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Digest
Mishna Berura
THE DAILY RESOURCE FOR MISHNA BERURA YOMI
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סימן שי"א סעיף ב'

Overview

Siman 311 Seif 2:

If a corpse smells foul and it is disgraced amongst the living and they are disgraced from it And some maintain that even if it does not yet smell foul but is close to smelling foul **it is permitted to take it to a *karmelis*. If there was a place for the living to go, the corpse may not be removed; rather the corpse is left in its place and the others must leave. Some maintain that that it is only permitted to remove the corpse by using bread or a child. Some maintain that if the corpse will be taken into a *karmelis* it is better to remove it without using bread or a child in order to minimize the *hotza'ah*. Some permit removing the corpse to the public domain by using a child but not using bread. The same is true if the corpse is experiencing another type of disgrace, for example, if it was on a ship and there were gentiles gathered there and anything which is similar.** It is also permitted to instruct a gentile to move the corpse similar to the allowance for bread and children. It is prohibited to move a corpse by use of bread or a child for the needs of *kohanim* or something else but some permit asking a gentile to do this and I saw this custom followed for the need of a *mitzvah* or wedding.

- Human dignity is so important that it overrides Rabbinic prohibitions. The primary rationale in this case is to give honor to the living and thus when another location for the living is available the corpse may not be transported. According to the lenient opinion that permits moving the corpse when it is close to producing a foul odor, it is permitted to move the corpse even if the people have another location available to them. (M.B. 7)
- Although there is no alternative but to transport the corpse, nevertheless, when it is possible to avoid violating the restriction of *muktzah* one must do so. (M.B. 8)
- Elya Rabba decided in accordance with the first opinion since many *poskim* follow that position. (M.B. 9)
- The rationale is that it is a *melacha she'aina tzricha l'gufah* since one does not need the corpse outside and being that we follow R' Shimon's position that it is only Rabbinically prohibited, when it comes to a corpse the injunction does not apply out of considerations for human dignity. Taz and Elya Rabba follow the first opinion since many authorities follow that opinion. (M.B. 10)
- This applies only when the child is old enough to support its own weight. (M.B. 11)
- Rema's wording implies that this is permitted only into a *karmelis* but others permit this even into the public domain. (M.B. 12)
- It is permitted to move the corpse for the needs of the corpse rather than the living. Authorities write that indirect movement, meaning transporting it from bed to bed, is permitted even without the use of bread or a child. (M.B. 13)

Halacha Highlight

Preventing an autopsy

Shulchan Aruch Siman 311 Seif 2

מתר להוציאו לכרמלית

It is permitted to transport it to a *karmelis*

Shulchan Aruch addresses the question of what may be done with a corpse on Shabbos. He maintains that if the corpse is producing a foul odor and as a result the corpse is disgraced in the presence of the living and the living are disgraced from the corpse, it is permitted to move the corpse to a *karmelis*. The method in which this may be done is debated and Mishnah Berurah (סק"ט) cites Elya Rabba who follows the first opinion that when available it is preferable to place bread or a child on the corpse so that one moves both things together. The rationale behind this leniency is the principle that human dignity is such an important principle that it suspends Rabbinic injunctions (מ"ב סק"ז).

Shulchan Aruch then writes that it is not only permitted to move a corpse when it is disgraced due to a foul odor that it is producing but it is also permitted to move the corpse if it will undergo another type of disgrace. As an example, he mentions a circumstance in which the corpse is on a boat where gentiles are gathering. Another example mentioned by the *Poskim* is when there is a possibility that if the corpse is not moved it will be subject to an autopsy. In such a circumstance it is permitted for a Jew to move the body to a *karmelis* and a gentile may move the body even to a public domain. When moving the body it is preferable to move it with its clothing that will eventually be removed rather than using bread or a child since that will avoid violating the prohibition against transporting the bread or the child. Additionally, if necessary it is permitted to make a phone call to prevent an autopsy from taking place or even ask a gentile to drive one to a courthouse (פסקי תשובות אות אי).