

What's the Truth about ... Har HaBayit?



MISCONCEPTION: Many religious Jews do not visit Har HaBayit (the Temple Mount) today. This is because we are all presumed to be in a state of *tumat met* (ritual impurity due to “contact” with the dead), and a *tamei met* is prohibited from ascending Har HaBayit. (Since the removal of *tumat met* requires the use of the ashes of a *parah adumah*, which are currently not available, every Jew is presumed to be in this state of impurity.)

FACT: Although individuals with certain forms of ritual impurities are barred from all of Har HaBayit, a *tamei met* may enter the peripheral areas of Har HaBayit surrounding the central holier region that included the Temple compound. Thus, although we currently lack the means to remove *tumat met*, this is not really a deterrent for ascending Har HaBayit. Those who refrain from ascending do so because of other halachic or political concerns or because of archeological uncertainties.¹

BACKGROUND: Halachah recognizes different levels of *kedushah* (holiness) that relate to both time and place. Thus, Shabbat has more *kedushah* than *yom tov*, which in turn has more *kedushah* than *chol hamoed*. This is reflected, for example, in various differences among the holy days with

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regard to Havdalah texts and the number of *aliyot* in the Torah reading, as well as in the range of prohibited activities and the punishments associated with their violation. A similar hierarchy is relevant to the sanctity pertaining to space. The Mishnah (*Keilim* 1: 6-9), for example, delineates ten levels of spatial *kedushah* within the Land of Israel, which is holier than all other lands. The first three levels are the following: walled cities in Israel, which are holier than the rest of the Land; Jerusalem, which is holier than other walled cities; and the Temple Mount, which is holier than Jerusalem. The remaining seven levels are areas of increasing sanctity within the Temple precinct. The level of sanctity of an area is reflected in the kinds of *mitzvot* that may be performed there as well as in the laws regarding entry.

The sanctified areas in Jerusalem correspond to the Israelite desert encampment (*Tosefta*, *Keilim* 1:10; *Sifri*, *Naso* 11; Rambam, *Beit Habechirah* 7:11; see *Aruch Hashulchan Ha'atid*, *Beit Hamikdash* 14:17, 36:7). Three concentric levels of sanctity existed in the encampment: the innermost area called *Machaneh Shechinah*, the Divine Camp that contained the *mishkan* (Tabernacle); *Machaneh Leviyah*, the encampment of the Levites that surrounded *Machaneh Shechinah*, and *Machaneh Yisrael*, an area beyond *Machaneh Leviyah* where the rest of the Jews encamped. When the Jews settled the

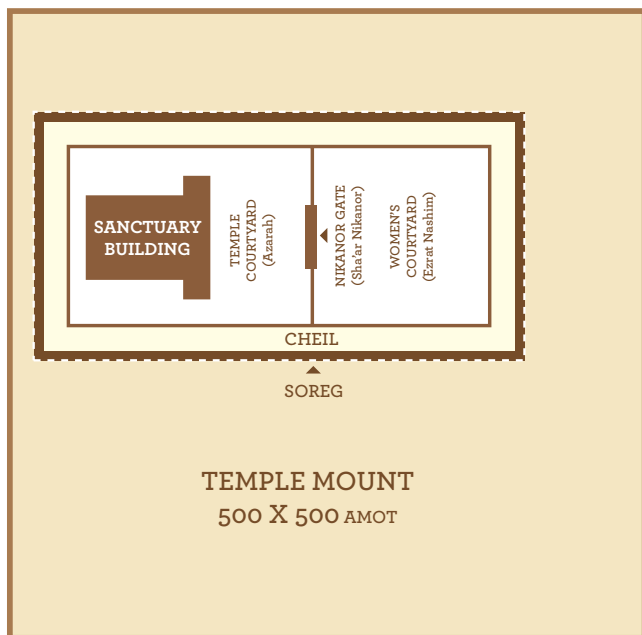
Land of Israel these “camps” were represented by the following sanctified areas: the *Azarah* (Temple Courtyard), which started at *Sha'ar Nikanor* (the Nikanor Gate) and included the *Beit Hamikdash* building and the altar (*Machaneh Shechinah*); Har HaBayit (*Machaneh Leviyah*) and the rest of Jerusalem (*Machaneh Yisrael*).

