

HALACHIC AND HASHKAFIC ISSUES IN CONTEMPORARY SOCIETY

72 - MODERN TUMAH AND TAHARAH ISSUES

COHANIM ON PLANES - PART 2

OU ISRAEL CENTER - WINTER 2017/2018

- We saw in Part 1 that a Cohen may have potential halachic issues with air travel if either (i) the plane contains a met; or (ii) the plane flies over a Jewish cemetery.
- The main problem is that tumah will penetrate the plane and affect the passengers. We explained that, in order to be protected from the tumah, we need to find some way to block the tumah through an Ohel Hachotetz - a roof structure which will stop the tumah from penetrating. In order to block the tumah, an ohel must NOT itself be mekabel tumah - susceptible to tumah.
- We looked at two main options: (i) some kind of plastic ohel structure in the hold of the plane around the casket; (ii) the roof of the cargo hold/floor of the passenger section serving as an ohel. On the latter option we discussed whether indeed the plane itself is mekabel tumah, whether due to its material, or perhaps to its very large size.
- Even if the plane IS mekabel tumah, and unable to block the tumah, the tumah will penetrate through the cargo hold ceiling and then go straight through the passenger section, penetrating the roof of the plane. As such, it would affect only those cohanim sitting immediately above the casket and would not spread through the passenger section of the plane.

But ALL of this analysis may only be relevant when the plane is on the ground. What about a plane in flight? Is it possible to have an ohel which is not fixed to the ground, but flying through the air!!? There is a major debate within the Talmud of the status of an Ohel Zaruk - a flying roof structure.

A] OHEL ZARUK

A1] THE FLYING CARPET

1. אלו לא מביאין ולא חוצצין הזרעים והירקות המחוברים לקרקע חוץ מן הירקות שמנו¹, וכיפת הברד והשלג והכפור והגלד והמלח².... והעוף הפורח וטלית המנפנפת (תפארת ישראל שאינו קשור בשום מקום רק כרוח כגזיבו וכו' עף באויר)

משנה אהלות פרק ח משנה ה

The Mishna in Ohalot³ list a number of types of 'roof' that do NOT block tumah. They include a flying bird and a flying carpet.

As such, it seems that something which is flying through the air is NOT able to act as an ohel to block tumah, so no customization of the airplane would help to block the tumah from reaching the Cohanim.

1. Note that earlier the Mishna lists overhanging trees as something that WILL spread and block tumah. This can have implications for Cohanim driving along roads under tree canopies which also overhang a Jewish cemetery. This may be more of an issue in the summer, when the tree canopy is in leaf, than in the winter. However, other poskim rule that only evergreen trees and only larger branches (which are a tefach wide and could hold a weight) would be a problem. See http://www.crcweb.org/overhanging_tree_branches.php where the advice of the cRc is: "T'uma can be transferred from a grave by overhanging tree branches. It may be possible for t'uma to spread from tree to tree. This applies whether one is walking, cycling, or riding in a car. Therefore the cRc recommends the following: A kohain should circumvent any tree branches that overhang both a Jewish cemetery and the road/walkway. Such tree branches are present at: [list of problematic cemeteries]. If the tree branches overhang a non-Jewish cemetery it is preferable to avoid the overhanging tree limbs. If they are not easily avoided, a Kohain may drive under them (preferably with the windows closed)." See also <https://www.haaretz.com/tiberias-uproots-trees-to-make-street-kosher-for-cohanim-1.397373>. As for whether the car itself could qualify as an ohel to protect the kohen, this is also a question of Ohel Zaruk. A moving car (made of steel) is unlikely to act as an ohel for the reasons set out below. Additionally, in the case of driving near cemeteries there are more options to avoid the problem than with flights, and therefore less grounds for leniencies. For this reason, cohanim should also avoid this issue with non-Jewish cemeteries (see Part 1).
2. Note that other arches or covers may spread tumah and this will include umbrellas. Some poskim have noted that at funerals on rainy days, the Cohanim standing at a distance may still be affected by tumah if someone standing over the casket is carrying an umbrella and other people are standing close together such that there is an unbroken 'sea' of umbrellas reaching to the Cohanim! See also <http://rabbikaganoff.com/of-umbrellas-trees-and-other-kohen-concerns/>
3. As mentioned in Part 1, perhaps better pronounced 'Ahilot'.

