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**Mishna**

And the following are the things which are to be buried (*because they are forbidden for benefit*): if a consecrated animal aborted a fetus, it (*the fetus – in cases where it is holy as well*) is to be buried; if a consecrated animal had an afterbirth, it (*the afterbirth*) is to be buried (*for we maintain that there can be no afterbirth without a fetus*); an ox which was condemned to be stoned (*for killing a person, or for committing an act of bestiality*); the calf whose neck was decapitated (*eglah arufah - the law is that upon finding a corpse, and being unable to solve the murder, the leaders of the city closest to the corpse are required to bring a calf to an untilled valley, decapitate it, wash their hands over it, and then they must recite a verse, declaring publicly that they did not kill the person*); the bird (*brought in connection with the purification*) of a *metzora* (*this refers to the bird which was slaughtered, which becomes forbidden for benefit, but the other bird, which was sent away, is permitted for consumption*); the hair of a *nazir* (*who became tamei and had to shave before commencing a new count of nezirus; the hair of a nazir tahor, however, is burned under the pot where his shelamim cooked*); the firstborn donkey (*which was not redeemed with a sheep or goat is decapitated*); a mixture of meat (*cooked*) with milk; and *chullin* which were slaughtered in the Temple Courtyard.

Rabbi Shimon, however says: *Chullin* which were slaughtered in the Temple Courtyard are to be burned (*for if we say that they are buried, there is a concern that since one cannot tell whether they are offerings or chullin, it may be said that in all cases of disqualified offerings it is permissible to bury them, whereas the law is that disqualified offerings are to be burned*), and likewise, an animal a *chayah* (*undomesticated animal, such as a deer*) which was slaughtered in the Temple Courtyard (*is also burned; for although one cannot mistake such an animal for a consecrated animal, as an undomesticated animal cannot be consecrated for the altar, we still burn it, on account of an animal of chullin which is burned in similar circumstances*).

And the following are the items which are to be burned: *Chametz* (*leavened bread*) on *Pesach* is to be burned; *terumah* which is *tamei*; *orlah* (*the fruit that grows from a tree; the first three years of its life, they are forbidden for all benefit*) and *kilayim* of the vineyard – (*the prohibition against planting together different species of vegetables, fruit or seeds; kilayim of a vineyard is forbidden for all benefit*). [*Regarding orlah and kilayim*] that which it is customary to burn (*solids*) is burned, and that which it is customary to bury (*liquids*) is buried. We may kindle a fire with the bread and oil of *terumah* which is *tamei* (*for it is not forbidden for benefit*).

All offerings which were slaughtered with the intention of eating them beyond their allotted time or outside of their allotted place are to be burned.

An *asham taluy* (*korban brought when one is unsure if he committed a sin that is subject to a chatas*) is to be burned (*in a case where it was slaughtered, but before the sprinkling of the blood it became known to him that he had not sinned; it is therefore like chullin which was slaughtered in the Courtyard, where the law is that it burned; if, however, he did not become aware that he had not sinned, it may be eaten, as is the case with other ashram offerings*). Rabbi Yehudah, however, says: It is to be buried.

A bird *chatas* that is brought for a doubt (*concerning a case where the fetus, of a woman who had miscarried, was of such a nature as to require her to bring the usual chatas after childbirth; since the chatas of a woman who gives birth is a bird, she can bring it even in a case of uncertainty, as it does not matter if the sprinkling is performed on behalf of a doubtful case, since in any case the chatas is not eaten for fear that the discharge was not a genuine fetus and therefore the bird would be chullin; this would render it neveilah, for a melikah - the Kohen “slaughters” the bird by piercing the back of the bird’s neck with his thumbnail - on a chullin bird is not a proper slaughtering, and it therefore must be burned*). Rabbi Yehudah, however, says: It is cast into the stream (*which flows through the Courtyard; due to the bird’s softness, it disintegrates and the water washes it away*).



All things that must be buried may not be burned, and all things which require burning may not be buried.