The verses in Bamidbar 5:2-4 that describe the laws pertaining to the desert encampment would seem to indicate that individuals with all types of *tumah* (ritual impurity) were removed from all three camps. However, Chazal explain (*Sifri*, *Naso*: 4; *Pesachim* 67a-68a; Rambam, *Biat Mikdash* 3:1-2) the specific rules:

At one extreme, a *metzora* (one who is afflicted with *tzara'at*) is excluded from *Machaneh Yisrael*; thus, he is not permitted anywhere in Jerusalem. At the other extreme, a *tamei met* is barred from *Machaneh Shechinah* but is permitted within *Machaneh Leviyah*.² Chazal derive this (*Tosefta*, *Keilim* 1:7; *Pesachim* 67a; *Sotah* 20b) from the fact that a corpse itself was brought into *Machaneh Leviyah* when Moshe, a Levite, transported Joseph's bones from Egypt for burial in the Land of Israel (see *Shemot* 13:19; *Nazir* 45a; Rambam, *Beit Habechirah* 7:15 and *Biat Mikdash* 3:4). Thus, according to Biblical law, a *tamei met* may ascend Har HaBayit and proceed all the way up to the *Azarah*, until *Sha'ar Nikanor*. How-

ever, the rabbis added additional restrictions, and decreed that a *tamei met* may not go all the way to the *Azarah* but must stop at the *Cheil*,³ the same boundary that applied to a non-Jew.⁴ The Biblical prohibition of entering the *Azarah* and the Temple building itself for a *tamei met* incurs the severe punishment of *karet* (Bamidbar 19:13, 20; *Makkot* 14b; Rambam, *Biat Mikdash* 3:12-13 and *Sefer Hamitzvot*, negative 77, positive 31).

There is, however, another form of *tumah* to which additional restrictions apply, including the prohibition against entering any part of Har HaBayit. This applies to an individual in a state of *tumah hayotzei megufo* (an impurity that emanates from his body), and includes *niddah* (menstruation), *yoledet* (post-partum), *zav*, *zavah*⁵ (Rambam, *Beit Habechirah* 7:15 and *Biat Mikdash* 3:3; *Pesachim* 67-68) and a *ba'al ker*i (one who experienced a seminal emission). While a *ba'al ker*i is usually included in this list, and is the most relevant form of *tumah* with regard to ascending Har HaBayit nowadays, the Mishnah (*Keilim* 1:8) and *Tosefta* (*Keilim* 1:7) both fail to mention the *ba'al ker*i when listing those forbidden from ascending Har HaBayit.⁶ The inclusion of the *ba'al ker*i, however, is an explicit statement of Rabbi Yochanan (*Pesachim* 67b-68) and seems to be an explicit *mishnah*, as explained by the Gemara (*Tamid* 27b). Strangely, when listing those prohibited from ascending Har HaBayit, Rambam twice (*Beit Habechirah* 7:15 and *Biat Mikdash* 3:3) omits



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mention of the *ba'al ker*i. Addressing this omission, the *Mishnah Lemelech* (*Beit Habechirah* 7:15; cf. *Mishnah Lemelech*, *Biat Hamikdash* 3:3) says Rambam maintains that the *ba'al ker*i is, in fact, included and notes that the *ba'al ker*i's inclusion in the prohibition is implicit in the Rambam in two other places (*Beit Habechirah* 8:7 and his textual source in *Biat Mikdash* 3:8⁷). Alternatively, it is possible that Ram-

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bam maintains that the *ba'al ker*i is indeed permitted on the peripheral areas of Har HaBayit (see *Aruch Hashulchan Ha'atid*; *Biat Mikdash* 36:10).⁸