A2] THE OX TRANSPORT

2. חצרות היו בירושלים בנויות ע"ג סלע ותחתיהם חלול מפני קבר התהום. ומביאים נשים עוברות ויולדות שם ומגדלות שם את בניהן. ומביאים שוורים ועל גביהן דלתות ותנוקות יושבין על גביהן. וכוסות של אבן בידם הגיעו לשלוח ירדו ומלאום ועלו וישבו על גביהן

משנה פרה פרק ג משנה ב

In order to draw the water to mix with the ashes of the Para Adumah, extreme precautions had to be taken to ensure that no one with any possible tumeh could come into contact with the water. As such, there were special locations in Yerushalayim which were built upon stone with a hollow underneath (to ensure that any unknown dead body in the ground would not project tumah). Pregnant women were brought to this place and gave birth to and raised their children there! When the time came to draw the water these children rode on a large wooden board on top of an ox until they reached the Shiloach to draw the water. They would then ride the ox back with the water!

The purpose of the wooden board was to act as an ohel to block any tumah (from an unknown dead body) while the ox was moving. The clear implication of this is that a moving ohel DOES work as an ohel!



from Machon HaMikdash

A3] ENTERING CHUTZ L'ARETZ IN A CLOSET!

3. דתניא: הנכנס לארץ העמים בשידה תיבה ומגדל - רבי מטמא. רבי יוסי ברבי יהודה מטהר. במאי קמיפלגי? מר סבר: אהל זרוק - לאו שמיה אהל, ומר סבר: אהל זרוק - שמיה אהל.

עירובין ל'

The Gemara in Eruvin discusses the case of someone being carried across the border into chutz l'aretz (which has a rabbinic status as tamei) in a wardrobe. There is a debate between the Tannaim as to whether an Ohel Zaruk is or is not classified as an ohel.

In short, we have three principal sources on ohel zaruk - a Mishna in Ohalot rules that it does NOT work. A Mishna in Para rules that it DOES work. A Beraita in Eruvin brings a machloket on the issue. How do the poskim rule?

4. המהלך בארץ העכו"ם ... טמא טומאת שבעה הנכנס לארץ העכו"ם בשידה תיבה ומגדל הפורחין באויר טמא שאהל זרוק אינו קרוי אהל

רמב"ם טומאת מת פרק יא הלכה ה

The Rambam and most Rishonim rule that an Ohel Zaruk does NOT work to block tumah. However, the minority position of the Rashba is that Ohel Zaruk DOES work.

5. ראה לי צרור דכאי תנא דס"ל אהל זרוק לא שמיא אהל חיינו דוקא לענין דאינו חוץ צפני הטומאה ולחומרא בעלמא מדרבנן אהל מדאורייתא אין לחלק

פני יהושע סוכה כא.

The Pnei Yehoshua⁴ rules that, according to all opinions, the concern that Ohel Zaruk does not work is only rabbinic. On a Torah level it will certainly block tumah.⁵

If so, the issue for the cohen would be Rabbinic, opening up more halachic options to be lenient in certain situations, especially if there are additional halachic factors on which to rule leniently.

