

TORAH & HORAAH



Tazria 5777

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Dear Reader,

The commencement of the month of Iyar harbors a trace of disappointment. As the month of Iyar arrives, we take leave of the month of Nissan. The great month of redemption, the month on which our perennial hope of the Mashiach's coming hangs, comes to a close. "In Nissan they were redeemed—and in Nissan they are destined to be redeemed" (Rosh Hashanah 11a).

However, it seems that the month of Iyar does not indicate a complete departure from Nissan. In fact, the Gemara seems to bind the two months together:

"Rabbi Yehoshua said, 'From where do we derive that the Forefathers were born in the month of Nissan? For it says, 'And it was in the four

This week's article discusses the halachic obligation to designate graves, a halacha derived from the proclamation of the leper, and related halachos. Why must graves be designated? Who bears the responsibility for doing so? And does a similar obligation apply to other potential pitfalls? These These questions, among others, are discussed in this week's article.

This week's Q & A addresses the question of wine touched by non-observant Jews.

"Impure, Impure!" - Halachic Lessons of the Leper's Proclamation

Parashas Tazria teaches laws of the leper—a man afflicted with the condition of *tzora'as*. Among many laws, the Torah teaches that the leper must proclaim his defilement: "And the leprous man whom the lesion is upon, his clothes shall be rent, his head shall be left bare and he shall cover his upper lip, and shall announce, 'Impure, impure.'" (*Vayikra* 13:45)

Rashi explains the reason why he must make this proclamation: "He declares that he is impure, so people will know to stay away from him."

The leper's declaration of defilement is used by Rabbi Avahu (*Moed Katan* 5a) as a source for the obligation to mark graves. Just as the leper must announce his *tumah* so that people will avoid contact with him, so there is an obligation to place a sign over graves so that people, and especially Kohanim, will avoid contact with them.

The Gemara mentions several other sources that uphold the obligation to mark graves. One of them, suggested by Abaye, is the prohibition against placing a stumbling block before the blind: Graves must be marked so that nobody will inadvertently become ritually impure.

We will dedicate the present article to the subject of designating ➤➤

hundred and eightieth year of the exodus of Israel from Egypt, in the fourth year [of King Shlomo's reign] in the month of Ziv' – in the month when those who shine up the world were born" (Rosh Hashanah 11a).

The verse cited by the Gemara states explicitly that the month of Ziv is the second month of the year, the month of Iyar. Yet, the Gemara derives from the name Ziv, which translates literally as a shining glow, that each of our three Forefathers was born in the month of Nissan. How does the reference to the month of Iyar and its biblical name Ziv imply the birth of the Avot in the month of Nissan?

In his first explanation, Rashi writes that the "glow" of Iyar implies the birth of the Avos in Nissan. If the month of Iyar glows with the light of the Avos, we must conclude that their birth preceded the commencement of the month.

Iyar, rather than Nissan, is "the month when those who shine up the world

graves, and to related halachos.

Torah or Rabbinic Obligation

Is the obligation to mark graves a Torah mitzvah?

The wording of the Gemara (*Moed Katan* 5a) seems to indicate a Torah obligation. After inquiring as to the Torah source for marking graves, the Gemara suggests a source from Yechezkel. Following this, the Gemara asks: "Who said it before Yechezkel came?" The search for a specific Torah source leads Tosafos (s.v. *ha*) to understand that the obligation to mark graves is a Torah law.

However, the Gemara uses the word *remez*, literally a hint, in searching for a Torah source for the obligation, and some commentaries understand that therefore this does not refer to a Torah obligation. Tosafos, however, explains that the Gemara uses the word *remez* only because the pasuk is mainly making a different point. Nonetheless, Tosafos elsewhere (*Bava Basra* 147a) write that the obligation is rabbinic in nature, proving the point from a Gemara in *Nidda* (57a). The apparent contradiction is noted by Rabbi Akiva Eiger (*Gilyon Hashas* on the above *Tosafos*).

In his *Sefer Hamitzvos* (112), the Rambam writes that there is a positive mitzvah for the leper to declare his defilement, and extends this obligation to other people who are ritually impure. However, he does not mention an obligation to mark graves, which implies that he maintains that this is a rabbinic extension. In fact, the Mishnah LeMelech (*Yom Tov* 7:16) writes that the Torah obligation applies only to a leper, while the obligation relating to other forms of *tumah*, including marking graves, is rabbinic.

