A corpse with no one to bury it ([met mitzva]) – This is a corpse in this state may not be moved. Rather, the corpse must be taken care of by the relatives of the deceased. Even if the deceased had no relatives, Rabbinic law states that if the deceased was married, he or she is obligated to become impure for the sake of the obligation of fixing the corpse. This is known as the Sotah, and it is a mitzva that is incumbent upon the relative of the deceased to bury the corpse. If one calls others to help with the burial, it is considered as if the relative had already done so. This is known as the rule of the “chief mourner.”

HALAKHA

Which is a [met mitzva] – A corpse that cannot be used by the deceased’s relatives. If one calls others to help with the burial, it is considered as if the relative had already done so. This is known as the rule of the “chief mourner.”

BACKGROUND

A corpse with no one to bury it ([met mitzva]) – A corpse in this state may not be moved. Rather, the corpse must be taken care of by the relatives of the deceased. Even if the deceased had no relatives, Rabbinic law states that if the deceased was married, he or she is obligated to become impure for the sake of the obligation of fixing the corpse. This is known as the Sotah, and it is a mitzva that is incumbent upon the relative of the deceased to bury the corpse. If one calls others to help with the burial, it is considered as if the relative had already done so. This is known as the rule of the “chief mourner.”

NOTES

If one calls others to help with the burial, it is considered as if the relative had already done so. This is known as the rule of the “chief mourner.”

If he did so unwittingly his payment is payment – There is a dispute among the early authorities with regard to the meaning of this statement (see Tosafot). Most commentators maintain that the terms unwitting and intentional refer solely to the payment, whereas the eating itself was unwitting, as whenever a non-priest eats teruma by accident his repayment to the priest, both the principal and the added fifth, is consecrated as teruma. However, some explain that the issue here is whether he ate the teruma unwittingly or intentionally (Riva). If a non-priest ate teruma intentionally, then even though he must compensate the priest, like anyone who damages the property of another, the payment is not consecrated. According to this second opinion, the Gemara’s comment that he should be blessed if he repays him with impure, regular produce is understandable, as this food is fit for a priest. However, according to Rashi’s interpretation this is difficult, as noted by Rashi himself. If this produce becomes impure teruma upon his repayment, why is he praised? Tosafot and other early authorities explain that he is worthy of a blessing because he himself forfeits more than the value of impure teruma. Others state, as explained in the commentary to the text, that when he set aside this produce it was suitable for the priest, and it is only after it reached the latter’s possession that it became unfit for him (Ritva).
And we discussed this baraita with regard to the following question: Why is it that according to the opinion of Rabbi Meir, when the non-priest pays the priest with ritually impure, ordinary food intentionally, his payment is not considered payment? On the contrary, the non-priest should be blessed, as he ate something of his that is not fit for him even during the priest’s days of impurity, as impure teruma must be burned, and he pays him with impure, ordinary food, which is something that is fit for him during his days of impurity. Admittedly, once he gives it to him, the produce becomes impure teruma, but at the time of his payment the food was available to be eaten.

And Rava said, and some say this statement unattributed to any particular Sage: The baraita is incomplete, and this is what it is teaching: If he ate ritually impure teruma, he pays with anything, even impure, non-sacred produce. If he ate pure teruma he pays with pure, non-sacred food, and if he paid with impure, non-sacred produce, the Sages disagreed about this case: Sumakhos says in the name of Rabbi Meir: If done unwittingly, his payment is payment; if intentionally, his payment is not payment. And the Rabbis say: Whether unwittingly or intentionally, his payment is payment, and he must go back and pay with pure, non-sacred produce.

The Gemara returns to the issue at hand, whether the court can stipulate to uproot something prohibited by Torah law. And here it is a case where by Torah law the produce he gave him is proper payment, and is fully owned by the priest, to the extent that if a priest betroths a woman with them, the betrothal with her is valid. And yet the Sages said, i.e., it is a rabbinic law, according to Sumakhos in the name of Rabbi Meir, that his payment is not payment. And this means that we permit a married woman to all men, as she is betrothed by Torah law, but in practice she is treated as an unmarried woman. Evidently, a rabbinical prohibition overrides a betrothal that is effective by Torah law.

The Gemara answers: What is the meaning of the phrase: His payment is not payment, that Rabbi Meir said? It means that he is required to go back and pay with ritually pure, non-sacred produce. However, the food he initially gave is also consecrated. The Gemara asks: If so, the opinion of Sumakhos is the same as that of the Rabbis.

The Gemara answers that Rav Aha, son of Rav Ika, said: The practical difference between them is whether they decreed against an unwitting sinner due to an intentional sinner. According to Sumakhos, if he unwittingly paid with impure, non-sacred produce his payment is valid and the Sages did not penalize him with a second payment, whereas the Rabbis maintain that even if his sin was accidental he must repay the priest, as the Sages issue the decree in a case of a mistaken transgression due to the case of one who sinned intentionally.