A person experiencing one of these states of *tumah* who ascends Har HaBayit does not incur the penalty of *karet* but is guilty of violating a negative prohibition, for which he should receive lashes (Rambam, *Biat Mikdash* 3:8). In order to remove these types of *tumah*, one must wait a requisite period of time, immerse in a mikvah and wait for the sun to set.⁹ During the period between immersion and sunset the individual has the status of a *tvul yom*, and is permitted on Har HaBayit but can go no further than the *Ezrat Nashim* (Women's Courtyard) (Rambam, *Biat Mikdash* 3:5-6 and *Beit Habechirah* 7:17).¹⁰

In summary, the generally accepted *halachot* are as follows: a *tamei met* may ascend Har HaBayit, but may only proceed as far as the *Cheil*. Those in a state of *tumah hayotzei meguf* are barred from the entire Har HaBayit; once such a person becomes a *tvul yom*, he is permitted on most of Har HaBayit.

All of the above regulations were in effect during the time of the Temple. The question is, Are they applicable today? This depends on whether the area where the Temple stood retained its sanctity despite the destruction of the *Beit Hamikdash*,¹¹ which is a subject of debate among halachic authorities. Rambam (*Beit Habechirah* 6:14-15) and many other Rishonim¹² and Acharonim¹³ maintain that the sanctity of the Temple persists, and thus just as one may theoretically offer sacrifices there today, were a *tamei met* to enter the area of the *mikdash*, he would still incur the punishment of *karet*. These sources assert that the initial sanctification of the area by King Solomon is in effect; he sanctified it for his time and forever after. Rambam states:

Even though the mikdash is today destroyed due to our sins, one is obligated in its reverence just as when it was standing. One should not enter except where he is permitted, and should not sit in the Azarah and not act with levity opposite the Eastern Gate. ... Even though it is destroyed it still possesses its holiness (*Beit Habechirah* 7:7).

Opposing Rambam, Ra'avad (*Beit Habechirah* 6:14) opines that since the *Beit Hamikdash* was destroyed, the original sanctity of the area is no longer in effect and therefore the punishment of *karet* no longer applies. Some understand Ra'avad as disagreeing with Rambam only with respect to the actual punishment of *karet*; according to this reading, he concurs with Rambam in that the restrictions pertaining to Har



Non-Jews could not proceed any further on Har HaBayit than a tamei met. At frequent intervals along the soireg (the stone balustrade surrounding the sacred area), stone slabs inscribed in Greek and Latin warned non-Jews not to enter the sacred zone on pain of death. Above is a partial inscription from such a sign in Greek discovered by archeologists.

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HaBayit still stand—or at the very least, he is uncertain as to whether these restrictions still apply and therefore does not permit entry *ab initio*. Others are of the opinion that Ra'avad permits free entry to all of Har HaBayit.¹⁴

Today, Israel's Chief Rabbinate and many rabbis forbid Jews from ascending Har HaBayit, and thus no shul or

