

הלכות אבילות

□ נלקטו משעורי

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תשס"ט

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A member of the *shiur* saw
Rav Simon one Tuesday night
in the Muss *beis midrash*.
Excited about the *shiur* that
would take place the next
morning he said, “Rebbe,
aveilus tomorrow!” Rav Simon
was quick to correct him:
“*Hilchos aveilus*, not *aveilus*.”

These notes from Rav Simon's *Hilchos Aveilus shiurim* are constantly being edited and updated. If while reading them you find any mistakes in translation, explanation, or even spelling, please email RIETSHalacha@gmail.com so that they can be adjusted and edited.

An Introduction to the Study of Halacha

In the early years of study in *yeshiva*, one's *limud halacha* is often limited to a half-hour of Mishna Berurah or the like during a short *halacha seder* in the morning. The Steipler Gaon writes that when a person is younger, most of their time should certainly be spent involved in the in-depth study of *Nashim* and *Nezikin*. This will help him expand his mind as he grapples with the *lomdus* and the *svaros* that accompany such study. But then, explains the Steipler, when a person gets to be a little older, he should spend the majority of his time learning *asukah shemaita alibah di'hilchasa*, focusing on an in-depth analysis of practical *halacha*.

Unfortunately, the source of many people's knowledge of *halacha* is hearsay, something which can be very dangerous. With hearsay, a person often comes to accept *chumros* that are not really *chumros* and *kulos* that are not really *kulos*.

Many find learning in-depth *halacha* to be dry and unenjoyable. Often, the reason is because the Shulchan Aruch is their first stop on the train. If the Michaber is one's introduction to a *sugya*, it can become very boring and even worse, it can be extremely confusing and difficult to apply to real-life scenarios. If, however, the Shulchan Aruch is the last stop on the train – if a person sees the entire *sugya*, the whole picture, and then the Michaber is just the summary at the end – then it becomes a very enjoyable *limud* and the *halachic* process is something entirely unique and firm.

The late *rosh yeshiva* of Yeshivas Kerem BiYavneh, Rav Yaakov Goldwicht z"l, had a close relationship with the Brisker Rav and the Chazon Ish. While the Brisker Rav was often found in the public sphere, the Chazon Ish did not give public lectures. To be a '*talmid*' of the Chazon Ish meant that one went to his house and spoke with him in learning there.

Rav Goldwicht z"l often said *vortlach* based on Midrash – sometimes gleaned a teaching from the Sefas Emes, other times from the Shem MiShmuel, and sometimes he would quote a *vort* that he had heard directly from the Brisker Rav. A *talmid* once asked the Rosh Yeshiva: 'How come the Rosh Yeshiva never says *vortlach* in the name of the Chazon Ish?' The Rosh Yeshiva responded that he had also asked the Chazon Ish this question, why it is that he doesn't say *vortlach*. The Chazon Ish responded that in matters of *halacha*, there is accountability for whatever one says. A person cannot just say whatever they want because it has to fit in with the Gemara, it has to fit in with the Tosefta, and it has to fit in with the Rambam. There is a system of checks and balances. In *inyanei* Midrash, however, people say whatever they please and have no liability for their stated understandings. The Chazon Ish said that he felt that he was not able to say anything in a *techum* where there were no checks and balances since he could not be certain whether his words were truly *emes*.

In *halacha*, one must have clear proofs and the backing of the *mekoros*, the Gemara, the *sugya*, the *gedolei* Rishonim and Acharonim, regardless of whether one is looking to rule *li'kulah* or *li'chumrah*. Through such an extensive analysis one will come to see that the *halachic* process has a true and lasting rigor.

סימן א: בענין אנינות מדאורייתא

The *pesukim* in **Parshas Ki Savo (26:14)** relate that at certain times a person is required to come to the Beis Hamikdash and recite *vidui ma'aser*, a declaration in which one states that he has taken off all the appropriate *terumos* and *ma'aseros* from his produce and has used his produce in a proper fashion. Part of this declaration is:

...לאֲכַלְתִּי בְּאֲנִי מִמֶּנּוּ...

I have not eaten of it in my intense mourning...

Rashi (ibid., d"h lo achalti) explains:

מכאן חסור לאונן.

From here we see that *ma'aser sheini* is forbidden to an *onein*.

There is a *din midioraisa* that an *onein*¹ is not permitted to eat *kodashim*, *ma'aser sheini*, and other sanctified foods on the day of the death of one of his seven closest relatives. The *onein* is forbidden to eat these foods throughout the day as well as the night after the burial.²

Nowadays, when we are not directly concerned with *tumah*, *tahara*, and the consumption of *kodashim*, the more practical *halachos* are the *halachos* of *aninus midirabanan*. Nonetheless, we will first try to understand this *din midioraisa* of “לאֲכַלְתִּי בְּאֲנִי מִמֶּנּוּ”.

The *issur* of eating *ma'aser sheini* as an *onein* is a strange type of *lav* because it is not a mandated *lav*. The Torah records it in context of the speech to be recited during the *vidui ma'aser*, but never explicitly forbids it *bi'lashon tzivui*. If a person would eat *ma'aser sheini bi'aninus* would they receive *malkos* for such an act?³

The **Rambam (Sefer HaMitzvos, Shoresh 8)** writes that there are two types of phraseologies in the Torah for a *lav*. The first is an *azhara* where Hakadosh Baruch Hu instructs us: “Don't do ____!” This, says the Rambam, is always recorded in *lashon asid*, the future tense. The second type of *lav* is recorded as a *shelilah*, a *lav* indicated through an inference in a *pasuk*. Since someone in the *pasuk* says, “I didn't do ____,” we infer that this is a forbidden action.

¹ Rav Schachter often points out from **Rav Soloveitchik** that the colloquial “*onein*” that we often refer to, who is exempt from doing *mitzvos*, is really a *din dirabanan* called “מי שמתו מוטל לפניו.” The **Mishna** in the beginning of the **Third Perek** of **Meseches Berachos** discusses such a person and the *mitzvos* he is exempt from. The real *din of onein*, however, is a *din midioraisa* that applies throughout the day of death, even beyond the *kevurah*.

² Though we will see that there is a *machlokes* in the Gemara whether the night after the *kevurah* is a *din midioraisa* or a *din midirabanan*.

³ As we will see, the answer to this question is dependent on a *machlokes* between the Rambam and the Ramban in the Sefer HaMitzvos. Rav Simon noted that usually a *machlokes* between the Rambam and the Ramban in the Sefer HaMitzvos is not so *nafka-minah*-oriented. Usually, it makes a difference as to whether you count or don't count a *mitzvah* as one of the 613, but in the end of the day you have to do the *mitzvah*. Once in a while, however, you can have a *nafka minah*, like by *onein*, where there are practical ramifications.

The **Ramban** (*ibid. d"h aval mah she'kasav*) disagrees and writes that we can see from the declaration made in the *pesukim* that refraining from doing a certain action is certainly the preferred mode of action, but that doesn't mean that one who acts contrary to these statements has violated a true *lav*.

In accordance with his opinion, that a *shelilah* is considered a true *lav*, the **Rambam** (**Hilchos Ma'aser Sheini vi'Netah Revai 3:5**) *paskens*:

When a person partakes of *ma'aser sheini* in a state of *aninus midioraisa*, he is liable for *malkos*, as the *pasuk* states, "לא-אכלתי באני מפניו"...

§

Another source for *aninus midioraisa* is found in **Parshas Shemini (10:19)**. The Torah recounts a story where Moshe Rabbeinu was angry with Aharon's sons, Elazar and Itamar, for burning the *chatas*-Rosh Chodesh while in a state of *aninus*.⁴ We see from this story that an *onein* is forbidden to partake of *kodashim*.

