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May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

The Gemora cites a braisa: If a woman miscarried a shaped hand or a shaped foot, she is subject to the *tumah* of birth (and since it is unknown whether the fetus was that of a male or a female, the restrictions of both are imposed upon her), and there is no need to consider the possibility that it might have come from an undeveloped body (which would exempt her from the *tumah* of childbirth).

Both Rav Chisda and Rabbah bar Rav Huna ruled: She is not allowed the days of taharah. [After childbirth, there are initial days of *tumah* (the amount depends – seven days for a male, and fourteen days for a female), and then there are days of taharah (thirty-three for a male, and sixty-six for a female); any discharge of blood during those days is ruled to be *tahor*.] What is the reason for this? It is because there is a possibility that her ‘giving birth’ took place over a long period of time (and, since the days of *tumah*/taharah begin when the greater part of the birth took place – that might have occurred already, and by the time the hand or foot in question was aborted, the prescribed period of taharah may have passed).

Rav Yosef asked from a Mishna: If a woman miscarried and it is unknown what gender the fetus was, she must observe (her periods of *tumah* and taharah) for both a male child and a female child. Now, if it is to be assumed that in any such case there is a possibility that her ‘giving birth’ took place over a long period of time, why was it not also stated that she must observe the laws of niddah (which would indicate that we do not give her the days of taharah)?

Abaye answered: If ‘the laws of niddah’ would have been stated, it might have been thought that she brings a sacrifice which may not be eaten (out of uncertainty if it was regarded as a birth or not; and in this case, there is no doubt about that); therefore we were informed that it may be eaten (and in truth, she does observe the laws of niddah, and we do not give her the days of taharah).

Rav Huna said: If a fetus put forth its hand and then withdrew it, its mother is *tamei* on account of childbirth; for it is written: And it happened that when she gave birth, one put out a hand.

Rav Yehudah asked from a braisa: If a fetus put forth its hand, its mother does not need to be concerned for anything!?

Rav Nachman answered: This was explained to me by Rav Huna himself that the woman must indeed consider the possibility that it (the extension of the hand) is a valid birth, but we do not give her the days of taharah unless the greater part of the fetus has emerged.

The Gemora asks: But the braisa explicitly stated that its mother does not need to be concerned for anything?

Abaye answers: Biblically, she does not need to be concerned for anything, but Rabbinically, she must take into consideration the possibility that it (the extension of the hand) is a valid birth.

The Gemora asks: But didn’t he quote a Scriptural verse?

The Gemora answers: The restriction is Rabbinical, and the Scriptural verse is merely used for support.

If a woman miscarries a *tumtum* (where a thick membrane covers its genitals, and therefore the gender is not known) or *androgynous* (a hermaphrodite – one that has both male and female genitals), she must observe the impurity and purity processes of both a male and female. If she miscarried a *tumtum* and a male, or to an *androgynous* and a male, she must also observe the impurity and purity processes of both a male and female. If she miscarried a *tumtum* and a female, or an *androgynous* and a female, she observes the impurity and purity processes for a female only. [This is because even if the *tumtum* were a male, the *tumah* period prescribed for the birth of a male (seven days) is completely overlapped by the longer one prescribed for the birth of a female (fourteen days); and the same applies also to the *taharah* period (thirty-three days for a male compared to sixty-six for a female).]

If the fetus emerged in pieces or in a breech position, it is deemed 'born' as soon as its greater part has emerged. If it emerged in the normal way, it is not deemed 'born' until the greater part of its head has emerged. And what is meant by the emergence of the greater part of its head? It means the emergence of its forehead.

The Gemora asks: Now that the *Mishna* has ruled that for a *tumtum* alone or for an *androgynous* alone, she must observe the impurity and purity processes of both a male and female, why should it again be necessary to state that the same law applies where she gave birth to a *tumtum* and a male or to an *androgynous* and a male?

The Gemora answers: This was necessary, as it might have been suggested that since Rabbi Yitzchak had stated that if the woman emits her seed first she bears a male, and if the man emits his seed first she bears a female, it should be assumed then that since one of them is a male the other also is a male; therefore we were informed otherwise (that no such assumption is made), since it might equally be assumed

that both emitted their seed simultaneously, these one resulting in a male and the other in a female.