other Jewish structure is found there. Some rabbis do permit entry (the number of religious Jews who visit is increasing, but is still quite small). But, seemingly, Jews did not always avoid the area.¹⁵ It is reported that with the Muslim conquest in 638 CE, the Jews were permitted to build a shul and *beit midrash* on Har HaBayit. Ben-Zion Dinburg,¹⁶ a former Israeli minister of education, marshals numerous obscure sources to demonstrate that a shul existed on Har HaBayit between the seventh and eleventh centuries. Rabbi Shlomo Goren (*Sefer Har HaBayit* [5752], chap. 26) finds evidence of a Jewish presence on Har HaBayit even before the Muslim conquest. Meiri (1249-1315; *Shavuot* 16a) wrote that he heard that in his time there was a widespread custom to ascend Har HaBayit. The Radvaz (1479-1573; 2:691) assumed that the rock in the Dome of the Rock is where the *aron kodesh* stood and he calculated how far one must be from that point; he then permitted entry to the rest of Har HaBayit. Rabbi Yechiel Michel Tuketchinsky (d. 1956), writing pre-Six-Day War (*Ir Hakodesh Vehamikdash*, sec. 5, pp. 80-81), observes that in the time of the *Beit Hamikdash* there were shuls on Har HaBayit. Furthermore, he says that in our pre-Messianic period, when we get permission to build (and the ability to do so), there is plenty of available space on Har HaBayit on which a shul can be built. Indeed, in the days of the *Beit Hamikdash*, it was probably not unusual for a *tamei met* to remove his other forms of *tumah* and to ascend Har HaBayit as a *tvul yom*. In other words, these individuals realized (as some do today) that while certain areas of Har HaBayit may be off limits, simply being on Har HaBayit is valuable in and of itself. Indeed, the remains of numerous Second Temple period *mikvaot* have been found in close proximity to Har HaBayit. Although their precise purpose is unclear, it has been reasonably suggested¹⁷ that they were used by the hordes of people who were in a state of *tumat met* and *tumah hayotzei meguf* but who nevertheless wanted to ascend to the areas of Har HaBayit accessible to one with the status of a *tvul yom*.

Those religious Jews who ascend Har HaBayit today abide by the ruling of Rambam, who states that entering the areas where the *Azarah* and the *Beit Hamikdash* itself stood still incurs the punishment of *karet*.¹⁸ However, there is one important aspect of this discussion that has not yet been addressed: the exact location of the historical Har HaBayit (the area referred to as Har HaBayit during the time of the *Beit Hamikdash*). Where exactly was the historical Har HaBayit located?¹⁹ The *mishnah* in *Middot* (2:1) states that Har HaBayit was 500 by 500 *amot*, an area of approximately 62,500 square meters. (An *amah* is roughly a half-meter.) Today the area referred to as Har HaBayit is a rectangle that is twice as long north-south as it is east-west, covering an area of about 145,500 square meters. Herod had built additions to Har HaBayit in the north and south, creating “spectator” sections for non-Jews. Thus, those who permit entry to the area suggest there are regions in the south (near the El-Aqsa mosque) and north that were clearly added by Herod.

If this is correct, then anyone can enter those areas, even one who has not gone to a mikvah. Those who object to ascending Har HaBayit at all assert that there is no way to know with certainty—and archeological evidence can never definitively determine—the precise location of the *Beit Hamikdash*. Thus, even though a *tamei met* may technically ascend Har HaBayit, because of the severe punishment (*karet*) he would face were he to mistakenly enter the *Azarah*, one should avoid the entire area.²⁰ Therefore some authorities (such as Rabbi Ovadiah Yosef) state that one should not ascend Har HaBayit because we are in a state of *tumat met*; these authorities agree that a *tamei met* is not barred from the peripheral areas of Har HaBayit, but they maintain that when one is in a state of *tumat met*, he should avoid all of Har HaBayit lest he stray into forbidden areas.

Those who rule permissively note that aside from the Herodian additions, there are many areas on Har HaBayit that a *tvul yom* may enter. The forbidden zone (where a *tamei met* is not

permitted to enter) is a rectangle-shaped area of about 357 *amot* east-west by 165 *amot* north-south. Currently, Har HaBayit’s rectangular-shaped compound measures about 500 *amot* east-west and close to 1,000 *amot* north-south, thus providing a large margin of error when calculating where one may go.

Some authorities suggest totally avoiding the entire Har HaBayit so as not to potentially violate a different commandment—that of *mora mikdash*, showing proper awe and reverence for the *Beit Hamikdash* (Vayikra 19:30; Rambam, *Beit Habechirah* 7:1-7). This includes (*Berachot* 54a, 62b; *Yevamot* 6a-b) not entering Har HaBayit while wearing leather shoes or with a walking stick or purse. Also, one may not spit, have dust on one’s feet, use Har HaBayit as a shortcut or engage in idle chatter while there (*Aruch Hashulchan Ha’atid, Hilchot Beit Hamikdash* 14: 1-14). Rambam also adds that *mora mikdash* bars even a ritually pure person from entering the area for no purpose.

