

HALOCHOSCOPE

This week's question:

Someone is hired to recite *kaddish*. A relative of the deceased paid him to recite *kaddish* for the year of mourning. He missed a day or two through unforeseen circumstances. Can he make up the missing days at the end? Can he make up the missing *kaddish* recitals? Must he inform the relative? Must he pay back the money for the missing recitals?

The issues:

A) *Kaddish* for the year of mourning

B) A *shliach*, agent, to recite *kaddish*; *Tashlumin*, making up for a missed *mitzvah*

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 a 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.

The Talmud says that the wicked are judged and punished for twelve months after they die. After this time, they merit their lot in the world to come. The implication is that those who do not deserve so much judgment receive a shorter sentence. It is during this period of judgment that one tries to accumulate extra merits for the deceased. The recital of *kaddish* by a surviving child brings the parent this extra credit. If the child were to recite *kaddish* for the entire twelve month period, he would be implying that his parent was a wicked person, who needed the full twelve months advocacy. This would serve as reverse honor. He would be dishonoring the reputation of his parent. Accordingly, the poskim say that a child should not recite it for the full period. Rather, he should recite it for eleven months only. Leading the services is permitted during the twelfth month. If he does not recite the *kaddish*, there is no obvious impression that he is doing it for his parent's merit. Anyone could lead services. At the same time, he gains the merit of the responses of the congregation, if it might be needed.

One reciting *kaddish* for a different relative may recite it for longer. He does not violate the *mitzvah* to honor them by implying that they need the extra merit. However, even for other relatives, the common practice is to stop reciting *kaddish* before the full eleven months are up. He should still not give the impression that the deceased was wicked. The one week period is based on a difference of opinion on how much one should shorten the period for a parent. The reason given to stop at the end of eleven months is that a day in a month can be counted as a full month. Therefore, one should not recite *kaddish* on the first day of the twelfth month. The other view allows one to recite it until the last week. A day in a month would not count as a full month, but a day in a week could count as a full week. Some say that even if one were to recite it for twelve months, the last *Shabbos*, the *neshama* does not need to leave. Therefore, he stops on the last *Shabbos*. [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. Availus Bahalacha 39:1. Tefilah Kehilchasa 24:58-60. References in Halocholescope I:28 III:42.]

B) Hiring a shliach

The early poskim discuss a hired person reciting *kaddish* in the context of *kedimah*, order of precedence. The original practice, especially in *Ashkenazic* communities, was that only one person could recite each *kaddish*. [This is still practiced in some communities.] The question arose, who takes precedence? There could be various *availim* at dif-

ferent levels. For example, one might be observing *shloshim*, another observing the twelve month period, and another, *yahrzeit*. In addition, one might be a full resident of the community, another a tenant, and another visiting. There could also be levels of relationship, such as a son, a parent or a sibling, or even a more distant relative who is not a mourner. Another possibility is one who is hired to represent a relative. He deserves consideration, albeit less than the true *availim*. The *availim* get two thirds of the *kaddeishim*, while the hired reciters get the remaining third. Others maintain that agents cannot compete with true *availim*. Some say they can compete with *availim* other than children.

Thus, we see that the practice to hire another to act as his agent is ancient. A child should always try to represent himself. *Brah mezakeh aba*, this gains true merit for the parent. However, a child is not required to forgo his livelihood for this. It is a part of the *mitzvah* to honor his parents. Honoring parents does not require one to use his own funds, but those of the parent. Therefore, if one cannot attend services and still earn his livelihood, he may hire someone who is able to attend to recite *kaddish* in his stead. The same would apply if one lives in a community where there is no daily service. He may hire someone who lives in a community with a daily service, rather than move or travel there every day by himself. In reality, any agent can do it, even without being paid. However, the paid agent is the one discussed. The poskim suggest that paying has an advantage. In this way, the child is indeed buying the service, and gains more credit.

