

For Nov. 21, 2019 Class on Midot with Rabbi Mark Levin

CORR 228-231

FAMILY DISAGREEMENT OVER CREMATION

QUESTION:

A Jew had died and left instruction in his will that his body is to be cremated; but the next of kin, either for religious or other reasons, wish to have a burial instead. Whose wish is to be carried out? (Asked by Rabbi John D. Rayner, Union of Liberal and Progressive Synagogues, London, England.)

ANSWER:

THERE IS a Talmudic maxim which, under ordinary circumstances, should guide the family. The maxim found in Gittin 40a and Taanit 21a is as follows: "It is a Mitzvah to carry out the intentions of the dead." In the Talmudic discussion and in the Shulchan Aruch (Even Hoezer 54; Chosen Mishpot 252:2) this principle is applied to the disposition of the property left by the deceased. However, the maxim is also used in a more general sense than that. For example, when a man says he does not want a eulogy spoken, or if he says he does not want Kaddish said for him, his wishes are to be fulfilled. See the full discussion in Recent Reform Responsa, p. 110 ff. (If the book is not available to you, let me know and I will send you a photostat of the responsum.)

However, it will be observed in this responsum that there is a definite limitation placed upon the maxim to fulfill the will of the dead. We may grant a man's wish not to have a eulogy or Kaddish because eulogy and Kaddish are for the honor or the atonement (respectively) for the dead; and a man has the right to say that he does not want these privileges. But if, for example, he had expressed the wish that his survivors should not mourn for him (Shiva and Sheloshim), this wish must not be carried out, because these periods of mourning are religiously incumbent upon the survivors and he has no right to expect his wish to be fulfilled when his wish contravenes the law.

On this basis the question would seem to be easily answered, namely, since cremation is contrary to Jewish law, the man's wish contravenes the law and may not be carried out. This would be the instant decision of an Orthodox rabbi.

However, since the question is put by Liberal and Reform rabbis to a Liberal or Reform rabbi, the question and the answer cannot be so clear-cut. While Orthodox opposition to cremation has occasionally gone so far as to refuse the burial of the ashes (though some permit this) and while some authorities have gone even further to prohibit any services for the person who has been cremated, the Central Conference of American Rabbis decided early (CCAR Yearbook 1892, p. 43, cf. Jewish Encyclopedia, Vol. IV, p. 344) that we will not refuse to officiate at a cremation. This decision leads us to look a little more closely into the status of cremation in Jewish law.

The fact of the matter is, there is no clear-cut prohibition of cremation in the Talmud. Of course, the presumption is that cremation was not practiced very much, if at all, first because earth burial is simpler and, secondly, because in Mishnaic times at least they knew that cremation was a Roman custom and, therefore, to be avoided as idolatrous.

The Orthodox agitation against cremation actually began about a century ago, when cremation became an ideal that was agitated for through many societies in the western lands. When one studies the arguments adduced (in the last century) against cremation, one can see that they are forced. For example, burning the body would be tantamount to a denial of bodily resurrection. The patriarchs all made arrangements for their burial. So, clearly, that was the only proper way of disposing of the body. (The best statements of the Orthodox case against cremation are in Lerner's *Chaye Olom* and Greenwald's *Kol Bo*, p. 53 ff.) A good article giving the permissibility of cremation is to be found in the *Central Conference Yearbook for 1891-2*, by Schlesinger, p. 33 ff. However, it is to be noticed that Solomon Ben Adret in his *Responsum #369* permitted the putting of quicklime on the body, which would burn up the flesh so that the bones could be transported to another city in fulfillment of the wishes of the dead. In fact, Isserles gives this as a law, that we may put quicklime on the body if the deceased had left a request that his body was to be buried in another city (see *Yore Deah 363:2*). Of course, it must also be noted that Joseph Caro in *Yore Deah 362:1* does speak of burial in the earth as a *Mitzvah*.

The situation, therefore, is as follows: While cremation is not well-established as a classic prohibition, nevertheless in the last century it has become an established decision and mood of Orthodoxy that cremation is forbidden. If we are dealing with Orthodox people, we should take this mood as a fact and respect it. If, then, the family is chiefly Orthodox, we would be inclined not to fulfill the wish of the dead. But if the family is chiefly Liberal, then we consider the fact that the prohibition against cremation is not a firmly rooted one and that Reform rabbis have long since decided to officiate at cremations. Surely if we officiate at a cremation, we cannot refrain from fulfilling or encouraging the fulfillment of a man's wish for this type of disposal of his body.

The decision then in this case must depend upon the mood prevailing in the family. If the family is not definite about it and asks our advice, we should urge them to carry out the Talmudic maxim: It is a *Mitzvah* to fulfill the wishes of the dead.