The Gemara further suggests: Come and hear another proof. With regard to blood that became ritually impure, and a priest sprinkled it on the altar, the following distinction applies: If he did so unwittingly, the offering is accepted. If he sprinkled the blood intentionally, the offering is not accepted.

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**HALAKHA**

If he ate ritually impure teruma – בַּמַּדְּּקַּדְּקַדְּקָי: If a non-priest ate ritually impure teruma he must give the priest either pure or impure non-sacred food (Rambam Sefer Zeraim, Hilkhos Terumat 10:20).

If he ate pure teruma – בִּרְפָּא: A non-priest who ate pure teruma must repay the priest with non-sacred, pure food. If he gave him non-sacred, impure produce, whether unwittingly or intentionally, his payment is valid, but he must pay him again with non-sacred, pure food. The halakha is in accordance with the opinion of Rava, who says that the Sages penalized one who acted unwittingly due to one who sinned intentionally (Rambam Sefer Zeraim, Hilkhos Terumat 10:20).

Blood that became ritually impure and a priest sprinkled it on the altar intentionally, the offering does not facilitate atonement; if this was performed unwittingly it does facilitate atonement. Some commentators resolve the apparent contradiction in the rulings of the Rambam by explaining that the frontplate atones only for bodily impurities ab initio, but after the fact it also atones for the impurity of the food itself (Rambam Sefer Avoda, Hilkhos Korbanot, Sefer Korbanot, Hilkhos Korban Pesah 4:2 and Lehem Mishna there).
To wrap ourselves with ritual fringes, as this is simply
Yet others write that the Torah does not in fact render it

Rabbis Yosei bar Hanina said that there is no proof from here, as what is

The Gemara raises a difficulty: Ultimately, the Torah mitzva of eating

The Gemara raises a difficulty: Ultimately, the Torah mitzva of eating the meat of this offering is uprooted, and it is written: “And they shall eat those things with which atonement was made” (Exodus 29:33). This verse teaches that the priests eat the offering and the owner thereby gains atonement. He said to him: The case of sit and refrain from action [shev ve’al ta’asek] is different. In other words, the Sages can uproot a Torah mitzva by instructing one to sit and refrain from action, i.e., to remain passive and do nothing. They cannot, however, uproot a mitzva by telling him to perform an action.

And I was likewise going to raise a question from the case of a circumcision knife, which the Sages decreed may not be carried on Shabbat, despite the fact that this entails the neglect of a Torah mitzva. And I also wanted to raise a question from the case of a linen cloak, on which the Sages did not allow one to place ritual fringes made of wool. This is a decree that was issued lest he do the same with a garment worn only at night, which is exempt from fringes, and therefore this would be a mixture of wool and linen that is forbidden, although this means that he is unable to fulfill the mitzva of ritual fringes.

And likewise I wanted to mention a difficulty from the case of the lambs sacrificed on Shavuot. When the festival of Shavuot occurs on Shabbat, the Sages rendered it prohibited to sprinkle the blood of its sacrificial lambs if the offerings had not been slaughtered with the proper intention, despite the fact that the sprinkling itself is not prohibited by Torah law. And similarly, there is a difficulty with regard to the halakha of the shefar, which is sounded on Rosh HaShana, and yet the Sages rendered it prohibited for it to be blown on Shabbat, lest one carry it four cubits in the public domain.
Sit and refrain from action is not considered uprooting – see N.H. 141:60. The commentators break down this question into its various components. Does the positive action in this context refer to the uprooting of the mitzva, or to the nature of the correct performance of the mitzva itself? Another question is whether a case of Sit and refrain from action, is more amenable to rabbinical decrees because it does not require an active deed, or is this merely because no decision is reached with regard to different options, which inevitably leads to inaction? Furthermore, after the Sages issue their decree and nullify a mitzva by Torah law, is the mitzva fully canceled, or does it remain intact, but due to the Sages' decree, which one must obey by dint of a positive mitzva, one refrains from action, and this is why the decree overrides the mitzva? They explain that these questions are interdependent, and that many of the discussions of the early authorities in this regard can be clarified in light of the answers to these basic questions (Kovetz Hecarat).

For the hour, listen to him – תֹּלֶכֶת דִּבְרֵי בְּהַר. Rav Shimon ben Gamliel says: He cannot nullify or add to its condition in a case where the bill of divorce included a stipulation. For if so, i.e., if he has the ability to cancel the bill of divorce, what good is the power of the court in their decree that one may not do so?

