

They are טמא

טמאות -

OVERVIEW

The משנה states that תלוליות (hillocks) that are close to a city or a road are presumed to be טמא, whether the תלוליות are recent or old. There is a concern that a fetus, etc. was buried there. However if they are far from the city then the recent ones are טהור and the old are טמא. The גמרא explains the difference [between קרובות and רחוקות (by חדשות)] and states that when it is close to the city, a woman can go herself and bury the fetus; however when it is far, then she has a man accompany her and goes to the cemetery. There is a dispute between רש"י and תוספות how to interpret this ruling.

פירש בקונטרס דבקרובות אפילו¹ חדשות טמאות –

רש"י explained that if the hillocks are close to the city or the roads then even new תלוליות are טמא. The reason is –

משום דאזלא איהי לחודה ואין ידוע אם קברה שם² –

Because since it is close to the city she goes there alone and therefore it is not known if she buried a body there in the תלוליות. There is the possibility that she did bury someone there –

אבל רחוקה דדברא איניש בהדה ואלמלי קברה איניש דאזיל בהדה היה מגלה³ –

However if the תלוליות are far from the city or road, then the woman will not venture there alone, but rather she will take a man along with her. Therefore, if she buried a body there, the person who accompanied her would reveal it, and it would be known. Since it is not known it is assumed that no one was buried there.

ולפיכך ישנות טמאות דאף על פי דדברא איניש בהדה נשתכח הדבר⁴ –

And therefore⁵ old תלוליות, are טמא (even if they are far); for even though she had a man accompany her if it was far (who would ostensibly reveal any burial that took place), nevertheless [even if we are not aware of any body being buried there, the תלוליות are טמא, for] even if she did bury a body it was forgotten since it took place in the distant past. This concludes רש"י's explanation.

¹ Seemingly we should assume that חדשות should always be טהור; for if someone was buried there, people would be aware of it.

² רש"י ד"ה אחד חדשות (בסופו).

³ See דאם איתא דנקבר ביה הו' ידעי ליה רש"י ד"ה חדשות טהורות.

⁴ רש"י ד"ה ישנות טמאות.

⁵ Since the only reason why חדשות רחוקות are טהור is because the דברא איניש would tell, this reasoning does not apply by ישנות.

תוספות has a difficulty with רש"י's explanation:

וקשה [לרבינו יצחק] דאם כן אמאי צריך לומר בסמוך –

And [the ר"י] has a difficulty with this explanation; for if it is so as רש"י states,⁶ then why was it necessary for the גמרא to state shortly -

דדברא איניש בהדה ולבית הקברות אזלא –

‘That a person accompanied her and she went to the cemetery’⁷ –

לא הוה לי למימר אלא דברא איניש בהדה ותו לא –

It was not necessary for the גמרא to state אזלא ולבית הקברות; but rather to only say that a man accompanies her; and say no more –

ולכך טפי חדשות טהורות דאם איתא דקברה שם היה הדבר ידוע⁸ –

And therefore (since דברא איניש בהדה), if the תלוליות are distanced more than the prescribed amount, the new תלוליות are טהורות; for if she buried a body there it would have been known. [There is no relevance (according to רש"י) in saying that ולבית הקברות אזלא.]

תוספות has an additional question on רש"י:

ועוד⁹ אי לבית הקברות אזלא ישנות אמאי טמאות –

And furthermore if she goes to the cemetery when she is accompanied; why are the old תלוליות טמא?! She went to the בית הקברות to do the burial, not to the תלוליות!

תוספות offers his interpretation:

ונראה לרבינו יצחק כרבינו חננאל דפירש דישנות טמאות אפילו רחוקות –

And the ר"י prefers the interpretation of the ר"ח who explained that the reason ישנות are טמא even if they are רחוקות is (not because she went with an escort and it was forgotten¹⁰, but rather) -

דחיישינן שמא קרובות היו שהיה העיר אצלה וחרב –

Because we are concerned that these תלוליות were close to a city; for there was a city nearby and the city was destroyed. At that time it was close and the woman went there alone -

ולפי זה לא נאמר משום דדברא איניש בהדה היה ידוע יותר –

⁶ According to רש"י, the חדשות רחוקות are טהור because the accompanying person would make it known.

⁷ This reason indicates that the reason חדשות רחוקות are טהור is because she goes with her escort to the cemetery (not because the escort would make it known). However, according to רש"י, this is not the reason.

⁸ See תוספות ישנים in the margin who attempts to answer this question, writing; ומצי למימר דתרי טעמי לטיבותא; נקט, and it is possible to say that the גמרא mentions two reasons to permit these תלוליות.

⁹ Not only is ולבית הקברות אזלא not relevant (to חדשות רחוקות); it contradicts the ruling by רחוקות.

¹⁰ This cannot be the reason; for the גמרא states that with the escort she goes to the cemetery, as תוספות previously asked in the second question.

And according to this interpretation of the ר"ה, **we do not assume that since a man accompanied her it would have been better publicized**, had she buried someone.¹¹ The escort is no cause to assume that there was no burial (for otherwise he would have made it known). We do not assume this at all -

ולחכי איצטריך לומר ולבית הקברות אזלא –

Therefore, in order to explain why חדשות רחוקות are טהור, **it is necessary to state that she went to the cemetery** with the escort, and did not bury in the תולדות (it has no connection to the lack of publicity).

SUMMARY

רש"י maintains that קרובות are always טמא, since she can bury by herself. חדשות רחוקות require an escort. Therefore טהור for the escort would inform us of any burial; however by ישנות (רחוקות) any report from the escort was forgotten. גמרא which states that by רחוקות she takes an escort and goes to the cemetery. A. why mention going to a cemetery? An escort is sufficient reason to make it טהור by חדשות רחוקות. B. if she goes to the cemetery with an escort why is ישנות רחוקות טמא? רש"י agrees with תוספות! רחוקות טמא because we are concerned that they were once קרובות and the woman buried by herself without an escort. חדשות רחוקות are טהור for an escorted woman buries in the cemetery.

THINKING IT OVER

רש"י is of the opinion that an escort should cause publicity. It follows that ישנות are more liable to be טמא because thing were forgotten (even if there was an escort). Nevertheless קרובות חדשות are also טמא (despite the fact that an escort causes publicity), for by קרובות there may have been no escort. תוספות is of the opinion that an escort does not add to the publicity. It would therefore seem that by קרובות there is no difference between ישנות and חדשות. They are both equally טמא. Why then did תוספות assume previously¹² that the status of ישנות is more פשוט than חדשות?¹³

¹¹ Alternately; תוספות is proving that דברה אינש בהדה is not a reason for publicity (as רש"י maintains). According to רש"י the גמרא should have said 'טפי דברא אינש בהדה והיה ידוע יותר'. Instead the גמרא states טפי דברה אינש בהדה ולבית הקברות אזלא. That being escorted lends us to assume that she goes to the cemetery.

¹² תוספות ד"ה אחד.

¹³ See פנ"י ואלהיו רבה וה"ב אות שב בד"ה אחד.