§

The concept of *aninus midioraisa* is also learned out from a *pasuk* in **Sefer Amos (8:10)**:

וְהִפְכֹתִי חַגֵיכֶם לְאֵבֶל וְכָל־שִׁירֵיכֶם לְקִינָה וְהִעֲלִיתִי עַל־כָּל־מִתְנַבְּיָם שִׁק וְעַל־כָּל־רֹאשׁ קָרְחָה וְשִׁמְתִיהָ כְּאֵבֶל יָחִיד וְאַחֲרֵיהָ כְּיוֹם מָוֶד:

And I will turn your feasts into mourning, and all your songs into lamentation; and I will bring up sackcloth upon all loins, and baldness upon every head; and I will make it as the mourning for an only son, and the end thereof as a bitter day.□

The **Gemara** in **Meseches Zevachim (100b)** uses this *pasuk* to imply that there are certain *issurim* that apply on the day of death. We will examine later precisely what these *issurim* are but we see from the *pasuk* in Amos that a concept of *aninus midioraisa* exists.

§

⁴ If you just read the *pesukim* you miss out on half the story but the **Gemara** in **Meseches Zevachim (101a)** fills in the missing details. The *mishkan* was erected for the first time on the 23rd of Adar. The seven days of *miluim* began then and Moshe Rabbeinu did the *avodah* for the seven days, putting up and taking down the *mishkan* each and every day. Finally, on Rosh Chodesh Nissan it was the "יום השמיני" (though the **Ibn Ezra** disagrees) and it was special for three reasons: It was 1) Rosh Chodesh, 2) the 8th day of the *miluim*, and 3) the first day of the *korbanos nesiim* (Nachshon ben Aminadav.) It was on that day that Nadav and Avihu entered the Mishkan and were killed for bringing an "אש זר," making Aharon and his remaining children *oneinim*. If an *onein* cannot eat *kodashim*, who was to eat the *se'ir* Rosh Chodesh, the *se'ir* of the *miluim*, and the *se'ir* of Nachshon ben Aminadav? Moshe told Aharon that the *issur* that an *onein* cannot eat *korbanos* did not apply to these *korbanos* because of their unique nature and he instructed Aharon and his sons to eat these *korbanos*. Aharon proceeded to burn the *se'ir* Rosh Chodesh and Moshe was upset for he had told him that it was to be eaten. Aharon explained that when Hashem said there is an exception to the law of *onein* by these *korbanos*, that exception only applied to the *se'ir* of Nachshon and of the *miluim* because those were one-time events in history (קדשי שעה), but for the *se'ir* Rosh Chodesh, which comes every month (קדשי דורות), why should there be an exception to permit an *onein* to eat them? Moshe agreed that he had made a mistake. Tangentially, Rav Simon noted that **Rav Henoch Leibowitz** in the **Chiddushei HaLev** has a whole *mussar shmuess* on the fact that Moshe was happy that Aharon pointed out his mistake.

The **Gemara** in **Meseches Zevachim (100b)** further discusses the *machlokes* whether one is considered to be an *onein midioraisa* or *midirabanan* on the night following the day of death. The Gemara states:

והתניא (ויקרא י) "הן היום" אני היום אסור ולילה מותר ולדורות בין ביום ובין בלילה אסור דברי רבי יהודה. רבי אומר אנינות לילה אינה מדברי תורה אלא מדברי סופרים.

"*These today:*" I am forbidden (to eat these *korbanos*) today, but I will be permitted to eat them tonight. However, in regard to the *korbanos* of future generations, an *onein* will be forbidden to eat them both by day and by night. This is the opinion of R' Yehuda. But Rebbi says: *Aninus* of the night (after the death) is not Biblical but Rabbinic.

If someone lost a relative on Sunday morning, Rebbi Yehuda would hold that their *kerovim* would remain *oneinim midioraisa* throughout Sunday-day and Sunday-night. According to Rebbi, however, Sunday-day would be *midioraisa* while Sunday-night would only be *midirabanan*.

What is the *nafka minah* as to whether *aninus* is *midioraisa* or *midirabanan*?

We saw earlier the opinion of the Rambam, that a person receives *malkos* for eating *ma'aser sheini* while he is an *onein midioraisa*. Therefore, a *nafka minah* could be whether a person receives *malkos* for eating *ma'aser sheini* on the night after the *kevrarah*. Additionally, there could be a question whether one who eats *ma'aser sheini* the night after *kevrarah* is violating an *issur dioraisa* and would be *pasul li'eidus*.

The **Mishna** in **Meseches Pesachim (91b)**, however, has another *nafka minah*:

משנה: אונן טובל, ואוכל את פסחו לערב; אבל לא בקודשים. השומע על מתו, והמלקט לו עצמות טובל ואוכל בקודשים.

An *onein* immerses and eat his *korban pesach* after nightfall, but may not partake of other *kodashim*. However, one who hears of his dead, or one who gathers the bones (of his parents), immerses and partakes of *kodashim*.

If someone is an *onein* on *erev-Pesach*, can they eat the *korban pesach* that night? The Mishna says that an *onein* goes to the *mikvah* and can then eat the *korban pesach* but no other *kodashim*.

The **Gemara (ibid., 92a)** explains why we make an exception by the *korban pesach*:

גמרא: מ"ט? קא סבר אנינות דלילה דרבנן וגבי פסח לא העמידו דבריהם במקום כרת, גבי קדשים העמידו דבריהם במקום עשה:

What is the reason (that the Mishna permits and *onein* to partake in the *korban pesach*)? Our Mishna holds that *aninus* of the night is only *midirabanan*. Thus, in the case of the *korban pesach* the Rabbanan did not establish their decree in the face of *kares*.

The Mishna must hold that *aninus* of the night after is only *midirabanan*. When it comes to regular *korbanos*, where there is only a *mitzvas asech* to eat them, the Chachamim said that you shouldn't eat them if you are an *onein*. When it comes to *korban pesach*,

however, since there is a punishment of *kareis* for those who do not partake, the Rabbanan removed the *issur* of eating *bi'aninus* at night in light of the severe punishment.

The **Mishna** in **Meseches Bikkurim (2:2)** states:

(ב:ב) יש במעשר ובביכורים מה שאין כן בתרומה : שהמעשר והביכורים--טעונים הבאת מקום, וטעונים וידוי, ואסורין לאונן ; רבי שמעון מתיר.

There are certain *halachos* that apply to *ma'aser* and *bikkurim* that are not found by *terumah*: The *ma'aser* and *bikkurim* have to be brought to the place (Yerushalayim), they require *vidui*, and they are forbidden to an *onein*. And R' Shimon permits them (to be eaten by an *onein*).

According to the Tanna Kamma of the Mishna, an *onein* is forbidden to eat *ma'aser sheini* and *bikkurim*, while *terumah* remains permitted.

Thus far we have seen that: 1) *kodashim*, 2) *ma'aser sheini*, and now 3) *bikkurim*⁵, are all forbidden to an *onein*.

§

Midioraisa, what is the *din* of *aninus* on Yom Tov? We know that one may not bury a *meis* on Shabbos and accordingly, there can be no *din* of *aninus* on Shabbos. However, *mi'ikar ha'din*, we permit *kevurah* to be done by non-Jews on Yom Tov *rishon* and even by Jews on Yom Tov *sheini*. Even though many do not bury on Yom Tov, since one can theoretically bury a *meis* on Yom Tov, do the *dinim* of *aninus midioraisa* apply? If someone lost a relative on Yom Tov, could they eat *korbanos*, *ma'aser sheini*, or *bikkurim*?

The **Gemara** in **Meseches Moed Kattan (14b)** discusses whether the *nihugei aveilus* that are usually observed by a *metzora*, like *chutz li'machaneh* and that he wears ripped clothing, are observed on Yom Tov:

אמר רבא : ת"ש (ויקרא יג) "והצרוע" לרבות כהן גדול. והא כה"ג דכל השנה כרגל לכולי עלמא דמי דתנן כהן גדול מקריב אונו ואינו אוכל, שמע מינה נוהג צרעתו ברגל שמע מינה.

Rava said: Come, learn: "והצרוע" – this comes to include the *Kohen Gadol* (in the law of *tzara'as*). And behold, the *Kohen Gadol*'s status of the entire year corresponds to the festival status of all other people (with regard to mourning) for we learned in a Mishna: A *Kohen Gadol* offers *korbanos* while he is an *onein* but does not eat. Derive from here that a *metzora* conducts himself during the *regel* (according to the restrictions imposed upon him) by his *tzara'as*.