And finally I wished to raise a difficulty from the case of a lulav, which may not be carried on the first day of Sukkot that occurred on Shabbat, for the same reason the Sages rendered it prohibited to sound the shefar on Rosh HaShana that occurs on Shabbat. However, now that you have resolved for us that an action defined as a case of: Sit and refrain from action, is not considered uprooting, this are also cases of sit and refrain from action.

The Gemara suggests: Come and hear another proof. The verse states with regard to a true prophet: “To him you shall listen” (Deuteronomy 18:15). From here it is derived that even if the prophet says to you: Transgress one of the mitzvot of the Torah, for example, as in the case of Elijah at Mount Carmel, who brought an offering to God on that mountain during a period when it was forbidden on pain of karet to sacrifice offerings outside the Temple, with regard to everything that he permits for the requirement of the hour, you must listen to him.64 This indicates that a Torah mitzva can indeed be uprooted in an active manner.

The Gemara answers: There it is different, as it is written: “To him you shall listen,” which means that it is a positive mitzva to obey a prophet, and a positive mitzva overrides a prohibition. The Gemara asks: And let him derive from this case a principle that the Sages have the same power as a prophet. The Gemara answers: Safeguarding a matter is different. Since Elijah acted with the aim of preventing the Jewish people from worshipping idols, it was temporarily permitted for him to override a mitzva, in order to strengthen Torah observance with regard to a particular matter in which the people are lax.

The Gemara suggests another proof. Come and hear: The Sages rendered it prohibited for a man who has sent a bill of divorce to his wife to cancel it in the presence of a court without her knowledge after he has given the bill of divorce to his messenger but before she gets the document. The prohibition was instituted to prevent a situation where the messenger, who is unaware of the cancellation, gives her the bill of divorce and she marries another man under the mistaken impression that she is divorced. If he proceeded to nullify it regardless, it is nullified; this is the statement of Rabbi Yehuda HaNasi. Rav Shimon ben Gamliel says: He cannot nullify or add to its condition in a case where the bill of divorce included a stipulation. For if so, i.e., if he has the ability to cancel the bill of divorce, what good is the power of the court in their decree that one may not do so?

The Gemara explains the proof from this source: And here it is a case where by Torah law, the bill of divorce is nullified, and yet due to the reason of: What good is the power of the court, his nullification is ineffective, which means that we permit a married woman to all men. The Gemara answers: The halakhot of marriage afford no proof, as with regard to one who betroths a woman, he betroths on the authorization of the Sages, and in this case the Sages nullified the betrothal, which they can do because their consent was required for the betrothal to be effective in the first place.

Ravina said to Rav Ashi: This works out well in a case when he betrothed with money, as it can be explained that the Sages declared the money ownerless, thereby negating the betrothal. However, if he betrothed by means of sexual relations, what can be said? The Gemara answers: The Sages equated his relations with this woman with licentious sexual intercourse. Since in this situation as well the acquisition of betrothal is effective only by authorization of the Sages, they have the power to declare it invalid.

And secondly, was there a dispute between the Sages and the court? The Sages have the power to declare money ownerless, but the court has the power to declare money ownerless. The question is: How can the Sages in an active situation change the power of the court? And some of the rabbis say: By the power of the court, everything is subject to their enactment. Others say: By the power of the court, they are subject to their enactment. In the case of neturei karta when they proceed to nullify it, it is nullified ab initio. However, if they instruct them to cancel the mitzva permanently, this indicates that he is a false prophet and is liable to be executed by trangalination (Rambam Sefer HaHaftorot, Hilkhot Yesdei HaTorah 9:3).

A prophet who cancels a mitzva temporarily – טֹבֻּל נֶגֶּשֶׁת. If a true prophet received a prophetic command to instruct the people to temporarily neglect one of the mitzvot of the Torah, they must listen to him. If, however, he instructs them to cancel the mitzva permanently, this indicates that he is a false prophet and is liable to be executed by trangalination (Rambam Sefer HaHaftorot, Hilkhot Yesedai HaTorah 9:3). If he proceeded to nullify it, it is nullified – טֹבֻּל נֶגֶּשֶׁת. One who sent a bill of divorce to his wife and wants to cancel it before it arrives in her possession should nullify it in the presence of the same messenger or the wife herself ab initio. After the fact, even if he nullified in her absence, it is nullified, provided that he does so in front of two individuals. This is in accordance with the principle that the halakha is ruled in accordance with the opinion of Rabbi Yehuda HaNasi in disputes with a single colleague (Rambam Sefer Nashim, Hilkhot Geirushin 1:6, Shmuel Arai, Even HaZer 141:60).
HALAKHA

The court may administer lashes and punish—תב תב מבעשכש

The court has the right to impose punishments that are not written in the Torah, including lashes and even the death penalty, in order to safeguard the Torah. They cannot do so as a fixed halakhah but as a temporary regulation if they consider it necessary at the time to strengthen Torah observance, as stated by Rabbi Elazar ben Yaakov (Rambam Hilkhot Mamrim 2:4, Shulhan Arukh, Hoshen Mishpat 21).