In recent years, the question re-

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garding the advisability of ascending Har HaBayit under present circumstances has been addressed in great detail by many leading rabbis. Those who forbid entering the area do so because of the fear of violating the laws pertaining to its sanctity. Advocates insist on extreme caution and intense reverence, but see a value in establishing a connection between the Jewish people and the awesome holiness of Judaism's most sanctified site. May we be *zocheh* to the day when there will be a rebuilt *Beit Hamikdash* on Har HaBayit and all our questions will be answered by those who sit in the *Lishkat Hagazit* (the Office of Hewn Stone, where the Sanhedrin sat). ■

Notes

1. This article is not taking a position on the propriety of ascending Har HaBayit nowadays. If, however, one chooses to ascend, he must be careful to restrict himself to certain areas and to immerse properly in a mikvah prior to going. Furthermore, one must adhere to the laws relating to *mora mikdash*, showing awe and reverence for the *Beit Hamikdash*, and should ascend under the guidance of an expert in the topic.
2. The *Aruch Hashulchan Ha'atid* (*Biat Mikdash* 36:8-9) attempts to explain the fact that *tumat met*—which in many ways is the most stringent type of *tumah*, as evidenced by its duration, means of purification and methods of transmittal—is not the most restrictive with regard to entering holy places.
3. The *Cheil*, which surrounded the entire perimeter of the *Beit Hamikdash*, was either an open space ten *amot* wide or a wall ten *amot* high (*Aruch Hashulchan Ha'atid*, *Beit Hamikdash* 11:5; Rabbi Shlomo Goren, *Sefer Har HaBayit* [5752], chap. 24).
4. Non-Jews could not proceed any further than a *tamei met* (*Mishnah Keilim* 1:8; Rambam, *Biat Hamikdash* 3:5). Note that this is not because of *tumah*, as a non-Jew cannot become *tamei* (Rambam, *Hilchot Tumat Hamet* 1:13). Josephus wrote (*Antiquities* 15:417; *Wars* 5:193, 6:124; cf. *Antiquities* 12:145) that there were warning signs posted at regular intervals along the *soreg* (the stone balustrade surrounding the sacred precinct), some in Greek and some in Latin, warning non-Jews to keep away. A partial inscription from such a sign discovered by archeologists can be seen in the Rockefeller Museum in Jerusalem. A more complete sign is in the Istanbul Archeological Museum. It reads: “No foreigner may enter within the railing and enclosure that surround the Temple. Anyone apprehended shall have himself to blame for his consequent death.”
5. Based on this halachah the Chief Rabbinate should probably be more strict about keeping non-Jews off Har HaBayit than about keeping out ritually impure Jews. In light of this, Rabbi Shlomo Goren, during his tenure as chief rabbi of Israel, proposed closing the central part of Har HaBayit to all. See Yoel Cohen, “The Political Role of the Israeli Chief Rabbinate in the Temple Mount Question,” *Jewish Political Studies Review* 11, 1-2 (1999): n. 61. See the article by Rabbi Eliyahu Bakshi-Doron (*Techumin* 14 [1994]: 11-19) on Jews discouraging non-Jews from entering the area and *Tzitz Eliezer* 10:1:10 for more on the subject.
6. Due to the complexity and the sensitivity of the laws of *niddah*, *zavah* and post-coital women, even those contemporary authorities who advocate going on Har HaBayit are hesitant about encouraging women to make the pilgrimage.
7. The implication of Deuteronomy 23:11 would seem to be that a *ba'al kerit* is barred from *Machaneh Leviyah*. See *Ha'emek Davar*.