The Gemara brings a proof that the *nihugei aveilus* of a *metzora* would be observed even on Yom Tov. From the fact that this display of *tzara'as* is *noheg* even by the *Kohen Gadol* who always has a status of "regel," we see that a regular person would also

⁵ The **Rambam** in his **Peirush HaMishnayos (Meseches Bikkurim 2:2)** notes that the source that *bikkurim* are forbidden to an *onein* is a *pasuk* in **Parshas Ki Savo (26:11)** which states: "...אֲשֶׁר נָתַן לְךָ ה' אֱלֹהֶיךָ..." which implies that the *bikkurim* have to be eaten in a state of *simcha*. The **Rash (Meseches Bikkurim 2:2)**, however, explains that the Torah writes, "לא-אכלתי באני ממנו" by the *vidui ma'aser* and since we have a *pasuk* that mentions both *ma'aser* and *bikkurim*, we learn out *halachos* one from the other.

observe these *nihugim* on the real *regel*.⁶ Since one of the *nihugim* is that the Kohen Gadol can bring *korbanos* but can not eat them, we conclude that the parallel *dinim*, that an *onein* is also not permitted to eat *korbanos*, would also apply on Yom Tov.

The **Tosafos Rid (Meseches Moed Kattan, 14b d”h kohen gadol)**, however, explains differently:

“A Kohen Gadol offers *korbanos* while he is an *onein* but does not eat”: Even though regarding eating the *korban* he is not considered like one celebrating the *regel*, for an *onein* would eat *kodashim* on the holiday since there is no *aninus*, nonetheless, regarding the *hakrava*, it is like a *regel* for him.

The Tosafos Rid explains that there is no *aninus midioraisa* on Yom Tov. Why does the Kohen Gadol offer the *korbanos* in a state of *aninus* but not eat from them? Tosafos Rid explains that the Kohen Gadol’s everyday is considered like a *regel* regarding the *hakrava* of the *korban* but not regarding the *achilah*. In general, however, if a person loses a relative on Yom Tov or Chol HaMoed they would be permitted to eat *korbanos* throughout the *chag* because there is no *animus midioraisa* on Yom Tov.

The **Mishna LaMelech (Hilchos Eivel, Perek 4 d”h hein emes)** disagrees with the Tosafos Rid’s conclusion and writes:

It seems to me that even if there is no *aninus* on Yom Tov, nonetheless, it is forbidden to eat *kodashim* because of “*tirdah*”...and the explanation of Rashi is that someone (can eat *korbanos* only if they are) not “*tarud*,” for by *kodashim* you need a great *simcha* (when eating them)...

Even if you could claim that there is technically no *din* of *aninus* on Yom Tov, still, someone who had recently lost a relative would not be allowed to partake in *kodashim* because they are still “*tarud*” with the thoughts of their loss and would not be able to partake in the *korbanos* in the required state of *simcha*.⁷

The **Yerushalmi in Meseches Chagiga (2:3)** also discusses *aninus* on Yom Tov. The Gemara states:

א”ר יוסי בי רבי בון : דוד מת בעצרת והיו כל ישראל אונגין והקריבו למחר.

⁶ **Rav Soloveitchik** has a whole piece based on the *pasuk*, “הוד וְהָדָר לְפָנָיו ; עַל וְתַפְאֵרֶת, בְּמִקְדָּשׁוֹ” as to why the Kohen Gadol is constantly considered to be in a state of Yom Tov. Whenever one is in the presence of the *shechina* there is *simcha* there. The Kohen Gadol is constantly in the presence of Hashem and so he is constantly in a state of *regel*. This idea of the Rav can be found in the *sefer Be’eros Nosson* by **R’ Nosson Dovid Rabinowitz**. Part of the piece there also discusses the famous Rambam in which he says that the Kohen Gadol has to live in Yerushalayim. The *Minchas Chinuch* wonders where the Rambam came up with such a *din*? The *Minchas Chinuch* answers that because the Kohen Gadol would bring the *minchas chavitin* every day, and we know that there is a *din* of *linah*, that one has to sleep in Yerushalayim the night before bringing a *korban*, it came out that the Kohen Gadol would have to sleep in Yerushalayim every night and so he likely lived there.

⁷ The source for this is a *pasuk* in **Parshas Korach (18:8)**, “...לְכֹל-קֹדֶשׁ בְּנֵי-יִשְׂרָאֵל לֶךְ נִתְּתִים לְמִשְׁחָה” from which the **Gemara in Meseches Chullin (132b)** learns that *korbanos* and *matanos kehuna* must be eaten “למשה” with royalty, roasted and with a dip. If someone is an *onein*, they can’t reach this level of “למשה” because they are not *bi’simcha*. Rav Simon noted that **Rav Schachter** is fond of quoting from the **Tosafos in Meseches Yoma** which says that when they ate *korbanos* in the Azarah they couldn’t sit since the *din* is “אין ישיבה בעזרה אלא במלכות בית דוד בלבד.” Tosafos asks and discusses: How is it “למשה” to eat standing up? Tosafos discusses whether the *din* of “אין ישיבה” should be canceled by some *korbanos* because of “למשה.”

R' Yose the son of Rabbi Bune said: Dovid (HaMelech) died on Shavuot⁸ and as a result all of (Klal) Yisrael were *oneinim*. They therefore brought the *korbanos* the next day.

The Yerushalmi indicates that there certainly is a *din* of *aninus midioraisa* on Yom Tov and it was for that reason they delayed bringing and eating the *korbanos* of Shavuot when Dovid HaMelech died.

§

The *halacha* is that if one would eat *kodashim bi'aninus* they would receive *malkos*. Additionally, according to the Rambam, if you eat *ma'aser sheini bi'aninus* you would get *malkos*. Regarding *kodashim*, we saw the story in Parshas Shemini where Moshe was angry with Aharon and his children, yet there was no *pasuk* there to point to a specific *lav*. What then is the source for not eating *kodashim bi'aninus*?

The **Gemara in Meseches Pesachim (24a)** learns a *kal vi'chomer* from *ma'aser sheini*:

ומה מעשר הקל אמרה תורה (דברים כו) "לא בערתי ממנו בטמא" בשר קדש חמור לא כל שכן?

Now, if regarding *ma'aser sheini*, which is of lesser sanctity, the Torah said that one must declare, "ולא בערתי ממנו בטמא," regarding meat that is *kodesh*, which is of greater sanctity, is it not all the more so (forbidden to eat while *tamei*)?

If *ma'aser sheini* can't be eaten *bi'tumah* then certainly *kodashim*, which is more *chamur* than *ma'aser sheini*, can't be eaten *bi'tumah*.

The **Gemara in Meseches Zevachim (101a)** says that Aharon HaKohen made the same *kal vi'chomer*, except in place of eating *kodashim bi'tumah* he had eating *kodashim bi'aninus*:

ומה מעשר הקל אמרה תורה (דברים כו) "לא אכלתי באוני ממנו" קודש חמור לא כל שכן?

Since, in the case of *ma'aser sheini*, which is a relatively lenient matter, the Torah states (that one must declare:) "לא אכלתי באוני ממנו," then in the case of *kodashim*, which is a relatively stringent matter, is it not all the more so (forbidden to eat as an *onein*)?

The **Minchas Chinuch (Mitzvah 428:1)** asks: Don't we have a *klal* of הדין מן הדין? The *halacha* is that in order to receive *malkos*, one must violate a *lav* in the Torah which states "השמר", "פן", "אל", or the strongest *lashon* of "לא." We generally assume, however, that one cannot administer punishments for the violation of a *lav* which is learned solely from a *kal vi'chomer* from another *mitzvah*. Since we assume that you do get *malkos* for eating *kodashim bi'aninus* or *bi'tumah*, how can it be that it is learned from a *kal vi'chomer* from *ma'aser sheini*?

The Minchas Chinuch answers based on a famous *yesod* of the **Maggid Mishna (Hilchos Ma'achalos Assuros 2:1)** where he explains that הדין מן הדין applies when without the *kal vi'chomer* one would have thought that something was totally *mutar*. Then the *kal*

⁸ Rav Simon noted that the Ba'al Shem Tov also died on Shavuot.

vi'chomer comes to teach that this thing is really an *issur lav*. Even though performing such an *aveirah* is still forbidden, one would not receive *malkos* for its violation.