6. (ו) ומקום בראש עוד להזכיר בזה דעתו של הגאון מאור הגולה הגרי"א ז"ל מקאוונא בזה שמובא בספר ברכת רצה שם, והוא זה, שחזה דעתו הגדולה דיש מקום להתיר לכהן לנסוע ברכבת העוברת דרך בית הקברות מכח דינא דספק טומאה ברה"ר, והזכיר בהקשר לזה שיטת הרשב"א שפוסק דאהל זרוק שמיא אהל, וכן דברי הפני יהושע בסוכה ד' כ"א שמבאר דהא דאהל זרוק ל"ש אהל הוא רק מדרבנן, וא"כ לפי"ז יש לפנינו ספק טומאה ברה"ר, דספק כמאן הלכה אי כהרשב"א דשמי' אהל ואי כהרמב"ם דל"ש אהל, והספק הוא בדרבנן.

שו"ת ציץ אליעזר חלק יב סימן סב

The Tzitz Eliezer brings a ruling of R' Yitzchak Elchanan Spector that a train running through a graveyard WAS still called an Ohel to block tumah.⁶ He is prepared to consider the matter a safek in the Rishonim on how to pasken AND regard the matter as Rabbinic.⁷ Additionally, the safek is in a matter of tumah in a public domain.⁸

B] SAFEK TUMAH IN A PUBLIC DOMAIN

Normally, with a doubt in a matter of Torah law the default position is to be stringent - safek deoraita l'chumra. In cases of tumah the situation is different.

7. הכי אמר רב נחמן: ספק טומאה ברשות הרבים התיר להן. והא הלכתא מסוטה גמרינן לה, מה סוטה רשות היחיד, אף טומאה רשות היחיד!

עבודה זרה לו:

The halacha rules that a questionable tumah in a public area⁹ will be permitted. An airplane with multiple passengers will be considered a public area for these purposes.¹⁰

C] RELATIVITY AND THE OHEL ZARUK

R. Yaakov Breish suggests another reason for the Cohen on the plane to be lenient. Maybe an Ohel Zaruk does not work to block tumah because it is moving OVER the met. But what if it is moving WITH the met. He suggests that the met on the plane may be less of a problem since it is moving together with the 'ohel'.¹¹

4. See also Shu't Shevut Ya'akov 1:85

5. Some poskim have questioned this position since it would also mean that, on a Torah level, an Ohel Zaruk also SPREADS tumah, which seems contrary to all other sources.

6. Although Rav Yitzchak Elchanan said that he was willing to sanction the kohen traveling on the train only if two other Rabbis agreed with him.

7. Note that Tosafot in Nazir 55a s.v. V'hatanya resolve the machloket between the mishnayot on the basis that the ox is still somewhat connected to the ground, whereas the flying carpet is not. So too the train (like the ox) is connected to the ground. On this basis, it could be argued that this will not help us with the plane which (like the flying carpet) is not attached to the ground and thus will not work to block tumah. (See the shiur by R. Aryeh Lebowitz - <http://www.yutorah.org/sidebar/lecture.cfm/879718/rabbi-aryeh-lebowitz/ten-really-40-minute-halacha-may-a-kohein-fly-el-al-out-of-jfk/> at minute 28:00 where he suggests a resolution of this issue).

8. There was a custom for cohanim from Jerusalem to place a board underneath their car when traveling to Jericho which then involved driving through the cemetery at Har Zeitim. In 1990 I was on a bus driving through that area of Jerusalem. At a certain point the bus stopped to let out the cohanim before continuing along the next part of road which was, apparently, laid over Jewish graves. The cohanim walked across an open area and got back on the bus further down the road.

9. This is not defined by partitions as in hilchot Shabbat but rather as a place with 3 or more people present.

10. However, safek tumah in a public area may only be a halachic principle to rule on the status of tumah. It may not be relevant to permit a cohen to become tamei.

11. This would not of course apply to the concern of overflying a cemetery.

D] BUT THE COHANIM ARE ALREADY TAMEI MET!?

8. טז נטמא למת פעמים הרבה אף על פי שהוא חייב מלקות על כל אחת ואחת לשמים אין בית דין מלקין אותו אלא אחת. ואם התרו בו על כל פעם ופעם והוא מטמא לוקה על כל אחת ואחת.
 יז במה דברים אמורים? בשנטמא ופירש וחזר ונגע או נשא או האהיל, אבל אם היה נוגע במת ועדיין המת בידו ונגע במת אחר אינו חייב אלא אחת אף על פי שהתרו בו על כל נגיעה ונגיעה שהרי מחולל ועומד.

