

# HALACHIC AND HASHKAFIC ISSUES IN CONTEMPORARY SOCIETY

## 71 - MODERN TUMAH AND TAHARAH ISSUES

### COHANIM ON PLANES - PART 1

OU ISRAEL CENTER - WINTER 2017/2018

- It is well known that a Cohen may not come into proximity with a dead body. In the modern world, this gives rise to a number of interesting halachic issues, such as:
  - whether a Cohen may have a problem with modern air travel.
  - whether a Cohen may travel on a plane which is carrying a body being transported for burial.
  - whether a Cohen may study and practice medicine.
  - whether a Cohen may enter a hospital.
  - whether a Cohen may enter a museum in which there are human remains.
  - whether a Cohen may have skin grafts or dental implants from cadaver derived products.
  - whether a Cohen may enter a clinic where such items are kept.
- With regards to the issue of air travel, there are three concerns:-
  - that a passenger may, God forbid, die on the plane during travel. (Not much can be done to avoid this!)
  - that the plane may fly over a Jewish cemetery.
  - that the plane may be carrying a body being transported for burial.

### A] THE RESTRICTIONS ON A COHEN

1. (א) וַיֹּאמֶר ה' אֶל-מֹשֶׁה אָמַר אֶל-הַכֹּהֲנִים בְּנֵי אַהֲרֹן וְאָמַרְתָּ אֲלֵהֶם לִנְפֹשׁ לֹא-יִטְמָא בְעַמּוּי:

וַיִּקְרָא כֹהֵן

*The Torah prohibits the sons<sup>1</sup> of Aharon from becoming tamei through contact with a dead body.*

- Some exceptions to this rules are set out in the subsequent verses in the Torah ie. that a Cohen **MUST** become tamei met to carry out the burial of his own immediate family.
- A Cohen must become tamei met for a 'Met Mitzvah' - a body which has no one else to bury it.
- A Cohen must become tamei for pikuach nefesh - to save human life.
- A Cohen **MAY** contract any other form of tumah - eg sheretz, neveila. However, this would prevent his/her eating terumah and kodshim and also entering the Mikdash.

### B] HOW IS TUMAT MET SPREAD?

Tumat Met can be contracted in a number of halachic ways:-

- Maga: touching a dead body or parts of a dead body.
- Masa: carrying a dead body, even if the corpse itself is not directly touched.
- Ohel: 'overhanging' in connection with a dead body. This could in turn have three potential forms:
  - (i) Where the person passes over or leans over the body.
  - (ii) Where the body passes over or hangs over the person.
  - (iii) Where the person and the body are together under the same roof.

1. Hence the prohibition relates only to male Cohanim, not the wife or daughter of a Cohen.

**C] NOT JUST A COHEN'S PROBLEM!**

2. א כל כהן שנטמא למת חוץ מששה מתים המפורשים בתורה או אשתו, בעדים והתראה, הרי זה לוקה שנאמר לנפש לא יטמא בעמיו. ואחד הנוגע במת או המאהיל או הנושא, ואחד המת ואחד שאר הטומאות הפורשות מן המת שנאמר לנפש לא יטמא בעמיו, וכבר פירשנו בהלכות טומאת מת כל דברים המטמאין מן המת מן התורה או מדבריהם. ....  
ה המטמא את הכהן אם היו שניהם מזידין הרי הכהן לוקה וזה שטמאו עובר עלולפני עור לא תתן מכשול. היה הכהן שוגג וזה שטמאו מזיד הרי זה שטמאו לוקה.

רמב"ם אבל פרק ג

*The Rambam rules that a non-Cohen who knowingly causes a Cohen to become tamei met is ALSO breaking a Torah prohibition of Lifnei Iver (see previous shiurim).*

- Is a person allowed to transport a body on an El Al flight in the almost certain knowledge that there will be Cohanim on that plane?

**D] FLYING OVER A CEMETERY**

- On most flights it is unlikely that the plane will overfly a cemetery.<sup>2</sup>

3. קברי עובדי כוכבים נכון לזוהר הכהן מלידך עליהם (מהר"מ ותוס' פ' המקבל) אף על פי שיש מקילין (רמב"ם והגמ"י בשם ס' יראים) ונכון להחמיר

שולחן ערוך יורה דעה סימן שעג סעיף ב

*Even though a Cohen may not touch a non-Jewish corpse, the halachot of Ohel for a non-Jewish body are more lenient. Whilst it is proper for a a Cohen to be strict and not be in a situation of Ohel over a non-Jewish grave, this is more of a chumrah than a strict requirement.*

- Given that it is unlikely that a plane will overfly a non-Jewish cemetery, this possibility is not a concern to a Cohen on a plane.
- How likely is it that a plane will overfly a Jewish cemetery? In principle, even less likely, but .....