Rabbi Yehudah says: If one wishes to be stringent with himself to burn things which are meant to be buried, he is permitted to do so. They said to him: One is not allowed to change. (33b – 34a)

### **Burning vs. Burial**

Tovi asked the following contradiction to Rav Nachman: We have learned in our *Mishna*: The hair of a *nazir* is buried. This, however, contradicts the following *Mishna* (in *Orlah*): If one weaves the size of a *sit* (the distance between the tip of the thumb and that of the index finger when spread apart) from the wool of a *bechor* into a garment, the garment is to be burned (for one cannot derive benefit from a consecrated animal). If one weaves from the hair of a *nazir* or from the hair of a firstborn donkey into a sack, the sack is to be burned (whereas our *Mishna* ruled that the hair of a *nazir* should be buried)!?

Rav Nachman answered him: Here, we are dealing with a *nazir* who is *tamei* (whose hair is buried), and there, we are dealing with a *nazir* who is *tahor* (whose hair is burned underneath the kettle in which his *shelamim* offering is being cooked).

Tovi said back to him: You have resolved the contradiction between the two cases of *nazir*, but you have not accounted for the difference between the teaching concerning the firstborn of a donkey in our *Mishna* and the teaching concerning the firstborn of a donkey mentioned in the other!?

Rav Nachman was at first silent and said nothing at all to him, but then he said to him: Have you heard something with reference to this matter? Tovi replied to him: Rav Sheishes said that here (in *Orlah*), we are dealing with a sack (where one wove the hair of a *nazir* or of the firstborn of a donkey into a sack; now if the sack is only buried, someone may come and derive benefit from it, seeing that it does not disintegrate until after some time), and here (in our *Mishna*), we are dealing with the hair itself (which only needs to be buried, and it makes no difference if the *nazir* is *tamei* or *tahor*).

The *Gemora* notes that it has also been stated: Rabbi Yosi the son of Rabbi Chanina said: Here (in *Orlah*), we are dealing with a sack, and here (in our *Mishna*), we are dealing with the hair itself. Rabbi Elozar says: Here (in *Orlah*), we are dealing with a *nazir* who is *tahor*, and here (in our *Mishna*), we are dealing with a *nazir* who is *tamei*.

Tovi asked Rav Nachman: Why shouldn't the forbidden hair (which is woven into the sackcloth) be nullified in the majority portion of the sack?

Rav Pappa answered: The *Mishna* is referring to a case where he wove the figure of a bird into the cloth (and due to its significance it cannot become nullified).

The *Gemora* asks: If he indeed wove the figure of a bird (with the forbidden hair), why doesn't he simply pull out the forbidden hair?

Rabbi Yirmiyah said: The *Mishna* there represents the opinion of Rabbi Yehudah, who holds that if one wishes to be stringent with himself so as to burn things which are meant to be buried, he is permitted to do so.

Tovi asked him: We asked why you shouldn't pull out the forbidden hair from the cloth, and you explain the *Mishna* as representing the view of Rabbi Yehudah!?! [Why don't they remove the bird figure, and the entire cloth would be permitted? There would be no necessity for burning it or for burial!?!]

Rabbi Yirmiyah explains: I meant that if it is possible to remove the forbidden hair, it is preferable, but if not, the cited *Mishna* may be explained as representing the opinion of Rabbi Yehudah, who says that if he wishes to be stringent with himself so as to burn things which only require to be buried, he is permitted to do so.

The *Mishna* had stated: *Chametz* (leavened bread) on *Pesach* is to be burned.

The *Gemora* notes that the *Tanna* of our *Mishna* states here anonymously the opinion of Rabbi Yehudah, who said that the removal of *chametz* is only through burning.

The *Gemora* cites a *braisa*: Rabbi Yehudah said: A *chata* of a bird which is brought in a situation of a doubt is cast into the stream (which flows through the Courtyard). He cuts it, limb by limb, and throws it into the stream and it rolls and goes down to the Valley of Kidron.

The *Mishna* had stated: All things that must be buried may not be burned, and all things which require burning may not be buried.

The *Gemora* explains the reason for this: It is because the ashes of things which are buried are forbidden for benefit, whereas the ashes

of things which must be burned are permitted for benefit. [If therefore he burns things which are to be buried, he might benefit from the ashes which are forbidden. See Tosfos for the explanation of the Gemora's distinction.]

The Gemora asks: But are the ashes of things which are buried forbidden for benefit? Has it not been taught in a *braisa*: The blood of a *niddah* (a menstruant woman) and the flesh of a corpse which has crumbled (and became dust) are *tahor* (as long as they are less than a ladleful)? Now, does this not mean 'tahir' and permitted for benefit (although the dust – ash – of the corpse must be buried)?