But if even without the *kal vi'chomer* one would have known that this thing was *assur*, but would have merely thought that it was a weaker *issur*, and now, the *kal vi'chomer* comes to inform me that it is in fact a more severe *issur*, then we don't say אין מזהירין מן הדין and would still punish for its violation.

In our case, the Gemara learns that just like one can't eat *ma'aser sheini bi'aninus*, so too one can't eat *kodashim bi'aninus*. Without the *kal vi'chomer*, however, one still would not have thought that it was *mutar li'gamrei* to eat *kodashim bi'aninus* because of the requirement of “למשחה.”

The **Smag**⁹ (**Lo Sa'aseh no. 265**) writes similarly:

...and the second *lav* is that one should not eat *kodshei mizbeach* in a state of *aninus*, as the *pasuk* says, “וְאֶכְלְתִי חֶטְאֵת הַיּוֹם, הַיֵּיטֵב בְּעֵינֵי ה'”. And if you say that this is not a *lav* but is only an *issur*, learn it from that which it says by *kodashim*, that they must be eaten “למשחה” and in the way of kings.

Even if you want to say that there is no *pasuk* that explicitly prohibits eating *kodashim bi'aninus*, and the *pasuk* from Parshas Shemini is just a statement and not even a *shelilah*, still, writes the Smag, it would not be proper to consume *korbanos bi'aninus* because *kodashim* require “למשחה.”

The Minchas Chinuch writes that based on *yesod* of the Smag and the Maggid Mishna, if something would have been *assur* to eat anyway *mi'tzad* an *issur kal*, you can have מזהירין מן הדין. From here we see that one can receive *malkos* for eating *kodashim bi'aninus*.¹⁰

§

The **Mishna** in **Meseches Sanhedrin (46a-b)** discusses the mourning process for a family whose relative was killed by *beis din*:

משנה: ...ולא היו מתאבלין אבל אוננין שאין אנינות אלא בלב:

...and the relatives do not mourn for him, but they do grieve, for grieving is only in the heart.

If somebody is killed by *beis din* for violating an *issur* in the Torah which carries a *chiyuv misah*, his relatives do not observe the regular practices of *aveilus*. Nonetheless, the *halachos* of *aninus* would still apply.

The **Yad Ramah (ibid., d"h lo hayu mis'abalin)** explains why this distinction is made:

⁹ In the Gemara, it tells you where to look up every Smag but somehow the Rambam took over and everyone looks up the Rambam's and not the Smag's. They say from the **Chafetz Chaim** that it used to be that on Simchas Torah when there weren't enough Torahs for the people to dance with, they would give out Smag's to dance with because it has *kol ha'Torah kulah* within it.

¹⁰ **Rav Yissachar Frand** has a *sefer* on Meseches Moed Kattan where he discusses this idea as well.

“ולא היו מתאבלין אבל אונגין שאין אנינות אלא בלב”: And it is forbidden for them to eat *kodashim* and *ma'aser* because (*aninus* still applies, for) *aninus* is something in the heart and since it's impossible that he won't have a “לבן דין” he is forbidden to eat *kodashim* and *ma'aser*...

The *kerovim* of someone put to death by *beis din* don't have any of the restrictions of *aveilus* but they still have the *dinim* of *aninus* because the death is still sad and emotionally taxing for them.

The Yad Ramah mentions another possible explanation:

And perhaps you can explain that you don't have *aveilus* because that would be a recognizable, outward sign of mourning, and the *pasuk* in Mishlei (Perek 11) says, “וּבְאֵבֶד רְשָׁעִים רְנָה”. But *aninus*, which is only in the heart, would be permitted...

In **Meseches Semachos (2:10)** we find an even stronger *lashon* concerning *aveilus* for those who have separated themselves from the *tzibbur*:

Anyone who is פורש מדרכי הצבור (if they die,) their relatives and family do not act like those who have lost a *karov*. They wear and wrap themselves in white garments and they eat and drink and rejoice, for an enemy of Hashem has been lost, as it says in Tehillim (Perek 139:21):
“הָלוֹא מִשְׂנְאֵיךָ ה' אֲשַׁנָּא וּבִתְקוּמָתִי אֶתְקוּטֵט.”

The Mishna in Meseches Sanhedrin states that if a person was sentenced to death by *beis din*, though his *kerovim* don't openly mourn his loss, the *kerovim* can still be sad internally. However, when it comes to one who is פורש מדרכי הצבור, the *halacha* is that even internal sadness is not appropriate and we in fact promote *simcha*.¹¹

¹¹ On a practical level, Rav Simon wasn't sure what you have to do in order to warrant such a title of 'פורש מדרכי הצבור' but Rav Simon just wanted to show the contrast and the progression of *nihugei aveilus* and *aninus*.

סימן ב: בענין מי שמתו מוטל לפניו

The **Mishna** in the beginning of the Third Perek of **Meseches Berachos (17b)** states:

משנה: מי שמתו מוטל לפניו פטור מק"ש ומן התפלה ומן התפילין ומכל מצות האמורות בתורה.

One, whose dead relative lies before him, is *patur* from *kerias Shema*, from *tefillah* (i.e. *shemoneh esreh*), from *tefillin*, and from all *mitzvos* stated in the Torah.

The simple understanding of the Gemara is that since this *karov* will be involved with the *meis* and with arranging for the *kevurah*, Chazal didn't want his attention to be diverted from that *mitzvah* to do other *mitzvos*.

The **Gemara (ibid.)** expands on the words of the Mishna:

גמרא: מי שמתו מוטל לפניו אוכל בבית אחר ואם אין לו בית אחר אוכל בבית חבירו ואם אין לו בית חבירו עושה מחיצה ואוכל ואם אין לו דבר לעשות מחיצה מחזיר פניו ואוכל ואינו מיסב ואוכל ואינו אוכל בשר ואינו שותה יין ואינו מברך ואינו מזמן ואין מברכין עליו ואין מזמנין עליו ופטור מקריאת שמע ומן התפלה ומן התפילין ומכל מצות האמורות בתורה...

One whose dead relative lies before him should eat in another house. If he does not have another house, he should eat in his friend's house. If he doesn't have a friend's house to eat in, he should make a *mechitza* (between himself and the *meis*) and eat. But if he has nothing with which to make a *mechitza*, he should turn his face away and eat. And he may not eat while reclining, and he may not eat meat, and he may not drink wine...

Aside from the exemption from *mitzvos* outlined in the Mishna, the Gemara adds that there is a prohibition for an *onein* to eat meat or drink wine until the body is buried.¹²

§

There is a *machlokes* between Rashi and Tosafos regarding whether this idea of doing *mitvos* in a state of *aninus* is prohibited or whether a person is merely exempt, though if they wish to partake in a certain *mitzvah*, they may.

Rashi (ibid., d"ה vi'eino mivarech) writes:

And he (i.e. the *onein*) does not need to make the *beracha* of *hamotzi* (when eating bread.)

The implication from Rashi is that an *onein* can choose whether he wants or does not want to make a *beracha* when eating food, but he is certainly not required to make a *beracha*.¹³

¹² An *aveil*, on the other hand, is *mutar* to eat meat and drink wine. In fact, the **Gemara in Meseches Sanhedrin (70a)** states that wine was only created to comfort mourners as the *pasuk* says, "תנו-שכר לאובד, ויין, למרי נפש." See also footnote no. 126. Rav Schachter often points out from the **Aruch HaShulchan** (and others) that accordingly, the reason we don't have meat and wine during the nine days is not a *din* in *aveilus* since an *aveil* is really permitted to have meat and wine. Rather, it is because of the *bitul* of the *korbanos* and *nesachim*.

