


HALOCHOSCOPE



This week's question:

A Jewish member of a secret society died. One of the practices of this society is to cover the body with an article of clothing used in some rituals. The article has symbols that are known to be ancient pagan symbols. May it be placed on the body for burial?

The issues:

- A) *Kevurah, the mitzvah of burial*
- B) *Tachrichin, burial shrouds*
- C) **What is interred with the body?**
- D) **Pagan symbols; *Darkei Emori, gentile superstitious practices***
- E) ***Mitzvah lekayem divrei hamais, complying with the instructions of the deceased***

A) *Kevurah*

This *mitzvah* is Scriptural. The Torah obliges us to bury those executed by *bais din* on the same day. We apply this to all corpses. The Talmud gives two possible explanations for this *mitzvah*. It is a *kaparah*, atonement for the soul, to have the body laid to rest in the ground, and it is undignified for a body to be left unburied. The difference between these reasons is when the deceased left instructions not to be buried. One may voluntarily claim he does not want a *kaparah*. *Bizayon* affects others, including his survivors. The poskim seem to conclude that the primary issue is *bizayon*.

There is a debate about those obligated in the *kevurah*. The *mitzvah* to bury executed bodies would appear to apply to the community at large. However, references to burial throughout the Torah and Scriptures refer to children or other family members burying. This pertains to both the actual activity and the cost. While a survivor might not complete the full burial, he would be able to participate in the main parts, and delegate the rest to others, paid or volunteers. In actuality the *bais din* had cemeteries for those executed. It appears that after the body decomposes, the remains are moved to a family plot.

During the period before the burial, the relatives obliged to bury are *onenim*, exempt from performance of other positive *mitzvos*, due to their preoccupation with this *mitzvah*. The poskim debate whether there is a hierarchy of those who mourn. If there are no relatives, the body is a *mais mitzvah*. All Jews are obligated, and the first available Jew must carry out the obligation. Ideally payment should come from the deceased's estate. If this has been given away or instructions were left not to use it for this, there is a debate whether it may be forcibly taken from the heir or the relatives? If the person died penniless, there could be an obligation on his survivors or the communal coffers to pay for a respectable but minimal burial.

There is a specific provision made in a *kesuba*, marriage contract, to obligate a husband to cover the costs of his wife's burial. This applies even if it was not written in to the document. It is a clause that was instituted Rabbinically, that can only be exempted in

special circumstances. He must also spend whatever is needed to accord her the honor that befits her station. If he is not available, *bais din* may take funds from his property. If he is not living, sometimes, his heirs pay, and sometimes those who inherit her *kesuba* pay, depending on the stage of her receiving the *kesuba*. The wife would not be obligated to spend her *kesuba* money on the husband's burial needs, even if there is none left in his estate to pay for it. The bill would then go to his survivors or *tzedaka*. [See Kesubos 48a, Sanhedrin 46b, Yevamos 89b, Nazir 43b, Poskim. Tur Sh. Ar. YD 348:2-3, 362:1, CM 253:30-31, EH 89, 118:18, commentaries.]

B) Tachrichin

The body is buried clothed. This is done in part out of respect for the image of Hashem that was created in the human. Also, the deceased will be revived in the clothes he wears when he is buried. In addition, some say that the shrouds at the time of death are symbolic of the way his soul is 'clothed' in Paradise. Accordingly, special attention is given to the shrouds of burial. In former times, it was the custom of the wealthy to clothe their dead in expensive garments. The poor could hardly afford even very cheap garments. Eventually, the poor left their dead relatives without burial, because of their shame. It was therefore instituted that all Jews must wear linen shrouds, so as not to discriminate between them. The wealthy could still purchase better quality linen, and the poor, regular linen. There are also mystical reasons to use white linen. This has become the standard practice. Furthermore, the poskim maintain that silks or gold-embroidered clothes should never be used, for other reasons. It is considered haughty and boastful. It is wasteful. It is considered a ritual of pagans [see below].