168. Linen Shrouds or a Garment

QUESTION: A family has asked whether it is necessary to purchase expensive linen shrouds for their dead grandfather. The family has limited means and would prefer to use some ordinary garments for burial. What is a attitude of tradition? (Kate Goldsmith, Houston IX)**ANSWER:** Tradition has emphasized simplicity for funerals. Rabban Gamliel, who was wealthy, insisted that he be buried in only a linen shroud in order to set an example (*MK 27b*). Another scholar R. Hezkiah asked that the shrouds used for his burial be limited in number (*J Kelaim 9.4*). Linen shrouds, often eight in number came to be used (*Shulhan Arukh Yoreh Deah 352*; Tekushinsky *Gesher Hayim* Vol 1 p 102f). The number may have arisen under kabbalistic influence. Shrouds could be omitted for a known sinner as a sign of disparagement (Joel Sirkes to *Tur Yoreh Deah 362*). There is a well established tradition for the use of shrouds, but we should remember that they were used to avoid extravagance and unnecessary expense. In keeping with tradition it should be possible to obtain inexpensive linen shrouds or shrouds of any other material. It would also be permissible to use the garments which the deceased wore and so avoid any additional expense. This is appropriate and in the spirit of tradition. May 1989.

6. Informing on Others in Criminal Activities

QUESTION: A prisoner has asked whether he is, according to Jewish law, duty-bound to inform on others in criminal matters with which he is charged. This will probably be part of “plea bargaining.” What is his duty according to our tradition? (Rabbi W. J. Leffler, Lexington, KY)**ANSWER:** Jewish tradition states that information which, if withheld, would harm individuals or the community, either through criminal activity or considerable financial loss, must be presented. This is based on a Biblical statement (*Lev. 19.16*) as well as later authorities (*Yad Hil. Rotzeah 1.13*; *Shulhan Arukh Hoshen Mishpat 426.1*; Elijah of Vilna *Biur Hagra*, *Hoshen Mishpat 425.20*; Isserles to *Shulhan Arukh Hoshen Mishpat 388.11*). Furthermore, in a criminal case every witness is obligated to testify if he possesses personal knowledge of the events (*Lev. 5.1*; *B. K. 55b*; Isserles to *Shulhan Arukh Hoshen Mishpat 28.1*). It is also clear that a person is obligated to testify before a Jewish or non-Jewish court in order to save himself from threatened punishment. Under such circumstances, one is *moser beones* (*Tur Hoshen Mishpat 388*; *Shulhan Arukh Hoshen Mishpat 388.8 ff*; *Yad Hil. Hovel 8.2*). We should note that there is no problem of testifying before a non-Jewish court. We have records of a Jewish community handing a Jewish criminal who had injured a non-Jew to a Gentile court as early as the Gaonic Period (700 – 1000 C.E.; J. Mueller, *Mafteah*, p. 182). It is quite clear, therefore, that Jewish law requires an individual to testify and that there is no reason to hesitate. February 1983.

CCAR RESPONSA

Formation of a Chevra Kaddisha

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She'elah

Some members of our Reform congregation would like to establish a Chevra Kaddisha because they are dissatisfied with the local funeral directors. They have requested information concerning the traditional activities of a Chevra Kaddisha from the Orthodox perspective and are inquiring whether there are any “desirable adjustments” from a Reform point of view. (Jay Friedheim, Honolulu, HI.)

Teshuvah

The Tradition. The Chevra Kaddisha is “a sacred society” of men and women who make themselves responsible for looking after the deceased and supervising the burial arrangements. It has a long and proud place in Jewish tradition.¹ We find mention of burial organizations as early as the Talmudic era.²

The primary purposes of the society are tohorah (washing the corpse), shemirah (watching it) and tachrichim (dressing it properly).

The corpse is first thoroughly and carefully washed. Then the body is positioned for tohorah, the pouring of nine measures (kavim, approximately 24 quarts) of water in an act of ritual purification.³ The duty of shemirah concerns the mitzvah of guarding the deceased. From the moment of death until burial, the corpse is not left alone.⁴ Finally, the corpse is wrapped in shrouds, tachrichim, and is guarded until burial. At all times, the Chevra Kaddisha is scrupulous to protect the honor of the deceased (kevod hamet).

The responsibilities are performed with a minimum of speaking. Female members of the Chevra Kaddisha care for women, and males care for men. Membership in the Chevra is reserved for the pious, and has long been considered a great honor.