¹³ Rav Simon noted that the *yeshivische* *raida* in every *sefer* is: If we know that an *onein* is not permitted to violate *issurim* and the Gemara in the beginning of Perek "Keitzad Mivarchin" says "אסור להנות בעולם הזה בלא ברכה" then how do we permit an *onein* to eat without a *beracha*? The classic answer "given by a thousand different people" is that by

Tosafos (ibid., vi'eino mivarech) takes issue with Rashi's explanation and states:

And it is implied from his (i.e. Rashi) words that if a person wants to make a *beracha* they are permitted to. However, in the Yerushalmi it says that if a person wants to be *machmir* on themselves (and say a *beracha*), we don't listen to him. Therefore it appears to me that "אינו מברך" means that he is not permitted to make a *beracha*. The Yerushalmi explains the reason why and says that because (it would be a lack) of the honor for the *meis*, or because (if you are not involved) nobody will carry the burden...

Tosafos explains that when the Gemara says "ואינו מברך" it means that an *onein* is not permitted to make a *beracha* or perform any *mitzvos*. Tosafos quotes the **Yerushalmi (Meseches Berachos, 22a)** where two reasons are given as to why one is not permitted to do other *mitzvos* while the body is yet to be buried:

- 1) It is a lack of *kavod* for the *meis* to be involved in other *mitzvos* when the *kevurah* has not yet been performed.
- 2) If you are not taking action to make sure the *kevurah* happens, but rather, are concerned with things like davening and going to shul, then who will take care of the arrangements for the *meis*?

The *nafka minah* between these two reasons, explains the Yerushalmi, is if there is "מי שישא משואר"¹⁴ (lit. someone to carry the burden.)

Tosafos continues by quoting Rabbi Nesanel:

Rebbi Nesanel said that it's possible to say that certainly if someone has in mind על התחום להחשיך then we can say that he is "טרוד להחשיך" and he would not be permitted to make *berachos*...

If someone lost a relative on *erev* Shabbos, the arrival of Shabbos abort the present state of *aninus* and the person would proceed as usual, making *berachos*, *kiddush*, and davening in shul. Only after Shabbos would they proceed to perform the *kevurah*. There is a *din* that normally we don't allow one to do any form of *hachana* on Shabbos for activities to be performed after Shabbos. However, in a case where the *meis* died on *erev* Shabbos and the body is outside the city *techum*, if we would not permit the *karov* to leave his house until after Shabbos, it would take a long time before he would reach the body on *motzei* Shabbos. The *halacha*, therefore, permits him to leave on Shabbos and wait by the edge of the *techum* so that once Shabbos is over he will have already covered much of the traveling time. A person who leaves his house to go wait by the *techum*, however, accepts upon himself the restrictions of an *onein* because his actions show that he is actively involved with the *kevuras ha'meis*.

This is quoted *li'halacha* in **Shulchan Aruch (Y.D. 341:1)**. The Shulchan Aruch quotes our Mishna, Gemara, and discussions found in Tosafos:

berachos, the *issur* of "אסור להנות" stems from the initial *chiyuv beracha*. If there is no *chiyuv beracha* then the *issur* never sets in in the first place.

¹⁴ Rav Simon said: Even if there are ten people who are involved with the *kevurah*, still everyone is in the mindset that they are involved, even if they are just involved in thinking about the *meis*. This would be considered for the *kavod* of the *meis* and would *patur* someone from *berachos* and *mitzvos*.

If someone loses a relative for which he would be obligated to mourn, before the burial he must eat in another house. And if he doesn't have another house, he must eat in his friend's house. If his friend doesn't have a house, he must make a *mechitza* and then eat...and some say that even if he wants to be *machmir* on himself and make *berachos* or answer 'amen' after other people *berachos*, he is not permitted to do so. And on Shabbos and Yom Tov he eats meat and drinks wine and is obligated in all *mitzvos* except *tashmish ha'mitah* which is forbidden to him...and if he wishes to walk and wait by the *techum* in order to involve himself with the *meis* (immediately after Shabbos) then the obligations of *aninus* fall upon him and forbid him (from all that would usually be permitted on Shabbos) from the time he begins to walk. If the person wishes to bury the *meis* on Yom Tov *rishon* via a non-Jew, then all of the *issurim* (of an *onein*) apply. And certainly on Yom Tov *sheini*, where he himself is permitted to bury the *meis*, the *issurim* of *aninus* would apply.¹⁵

The **Rash** in **Meseches Damai (1:4, *d"h u'mivarchin alav*)** presents a different opinion as to whether an *onein* may perform *mitzvos*¹⁶:

Therefore it seems that the entire matter is dealing with (making *berachos*) to exempt others – that he doesn't make *hamotzi* to exempt others and others don't make *hamotzi* to exempt him. And the same would apply to *birkas ha'mazon* and joining in a *zimun*...

The Rash claims that an *onein* must make *birchos hanehenin*. When the Gemara writes “אינו מברך”, that comes to teach that an *onein* can't make *berachos* to be *yotzei* other people and similarly, others can't be *motzi* him. The *onein* himself, however, has to make *berachos*.¹⁷

The **Yerushalmi (Meseches Berachos, 22b)** states:

נמסר לרבים אוכל בשר ושותה יין. נמסר לכתפים כמי שנמסר לרבים.

If the *meis* was given over to the public (i.e. a community service), the mourner may eat meat and drink wine. If the *meis* was given over to the *katafim*¹⁸ (i.e. the pole-bearers who transport the bier to the burial site), it is as though it had been given over to the *rabim*.¹⁹

¹⁵ Rav Simon noted that **Rav Ezra Schwartz** was in Lawrence over Yom Tov (Pesach 5769) and there was a *shaila* involving a *meis* who had passed away on Yom Tov. Since it's not a *chassidish* community, they weren't going to do the *keverah* on Yom Tov, but they brought the *meis* to the funeral home and put the body in the fridge. The relative wanted to go on Yom Tov *sheini* to the funeral home to make sure that everything was okay. Would we say over there that there should be a *din* of *aninus*, for the fact that he is walking to the funeral home on Yom Tov *sheini* brings upon him the *issurim* of an *onein*? Rav Simon said he could hear both sides but would probably assume not that way.

¹⁶ Rav Simon noted: “Whenever you think that everyone is *muskam* on a certain point, there is always that one *Rishon* that very often didn't even make it into the Shulchan Aruch. They're not even a “יש אומרים”...but it's always good to see that one *Rishon* that bucks the trend.”

¹⁷ What would be the logic of such a *din*? Rav Simon mentioned that someone once suggested that maybe it's a *din* that we don't want him to be *bi'chaburah* with other people, kind of like by the *seudah ha'mafsek*. Rav Simon wasn't really sure if that's it, and again, this isn't even quoted as a “יש אומרים” in Shulchan Aruch.

¹⁸ The **Ramban** in **Toras HaAdam (pg. 70 *d"h nimsar li'rabim*)** explains that this *din* of *nimsaran li'rabim* or *li'katafim* would take place by the family paying the people to take the *meis* out. Once the family made the deal and hired them, even if the *meis* is still literally there, the obligation is no longer on the family and their *aninus* would terminate.

¹⁹ Rav Simon posed the following question: Presumably the Yerushalmi meant that you can eat meat and drink wine and are accordingly *chayav* in all *mitzvos* because the burial is no longer in your hands. If so, how does this work with the second opinion seen earlier in the Yerushalmi of “*kavod ha'meis*”? Rav Simon answered that one could say that the Yerushalmi here is only going according to the opinion who said that the concern is “who will carry the burden” and in this case, the “*rabim*” have taken that responsibility. Another possibility is that once the burial of the *meis* is no longer

The question raised by the Poskim is how does the modern-day *chevra kadisha* fit into this *halacha*? One could claim that the *chevra kadisha* is this exact Yerushalmi of “נמסרן לכתפים” because right after someone dies, they take the body, do the *tahara*, and take the *meis* to the funeral home. Generally, the family is following their lead.

Nonetheless, the predominant *minhag* seems to be that we consider the family *oneinim* even after the body has been taken by the *chevra kadisha*. Why is that?

The **Chochmas Adam (Hilchos Aveilus, Klal 153:3)** writes:

In a place where the *minhag* is that there are specific *katafim* to take the *meis*...much like what we have in our communities called the ‘*chevra kadisha*,’ the *kerovim* are permitted to eat meat and drink wine (once the *meis* is taken.) And it seems to me that the simple *din* would also be that they are permitted to *daven* and make *berachos*, even before the physical *meis* is removed from the house. Accordingly, it is not proper that which the *oneinim* do, that they wait to *daven* until after the burial...

