

HALOCHOSCOPE

Note on last week's issue: It was pointed out that the name Wolf predates Germany. The Talmud mentions the name Lukus as one that is not used by Jews. Lukus is the Greek for wolf (lycos, but the y has a u sound). This was probably frowned on as a Jewish name initially, and became accepted with time. [Possibly the origin of Lucas.] The name might have traveled with the Jews into galus and was translated into German later. [See Gitin 11b, Sukah 56b. Igros Moshe EH:III:35.]

This week's question:

An occasional *mispalel*, congregant, has *yahrzeit*. A regular *mispalel* is an *avail*. Should the *avail* yield to the *yahrzeit*? Does *shul* membership make any difference? What if the regular *avail* is not a fully paid-up member, but the occasional who has *yahrzeit* is paid-up?

The issues:

- A) *Kaddish* and serving as *shliach tzibur* for an *avail* or *yahrzeit*
- B) *Kedimah*, priority rights for either of these
- C) *Oraiach* and *toshav*, a guest or a regular
- D) Membership

A) *Kaddish* or serving as *shatz* for *avail* or *yahrzeit*

The source for *kaddish yasom*, recited by an orphan, is ancient. The popular notion is that it is a prayer for the dead, and some chant it in mournful tones. It is true that it has beneficial effect on the soul of the departed, in addition to the merit of the responses that are attributed to the orphan, and thereby, to the departed soul. However, *kaddish* has nothing to do with death. It is a sanctification of Hashem's Name, done only in the presence of a quorum, and mostly during services. The original institution was to permit an *avail* to lead all services, not as an act of mourning, but to bring merit to the deceased who is no longer in this world of action. The only way for him to gain additional merit is through his survivors. Any good deeds help, but causing a large number to do good at one time increases the merit dramatically. A person is judged during the year following death and on the *yahrzeit* again. At this time, the survivors try to gain merit for him. His children also wish to perform an act of honoring their parents by increasing their merits.

An orphan below *bar-mitzvah* is not qualified to act as *shliach tzibur* for the full service. Parts of the service require the *shatz* to discharge the obligations of the congregation. A minor, who is not obliged himself, cannot discharge adults' obligations. The last *kaddish*, a concluding prayer for ultimate sanctification of Hashem's Name, was reserved for these young orphans. The world is maintained by the '*yehei Shemei rabah ...*' after Torah study. Therefore, this *kaddish* is also given to the *yasom*.

Kaddish has three parts: the *hazmanah*, introduction until *yehei Shemei*, the central section until *da'amiran be'alma*, and the last part, which consists of additional prayers. Some communities recite the main part with the *shatz*. Some maintain that though the listeners are indeed obliged to, they need not recite it aloud themselves. They may rely on

shomaia ke'oneh, listening is like responding. A third view maintains that the listeners' obligation applies only to the first sentence of this section, which must be recited aloud in unison. According to the first and third views, the *yasom* is not discharging anyone's obligation, since they recite the parts that they are obliged to. According to the second view, congregants are relying on the *shatz*. If he is a minor, they would be required to say it along with him. According to the poskim, the last *kaddish* must always be recited. If there is no *avail* present, the *shatz* recites it, having in mind all the departed Jews.

An adult *avail* can amass more merit by leading the entire services. There could be reasons why he cannot serve as *shatz*: it is customary not to allow an *avail* to serve as *shatz* on certain days, including *Shabbos* (there being no judgment then); there might be a *shatz kavua*, permanent *chazan*; the *avail* might be unacceptable to the *tzibur*; he might lack confidence or fluency. Therefore, *kaddish*, which always helps with extra merit, was reserved for adult *availim* as well. At other junctures during the service *kaddish* is recited by *availim* as well. An *avail* who is unable to lead the whole service, should lead the last part, including *kedusha desidra*, better known as *Uva letzion*. This is another recital that keeps the world going. [See Brochos 3a Sotah 49a, Poskim. Tur BY Darkei Moshe (YD:376:9) Sh Ar OC 53:20 22 55:1 131 132 133 YD 344 376:4 402 403, commentaries. Tefilah Kehilchasa 24:58-60. References in Halochoscope I:28 III:42.]