Around Ben Gurion airport there are 4 Jewish cemeteries, including Emek Lod Achiezer and Yehud. Additionally Holon Cemetery is a very large area which is potentially in the flight path into or out of Natbag.

- Historically this has been an occasional problem as flight paths from Ben Gurion try to avoid densely populated areas to the north and military areas to the south.
- Occasionally, construction work at the airport causes the diversion of departing flight paths over Holon Cemetery. This happened in November 2016. Some poskim<sup>3</sup> advised Cohanim to avoid these flight, for example by flying from Haifa to Cyprus and flying on from there.

2. One estimate is that 0.03% of the globe is covered with cemeteries - 3% of the globe is urbanized and approximately 1% of that comprises cemeteries.  
<https://www.quora.com/What-percentage-of-earths-surface-is-covered-up-by-cemeteries-the-cemetery-to-livable-land-ratio>

3. Including Rav Nissim Karelitz.

## E] A BODY ON THE PLANE?

- As is known, many airlines transport bodies for burial overseas. This is especially true of flights to Israel since many Jewish people wish to be buried in Eretz Yisrael. How much of a problem is this?
- It is more of an issue with El Al flights, especially since El Al apparently charge less to transport a met to Israel.
- In previous times, the advice often given was that Cohanim need not worry since the majority of flights do not contain a corpse. This is no longer the case. Even by 1990 El Al estimated that there was a body on 80% of planes leaving New York in the winter and 60% in the summer.<sup>4</sup>
- Today, almost every El Al flight leaving New York has a Jewish met on it.<sup>5</sup> There is one designated El Al flight per day from Newark which is guaranteed not to have a met on board.

## F] SOLUTIONS

### F1] TAKE A DIFFERENT FLIGHT

- Clearly, once a Cohen knows or is seriously concerned that there may be a body on the plane or that the plane may overfly a graveyard, the problem can be solved by taking a different flight. As noted above, EL Al guarantee one flight a day from Newark without a body. This may be more expensive or less convenient, but if there is a real concern of a Torah prohibition, the cost or inconvenience may be unavoidable.
- However, we need to establish if there is actually a clear violation of a Torah prohibition. Are there grounds for leniency? If such grounds for leniency are halachically valid they will become relevant, especially where the extra cost or inconvenience become very significant.

### F2] CHECK WITH THE AIRLINE

4. ידוע דמנהלי האוירון מסתירין הדבר מפני הנוסעים שלא יתוודע להם שנוסע באוירון גם מת. ואם יאמרו לו שאין בשם מת אין להאמין להם, כי זה עוד יותר מלהשביח מקחו דא"ל, יען כי הם רוצים להסתיר זאת מהנוסעים. אם כן ההיתר א"א להתברר רק האיסור וממילא א"צ לברר ולשאול כלל

שו"ת חלקת יעקב יורה דעה סימן ריד

*R. Yaakov Breisch raises the question of whether there is any halachic benefit (or requirement) to ask the airline if there is a body on a specific flight. Since the airline has a clear commercial interest in hiding the fact their answer may not be reliable (aside from the general problem of whether the company representative on the phone genuinely has the relevant information to make that call and whether they will be prepared to say if they don't know!)*

- Additionally, the airline may only know for sure if there will be a body on the flight shortly before the flight, so any earlier information could be misleading.

### F3] TZAMID P'TIL

5. (יד) זאת התורה אדם כי ימות באדם באהל כל-הבא אל-האהל וכל-אשר באהל יטמא שבעת ימים: (טו) וכל כלי פתוח אשר אין-צמיד פתיל עליו טמא הוא:

במדבר יט

*The Torah states that where an enclosed room is contaminated by tumat met, a vessel inside the room which is sealed - tzamid p'til - will protect its contents, which will remain tahor.*

- Tzamid P'til will only work if the vessel in question is not 'mekabel tuma' - receptive to tumah - from the exterior ie earthenware, or not mekabel tumah at all eg stone or mud.
- It must fully wrap around - tzamid, and must be sealed hermetically in a way which is not easily opened - p'til.
- When occasional flights were briefly overflying a cemetery, some Poskim suggested that a Cohen could temporarily wrap himself in a sealed plastic bag to create a tzamid p'til.<sup>6</sup>