Once the responsibility has been transferred and the *chevra kadisha* or *katafim* take control of the situation, the Chochmas Adam explains that the *oneinim* are really no longer in a state of *mi she'meiso mutal lifanav* and they should no longer be exempt from saying *berachos* and performing *mitzvos*.

Elsewhere in the **Chochmas Adam (Matzeves Moshe; pg. 702, section 3)**, he writes about his personal experiences. He writes that when a *karov* of his was *niftar*, once all responsibility had been passed over to the *chevra kadisha* and the burial plot had been secured, he proceeded to make *berachos* according to the *halacha* as it is recorded in Shulchan Aruch. He writes:

And someone asked that, still, there is the factor of *kavod ha'meis* regarding which the Rosh writes explicitly that even after you have dealt with the details of the *kevurah*, you are still *patur* (from *mitzvos*). And I answered him that the Rosh himself quotes the *din* in Perek “*Mi SheMeiso*” that if you transfer full responsibility to the *katafim* then even if the *meis* is still in the house it is *mutar* (to make *berachos*.) [And see the Beis Yosef who quotes the Ramban.]

As we saw previously, if one is taking responsibility for the burial and for the arrangements, then even if they have set everything in place they would still be exempt from doing *mitzvos* because of *kavod ha'meis*. However, once they have completely unburdened themselves from responsibility by handing the entire situation over to the *chevra kadisha* or *katafim*, they are no longer *patur* from *berachos* and *mitzvos*.

The popular practice, however, has become to rule in accordance with the **Nodeh BiYehuda (Mehadura Tinyana, Y.D. 211; d”h vi’annam)** who quotes the opinion found in the Hagahos Maimoni.

on your shoulders but has been “נמסרן לכתפים,” it is no longer called “מי שמתו מוטל לפניו” and even the reason of *כבודו של מת* is no longer a concern.

The **Hagahos Maimoni (Hilchos Avel 4:6, s.k. 6)** writes:

And in the Yerushalmi the *girsā* is: Once the *meis* is handed over to the *rabim* or to the *katafim*, one can eat meat and drink wine. And I am uncertain about what the *din* is if one is escorting the *meis* in a boat or in a wagon, if that is similar to *לכתפיים* or not.

The Nodeh BiYehuda writes accordingly:

If so, one could say that when we say “*גמסרן לכתפיים*,” that is when they are taking the body somewhere far away and the *onein* is not traveling with them to the place of burial. That is called *לכתפיים*. Even though the *meis* is still with them in the house, the *aninus* ceases because the relative is no longer involved. But in a situation where the *karov* goes with the *katafim* to the burial, it is not enough that they gave over the body, for since the relative is accompanying them it is like he is still involved...

For example: A man who is 98-years old has a 96-year old brother who passed away. The 98-year old is in the nursing home and is unable to make the appropriate arrangements for the burial of his brother. Accordingly, the *chevra kadisha* takes the body and is now in charge. That, says the Nodeh BiYehuda, is called *לכתפיים* in which case the *dinei aninus* would end. But if the family is accompanying the *meis* to the burial, like in most cases today, even though there is also a *chevra kadisha*, they would still be considered *oneinim*.^{20, 21}

The **Ksav Sofer (Y.D. Teshuva 182)** disagrees with the Nodeh BiYehuda’s analysis of the *safek* in the Hagahos Maimoni. The *safek* was regarding a case where the *meis* was being transferred by a boat or on a wagon and he wondered whether that is called *לכתפיים*. The Ksav Sofer writes that in a case where you hired a wagon to take the *meis* and the relative comes along, that is not called *לכתפיים* but rather, you simply had to hire a driver. The driver though, is not responsible to bury the body. He just has to get you there.

§

The **Rosh (Meseches Berachos, Perek Shelishi: Siman 3)** writes that there was a certain person put in jail by the government. He died in jail and his family was having difficulty in obtaining the body. The R”i ruled that his relatives were not in a state of *aninus* because there was nothing that they could do to hasten the *kevurah*.

The Rosh continues:

And when Rabbeinu Tam’s sister passed away, he was made aware of this fact while in a different city and he continued to eat meat and drink wine.²² The reason that he gave for his actions was that since his sister had a husband who was responsible for her burial, it was not *assur* for him to eat

²⁰ Rav Simon noted that he’s “not here to change the *minhag*” but he’s not so sure that the Chochmas Adam’s reasoning, that once there is a *chevra kadisha* then the family should no longer be *oneinim*, is incorrect. Nonetheless, the *minhag* seems to have become like this Nodeh BiYehuda, that even if the *chevra kadisha* has taken the body, the family remains *bi’aninus* until the body is buried.

²¹ This discussion between the Nodeh BiYehuda and the Chochmas Adam is quoted in the **Pischei Teshuva (Y.D. 341, s.k. 21)**.

²² Rav Simon said that this probably means he said *berachos* and davened as well.

meat and drink wine. And according to this reason, all of this would have been *mutar* even if he was in the actual city (where his sister had died.)

The Rosh extrapolates based on this story of Rabbeinu Tam that he thinks that even had Rabbeinu Tam been in the same city as the *meis*, he also would have consumed meat and wine. Why? For the same reason – that since someone else (i.e. the husband) was involved in the burial arrangements he was not needed and was therefore not considered an *onein*.²³

After assuming a hypothetical opinion of Rabbeinu Tam, the Rosh writes that he disagrees with such an opinion:

And it is strange, for if the *halacha* is so, (like Rabbeinu Tam,) then *aninus* would never fall on anyone except the sons (who will bury,) but not the father nor the brothers. But the *lashon* of the Gemara doesn't imply this since it says, 'Anyone who will observe the *aveilus* is like an *onein* (when the *meis* first dies.)'

The **Bach (Y.D. 341:4)** disagrees and claims that perhaps the Rosh's extended interpretation of Rabbeinu Tam was incorrect. Perhaps you can explain Rabbeinu Tam differently. He writes:

However, in order to answer for Rabbeinu Tam, I say that certainly if he was in the city with her (i.e. his sister) it would have been forbidden for him to eat meat and drink wine, for since the responsibility of burial falls on all of them, how can one disregard that responsibility? But rather, since he was in an entirely different city and his sister's husband was with her, the responsibility to bury her was not his.

The fact that Rabbeinu Tam was both in a different city²⁴ and there was someone else already involved in the burial entirely uprooted his status of *מי שמתו מוטל לפניו*. But if one is in the same city as the *meis*, even though they are not the prime activist in the family and others are dealing with the burial, still, one would not be permitted to eat meat or drink wine.

The Bach explains that it has nothing to do with the husband per se and had the roles been reversed and Rabbeinu Tam had been with his sister while her husband was in a different city, the *din* would have been the same: The husband would have been permitted to eat meat and drink wine while Rabbeinu Tam would have been the *onein* responsible for the burial. Therefore, explains the Bach, the Rosh unfairly set up Rabbeinu Tam²⁵ and assumed incorrectly how Rabbeinu Tam would have acted in a hypothetical situation.

²³ The **Taz (O.C. 71)** writes that if this is the correct interpretation of Rabbeinu Tam, he must have been holding of the second reason in the Yerushalmi of "מי שישא משואו" but not considering the first reason of "כבודו של מת."

²⁴ Rav Simon also pointed out that a 'different city' then is not like a 'different city' today. "Today I can sneeze in New York and then I'm in California. With a sneeze you're already in Wyoming," but back then a different city meant it was at least a days-travel away.

²⁵ Who the Bach calls here, "המאיר לכל ישראל באור תורתו."

The **Shulchan Aruch (Y.D. 341:1)** rules that one is an *onein*:

...even if he is in a different city...

The Shulchan Aruch seems to rule like the Rosh against Rabbeinu Tam, that the *dinim* of *aninus* apply even to one who is in a different city than the *meis*.²⁶

The **Shach (ibid., s.k. 5 d"h vi'afilu hu bi'ir acheres)** writes:

This (*din*, that *aninus* applies in a different city,) implies that even if there is someone else who is in the city and involved with the *meis*, the laws of *aninus* still apply to him. This is like the opinion of the Rosh who argues with Rabbeinu Tam who the Tur quotes. However, the Bach rules like Rabbeinu Tam, that *kerovim* who are residing in a different city, do not have a *din* of an *onein* unless there are no mourning *kerovim* in the city with the *meis*. But if there are mourning *kerovim* in the city, then there is no *din onein* for those relatives outside the city.