B) Kedimah

Serving as *shatz* is a privilege, but since it is reserved for *availim*, they have a right to it. This depends on the will of the *tzibur*, to a point. Thus, it can be determined by *minhag makom*, local custom. In *Sefaradic* communities *kaddish* is recited by all *availim*. In others, only one person recites it, since 'two voices cannot be heard (properly)'. If there is more than one *avail*, which of them has the rights? The same question applies to serving as *shatz*. The various sections and *kaddaishim* can be shared out. Usually, the level of *availus* is the guide. Priority is given to a child over other relatives. Indeed, in some communities, other relatives are not given any rights. Of the children, one in his first week of mourning comes first. Next is one during the first thirty days, and then one during the first year. One observing *yahrzeit* for a parent is somewhere in-between, because he only has the one day to serve, while the others have the next day. *Yom hafsakah*, the last day of *kaddish*, is considered equal to or greater than *yahrzeit*. This person will not have a chance again, except on *yahrzeits*. It would be helpful for a *shul* to draw a chart with the order of priority according to their *minhag*.

In cases where there are multiple *chiyuvim*, obligants for *kaddish*, they can divide the opportunities. This way, even those who are lower on the scale can have a chance. Nonetheless, the higher priority *chiyuv* could claim that he has all the rights. The poskim debate this, and the consensus is to share the rights. Thus, each *avail* can have a certain number of rights. Each *kaddish* could be divided a few ways. For example, we could say that there are three or four claims per *kaddish*, and there are four *kaddaishim*. Each *avail* gets one claim per level of *availus*. Thus, a child could have two claims against another relative's one claim. The *kaddaishim* will then be divided according to claims. However, to serve as *shatz*, many poskim maintain that the level of *availus* is not enough to stake a claim automatically. This is much more dependent on the will of the congregation. They

may make any determination that they see fit to do. Usually, it will be based on rational reasons, including those in the next sections.

For equal *chiyuvim*, the *tefilos* of the complete day are taken into account. *Maariv* can be given to one *avail* and *shacharis* to another. What if one of them has to leave after *maariv*? To resolve conflicts, comparisons are made to monetary law. In practice, poskim suggest drawing lots. This may be done even on *Shabbos*. It is assumed that the merit will be determined from Above. If one *avail* 'steals' the right from another *avail*, he has done nothing to help the deceased soul. On the contrary, he probably causes more harm than good. Furthermore, the poskim say that the merit gained from the *kaddish* or *tefilah* will always go to the place it was meant to go all along. Moreover, compromising will certainly bring merit to the soul of the departed. When there are not enough *kaddaishim* to go around, some congregations add additional *tefilos*, with extra *kaddaishim* recited after them. The higher priority *availim* will then get the main *kaddaishim* and the chance to be *shatz*. [See refs to last section. Biur Halacha 132. Tefilah Kehilchasa 24:61-64.]

C) Toshav and oraiach

Among the claims to priority are the rights of a resident over that of a visitor or guest. An exception is made for the first day that a guest is in town. Otherwise, he really has no claim to any *tefilah* over any resident. Guidelines for residency are taken from communal and monetary law. Generally, tax-payers are considered residents. Sometimes, a businessman will pay taxes in a community in which he does business, even if he resides somewhere else. This raises some debate about his equality with local residents. Evidently, money is not the only issue. The availability of another *shul* to call one's own plays a role. Paying for seats in a *shul* is also considered. This itself can be dependent on various factors. In some communities, this right is of real monetary value, and can be claimed permanently, inherited or sold, and the holder can place a ban on it. In others, it is an annual fee, and the actual seat can be decided at the discretion of the leadership.