4. See *Tumeah of a Kohen*, R. Alfred Cohen, Journal of Halacha Vol 15 at p28. Available at <http://download.yutorah.org/1988/1053/735713.pdf>

5. Quoted by Rabbi Aryeh Lebowitz in Ten (Really 40) Minute Halacha Jun 7, 2017 - *May a Kohein Fly El Al out of JFK* at minute 6:00 <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/>

6. A famous picture of a man in a plastic bag was circulating in 2013. There was a debate however as to when the picture was taken and whether it was authentic. See

- This assumes that: (i) Plastic is not mekabel tumah; and (ii) The bag is considered a tzamid p'til even if there is no separate sealant.
- This psak was initially followed in certain emergency situations.<sup>7</sup>
- It can only be used for very short time periods (eg overflying a cemetery) and will not help if there is a body on the plane.

6.

ובהאי ענינא נראה להעיר שיש למצוא עצה למי שנחרך לו לנסוע על כביש שיש קברים והוא כהן שיעשה שק גדול מניילון וכנס כולו בתוכו ויקפל פתח הניילון וידביק בסלסטור עד שיעבור מעל הטומאה וכיון שהוא נמצא בכלי צמיד פחיל אינו נטמא ואינו עובר באיסור לטכא לכתים. ואף שיש לדון שאולי הניילון מקבל טומאה מחמת שיש לו דין בגד אבל מסתבר שאינו בגד. וכמו שמצינו לענין כגד שחייב בציצית שבגד של עור פטור והטעם דאינו בכלל בגד וכמו שהביא המ"ב בסימן י"א אות י"א מהלבוש. ומוה נראה שכל שאינו ארוג אינו בכלל בגד ואינו מקבל טומאה ואף שיעור מקבל טומאה שאנו עור שגזרה תורה שמטמא אבל אינו בכלל בגד וממילא ניילון אין לו טומאה כלל. וברמב"ם פכ"ג ה"ב מטומאת מת אדם שהיה נתון בתוך החבית ומוקפת צמיד פחיל וכו' ויראה לי שלא גזרו על כלי חרס שלא יציל את האדם שהוא דבר שאינו מצוי וכל דבר שאינו מצוי לא גזרו עליו. אכן בניילון כודאי מציל גם מדרכון שהרי אינו מקבל טומאה גם מתוכו ולא שייך טעם הגזירה. ונראה שגם אם יש נקב בניילון שיעור שאינו מוציא דה מציל וכמו שפסק הרמב"ם בפ"כ מטומאת מת ה"ג אכן אם יעשה בכוונה נקבים קטנים צ"ע אם יציל.

רב זלמן נחמיה גולברג בהסכמה לספר מראות חיים על מס' כלים

*Rav Zalman Nechemia Goldberg rules that the sealed bag approach does protect from tumah, even if there a small holes in the bag which will allow in air. He is not sure if the holes can be made intentionally.<sup>8</sup>*

#### F4] OHEL CHOTZETZ

(a) What is the halacha of an 'Ohel?

7. טומאה בוקעת ועולה בוקעת ויורדת

נזיר נד.

*One of the first principles of tumat met is that it extends upwards and downwards from the body in a direct line.*

8. יש (1) מביאין את הטומאה וחוצצין. (2) מביאין את הטומאה ולא חוצצין. (3) חוצצים ולא מביאים. (4) לא מביאין ולא חוצצין

....

משנה אהלות פרק ח משנה א

*This tumah can be blocked when it hits an 'ohel' - a roofed structure. The Mishna in Ohalot<sup>9</sup> delineates four types of ohel for the purposes of tumah. A regular ohel will achieve two important halachic consequences - (i) it will spread - מביא - the tumah to all areas under that roof; and (ii) it will block - חוצץ - the tumah such that if something is above the roof, it will no longer be affected by the tumah. Some unusual 'roofs' have the effect of doing one of these but not both, and some do neither. However, a regular roof will do both.*

9. וכל דבר שהוא מקבל טומאה - אינו חוצץ בפני הטומאה

בבא בתרא יט:

*Another major halachic principle is that a roof will NOT protect against tumah if it is itself mekabel tumah. For example, if a roof made of metal overhangs a met it will not block the tumah and someone above the roof in line with the met WILL become tameh*