Neither this one nor that one may become impure for her—הלALA התייה היה היה: A priest must defile himself for his wife, where their marriage is halakhically valid, but not for a woman to whom he is betrothed, or his divorcee, or his disqualified wife (Shulhan Arukh, Yoreh Dea’ah 373:4).

NOTES

Because the hour required—תב תב מבעשכש

The commentators investigate why the Gemara here provides two separate reasons to explain why neither man is entitled to her found objects or her earnings when elsewhere it is implied that both halakhot were instituted by the Sages due to enmity (Tosafot). In the Jerusalem Talmud it is stated that although some Sages group these two categories together in accordance with the opinion that they both serve to preclude hatred, others distinguish between them and base their rulings with regard to them on different reasons, as indicated by the Gemara here.

What is the reason that the Merciful One states that a husband may marry a nullified wife—תב תב מבעשכש

Some commentaries cite a different version of the text: What is the reason that the Sages said that a husband may marry a nullified wife? (Tosafot Yeshanim). They explain that length that there is a difference between the basic halakha of nullification of vows, which applies by Torah law, and certain vows that a husband may annul by rabbinic law, for the reason stated here. See the Rif for an analysis of this halakha from a different perspective. The later authorities also state that the reason mentioned by the Gemara here accounts only for some of the cases, while there are other justifications, such as the basic claim that a wife always wows with her husband’s implicit consent in mind. In this case, as the Sages canceled the husband’s rights, she cannot be said to have wowed with his consent.

The Gemara cites yet another relevant source. Come and hear, as Rabbi Elazar ben Yaakov said: I have heard that the reason why the court may administer lashes and punish is not by Torah law, i.e., in response to actions for which one is liable to receive punishment by Torah law, is not so as to transgress matters of Torah, but to establish a safeguard for the Torah. And an example of this is an incident involving a certain person who rode on a horse on Shabbat in the days of the Greeks, an act that is prohibited by rabbinic law, and they brought him to the court and they stoned him as a desecrator of Shabbat. They did so not because he was deserving of this, as riding a horse is not punishable by stoning by Torah law, but because the hour required it, as at that time Jews were negligent with regard to Shabbat observance.

And again, an incident occurred involving a certain person who cohabited with his own wife under a fig tree in plain view, and they brought him to the court and flogged him, not because this punishment was fitting for him, as it is not prohibited by the Torah for one to engage in relations with his wife wherever he chooses, but because the hour required it, to discourage others from engaging in licentious behavior. This shows that the court can uproot a Torah mitzva even by means of a positive action such as stoning. The Gemara answers: Safeguarding a matter is different. As stated above, the court may uproot a Torah mitzva so as to strengthen Torah observance in general, as was the case with the prophet Elijah.

§ The mishna taught: Neither this one, her first husband, nor that one, her second, may become impure for her,9 if they were priests. The Gemara asks: From where do we derive this halakha? The Gemara explains that it is written: “But to his relative, who is close to him, for her he may defile himself” (Leviticus 21:2), and the Master said: “His relative” is his wife.

And it is further written: “He shall not defile himself, a husband among his people, to profane himself” (Leviticus 21:4). It may be inferred from this apparent contradiction between the verses that there is a husband who becomes impure for his wife, and there is a husband who does not become impure. How so? He becomes impure for his fit wife, but he does not become impure for his disqualified wife. Since in the case of the mishna, the woman in question is disqualified with regard to both men, neither of them may become impure for her.

§ The mishna further taught: Neither this one nor that one is entitled to her found articles. The Gemara explains: What is the reason that the Sages said that the found object of a wife belongs to her husband? So that he should not harbor enmity toward her, due to her refusal to give him the item she found. Here, however, let him harbor much enmity toward her, as the Sages want him to divorce her.

§ And the mishna also taught that neither man is entitled to her earnings.10 The Gemara explains: What is the reason that the Sages said that a wife’s earnings belong to her husband? Because she eats his food. In this case here, since she does not have rights to his food, her earnings are not his either.

§ And the mishna further taught that they may not nullify her vows. The Gemara similarly explains: What is the reason that the Merciful One states that a husband may nullify his wife’s vows? So that she should not have to fulfill a vow that will cause her to become repulsive to him, such as refraining from washing or from applying cosmetics. Here, let her be highly repulsive, as the Sages want their relationship to end.

§ The mishna taught that if she was an Israelite woman, she is disqualified from marrying into the priesthood.