Rav Nachman said in the name of Rav: If a *tumtum* or an *androgynous* observed a white (like substance, similar to semen) or a red (substance, similar to blood) discharge, they are not liable for the obligation of an offering for entering the Sanctuary (for we are uncertain if they are *tamei* or not), nor is *terumah* to be burned on their account. [A blood discharge only renders a female *tamei*, and a semen discharge only renders a male *tamei*.] If they observed a simultaneous discharge of white and red, they are not liable for the obligation of an offering for entering the Sanctuary (even though we are certain that he is *tamei* – either as a *ba'al keri* or as a *niddah*), but *terumah* must be burned on their account; for it is written: Both male and female you shall send out; only a confirmed male or a confirmed female shall be sent out, but not a *tumtum* or an *androgynous*.

The Gemora suggests that the following *braisa* provides support for his view, for it was taught in a *braisa*: If a *tumtum* or an *androgynous* observed a white or a red discharge, they are not liable for the obligation of an offering for entering the Sanctuary (for we are uncertain if they are *tamei* or not), nor is *terumah* to be burned on their account. If they observed a simultaneous discharge of white and red, they are not liable for the obligation of an offering for entering the Sanctuary (even though we are certain that he is *tamei* – either as a *ba'al keri* or as a *niddah*), but *terumah* must be burned on their account. What must be the reason for this? Is it not because it is written: Both male and female you shall send out; only a confirmed male or a confirmed female shall be sent out, but not a *tumtum* or an *androgynous*?

Ulla said: No (this might not be the explanation); this may represent the view of Rabbi Eliezer, for we learned in a *Mishna*: Rabbi Eliezer says: A *sheretz*... and it was concealed from him. He is liable (to bring the *olah v'yored*) if the *sheretz* was hidden from him, but he is not liable if the Temple is hidden from him. Rabbi Akiva says: And it was concealed from

him that he is *tamei*. He is liable if it was hidden from him that he was *tamei*, but he is not liable if the Temple was hidden from him. And the *Gemora* had asked: What is the difference between these opinions? Chizkiyah answered: The difference is becoming impure through a crawling creature or *neveilah* (*improperly slaughtered animal*). Rabbi Eliezer says one must know if he became impure through a crawling creature or a *neveilah*. Rabbi Akiva says: He does not have to know how he became impure, but rather that he became impure. Now, didn't Rabbi Eliezer state there that it is necessary that a person should know whether he contracted *tumah* through a *sheretz* or a *neveilah*? Well, here then as well, it is necessary that the person should know whether he became *tamei* on account of the white discharge or an account of the red one; but according to Rabbi Akiva who stated that a person is liable for the obligation of an offering on account of *tumah*, an offering would be incurred here also on account of the *tumah*.

The *Gemora* asks: But, according to Rav, why is it that they are not liable to an offering for entering the Sanctuary? It is because it is written: *Both male and female you shall send out*, which implies that only a confirmed male and a confirmed female must be sent out, but not a *tumtum* or an *androgynous*. But, if so, *terumah* also should not be burned, since it is written: *And of a person that had his discharge, whether it be a male, or a female*, which implies - does it not, that only a confirmed male and a confirmed female are subject to the restrictions, but not a *tumtum* or an *androgynous*?

The *Gemora* answers: That verse is required for an exposition made by Rabbi Yitzchak, for Rabbi Yitzchak stated: *Whether it be a male* includes a male *metzora* regarding his secretions (*that they are tamei like that of a zav*), and *or a female* includes a female *metzora* regarding her secretions. (28a – 28b)

DAILY MASHAL

The ashes of a corpse

After the Holocaust many halachic questions arose, including the following chilling quandary. A survivor said, "I passed through Kovel in Wohlin, a town once populated by many Jews. Here lays desolate the deserted court of the Trisker Rebbe, to whom Chasidim flocked from all parts of Wohlin and Poland. The *beis midrash* stands locked. When I looked through the window, I was horrified: The blood-soaked walls proved that here the enemy gathered the community of Kovel and here they sanctified the name of Heaven and accepted the judgment.

"And suddenly a chill came over me as a sacred terror passed through all my limbs. In the northeast corner I saw written in blood *nekom nikmas Hashem* 'Avenge Hashem's vengeance'. The last word was left unfinished. The writer died in the middle of writing with the blood of his heart his last will and testament. I stood petrified as I whispered, '*Ribono shel 'olam*, avenge the vengeance of the spilt blood of Your servants.' Suddenly someone touched my shoulder. A Jew stood there, the only Jew left in Kovel, alone and bereaved, and while talking with him he asked me the following question.

