



Volume 5. Issue 39

Burning Clothes

Masechet Midot begins in a similar manner to *Masechet Tamid* discussing *shmirah* (guard duty) in the *Beit Ha'Mikdash*.¹ Here however, it elaborates further discussing the *shmirah* performed by the *levi'im* as well as the following detail:

Ish Har Ha'Bait would go between watch posts with a lit torch in his hand. [If he found] any guard who would not stand [when he approached] he would say "Shalom to you". If it became clear that the guard was asleep he would strike him with a stick. He also had permission to light his clothes...

The *Tifferet Yisrael* writes that this measure served not as a punishment, but rather as a strong deterrent for the other *shomrim* as the screams of the now awake *shomer* would resonate throughout the *Mikdash*.

A question that arises from this disciplinary action is how was he allowed to set light to the sleeping *shomer's* clothes. There is a prohibition of "*ba'al tashchit*" – simply translated as not causing undue waste. The *Torah* (*Devarim* 20:19) prohibits cutting the fruit trees surrounding a city under siege at a time of war. The *Chachamim* extended this prohibition to other items as well (*Rambam Melcahim* 6:10). How then can the clothes be lit?²

The *Tifferet Yisrael* answers that the burning was defined as a *knas* (a fine). Consequently it served a purpose and no longer is the subject of *ba'al tashchit*. The *Ramban* (*Hashmatot Le'Sefer Hamitzvot, Aseh* 6) explicitly rules that the prohibition only applies when wasting for no reason.

The *Rosh* however writes that in this case there is no *ba'al tashchit* because "*hefker beit din hefker*". This concept relates to *Beit Din's* power to cancel one's monetary ownership of property. According to the *Rosh* inflicting a fine in this manner is clearly not enough to allow burning the clothes. Yet, how does *hefker beit din hefker* relate to the prohibition of *ba'al tashchit*? The question is further sharpened as *ba'al tashchit* appears to apply also to *hefker* (ownerless) items.³

The *Shut Yehuda Ya'ale* understands that the *Rosh* simply disagrees; rabbinic *ba'al tashchit* does not apply to ownerless property. Since the *Chachamim* expanded the prohibition they can limit it just the same. (One could suggest in a similar manner that as it is a rabbinic prohibition they deemed that it did not apply in this situation. Such a suggestion would not help to understand the *Rosh* as he specifically employs *hefker beit din hefker*.)

Alternatively the *Node Beyehuda* (*Mehadura Tanina, Yoreh Deah* 10) however suggests an important distinction. While he understands that *ba'al tashchit* applies to *hefker* property it does not apply to items that have no loss to any person. Perhaps one could suggest that in this case, the *hefker beit din hefker* is stronger than normal *hefker* in that it makes it perpetually ownerless and therefore of no value to anyone.

Yisrael-Yitzchak Bankier

¹ Why does this *Masechet*, that deals with a description and dimensions of the *Beit Ha'Mikdash* open with a discussion about *shomrim*? The *Tifferet Yisrael* explains that the entire purpose of learning this *masechet* is so that we can guard in our hearts the form and design of the *Beit Ha'Mikdash* so that we can know how it will be built in the future whether built by man (*Rambam*) or whether it comes done from heaven (*Rashi*). We must therefore "guard" in our hearts, even now, all its details. He uses this understanding to explain the *pasuk* "On your walls *Yerushalaim* I have placed watchmen all day [while the *Beit Ha'Mikdash* is built] and all night [during the time the *Beit Ha'Midash* is destroyed.]

² Another question relating to lighting the *shomer's* clothes is how a physical punishment can be given without prior warning, especially in a case where the *shomer* is likely to have been overcome by tiredness and did not deliberately sleep at his post. An answer to that question can be found in the *Shut Yehuda Ya'ale* (*Chelek A, Yoreh De'ah* 164).

³ See the *Shut Dvar Avraham*. The *Shulchan Aruch Ha'Rav* (*Hilchot Shmirat Ha'Guf Ve'Hanefesh*) explains that since *ba'al tashchit* applies to the property of the enemy at a time of war, it must certainly apply to ownerless items.

Revision Questions

תמיד ב' ה' – ה' א'

- Who were invited to take part in the lottery to decide who would offer the *ketoret*? (ה' ב') (ה' ב')
- What was decided in the fourth lottery? (ה' ב')
- What happened to those *kohanim* who did not receive any specific role? (ה' ג')
- What did the person who was elected to offer *ketoret* carry? (ה' ד')
- What did the person that would accompany him carry? (ה' ה')
- Described what this person would do and how it was different on *Shabbat*? (ה' ה')
- What were the three uses of the *psachter*? (ה' ה')
- What were the three activities that resulted from the sound of the *magreifah*? (ה' ו')
- What would occur prior to the *ketoret*? (ה' ו')
- Describe how the *ketoret* was offered? (ה' ז')
- What did everyone do when the *ketoret* was offered? (ה' ז')
- Describe how the *kohen gadol* would enter the *kodesh* and what would he do there? (ה' ח')
- Describe where and how the *kohanim* would then “bless the nation”? (ה' ח')
- How would *birkat kohanim* differ when said in the *Beit Ha'Mikdash* both in content and action? (ה' ט')
- Describe how the *kohen gadol* would place the parts of the *tamid* on the *mizbeach*. (ה' ט')
- Describe how he would then perform *nisuch ha'yayin*. (ה' י')
- What would happen just prior and after *nisuch ha'yayin*? (ה' י')
- What *shir* was recited by the *levi'im* on each day of the week? (ה' י')

מדות א' א'-ב'

- What were the three places the *kohanim* stood watch? (ה' א')
- How many places did the *levi'im* stand watch? (ה' א')
- What would happen if one was caught asleep while standing watch? (ה' ב')

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Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
25 th January כ"ט טבת	26 th January א' שבט	27 th January ב' שבט	28 th December ג' שבט	29 th January ד' שבט	30 th January ה' שבט	31 st January ו' שבט
Midot 1:3-4	Midot 1:5-6	Midot 1:7-8	Midot 1:9-2:1	Midot 2:2-3	Midot 2:4-5	Midot 2:6-3:1