The poskim discuss the terms of the agency. One reciting *kaddish* for a parent should try to recite it at every opportunity. This means getting to services on time and reciting each *kaddish*. If only one person is allowed to recite *kaddish*, the child should ask for as many as he is allowed. At the least, he should be allowed one *kaddish* a day. If, however, the community has one *minyan* and too many *availim* to give each person a *kaddish* each day, they might need to take one every two days or more. [This could be another situation in which an *avail* might ask a *shliach* to cover for him.] Thus, the basic minimum is to recite one *kaddish* each day. Better than that would be to recite one in the morning and one in the evening. Better than that would be to recite two morning and evening. The best would be to recite each *kaddish*.

An agent who is hired must fulfill the terms of his agency. This is a service provided for payment. When one hires an agent, he could have in mind that the agent will do whatever he himself would be obliged to do. This would depend on the local practice regarding more than one reciter. It could also depend on how vigilant the *avail* or his agent will be to do it. Thus, some poskim maintain that the unspoken standard is to recite one *kaddish* a day. If the *avail* or relative specifies otherwise, the agent must follow the terms of agreement. Others maintain that the standard agreement is based on the expectation that the agent will recite each *kaddish* available to him.

There are two differences between the opinions. Firstly, the second view maintains that the agent must try to say more *kaddeishim*. Secondly, according to the first view, an agent could theoretically act on behalf of many relatives. He could dedicate one *kaddish* to each. According to the second view, this would depend on whether he can recite one *kaddish* for more than one *niftar*. If he cannot, he could not hire himself to more than one relative at any given time. All of his available *kaddeishim* would be dedicated to that *nif-*

tar. However, this last point is debated. While there is a view that one must dedicate a separate *kaddish* for each *niftar*, many poskim do not follow it. For example, if one happens to be saying *kaddish* for two parents, he might not have a claim on more than one *kaddish*, if the local practice is to share them out. As proof for this last view a ruling is cited regarding a *shul* where there are no *avilim*. The *kaddish* after *aleinu* should still be recited anyhow. The person reciting it should have in mind all the *niftarim* within the last year. Evidently, one could recite *kaddish* for a number of *niftarim*.

Some great people have the meritorious practice to hire an agent in addition to the *avilim*. They want to gain the extra merit. Specifically, they designate money from their estate to be paid to others to study and recite *kaddish derabanan*.

If one misses a *tefillah* through negligence, he may not make it up. If he was not negligent, he may make it up. The principle is that a *tefillah* is really based on a specific time, and linked to an offering. This offering may only be offered on its day, and cannot be made up. However, the element of prayer can be made up by reciting an extra *tefillah* in the period for the next *tefillah*. The poskim discuss one who forgot to observe the *yahrzeit* of a parent. He should observe the next day. He should also try to observe an extra *kaddish* in future, on the day before the *yahrzeit*.

What about missing a day of *kaddish*. A *yahrzeit* is tied to a specific day. *Kaddish* applies every day. In the sense that *kaddish* is connected to the *tefilos*, he could make it up in the same way. This works if he would normally recite one *kaddish*. If he recites all the *kadeishim*, he cannot do this. However, he might be able to add some days at the end. If he is a child, this would not be appropriate. If he is an agent, he could do this. The questions are: would the relative agree to this? Would the relative claim that he did not do his job? If so, how much could the relative claim back?

Hiring generally following prevailing *minhag*. Since people are human, anyone hiring an agent understands that there are circumstances that make it hard to fulfill every single detail of the terms at all times. Therefore, the relative cannot demand perfection. This does not relieve the agent of his responsibility to try. If he knows in advance, he could ask someone else to cover for him. However, in monetary terms, he cannot be expected to refund for his missed *kadeishim*. He should make up the merits that were lost by adding extra *kadeishim* at any point during the year, since an actual make up is not possible. [See refs to section A. Brochos 26a Baba Metzia 83a etc., Poskim. Bais Yosef end YD 403. Sh Ar OC 55 Kaf Hachaim 20-30, 108, 132, MA 1 CM 331, commentaries. Hakadish (Asaf) p. 162-167. Igros Moshe YD:I:154. Even Yaakov 50. Availus Bahalacha 39:26-28. Nitei Gavriel Availus II:50.]

In conclusion, he should make it up by reciting extra *kadeishim* for the merit of the deceased. He need not refund any of the payment.

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Shmuel haKohain z"l whose *yahrzeit* is on the 25th of Teves. 

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