<https://www.vosizneias.com/128174/2013/04/14/new-york-el-al-says-photo-of-bag-wearing-man-10-years-old/>

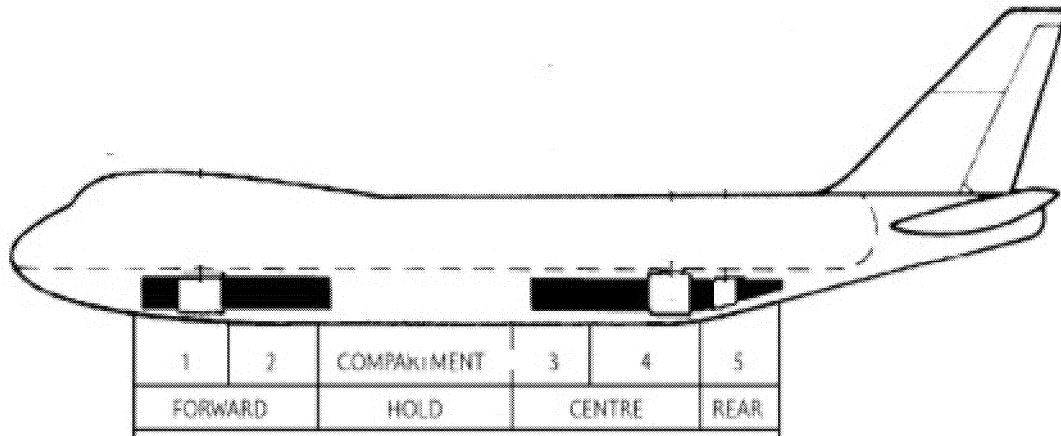
7. In one case it was the only way someone could take to get a flight back to Israel for Pesach.

8. See articles by Rabbi Daniel Wolf in English - <http://etzion.org.il/en/kohanim-flying-airplanes> and in Hebrew

<http://etzion.org.il/he/%D7%98%D7%99%D7%A1%D7%AA-%D7%9B%D7%95%D7%94%D7%A0%D7%99%D7%9D-%D7%9E%D7%A2%D7%9C-%D7%A7%D7%91%D7%A8%D7%99%D7%9D>. Rabbi Wolf writes that small holes may be made in the bag since only the seal around the top needs to be hermetic.

9. Some scholars suggest that the correct pronunciation is actually Ohilot. The plural of ohel - tent - is ohalim. Ohilah is the abstract noun - 'tent-forming' - and the plural will be ohilot.

(b) How does this relate to the plane?



- The met is stowed in the hold of the plane with the passengers seated above. Between the two sections is the roof of the hold, which is also the floor of the passenger section.
- Does this cargo roof act as an ohel to contain the tumah?
- If not, and the tumah is able to get through to the passenger section, will it simply go straight up and through the roof of the plane, or will the roof of the plane enclose the tumah and spread it through the passenger section?

(c) Is the plane mekabel tumah?

10. השידה והתיבה והמגדל כוורת הקש וכוורת הקנים ובור ספינה אלכסנדריית שיש להם שולים והן מחזיקין ארבעים סאה בלח שהם כורים ביבש הרי אלו טהורין. (ר' עובדיה מברטנורא - דלחקש כלי עץ וכלי עור, לשק המיטלטל מלא וריקן, וזה אינו מיטלטל מלא, לפי שגדול יותר מדאי ואם יטלטלוהו מלא ישבר). ושאר כל הכלים בין מקבלין בין אינם מקבלין טמאין

משנה כלים פרק טו משנה א

*The Mishna rules that very large wooden kelim (which contain more than 40 seah) are NOT mekabel tumah<sup>10</sup>. A very large kli made from metal WILL be mekabel tumah.*

- A plane is a very large kli, but it is NOT made from wood! Will it be mekabel tumah?
- New planes are made from graphite-epoxy - a carbon fibre compound which is NOT mekabel tumah.<sup>11</sup>
- Older planes are made<sup>12</sup> from aluminium<sup>13</sup>. Is aluminium mekabel tumah?