Taxes include local government taxes, that were often collected through the community, and communal taxes to provide services to the community. Some communities levied a head tax or a household tax, or a combination. For some communal needs, there was an arrangement to levy the tax half according to means, and half according to households. This provided for the salary of *rav*, *chazan*, *dayanim*, *shochet* and *shamas*. It also provided for the *mikvaos*, *shuls* and wedding halls. There would be a *kupas tzedakah* to provide for local and visiting poor, including food, clothing and shelter. All residents had to participate in this tax. In addition, certain products would be taxed, most notably, the meat-tax went towards the *melamed*, school teacher. A resident for more than twelve months, or one who purchased a home, is considered *toshav* for this purpose. Some maintain that students or migrant workers are considered *toshavim* while they live here.

The residence of the deceased is a factor. Children of a resident would have *kedimah* over those of a non-resident. Furthermore, if a resident died with no survivors, he might hire another resident to say *kaddish*. This unrelated person could even have claims of equality or priority against a real *avail* for a non-resident. [See refs to other sections.]

D) Membership

In most communities, there are more than one *shul*. Each *shul* is supported by its

own membership. Sometimes a non-member will *daven* in a *shul*. This could happen occasionally, or on a regular basis. In monetary terms, a paying member has a share in the *shul* and its assets, including the land, furnishings, *sifrei Torah* and the *seforim*. He is also responsible to contribute to upkeep. In some *shuls*, membership is not collected regularly. Rather, payment is made for any *kibud*, honor of an *aliya* and the like. Regular appeals are also made according to need. Accordingly, any regular *mispalel* will be called on to support the *shul*. He will then have the rights. However, the poskim differentiate between different *mispalelim*. Those who come for the *tefilos* that do not raise money have no claim of membership.

In most *shuls*, a combination of the two methods is used. Accordingly, a paying member would have one claim, and if he is a regular *mispalel* he would get a second claim. This raises a question about a situation where there are two equal *chiyuvim*, one of whom is a regular *mispalel*, but not a paying member, while the second is an occasional *mispalel*, but is a paying member. If the paying member pays a higher annual total than the non-member pays in *nedavos*, the case could be made to give him priority. On the other hand, membership dues are not according to means. *Nedavos* are according to means. Therefore, it might not be fair to compare them directly. Rather, if the *shul* budgets according to *nedavos* equally or more than membership, it would make them equal. If membership is the base, with *nedavos* an auxiliary amount, members come first.

There is an additional factor. The occasional *mispalel* must have another *shul* which he frequents regularly. In that *shul*, he is likely to have been given equal rights. Therefore, all things being equal, the poskim say that the regular *mispalel* should be given priority. He does not have another *shul* in which he can claim priority. In our case, this factor is complicated by the membership factor.

It would seem that the *shul* and its *tzibur* can use their discretion in this matter. They have the prerogative to determine the rights to a *chiyuv* based on either the regularity of the *mispalel* (which can also be critical in a small *minyan*), or the paid-up membership. They could take into account the rules in the other *shul* that the paid-up member frequents. He might attend there for convenience, but have no rights. He can reasonably claim that membership dues are not merely to vote or to claim a share in the *sifrei Torah*. One expected benefit of paying membership here is the right to *kaddish* or *shatz* when he is an *avail* or has *yahrzeit*. In that case, it would make sense to champion members over *mispalelim*. [See Megila 25b-27b Nedarim 46b-48a Baba Basra 7b-8b 43a, Poskim. Refs to earlier sections. Tefilah Kehilchasa 24:note 194.]

In conclusion, the *shul* has discretion in this matter, based on their considerations. **On the parsha for there was no household that did not have dead (member).** [12:30] Perhaps one of the harsher aspects of the *makas bechoros* was that it affected every single household. One in mourning has friends to console him. When one says *kaddish* and others respond, it comforts the mourner. If everyone in *shul* recites it, there is no-one to respond and comfort him. The Egyptians had no-one to even comfort them, for everyone suffered equally.

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