Sometimes a person might be in Eretz Yisrael and they lose a relative in New York and plan to take the next flight out. In New York, there are many *kerovim* taking care of the arrangements but one brother is coming in from Eretz Yisrael. Is he considered an *onein*? Should he daven Mincha or Ma'ariv? Does he make *berachos* on the food on the airplane? According to the Rosh he would be an *onein* and according to Rabbeinu Tam he wouldn't.

There are *morei hora'ah*, mostly in Eretz Yisrael, who say like Rabbeinu Tam, that if you are coming from an "עיר אחרת" and there are other *kerovim* in the city with the *meis* arranging the funeral and burial, then you don't have the *din* of an *onein* and you should accordingly daven, say *berachos*, and do all *mitzvos*.²⁷

The second part of this question is whether there is a *din* of *aninus* in general on an airplane or on a train.

Rav Gavriel Zinner writes in his **Nitsei Gavriel (Inyanei Aveilus, Perek 14:5)**:

If the *kerovim* are accompanying the *meis* to a different city, the *dinim* of *aninus* apply to them until the burial is completed. If they travel on an airplane, since the *niftar* is placed in a separate area and the *kerovim* thereby have no involvement with the *meis*, it is the opinion of many of the *Chochmei Zmaneinu* that there is no *din* of *aninus* until they gather their belongings.²⁸

²⁶ There is a whole discussion regarding this *nekudah* of a relative being in a different city. Does it mean that they are in a different city but are planning to come to the *levaya*? Or, does it mean they are in a different city but are not coming, in which case it could be that they should begin the *aveilus* right away? See התחלת אבילות for more on this topic.

²⁷ Rav Simon said that he looked in the **Pnei Baruch**, the *aveilus sefer* that Artscroll basically translated, and they write like Rabbeinu Tam. **Rav Gavriel Zinner** in his **Nitsei Gavriel (Inyanei Aveilus, Perek 14:3)** also somewhat sides with this ruling of Rabbeinu Tam and writes that if a *karov* is in a different city, cannot do anything for the *meis*, and doesn't plan on coming to the funeral, he doesn't have a *din* of an *onein*. Rav Simon noted that nonetheless, many Poskim (including **Rav Yitzchak Abadi**) follow the straight ruling of the Shulchan Aruch, that a person is an *onein* even if they are coming from another city and are planning on coming to the *levaya*.

²⁸ In footnote no. 13 he quotes this *din* from the **Admor miKlausenberg** and from **Rav Shlomo Zalman Auerbach**, and from "עוד הכמי ארצינו הקדושה." He writes that the *svara* is that since the *meis* is placed in a different compartment and there is nothing that the *kerovim* can do to assist the process (i.e. they can't make the train or airplane go any faster,) they should lose this status of *oneinim*. He quotes that this original *shaila* was asked in the **Shu"t Parach**

In the *sefer Yesodei Smochos* by **Rav Aharon Felder**²⁹ he writes as follows:

An *onein* traveling to the city of the deceased should not put on *tefillin*, eat meat, or drink wine, but should observe all other *mitzvos* until reaching the city. Upon reaching the city, all laws of *aninus* will now apply to the *onein*.³⁰

This opinion is a split opinion. On the one hand he is *choshesh* for the *svara* of “*kevodo shel meis*” and so maybe the *karov* shouldn’t be eating meat or drinking wine. However, if they offer dinner on the airplane he can eat and make *berachos* on the other foods. He should still daven, though without *tefillin*, for perhaps it’s *yom rishon* and you don’t wear *tefillin* on *yom rishon*.³¹

§

There is another *din* quoted in the **Gilyon Maharsha**³² (Y.D. 341:1, *d”h vi’lo mizamnin*) on Shulchan Aruch where he discusses whether an *onein* is *mitztaref* to a *minyán*. He writes:

דבר שבקדושה אין מזמנין: And he is not included (towards a *minyán*) for any

Though there are Poskim who disagree, the predominant *psak* is that an *onein* who is *patur* from *mitzvos* is not included towards the counting of a *minyán*.

Mateh Aharon (Siman 89) regarding *kerovim* accompanying a *meis* on the “*ban*” (train) where they could not effect the travel speed and would have no contact with the *meis* who was stored in a different compartment.

²⁹ Rav Aharon Felder currently lives in Philadelphia though he is formally from Washington Heights. Rav Simon noted that Rav Schachter often says that Rav Aharon Felder has *psakim* in his *sefer* (which is in English) from **Rav Moshe Feinstein** that are not quoted anywhere else.

³⁰ He quotes that the source for this is that which he heard from **R’ Moshe Feinstein** shlit”a, that since the person can’t be involved with *meis* while on the airplane, they would be *chayav* in these *mitzvos*. Again, Rav Simon said that the more predominant *psak* of *morei hora’ah* is that nonetheless, he would be considered a complete *onein*.

³¹ Rav Simon was discussing this with R’ Moshe Shapiro in the library and they wondered if this *psak* was only where the person was going to the *meis* who was in a different city. However, based on the reasoning it seems that it shouldn’t make a difference even if he had the *meis* with him. Rav Simon called up R’ Felder to verify this point and R’ Felder told him that his *mesorah* from Rav Moshe was that in both scenarios, while on the airplane, one would be *chayav* to daven because they are not directly involved with the *meis*.

³² “Not the Maharsha that we all know from the Gemara, but Rav Shlomo Eiger who also called himself the Maharsha.”

סימן ג: לקוטי דינים בענין מי שמתו מוטל לפניו

The **Beir Heitiv (O.C. 55, s.k. 7)** agrees with the previous ruling of the Gilyon Maharsha:

An *onein* is not *mitztaref* to a *minyan* for any דבר שבקדושה (for he is) like one who is exempt from all *mitzvos*.

Since counting for a *minyan* is dependent on whether you are a *bar chiyuva*, an *onein* who is *patur* from *mitzvos* can't count towards the ten.

This *din*, that an *onein* is not *mitztaref* to a *minyan*, is not a *din* found in the Gemara. Nonetheless, it seems to be a *din* brought down by the later Poskim.

The **Shevus Ya'akov (Shailah 25)** brings an earlier source for this idea from the **Kol Bo**:

And nonetheless, it appears to me that everyone agrees that before the *meis* is buried, since the *onein* is *patur* from *tefillah*, he cannot be *mitztaref* to the *minyan* of ten. And this is also indicated in the words of the Kol Bo that the **Beis Yosef (Siman 341)** quotes, and this is his *lashon*: “And he is permitted to walk to the *beis ha'kenesses* on Shabbos, and even during the week it is not forbidden, but since they aren't allowed to daven what are they going to do there?”

The Shevus Ya'akov learns out from this *lashon* of the Kol Bo that an *onein* cannot be *mitztaref* to a *minyan*. The Kol Bo writes, “If he can't daven, then why go to shul?” implying that there is absolutely nothing he can do in shul, not even be *mitztaref* to a *minyan*.

§

There are many *shailas* that arise regarding an *onein* and his level/involvement in *chiyuv mitzvos*.

The **Pri Megadim (Pesicha Kolleles, Chelek 2: Sug 9)** writes:

The ninth category is someone who is an *onein* and his *meis* is *mutal lifanav*. See the beginning of Perek “*Mi SheMeiso*” in Meseches Berachos (17b) and Yoreh Deah (Siman 341). And it's written in the **Shu”t Chacham Tzvi (Siman 1)** that it is specifically *mitzvas aseh* that an *onein* is exempt from but *mitzvas lo sa'aseh* they are *chayav* in like all other people. (This is so, for) it is obvious that the reason of *osek bi'mitzvah patur mi'mitzvah* doesn't allow one to violate the Torah. And see Rabbeinu Yonah in the beginning of Perek “*Mi SheMeiso*.”