11. (כא) ויאמר אלעזר הכהן אל-אנשי הצבא הבאים למלחמה זאת תקת התורה אשר-צנה ה' את-משנה: כב) אך את-הזהב ואת-הכסף את-הנחשת את-הברזל את-הבדיל ואת-העפרת: כג) כל-דבר אשר-יבא באש תעבירו באש וטהר אך במי נדה יתחטא (רש"י - לפי פשוטו חטוי זה לטהר מטומאת מת) וכל אשר לא-יבא באש תעבירו במים:

במדבר לא-כא-כג

*Following the war with Midian, the kelim captured had to be kashered, toveled and also put through a tahara process to remove tumat met. 6 types of metal are mentioned as being mekabel tumah - gold, silver, bronze, iron, tin and lead.*

- Are these the ONLY 6 metals which are mekabel tumah? If so aluminium will remain tahor. Or are they just examples of common metals of the time, in which case aluminium will also be mekabel tumah.

12. שאין כלי מתכות טמאין דאורייתא חלא במגויין צפרשב (במדבר לח) הוצב והכסף והנחשת והברזל וגו'.

רש"י ראש השנה יט:

*Rashi rules that ONLY the 6 metals mentioned explicitly in the Torah are mekabel tumah. Aluminium is not!<sup>14</sup>*

10. Learnt from the connection between wooden kelim and kelim which are sacks. Just as a sack - full or empty - is moveable, so too a wooden vessel must be moveable (full or empty) to be mekabel tumah.  
 11. Although the inside panelling and floors may still be made from other materials which could be mekabel tumah. In this case the roof of the cargo hold is key and these facts would need to be checked.  
 12. Usually 80% of the weight is aluminium. Much of the rest is fiberglass.  
 13. Spelt thus out of loyalty to English roots!  
 14. This position is also taken by the Vilna Gaon.

13. אך יש לעיין דאולי רק אלו מיני מתכות שנאמרו בקרא ... הם מקבלין טומאה ולא מינים אחרים. .... שאין למילף למיני מתכות אחרים דהם ששה כתובים הבאים כאחד. הנה גם בלא זה אין למילף דיני טומאה למין חדש דכל דיני טומאה הם גזה"כ! וראיה קצת מהא דכלי זכוכית לא מק"ט מדאורייתא אף שהם ניתכין כמתכות ולא אמרינן שיהא להן דין כלי מתכות כאלו שבקרא, אבל מ"מ צ"ע לדינא. ואם הוא מתערבות מיני מתכות אלו טמא בפשיטות ... אזלינן בתר רובא ...

שו"ת אגרות משה יורה דעה חלק ב סימן קסד

*Rav Moshe Feinstein also raises this as a likely possibility. In matters of tuma and tahara we depend largely on the explicit designation of the pesukim and are not given to logical extrapolations.*<sup>15</sup>

14. ואמר בכלי מתכות אך את הזהב ואת הכסף וכו'.... וכן קוראים לכל הכלים הניתכים דוקא 'כלי מתכות' ואין כלי זכוכית בכללם

פירוש המשנה לרמב"ם מסכת כלים הקדמה

*However, the position of the Rambam is that ALL metals are included in halacha. Thus, aluminium will be mekabel tumah.*<sup>16</sup>

- Therefore, according to Rashi the aluminium roof of the cargo hold will act as an ohel to block the tumah so the passengers remain tahor.
- According to the Rambam, the aluminium roof of the cargo hold will NOT block the tumah. It will therefore break through that roof into the passenger section. BUT, by the same token, the aluminium roof of the passenger section at the top of the plane will ALSO not block or spread the tumah around the passenger section. So the only people affected by the tumah will be those people sitting directly above the met.<sup>17</sup>
- A middle position could be that the aluminium in the place would be mekabel tumah on a Rabbinic level<sup>18</sup> similar to glass. Even if this were the case, it may STILL be that an ohel which is only rabbinically mekabel tumah will still block tumah.<sup>19</sup>

#### (d) Metal bolts and mixed materials

- Even if the plane is made from a material which is not mekabel tumah (whether carbon fibre or aluminium according to the view that it is not mekabel tumah), it could be that the steel bolts of the plane which hold it together would be considered a ma'amid.
- Since the ma'amid holds the structure together<sup>20</sup> it will have a dominant halachic status for these purposes. As such, if the ma'amid is mekabel tumah, the whole structure could be deemed to be mekabel tumah.
- Some poskim differentiate between a ma'amid which gives real form to the material (which is stricter in halacha) and lesser form of ma'amid which simply holds the pieces together. Even if the plane is held together with steel bolts, these do not give form to the aircraft.
- This would appear to be supported by 19C poskim who ruled that trains (which sometimes passed over Jewish cemeteries) were to be categorized as wooden kelim (even though they are also held together with metal bolts).
- In general, where there a substance is made from a mixture of materials, some of which are mekabel tumah and some are not, the halachic status follows the majority.<sup>21</sup>

#### (e) A special plastic Ohel

- El Al purchased a large number of special plastic boxes designed by the Institute of Science and Halacha<sup>22</sup>. The met is stowed within this mini-ohel in order to block the tumah.
- Plastic is not mekabel tumah and should stop the tumah. Although we will see below that there may be other reasons that it would not work.

