רשעים גמורים

What difference does it make? [The difference is that he will be] buried amongst the completely wicked.

Shulchan Aruch¹ rules, based on our Gemara, that one should not bury a wicked person near a righteous person. Over the course of history the question has come up what to do when one realizes that a righteous person is buried next to a wicked person. Rav Moshe Sofer², the Chasam Sofer writes that this is not a reason to exhume the body. Other Poskim³ suggest as a remedy to the situation that a partition should be erected between the two graves.

Based on this ruling that restricts burying a wicked person near a righteous person, Rav Moshe Feinstein⁴ was presented with the following inquiry. There was once a person who, due to Soviet law prohibiting the existence of a Jewish cemetery, was buried in a non-Jewish cemetery. When the deceased's family was given permission to leave they did not want to leave their relative behind in the non-Jewish cemetery nor could they obtain permission to exhume the body to take with them to America. They decided to remove the body from the grave, burn the remains and take the ashes with them. The question posed to Rav Feinstein was whether they made the correct choice.

Rav Feinstein writes that the question requires analysis since both issues are Biblical. On one hand there is a Biblical obligation to bury the deceased⁵ (and not cremate him) as indicated by the words, **כי קבור תקברנו** (because you should bury him). On the other hand the prohibition against burying a Jew with non-Jews is

REVIEW and Remember

1. Does a get following ma'amar permit the yevama to marry a stranger?
2. Explain **אין איסור חל על איסור**?
3. What is the concept of a more extensive prohibition **איסור מוסף**?
4. Explain the dispute between R' Chiya and Bar Kappara?

also a Biblical law, derived from Halacha L'Moshe M'Sinai⁶. It would seem, writes Rav Feinstein, that the obligation to bury the deceased is a greater obligation than the restriction against burying a Jew with a non-Jew. The reason is that burial provides a person with atonement and that atonement will take place even if one is buried next to someone wicked or a non-Jew. On the other hand, the restriction against burying a Jew next to a non-Jew or someone who is wicked relates to honoring the deceased and honoring the deceased is not as weighty as not having a burial. Therefore, Rav Feinstein concludes that they did not make the correct decision to remove the body and burn the remains which thereby precluded any further burial. ■

1. שו"ע יו"ד סי' שס"ב סע' ה'
2. שו"ת חת"ס יו"ד סי' ש"ל
3. שו"ת מנחת יצחק ח"ו סי' קל"ו, ושו"ת שבט הלוי ח"ז סי' קצ"ג
4. שו"ת אג"מ יו"ד ח"ד סי' נ"ו
5. גמ' סנהדרין מו
6. ע' שו"ת אג"מ הנ"ל ע"פ גמ' סנהדרין מ"ז ■

STORIES Off the Daf

"Rebbi Chiya Jumped In..."

קפץ רבי חייא ונשבע

In our Gemara we see that both Rebbi Chiya and Bar Kappara interjected and swore to each of their versions of what Rebbi had really taught. Rebbi Chiya swore that a non-kohen who served on Shabbos or in a state of ritual impurity transgresses only one sin, while Bar Kappara swore that he transgressed two sins simultaneously.

From their acts we can see the fervor of talmidei chachamim. They don't state what they believe to be true in a cold and detached way. They live for Torah, and (**כביכול**) just as a "true fan" of a sports team

evidences a great deal of excitement at his team's victories and a deep distress at its setbacks, so too does a true talmid chacham sometimes show what we would consider to be an unusual degree of passion for his beloved study.

Rav Eliezer Gordon, zt"l, was once passing the shul in Slobodka where he served as Rav when he overheard a dispute regarding a certain matter through the open window of the building. One student asked the other a challenging question and the other tried to answer, but the questioner was unsatisfied with the answer he received.

Immediately, the Rav dashed to the door to enter the shul so that he could take part in the discussion, but the door was locked. Without pausing for an in-

stant, the Rav jumped on the windowsill and leaped into the shul to join the heated debate, much to the shock and alarm of the two chavrusos!

Rav Shach, zt"l, would often find himself unable to sleep if he had an unresolved question. In a great state of agitation, he was known to sometimes spring from his bed to look up another source or to seek out another opinion. At odd hours he would try to speak out his question with another Gadol or with whoever was still in the beis midrash at whatever hour the question occurred to him. On at least one occasion, Rav Shach even stayed up all night, davened with the sunrise, and took the first bus to Yerushalayim so that he could place his query before the Brisker Rav, zt"l! ■