INSIGHTS TO THE DAF

Taking the ashes of those killed for burial in Eretz Israel: "As he plans to leave the town where his whole family was killed, he wants to take some remains from the pile of ashes of the holy martyrs who were subsequently burnt in the courtyard of the *beis midrash*, his family amongst them, and bring the ashes to Eretz Israel but since he's a *kohen*, he's in doubt if he's allowed to do so" (the question was cited in Responsa *Piskei 'Uziel, Sheeilos HaZeman*, 39).

The answer to this question is apparently clear. An explicit mishnah (Oholos 2:2) is cited in our *sugya*, which says that

the ashes of the deceased do **not** render impurity, and the halachah was so ruled (Rambam, *Hilchos Tumas HaMeis* 3:10; *Sheeilas Ya'vetz*, II, 169, cited in *Pischei Teshuvah*, Y.D. 369, S.K. 2), that a *kohen* may bury the ashes of a deceased even though there are non-kohanim who could do it, as the ashes of the deceased do not render impurity.

The ashes of an entire body render impurity: However, our Gemara explains that the matter is not simple at all and the Ritva and other Rishonim wrote that as for the halachah, the ashes of an **entire** corpse render impurity whereas the ashes of part of a corpse do not. HaGaon Rav Y. Fishoff therefore wrote in his *Ta'am Veda'as* (on Rambam, *ibid*) that in our case, the *kohen* must refrain from burying the deceased and allow non-kohanim to do so. (All this pertains if there is no skeleton; if there is a skeleton form, the ashes render impurity in every instance).

Rambam: "These ashes are on the level of a body?" However, Rambam's perplexing words bothered a number of *talmidei chachamim*, as he wrote in his commentary on the Mishnah (*ibid*): "The Chachamim put these ashes (of the deceased) on the same level as the body, because when it was burnt, it ceased to be defined halachically as a *meiss*." The last part of his statement is well understood: he who is burnt has no body at all and therefore is not a *meiss* and does not render impurity. However, what is Rambam's intention when he says "The Chachamim put these ashes on the same level as the body"? It seems to contradict our understanding that the ashes are not considered a *meiss* while in these words Rambam gave the substance of a body to the ashes!

Many Acharonim tried to explain Rambam's statement, including the author of *Tzafnas Pa'neiach* (2nd edition, p. 22, 111, etc.), who claimed that the ashes of a dead person **do** render impurity because *tuma* does not **dispel** when a corpse is burnt whereas the mishnah only eliminated impurity from the ashes of someone burnt alive. This is Rambam's intention: "The Chachamim put these ashes on the same level as the (live) body because when he was burnt, he was

not defined halachically as a *meiss*." In other words, he never became a dead body and therefore no impurity applied to him.

However, the author of *Seridei Eish* zt"l wondered extremely (Respona, I, 181). First of all, it cannot be that a person's whole body would become ashes while still alive, as while being burnt, he dies and if so, there's no possibility of ashes of a *meiss* not rendering impurity (members of our *beis midrash* remarked that a severed limb also renders impurity; therefore, we can explain the mishnah as pertaining to a live person who had one of his limbs burnt till it became ashes and the mishnah rules that these ashes do not render impurity). In addition, he proves from our *sugya* that the ashes of the deceased do not render impurity. Our Gemara explains that there are two possibilities for a corpse to leave the doorway of a house without the impurity passing through the entrance: (1) if his limbs become separated such that no part has the amount of a *kezayis* required for impurity; (2) if the deceased is burnt. We thus see that the ashes of a burnt corpse do not render impurity.

The "correction" that reversed the explanation: However, the author of *Melamed Leho'il* (Respona, Y.D. 114) contended that the error stems from the translation of Rambam's statement from Arabic to Hebrew. The original stated *segif*, meaning "lime". In other words, Rambam wrote that the ashes are on the same level as lime, which does not render impurity and the translator wrote *haguf* ("the body") instead of *hasid* - lime. Rav Kapach's translation of Rambam's commentary on the Mishnah appeared years later and he translates the term as meaning "gypsum" (lime) and thus there's no question.