The Gemora answers: No! It means 'tahir,' but it is forbidden for benefit.

Rav Pinchas asked from the following *braisa*: The crop and the feathers of a bird *olah* whose blood has been squeezed (on the altar) are not subject to the law of *me'ilah*. Now, does this not mean that they are not subject to the law of *me'ilah* and are permitted for benefit? [The Kohen cuts out the crop and surrounding feathers of the bird and throws them to the ash-pile near the side of the altar – the same place where the ashes from the altar were thrown daily. They miraculously absorbed into the ground – indicating that they are to be buried. Seemingly, they turn into dust, and we infer from the *braisa* that they are permitted for benefit.]

The Gemora answers: No; it means that they are not subject to the law of *me'ilah*, but are forbidden for benefit.

[The Gemora had explained that the reason why we cannot change from burial to burning is because if one would burn things which are to be buried, he might benefit from the ashes which are forbidden.] The Gemora asks: But are the ashes of consecrated things permitted for benefit? Has it not been taught in a *braisa*: The ashes of all things which must be burned are permitted for benefit, except for the ashes of an *asheirah* tree (used for idolatry), and the ashes of consecrated objects are always forbidden. [The Gemora's question is: now that the ashes of some things which must be burned are forbidden, people will not confuse one with the other, even if they deviate from one to the other!?!]

The Gemora interjects that the *Tanna* in the *braisa* here does not state both cases (of *asheirah* and consecrated items) together, because *asheirah* can be nullified by an idolater, whereas consecrated objects can never be nullified.

Rami bar Chama answers: The *braisa* (is not discussing disqualified offerings which must be burned, but rather it) refers to a case where a fire broke out by itself among consecrated wood, and seeing that there was nobody who could be guilty of *me'ilah* for the ashes to become *chullin*, the ashes remain forbidden. [Generally, through an act of *me'ilah*, consecrated items become deconsecrated. Here, where the fire broke out by itself, the wood and its ash remain forbidden.]

Rav Shemaya answers: The *braisa* refers to the ashes of the *terumas hadeshen* (the ashes removed from the altar daily), and which are always forbidden for benefit, for it has been taught in a *braisa*: And he shall put it, meaning 'gently'; and he shall put it, meaning 'all of it' (the entire handful); and he shall put it, meaning 'he must not scatter it' (for it remains forbidden). (34a)

WE WILL RETURN TO YOU, YEISH B'KODSHEI MIZBE'ACH  
AND TRACTATE TEMURAH IS CONCLUDED

## INSIGHTS TO THE DAF

### *The halachah of the ashes from burning chametz*

A person who found *chametz* during Pesach must not derive benefit therefrom and must eliminate it immediately. What about the ashes resulting from burning the *chametz*? Is it forbidden to derive benefit from them or perhaps the *issur hanaah* disappears from them? The *Tur* states that the answer depends on the difference of opinions among the Tana'im in our mishnah (see Gemara 34a): "But to derive benefit from its ashes after he burnt it, this depends on the difference of opinions between Rabbi Yehudah and the Rabanan. According to Rabbi Yehudah, that *chametz* must be burnt, the ashes are permitted as the halacha is that the ashes of anything that must be burnt are permitted but according to the Rabanan (that *chametz* may be crumbled and thrown to the wind), the ashes are forbidden, as the ashes of anything to be buried are forbidden" (*Tur O.C.* 445). Let us explain the issue.

The Torah forbids us to derive benefit from many things. Our *sugya* explains that the ashes of those which must be burnt are permitted but the ashes of those which must be buried are forbidden. Tosfos explain the difference: concerning those which must be burnt, their *din* has been observed – i.e., the reason that caused us not to derive benefit from them imposes the obligation to burn them and once their mitzvah has been observed, the *issur hanaah* disappears. However, regarding those which must be buried, this is only to conceal them lest



they cause an obstacle of sin but their burial is not their mitzvah and therefore neither burning nor burial can remove the *issur hanaah*.

Rabbi Yehudah and the *Chachamim* disagreed about *chametz* found during Pesach. According to Rabbi Yehudah, it should be burnt and according to the *Chachamim*, it may also be crumbled and thrown to the wind. Therefore the *Tur* concluded that according to Rabbi Yehudah, that it must be burnt, after it is burnt the *issur hanaah* disappears but according to the *Chachamim*, that it doesn't have to be burnt, *chametz* is not included with "those to be burnt", where their burning permits the *issur hanaah*, but is included with those *issurei hanaah* which remain forbidden even after their elimination.