Along with many of the time-honored funeral and burial customs,⁵ the rituals of the Chevra Kaddisha are considered important but not imperative by the Halakhah. For

instance, rabbinic authorities declare that a corpse that does not undergo the ritual of tohorah is still accorded all the privileges of Jewish burial:

Heaven forbid that we should deny the person [the right] to be buried in a Jewish cemetery. For tohorah only serves to honor the dead [and not as a qualification for burial].⁶

The traditional reason given for the custom of shemirah was to protect the corpse from animals.⁷ Since, in the majority of cases, this is not a concern for the modern funeral home, shemirah may not appear to be necessary. In fact, shemirah has become less a time for guarding than for reciting Psalms.

Reform Perspectives. The functions of the Chevra Kaddisha accord with the principles of Reform Judaism. Though they have not become a part of its general practice, which has not required tohorah, shemirah or tachrichim,⁸ we consider them highly desirable. In larger cities, it has become customary to engage a Jewish funeral director to be responsible for preparing the corpse for burial in order to assure traditional services. However, where there are only non-Jewish funeral directors available, or there is disregard for Jewish sensitivities and burial customs, we would encourage the community to establish either a Chevra Kaddisha or some other organization that would be involved with funeral and burial arrangements. ⁹ Together with a Rabbi, it should meet with the local funeral directors (both Jewish and Gentile) to insure that they are aware of the appropriate way to handle Jewish deceased. At the very least, the Reform Chevra Kaddisha must insist that the principles of honoring the dead are being met: that the Jewish deceased are washed carefully, and that the corpse is treated with dignity in preparation for burial.

Not surprisingly, finding the right people to perform such a task has often proven to be difficult. The sources are filled with admonitions that attempt to regulate the behavior of those who are assigned the task of staying with the deceased throughout the nights and days before burial.

A Reform Chevra Kaddisha can be an important (and sometimes necessary) addition to the Jewish community. It is desirable especially when it adds to the traditional functions a concern for comforting the mourners (nichum avelim). For instance, it could establish itself as the congregational branch that is responsible for helping the family make the

arrangements before and after the burial. After the funeral, the Chevra Kaddisha, or one of its auxiliaries, could see to it that the mourners will come home to a se'udat havra'ah, the meal of consolation. They could also help assemble a minyan for services during shiva. They could explain and make available to all Jews the traditional rituals and customs in caring for the dead.¹⁰

Organizationally, the Chevra might begin as a congregational or inter-congregational service, offered to members, and in time offer its services to all Jews. Even in its early, limited role, the congregational Chevra Kaddisha would make a positive contribution to the Jewish community. It should not take long for the local funeral directors to become sensitized to Jewish burial practices and customs.

Some Reform communities have successfully established a traditional Chevra Kaddisha. Others have created a related organization or committee that is responsible for helping the mourning family with burial, funeral and shiv'a arrangements.¹¹ In all cases, it is a mitzvah for friends and congregants to share in the duties and responsibilities of caring for the deceased and their grieving families. Certainly, every community would be greatly blessed by the dedication of those who help others through the pain and anguish occasioned by the loss of a loved one.

We therefore heartily endorse your intention of rendering this valuable service.

Notes

- BT. Moed Katan 27b. The traditional duties of the Chevra Kadisha are laid out in Hyman

Goldin's Hamadrikh (New York, 1939) and in Maurice Lamm's The Jewish Way in Death and Mourning (New York, 1969); see also Encyclopaedia Judaica 8:442-446, where a brief history of the institution is given.

- Goldin, chapter 197.
- Goldin, chapter 194.
- Tur, YD, Hilkhot Avelut 376, in which the custom of washing the hands when returning from the cemetery and before entering the house of mourning is

declared not necessary. R. Jacob b. Asher goes on to declare that many of the customs at the cemetery are for symbolic reasons only (end of 376).

- Kol Bo Al Avelut, p. 89.
- TB, Berachot 18a; Mishnah Berurah, OC, Hilchot Keri'at Shema, 71.3.
- See Gates of Mitzvah, p. 53.
- Compare Walter Jacob, Questions and Reform Jewish Answers, #167, pp. 277-278.
- See, for instance, Chaim Benjamin Goldberg, Mourning in Halachah, (New York, 1992), p. 55 (especially note

#100, the reference to Ma'avar Yabok).

- See also American Reform Responsa, edited by Walter Jacob, #100 (especially pp. 347-348).
- For example, the Canadian Council for Reform Judaism, 36 Atkinson Avenue, Thornhill, Ontario, L4J 8C9,

(905) 709-2275; Temple Beth El of Northern Westchester, 220 South Bedford Road, Chappaqua, NY, 10514, (914) 238-3928; Congregation B'nai Torah, 2789 Oak St., Highland Park, Illinois, 60035, (708) 433-7100.