15. Rav Moshe also rules that aluminium kelim require tevilah on a Rabbinic level and not min haTorah. כב. איגרות משה יורה דעה ח"ג סימן כב. It is not clear however if that has any direct bearing on the Cohanim issue.

16. This is also the positions of the Tiferet Yisrael.

17. It should be possible to check where the met is stored in the hold and whether there are any seats directly above it. If so, a Cohen may be able to avoid booking those seats.

18. As we saw in the halacha of tevilah above.

19. This is the position of the Mishne LeMelech and others - see Rabbi Wolf's Hebrew article

20. We are more familiar with this concept in the halachot of s'chach on Succot where we require (or at least prefer) the ma'amid holding up the s'chach to also be made from a material which is not mekabel tumah.

21. See Mishna Kelim 11:4. Again, the issue can be more complex than this - see a detailed analysis in Rabbi Wolf's Hebrew article ob cit.

22. Under the leadership of Rabbi L. Y. Halperin. See Shu't Minchat Shlomo 72 where R. Shlomo Zalman Auerbach explains the invention of R. Halperin and raises various concerns and objections as to whether it will work halachically.

(f) Carpets

- Whether the carpets are or are not mekabel tumah is less relevant as they will usually be 'batel' to the metal floors.

(g) A Move**ABLE** Tent

15. וכל כלי עץ העשוי להתטלטל מלא וריקן כשק אפילו היה מחזיק מאה סאה ואף על פי שיש לו שוליים הואיל ואינו עשוי לנחת הרי זה מקבל טומאה דין תורה כשאר כלי קיבול

רמב"ם כלים פרק ג הלכה א'

*According to the Rambam, any kli which is designed to move is ALWAYS mekabel tumah, even if it is enormous and contains far more than 40 seah, and even if it is made from wood and not metal!*

- According to this view, the plane will definitely be mekabel tumah, no matter what it is made from, and will not act as a barrier against tumah.

(h) Ships of the Sky

16. מנין לספינה שהיא טהורה שנאמר (משלי ל"ט) דָּרְךְ־אֲנִיָּה בְּלִבֵּי־יָם

משנה שבת פרק ט משנה ב

*The Mishna, based on a verse in Mishlei rules that ships are NOT mekabel tumah.*

17. גמרא. פשיטא אניה בלב ים היא! הא קא משמע לך: כים. מה ים טהור אף ספינה טהורה

שבת פג:

*The Gemara appears to understand that the ruling is based on the inherently tahor status of the sea and all in it.*

18. ספינה של חרס אף ע"פ שהיא מקבלת, אינה מקבלת טומאה. שאין הספינה בכלל הכלים האמורים בתורה בין היא של חרס בין היא של עץ בין גדולה בין קטנה.

רמב"ם כלים פרק יח הלכה ט

*The Rambam appears to give a different reason for the tahor status of a ship. It is just not like a regular kli<sup>23</sup>. Could the same be said of an airplane? Would it apply even to a metal ship, or plane?*

F5] OHEL ZARUK - A MOVING TENT

ALL of the above analysis may be irrelevant!!!! This is due to the principle of Ohel Zaruk. In its discussion of the principles of Ohel, the Gemara understands that an Ohel can block tumah if it is acting as a regular Ohel - stationary on the ground. But what if an Ohel is moving - flying through the air!?! There is a major debate within the Talmud of the status of an Ohel Zaruk - a flying tent structure.

Next week iy'H we will move into the halachic world of flying carpets and super-tahor children who ride on specially modified oxen to avoid tumah. We will also raise other fresh issues such as:-

- Why is all of this an issue if Cohanim are all already tameh anyway?
- Do we really know who is a Cohen?
- When is a grave a grave?

To be continued .....

23. The Rambam does not elaborate on what the essential difference is. The analogy to a ship is a chidush of R. Wolf - see his Hebrew article for more discussion. Although interesting, this sevara will not be definitive.