**How a difference came about between two sorts of burning:** HaGaon Rabbi Akiva Eiger zt"l posed a serious question on the *Tur*'s conclusion. There's no doubt that Tosfos did not intend that the mitzvah of **burning** – the heat, flames and smoke – eliminates the *issur hanaah* but that regarding any forbidden object where there is a mitzvah to **eliminate its existence** entirely, its prohibition disappears with its elimination whereas regarding objects which must be buried, their prohibition does not disappear. As such, both Rabbi Yehudah and the *Chachamim* agree that *chametz* must be eliminated entirely: Rabbi Yehudah requires burning whereas *Chachamim* say that *chametz* can also be entirely eliminated by crumbling it and throwing it to the wind. Thus both according to Rabbi Yehudah and the *Chachamim*, one can observe the mitzvah by burning the *chametz*. What difference, then, did the *Tur* find between Rabbi Yehudah's burning and the *Chachamim*'s burning such that he determined that according to Rabbi Yehudah, the prohibition disappears and according to the *Chachamim*, the prohibition doesn't disappear? (Indeed, many Acharonim hold that according to Rambam, there's no difference between the *Chachamim*'s opinion and Rabbi Yehudah's and according to both, after burning the *chametz*, the ashes are permitted). This great question was brilliantly solved by HaGaon Rabbi Chayim of Brisk zt"l.

**The mitzvah does not eliminate the prohibition like a magic wand:** Let us examine the reason for permitting the *issur hanaah* from an object after the mitzvah to burn it has been observed. We should not regard the situation superficially: the mitzvah has been observed – the prohibition has disappeared. Not at all. For example, a person unwittingly cooked meat with milk. It is forbidden to derive benefit from them but there's no mitzvah to eliminate them. In his great distress, he vowed that he would burn them (see Vol. 260, *ibid*, that burning the mixture is not necessarily considered cooking) and observed his vow. By burning them he observes his vow. Just because he performed a mitzvah by burning them, does that suffice to permit

the *issur hanaah*? Everyone understands that that is not so, that there's no connection between his mitzvah of burning and the forbidden object. Only if the mitzvah of the object itself is to be burnt, it is as if its mission has been accomplished and the prohibition has been permitted.

**Burning as a mitzvah and as a means:** Rabbi Chayim says that therefore Rabbi Yehudah and the *Chachamim* didn't only disagree about the ways to eliminate the *chametz* but they maintained a mighty dispute: Is the "**mitzvah**" of *chametz* found in someone's domain during Pesach that it must be eliminated or perhaps it is a mitzvah to eliminate it so that there won't be *chametz* in a Jew's domain? In other words, is this a mitzvah pertaining to an object (*cheftza*) – to the *chametz* – or a mitzvah applying to the person (*gavra*)? According to Rabbi Yehudah, this is the mitzvah concerning this *chametz*. This is its halachah, that it must be burnt, and as such, once this has been accomplished, the *issur hanaah* disappears. According to the *Chachamim*, burning – just like crumbling etc. – is only a means to prevent the prohibition of *chametz* from its owner but has no independent essence, which has the power to permit the *issur hanaah*. Therefore the *Tur* wrote that the ashes of burnt *chametz* are permitted according to Rabbi Yehudah and forbidden according to the *Chachamim* (*Chidushei Rabeinu Chayim HaLevi, Hilchos Chametz Umatzah* 1:3).

## DAILY MASHAL

### *Ashes for Sheva' Berachos*

HaGaon Rav Chayim of Brisk zt"l was sitting with a few *talmidei chachamim* and explaining a certain Tosfos. One *rav* responded, "I can't accept explanations and differences. I can only accept the simple meaning."

Rav Chayim offered him a parable: "Concerning the ashes of forbidden things that must be burnt, which are permitted, one explanation in the Rishonim is that the ashes are a 'new appearance' (*panim chadashos*). According to you, that we only have the simple meaning, we now have a new halachah: To pronounce the *sheva' berachos* at a chasan's meal, we need a guest who didn't attend any previous *sheva' berachos*, known as *panim chadashos*. If we don't have such a guest, we can bring some ashes..." (*Ishim Veshitos*).