רמב"ם נירות פרק ה

The Rambam rules that a Nazir who is already tamei met can still get malkot for touching another met once he has released the first source of tumah. The fact that the Nazir is already tamei does not avoid a further Torah prohibition of contact with a met! Presumably the same would be true of cohanim.

9. מעתה טומאה וטומאה אפילו פירש וחזר ונגע פטור. והכהנים בזמן הזה טמאי מת הן ועוד אין עליהן חיוב טומאה והמחייב אותם עליו להביא ראיה

רמב"ם נירות פרק ה

The Ravad disagrees. He rules that a Cohen who is already tamei would not be chayav¹² for becoming tamei again.

10. ויש להוסיף עוד כסניף לבד, שהכהנים היום הם בחזקה לבד וגם שכבר נטמאו אבל מטעמים אלו ח"ו להתיר.

תשובות והנהגות כרך ב סימן תקסט

The poskim are not willing to rule like the Ravad but may be able to join it as as snif lehatir in certain circumstances.

E] WHO IS REALLY A COHEN?

- Very few cohanim today are 'meyuchasim' - tracing their lineage back to the Mikdash. However, even a Cohen muchzak - who has a presumption of kehuna due to family tradition - is fully bound by all the laws of kehuna.
- However, a cohen descended from an invalid marriage - a chalal - will NOT be bound by these halachot. Therefore a child/grandchild of a marriage between a cohen and a gerusha/chalala/zona will not be restricted.
- Can/should we raise questions about the status of a cohen today to try and permit what would otherwise be a prohibition of kehuna? Although some poskim are willing to take this into consideration¹³, many are very unhappy to do so.¹⁴

F] DOES A COHEN NEED TO LEAVE?

- Clearly, if the cohen discovers that there is a met on the plane when already in flight there is nothing they can do - *ones rachmana patrei*.
- But what if the cohen finds out before take-off?

11. ככן שהוא ישר, ומת עמו באוהל, לריכין להקיצו ולהגיד לו כדי שיא

שולחן ערוך יורה דעה סימן שעג סעיף א

Where it transpires that a sleeping cohen is in the same domain as a met he must be woken up and leave immediately. This would also be true on a wagon, train or plane.

- However, the Shach rules¹⁵ that in a situations where the issur tumah was actually rabbinic in nature and the cohen is unaware of the problem, he may not need to be told to leave. As such, in a case of pressing need - eg where a traveller is left stranded in the cold - if can establish that the halachic problem is rabbinic, it may not be necessary to inform the cohen.¹⁶

12. Although it could be that the Ravad is only lenient for the chiyuv malkot in Beit Din. Perhaps he agrees that there is still an issur deoraita for the cohen who is already tamei to reconnect with tumat met.

13. Consider also the case of a cohen ba'al teshuva who wants to marry a ba'al teshuva girl who is disqualified (as a 'zonah') from marrying a Cohen due to her previous sexual relationship with a non-Jewish man (assuming she can really know who is Jewish these days). Is it legitimate to try and establish that the man may in fact be a chalal? This could happen in cases where his own mother was also a ba'al teshuva with a history of relationships which technically disqualified her from marrying the father and rendered the son a chalal. What are the implications for the whole family in going down this route!?

14. If we were to doubt the status of cohanim, it would be necessary to perform a pidyon haBen for the child of a bat cohen, just in case she was not a real cohenet. This is unheard of.

15. YD 372:3

16. A similar halachic question arises as to whether one needs to inform a chazan on Yom Kippur who is a cohen, or cohanim in the middle of bircat cohanim, if someone dies in the building.