While there is no clear consensus on this matter, it seems from the treatment of the obligation by most authorities that the obligation is not considered a Torah duty. In his annotations to the Gemara in *Nidda*, *Maharatz Chajes* notes that we find similar wording even for rabbinic obligations that are alluded to by a Torah verse (an *asmachta*). The *Yaavatz* reaches a similar conclusion in his annotation to the Gemara in *Moed Katan*.

However, the Vilna Gaon writes in his annotations to the Yerushalmi (*Maaser Sheni* 28b) that the Yerushalmi maintains that the obligation to designate graves is *de'Oraisa*—a Torah-mandated obligation.

The Reason for the Obligation

The final source mentioned in the Gemara for the prohibition is

noted by Rav Ashi, who cites the *pasuk* “and you shall guard My guarding,” referring to guarding Terumah produce from becoming defiled. Perhaps based on this source, Rashi writes that the reason for marking graves is to ensure that “those eating Terumah” should not become impure. Moreover, on the “stumbling block” that the graves comprise Rashi explains a concern that those “carrying Terumah” should not become impure.

The principle concern, according to Rashi, appears to be for the purity of Terumah produce. The Ran, following similar lines, writes that the concern is lest Terumah become defiled, or lest a Kohen eat Terumah while in a state of impurity.

However, the simple understanding of the obligation to mark graves is the need to distance Kohanim from inadvertently becoming ritually defiled by contact with those graves. This is the reasoning provided by the Rambam: “Graves whose gravestones have been erased by rains must be marked, so that Kohanim distance from them” (*Laws of Yom Tov 7:11*). The Rambam writes the same explanation in his commentary to the Mishnah (*Maaser Sheni 5:1*), and the Tur similarly explains the prohibition as meaning to warn Kohanim (*Orach Chaim 544*).

This understanding is reinforced by all authorities who note the obligation as applying even today. While Terumah-related concerns are generally inapplicable today (when Kohanim don’t eat Terumah), the concern for defilement of Kohanim certainly applies.

Who Does the Marking?

The obligation to mark graves is noted by the Mishnah in two places (beginning of *Moed Katan*; beginning of *Shekalim*). Significantly, in both places the Mishnah lists a range of public duties, marking graves being only one of them. These include uprooting *kilayim*, fixing roads and paths, maintaining *mikvaos*, and so on.

The listing of such public requirements as maintenance of roads together with the obligation to mark graves seems to indicate that these are not private duties that fall on individuals, but rather public duties that fall upon the authorities. The body that is generally responsible for these duties is the local *Beis Din*.

Shut Shaul Umeishiv (I, Vol. 1, no. 94) thus writes: “Since somebody who leaves *kilayim* in his vineyard transgresses, all of Israel are obligated to uproot the *kilayim* (if the owner did not fulfill his duty), and Beis Din sends out agents to uproot them.” While all of Israel are responsible for one another, the primary duty for caring for the spiritual state of the nation—beyond each

were born” – because only in the month of Iyar was their glow brought to the world. From the light of Iyar, we know its source in Nissan.

The same, it appears, is true of the general nature of the two months. True, Nissan is the month of revelation, the month of redemption and the month of miracles. Yet, it is only the labor of Iyar, the special service of the Omer period during which we seek to perfect ourselves and to ready ourselves for Torah, that the light is consolidated. Without Iyar, the light would be momentary; Iyar allows it to shine on.

By means of Iyar and the count of the Omer that runs through it, the redemption of Nissan reaches its ultimate purpose: the giving of the Torah at Sinai. The labors of Iyar might not carry the same joy as Nissan, but they are no less important.

May we be found worthy of the task of the Omer count – of building the bridge between Nissan and the giving of the Torah.

person's responsibility for himself—is Beis Din.

The Rambam, however, notes that there is also a personal obligation to mark graves: “Whenever a person discovers a grave, a corpse, or a portion of a corpse that would impart impurity through *ohel*, he should mark it, so that it will not create an obstacle for others” (*Tumas Mes* 8:9).

Yet, the personal obligation mentioned by the Rambam applies only to somebody who chances upon a grave. After the encounter, he is charged with marking the grave to ensure that it will not be an obstacle for others—recalling the Talmudic reason of not “placing a stumbling block before others,” which is a personal obligation.