In addition, the body is wrapped in a *talis*. There is much debate regarding the *tzitzis* on this *talis*. Part of the debate involves the rule that one may not scoff at the deceased, who is in a situation in which he cannot fulfill the *mitzvos*. [Therefore, those carrying the body do not wear *taleisim*. Nowadays, they must conceal their *tzitzis*.] In practice, there are varying customs, the most prevalent in our communities being to invalidate one of the *tzitzis* before interment. By extension, it would appear that wearing something normally forbidden is also a way of scoffing. However, *tachrichin* may be made with *shatnez*, a mix of wool and linen. Some explain that *shatnez* is only forbidden when the body benefits from it. The reason *tzitzis* are placed on the body is because they represent the entire Torah. If the item of clothing in our question would be forbidden to wear, regardless of benefit, it would seem that one should not place it on the body. [See Brochos 18a Kil'ayim 9:4 Shabbos 104a Moed Katan 27b Kesubos 8b Semachos 9 Nidah 61b, Poskim. Rambam Aivel 4:2. Tur, BY, Sh Ar YD 301:7 334 351-2, commentaries.]

C) Interring other things

As mentioned, interring expensive items is wasteful. The Talmud discusses a 'day of death' as a pagan holiday when commerce with the idolaters would be forbidden. There is a debate on whether this applies specifically to a death that involved burning the personal possessions of the deceased. This was the custom when a prince or king died. His '*yahrzeit*' would then be commemorated by his heir, as a holiday. Those who insist that it is only considered pagan if there is burning, seem to maintain that the practice of burning is *chukas hagoy* and *darkei Emori* [see below], gentile superstitious practices, linked to cultural paganism, and forbidden. Yet, the same burning practices are recorded for Jew-

ish princes and kings. The Talmud concludes that it is not *chukas hagoy*, but is a sign of prominence. The *yahrzeit* of a prominent person is observed as a pagan holiday.

Since the practice of burning *per se* is permitted, there seems to be no issue of *bal tashchis*, wastefulness. However, the Talmud is very clear that it is only permitted for princes and kings. The purpose is to show them respect by making it impossible for anyone else to use their personal belongings. Wherever there is a positive purpose in destruction, it is not considered a violation of *bal tashchis*. One may not follow this practice with regard to other corpses. Grieving relatives might throw the personal belongings of the deceased into the coffin or the grave, or on the bier. One should try to rescue the items, so that they are not abandoned like this. There are certain specific cases where it is permitted to put things into the grave or the coffin. These cases have a constructive reason, and are therefore not considered a violation of *bal tashchis*. The best known was to include a quill when burying a betrothed person. This was to symbolize the loss. The betrothed was to have married and had a *kesuba* written up, but this was not to be. Certain items may be placed in the coffin or the grave with the *mais*. Some have a tradition to include items that they used in *tefilah* or on specific occasions. In these cases, the rule of fulfilling the wishes of the deceased is applied.

In addition to *bal tashchis*, there arises the issue of *darkei Emori*. As we shall discuss, certain cultures would bury various artifacts with the corpse. Some of these practices were evidently superstitious. This comes into play in our case. In ancient times, it was customary to take a *sefer Torah* along with the funeral procession of a great sage, to indicate that the scholar fulfilled what was written in the Torah. The *sefer Torah* was not buried with him. If an invalid *sefer Torah* needs to be interred, it is buried with a great scholar. Rather than 'including' something with the burial of the sage, this is the preferred way to bury the *sefer Torah* in its own right. [See Megilah 26b Avoda Zara 11a, Poskim. Sefer Chasidim 732 736 1129. Tur Sh Ar OC 154:5 YD 282:10 348-352, commentaries.]

D) Pagan symbols; Darkei Emori

The secret society in our case claims that it is not a religion but a fraternity. However, they use ancient pagan symbols. While their claim of non-paganism is debatable, the symbols remain pagan. The poskim maintain that modern day practitioners of some religions cannot be considered idolaters, but traditionalists. Nonetheless, the very symbols they use remain items of paganism, and as such are considered *avoda zara*.