G] SUMMARY - REASONS TO BE LENIENT

We have seen a number of potential reasons to be lenient:-

- That the floor of the plane may act to block the tumah since the plane may not be mekabel tumah (due to its size or material composition).
- That, even if the plane IS mekabel tumah and will not block the tumah, maybe only the cohanim sitting immediately above the met could be affected since the tumah will exit through the ceiling.
- The issue of ohel zaruk may be resolved leniently as a safek tumah derabbanan in a reshut harabim.
- There may not actually be a met on the plane.
- Is it ever legitimate to take into account the fact that the cohen is already tamei met and that he may not actually be a cohen?¹⁷

H] MODERN DAY POSKIM

- Rav Moshe Feinstein¹⁸ is machmir and will not allow a cohen to fly in a plane with a met.
- Rav Herschel Schachter and Rav Mordechai Willig are quoted as machmir not to allow the Cohen to fly.¹⁹

12. ולכן נראה להחמיר בכהן שלא לטוס במטוס לארץ ישראל אלא אם בירר כפי האפשר שאין שם מת ... ורק אז לנסוע ובזמן האחרון שמעתי שהתקינו למתים במטוס ארון מחומר מיוחד כעין פלסטיק שאינו מקבל טומאה, ועם פותח טפח באופן שאין טומאה בוקעת, והסכימו לזה מגדולי הפוסקים, אבל צריך בירור שעוד לא תיקנו כן בכל מקום ויש לברר הדבר היטב.

תשובות והנהגות כרך א סימן תרעח

Rav Moshe Sternbuch is also concerned but appears to permit the special plastic ohel covering the casket, as long as we are sure that this is indeed in place.

- Shearim Metzuyanim Behalacha²⁰ rules leniently (although assumes that most flights do not have a met which, as we have seen, is not true today for El Al out of JFK) especially in cases where the trip is for the purposes of a mitzvah. He also rules that, since most people travelling on planes are not Cohanim, there is no problem transporting a met on a plane.²¹
- Rav Yaakov Breisch agrees that one may transport a body since there is a doubt as to whether a Cohen will be involved and there is a great mitzvah to bury the dead.

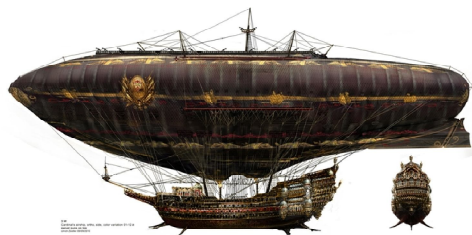
POSTSCRIPT - THE POWER OF IMAGINATION

The Gemara and the Rambam (above) rule on about towers flying through the air. Is this an ancient precedent for air travel?

13. והחלק המדמה - ולפיכך ירכיב זה הכח מן הדברים אשר השיגם - דברים שלא השיגם כלל, ואי אפשר להשיגם, כמו שידמה האדם ספינת ברזל רצה באויר, ואדם שראשו בשמים ורגליו בארץ, וחיה בעלת אלה עינים, על דרך משל

שמונה פרקים לרמב"ם פרק א

In the Shemona Perakim when describing the power of imagination the Rambam uses the exact example of a metal ship flying through the air as something that we all know could never be!



17. Most poskim do NOT accept these considerations in most cases.

18. Igrot Moshe YD 2:154

19. R' Leibowitz understands that Rav Feinstein and Rav Schachter may be coming from the same sevara - that for some reason the tumah will penetrate the floor of the passenger section but NOT the ceiling. It will thus spread around the passenger section and affect the Cohanim. This could certainly happen if the floor were made of metal and the ceiling of carbon fibre. On the other hand, Rav Schachter suggests a sevara to be lenient - that the root of the prohibition is that the cohen may not to come close to a met. In the case of a plane flying over a cemetery the cohen is nowhere near the met. This would be different in the case of a met on the plane.

20. R. Shlomo Zalman Braun, on Kitzur Shulchan Aruch 202:8

21. Although he advises that if someone knows that a cohen is on the flight they should inform them.