By contrast, there is no obligation to go out of one's way to find graves and mark them. This obligation, while relating to all of Israel, falls upon Beis Din. The Gemara (*Shabbos* 35A) describes how R. Shimeon Ben Yochai after he emerged from hiding after thirteen years wanted to do something to help the public and therefore, he demarcated the places where kohanim were forbidden to go because they were burial spots and were not previously marked.

Warning of Other Prohibitions

Does a similar principle, obligating us to warn of spiritual obstacles, apply to other prohibitions?

Alongside designating graves, the Mishnah (*Maaser Sheni* 5:1) mentions that one who possesses trees whose produce is *orlah* or *kerem revai* must mark them so that people will know

not to eat the fruit. This indicates that the duty of designation is not limited to graves, but applies even to other prohibitions. The *Yerushalmi* (27b) cites as the source for this obligation the proclamation of the leper, as noted at the outset from the Gemara.

Like marking graves, this does not mean that a person is obligated to invest time or money in searching for spiritual pitfalls and marking them. This obligation is a personal duty of the owner of a pitfall. When the problem is public property it is a public duty, and falls upon the relevant public authority.

A person who takes the initiative and acts in the public interest is fulfilling a mitzvah of delineating places or things which cause impurity or are prohibited. Moreover, when a person encounters such a pitfall—and the more so when his own property might cause somebody to sin or stumble—there is a clear obligation to warn of the pitfall.

As an example, if somebody bakes a dairy cake for a public occasion, there will be a concrete obligation to somehow mark the cake as being dairy, so that nobody will come to consume the cake together with (or soon after) eating meat. Even it does not fall under the direct rubric of placing a stumbling block in front of the blind, it will fall under the obligation denoted by the leper's proclamation.

In these special days between Pesach and Shavuot, may we remain clean of sin—both our own, and those of others too.

Halachic Responsa

to Questions that have been asked on our website dinonline.org



The Question:

Should one be particular not to drink non-mevushal wine that was touched by somebody who violates Shabbos publicly?

If one is particular for this, does the principle apply equally to eating their cooked foods (bishul akum), or is there a distinction between the two? Is there room to be lenient for their cooking and stringent for wine?



Answer:

Some authorities rule that one can be lenient concerning the touch of wine by those who violate Shabbos publicly (see Igros Moshe, Orach Chaim 5:37).

Other authorities, however, are stringent, and for this reason some are careful to avoid this circumstance – though this stringency will depend on particular circumstances (see sources, below).

For food cooked by non-observant Jews, even authorities that are stringent concerning wine are lenient, and it is permitted to eat the food, provided one knows all ingredients are kosher.



Sources:

As noted, Rav Moshe Feinstein zt”l is lenient in the matter of wine, the being that although the Shulchan Aruch (124:8) rules that wine touched by a mumar is forbidden (as emerges from Chulin 72), this is only because of a concern that the person is an idolater. Today’s non-observant Jews are not idolaters, and there is no concern for idolatrous libations, so that the prohibition does not apply.

Another reason for leniency is that the great majority of non-observant Jews can be classified as tinokos she-nishbe’u, and therefore are not considered mumarim. Moreover, if the person in question does perform certain mitzvos, such as bris milah, davening occasionally, and so on, there is no need for stringency (Shut Shivas Zion 23; Halichos Olam 7:p. 161).

However, for those who are prepared to violate the Shabbos even in front of an “adam gadol” (Mishnah Berurah 385:6), and who openly declare their unbelief, many authorities are stringent. The common custom is to be stringent on this matter, but those who are lenient certainly have upon whom to rely.

Yet, many of the authorities who are stringent concerning wine agree that there is no need for stringency concerning food cooked by those who violate the Shabbos. The basic reason for this is that whereas the decree forbidding wine includes an element of concern for the kashrus of the wine itself, there is no such element in the decree concerning food that was cooked, which is entirely on account of the concern for intermarriage.

Because the cooking of a mumar does not raise this concern, there is no need for stringency in this matter.

Note, however, that one must ensure that only kosher ingredients are used, and a non-observant Jew is not generally trusted in this matter.

See Teshuvos Ve-Hanhagos (3:247) who is stringent on the matter of cooking; but see Igros Moshe (Yoreh De’ah 45, 46) who is lenient, and see Tzitz Eliezer (9:41) who writes that there is no room for stringency in the matter, citing from the Chasam Sofer (Yoreh De’ah 120 and 6:83); see likewise Yabia Omer (5 Yoreh De’ah 10), among others.