Darkei Emori has already been alluded to. The Talmud lists certain activities and symbolisms as *darkei Emori*, the ways of the Emorites who populated *Eretz Yisroel* before it was conquered by *Yehoshua* and *Benai Yisroel*. The reference is to a *pasuk* that forbids following the customs of the peoples who lived in the Land before we arrived there. By classing them in this way, one includes them in the prohibition of *chukos hagoy*. This is the *mitzvah* not to follow gentile culture. Most poskim maintain that two classes of custom or practice are forbidden as *chukos hagoy*. Anything that is a *chok*, meaningless and purposeless, is only done as a fashion. Anything done due to superstition has idolatrous connotations. In addition, practices that are done to symbolize or identify a specific culture are included in a class called *chokosaihem*. Some consider this a general prohibition, based on a related *pasuk*, while others maintain that they are included in the Scriptural prohibition. This last class is relative, with different communities adopting different

levels of restrictions. In general, people try to distinguish themselves in some way from the general culture in some way, such as dress.

Death and burial has always been associated with rituals and religious or quasi-religious practices. Many religions confuse the afterlife with the burial and what is included in a grave. They also associate the symbols placed on or near a body as 'protection' by their 'spirits'. Some of the *mitzvos* associated with grief are explained directly by the commentators as ways of distancing from idolatry. Our case clearly raises these issues. The obvious reason that the society wishes to include their item of clothing is to show some significance or ritual. It is either purposeless and meaningless nonsense, or it has superstitious or religious undertones. That alone should forbid it. In addition, the symbols on the cloth are pagan. There is a source to forbid, specifically, any pagan symbols in a Jewish grave. Apparently, it can cause spiritual harm to the survivors. [See Vayikra 18:3. Shabbos 61a 67a Tosefta Baba Metzia 83a 7 Chulin 77b, Poskim. Tur sh Ar YD 141: etc., 178-10, commentaries. Sipurei Chasidim Vayeitzei 31:19.]

E) Mitzvah lekayem divrei hamais

The only issue remaining is whether to take into account the wishes of the deceased. If the matter is not a clear and evident violation, one would need to weigh the wishes of the deceased against the possibility of violations. The general concept of *mitzvah lekayem divrei hamais* usually applies to monetary matters, such as how to distribute his estate. It also applies specifically to explicit instructions, rather than implied wishes.

The concept arises often with regard to the burial and its accompanying services. If a *mais* instructed his heirs not to bury him, or not to use his own funds for it, one disregards the instructions. They run counter to the *halacha*. If, however, he asks that his burial be delayed, which is usually forbidden, in certain cases his wishes are granted. It can sometimes be considered respectful. Delaying burial is disrespectful. When it is done to bring honor and respect to the *mais*, it is allowed. In our case, it would appear that the ceremony is forbidden outright. Since it is not a monetary matter, nor would it bring honor to the deceased or his relatives, there is no reason to permit it in accordance with his wishes. [See Kesubos 48a Gitin 14b Sanhedrin 46b, Poskim. Tur Sh Ar CM 252 YD 348:2-3. Sdei Chemed, Availus 87. Mem 219.]

On the Parsha ... Rachel stole the terafim of her father ... [31:19] She intended to stop her father from idolatry. [Rashi] Terafim are not idols, but Lavan worshiped them. [Ramban] Why did Rachel take the terafim and hide them? She should have destroyed them! Since they were not actual idols, they need not be destroyed. Rachel thought that Lavan might come after them, and she might have to return them. [Maharal] She stole them to show Lavan that they could not even protect themselves. [R Hirsch] Having shown Lavan their futility, why didn't she return them to him? Perhaps she felt that while he would stop worshiping them, he would still use them in rituals. Perhaps he would wish to have them buried with him after death. She wanted to prevent this as well. Since she knew that she would not be present at his death, she needed to prevent it now.

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