8. It seems likewise from his phrasing in *Sefer Hamitzvot*, negative 78.
9. See Radak to Yechezkel 42:16, who also omits mentioning the *ba'al kerit*.
10. For some of these ritual impurities—*zav*, *zavah* and *yoledet*—a sacrificial requirement may be necessary as well in order to achieve complete purification.
11. The Talmud (*Yevamot* 7b) observes that there was a rabbinic enactment barring a *tvul yom* from *Machaneh Leviyah*, which seems to include the entire Har HaBayit. *Tosafot* (*Zevachim* 32a, s.v. *u'vatemaim* and *Pesachim* 92a, s.v. *tvul yom*) explain that the *gemara* means that a *tvul yom* is barred from the *Ezrat Nashim*, the part of *Machaneh Leviyah* closest to the *Machaneh Shechinah*, and not from the entire Har HaBayit. Rambam (*Biat Hamikdash* 3:6 and *Beit Habechirah* 7:17) simply says that a *tvul yom* may not enter the *Ezrat Nashim* and that by rabbinic fiat he is barred from *Machaneh Leviyah*. From this statement, it would seem that Rambam, at least with regard to this halachah, does not consider the entire Har HaBayit as constituting *Machaneh Leviyah*. See also the *Aruch Hashulchan Ha'atid* (*Beit Hamikdash* 14:26).
12. See Rabbi Ovadiah Yosef, *Yechave Da'at* 1:25, for a list that includes *Tosafot*, *Sefer Yeri'im*, Smag, Rosh, Ritvah, *Sefer Hachinuch* and others.
13. See *ibid.* for a list that includes the Avnei Nezer, Binyan Tzion, Ridvaz, Rabbi Avraham Yitzchak HaCohen Kook, as well as *MA* 561:2 and *MB* 561:5.
14. For a discussion of Ra'avad's position, see *Binyan Tzion* 2; *Mishpat Kohen* no. 96 and Rabbi Shlomo Goren, chap. 8 in *Sefer Har HaBayit*.
15. There are those who assert that Rambam *davened* on Har HaBayit. This is based on an autobiographical letter attributed to Rambam about his travels in the Land of Israel (see Yitzchak Shilat, ed., *Iggerot HaRambam*, vol. 1 [Jerusalem, 5747], 224-226). However, the letter's authenticity is questionable. Even if Rambam wrote it, his reference to Har HaBayit is somewhat vague. Some recent *posekim*—primarily those opposed to ascending Har HaBayit—suggest that Rambam *davened* in a synagogue located near, not on, Har HaBayit (*Minchat Yitzchak* 5:1; *Tzitz Eliezer* 10:1:54-55, 11:15:6). See Rabbi Goren, *Sefer Har HaBayit*, 350-351.
16. Ben-Zion Dinburg, “Beit Tefillah uMidrash LeYehudim al Har HaBayit,” *Zion*, vol. 3 (5689): 54-87; cf. Yehudah Yitzchak Yechezkel, “HaKotel HaMa'aravi,” *ibid.*, 95-163.
17. Yonatan Adler, “The Ritual Baths Near the Temple Mount and Extra-Purification Before Entering the Temple Courts: A Reply to Eyal Regev,” *Israel Exploration Journal* 56, no. 2 (2006): 209-215.
18. Unlike that which is implied by Meiri, who states that people used to ascend Har HaBayit in his day because of the position of Ra'avad (who states the punishment of *karet* no longer applied). So, too, Radvaz permitted people to ascend, partially relying on the position of Ra'avad. Today Ra'avad's position is no longer given weight even by those who ascend Har HaBayit.
19. Some authorities assume the Kotel was a wall of the *Azarah*. This would mean that the Kotel Plaza is a part of Har HaBayit. See *Yabia Omer* 5, *YD*: 27, for a discussion and refutation of this position.
20. In addition to the “technical” questions with regard to ascending Har HaBayit, others see spiritual issues. Rabbi Avraham Yitzchak HaCohen Kook wrote (*Iggerot Hareiyah* 2:285) that one small trespass on the holiness of our eternal *Beit Hamikdash* negates the merit of the establishment of millions of settlements in the Land of Israel.

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