The Pri Megadim continues and writes that if a person happens to be an *onein* on *erev Pesach* by *chatzos*, a time when there is a *mitzvas aseh* of “תשביתו,” he is exempt from this *mitzvah* even though it will ultimately lead to the violation of a *lav* of “בל יראה.” We still permit this because it's a *lav* done in a manner of *shev vi'al ta'aseh*. When we say that an *onein* cannot do *aveiros*, we mean that he can't do *aveiros* in a manner of *kum vi'aseh*. But there are certain situations, like our case by “תשביתו” for example, where he violates an *issur* in a way of *shev vi'al ta'aseh*. Since we are not *michayev* him to do *ma'asim*, we don't make him get rid of his *chametz* even though he will come to violate the *lav* of בל יראה.

In **Hilchos Sukkah** the **Pri Megadim (Aishel Avraham; O.C. 640, d"v vi'dah)** suggests something similar to that which he wrote in the Pesicha Kolleles:

And know that an *onein* is *patur* from *sukkah* and from all the *mitzvos* in the Torah...and specifically *mitzvas aseh* in a manner of *shev vi'al ta'aseh*. But to eat outside of the *sukkah* is a violation of *kum vi'aseh*...

It could be that an *onein* wouldn't be permitted to eat outside of the *sukkah* because that would be a violation in a way of *kum vi'aseh*.

In the **Bikkurei Ya'akov (Hilchos Sukkah, pg. 30; s.k. 19)** of **R' Ya'akov Etlinger**, he writes:

The Pri Megardim is uncertain regarding an *onein* and their *chiyuv* of *sukkah* on Chol HaMoed or even on Yom Tov in a case where they plan to bury the *meis* on the first day via a non-Jew or even by a Jew on Yom Tov *sheini*, because in such a case, *aninus* is in effect. (His uncertainty is that) an *onein* is only *patur* from *mitzvas aseh* that are *shev vi'al ta'aseh*, but by *sukkah*, it is a violation in a way of *kum vi'aseh* when he eats outside of the *sukkah*.

He explains that certainly an *onein* is not *chayav* in the *mitzvah* of *sukkah* because are not *michayev* an *onein* to do something in a way of *kum vi'aseh*. Even though if we don't require him to eat in the *sukkah* it will come out that he will be eating outside of the *sukkah*, we still can't force him to take the initial action. He is therefore entirely *patur*.³³

§

We saw previously that if someone lost a relative on Shabbos or immediately before Shabbos and there was no time to do the *kevrurah* beforehand, that the *halachos* of *aninus* are suspended throughout Shabbos. Once Shabbos ends, however, the regular *dinim* of *aninus* resume. This would mean that such a person would not be allowed to make or daven Ma'ariv.

What about after the *kevrurah*? Since one can technically make *havdalah* until Tuesday, should a person make *havdalah* on Sunday after the burial?

The **Rosh (Meseches Berachos, Perek Shelishi: Siman 2)** writes:

They say that one time the R"i was an *onein* and he ate without making *havdalah*...the next day when he came from the cemetery (his *talmidim*) said to him, 'Why aren't you making *havdalah*?'...He answered them, 'Since I was *patur* from *havdalah* at the time of the *chiyuv* because I was an *onein*, I am also *patur* now.'

The Rosh quotes a proof for this opinion from the **Gemara in Meseches Chagiga (9a)**. If someone was a *היגר* on the first day of Yom Tov and their leg healed on the second day, they are still not *chayav* to bring the *olas ri'eyah* or the *chagiga* for they were already entirely exempt by not being obligated on the first day.

³³ In the **Birkei Yosef (Y.D. 341:5)** from the **Chida** he writes on a related topic, that he is *misupak* as to whether an *onein* is required to wash *netilas yadayim* before eating bread. He concludes that an *onein* should wash his hands but not make a *beracha*.

The Rosh continues by quoting a dissenting opinion of the Maharam miRutenberg:

The Maharam miRutenberg writes in his Hilchos Semachos that if someones relative died on Shabbos and they will not bury them until the next day, such a person does not make *havdalah* on *motzei* Shabbos and it is *mutar* for them to eat without reciting *havdalah*. This is in accordance with what is says in Perek “*Mi SheMeiso*,” that someone who’s *meis* is before them is *patur* from all the *mitzvos* in the Torah. And the Yerushalmi writes that whoever is *patur* from something and does it nonetheless is called a *hedyot*. However the next day, after the *meis* is buried, it is *assur* to eat anything until you make *havdalah*...

The **Shulchan Aruch (Y.D. 341:2)** rules like the Maharm miRutenberg:

If someone’s relative died on Shabbos, the *karov* can eat on *motzei* Shabbos without making *havdalah* and he shouldn’t daven (Ma’ariv) and he also shouldn’t daven in the morning before the *kevurah*. And after the burial he should daven Shacharis if the time hasn’t passed but he should not make up the missed Ma’ariv because the time has already passed and it’s not like one who forgot to daven Ma’ariv and as a result davens Shacharis two times since on the (previous) night he was not *chayav* to daven. And regarding *havdalah*, he should make *havdalah* after they bury the *meis*.

According to this *halacha*, we see that the *ikar zman* for *havdalah* is like the Gemara learns, until Tuesday, and it is not that each day is a *tashlumin* for *motzei* Shabbos, for had that been the case the *onein* would have been *patur* from this *mitzvah* all together like he is by Ma’ariv. However, since the *ikar zman* is until Tuesday, he is still *chayav* to make *havdalah* after the *meis* is buried.³⁴

There is a *din* that one can really say *havdalah* on Shabbos from *plag ha’mincha* and onward. Obviously when making *havdalah* during Shabbos-day one wouldn’t make the *beracha* on the fire, but just like one can make early Shabbos and make *kiddush* even though it is still technically Friday, so too, one can make *havdalah al ha’kos* even though it is still Shabbos.

The question that arises from this is: Why don’t we avoid the entire *shaila* of making *havdalah bi’aninus* and have a person who knows they will become an *onein* when Shabbos ends (either because someone died right before Shabbos or died on Shabbos) make *havdalah* on Shabbos itself while he is not yet an *onein*?

The **Shulchan Aruch (Hilchos Kerias Shema, O.C. 71:1-2)** writes in Hilchos Kerias Shema:

If a relative that one is obligated to mourn over passes away, even if the body is not lying before him to be buried, he is *patur* from *kerias Shema* and *tefillah*. And even if he wants to be *machmir* on himself and recite it, he is not permitted to. But if someone else is involved

³⁴ Rav Simon said he saw a discussion of one who is an *onein* during the *zman* of *birkas ha’chamah*. It seems that if someone was an *onein* at that time and the *kevurah* was finished before *chatzos* they should still make the *beracha*. **Rav Zinner** had in his *sefer* the following *svara*: The **Magen Avraham** says that the *zman* is the first three hours of the day while the **Nodeh BiYehuda** says that the *zman* for the *beracha* is until *chatzos*. This person thought that maybe the first three hours is really the *ikar zman* and until *chatzos* is like a *tashlumin*. Therefore, if you weren’t *chayav* during the first three hours because you were an *onein* then perhaps you wouldn’t be *chayav* at all. Rav Simon thought that the *pashtus* was not like that and someone who was *onein* earlier could recite the *beracha* until *chatzos*

with arranging the burial, if he wants to be *machmir* upon himself and recite, we do not object.

The above ruling applies on a weekday, but on Shabbos he is obligated (to recite *Shema* and *Shemoneh Esreh*) during the whole day. If he waits until nightfall at the *techum* in order to be able to attend to the requirements of the burial immediately after Shabbos, he is only obligated to do so until the evening. However, if he does not wait until nightfall at the *techum* in order to attend to the burial requirements immediately, he is also obligated at the time of evening to fulfill all obligations. Yom Tov *sheini* has the same ruling as a weekday in this respect. On Yom Tov *rishon*, if he wishes to bury the *meis* that day by means of non-Jews, it has the same ruling as a weekday, but if he does not wish to bury the *meis* that day, it has the same ruling as a Shabbos.

The Shulchan Aruch writes that such an *onein*, unless he goes to wait by the *techum*, should even recite *kerias Shema* on *motzei* Shabbos.

The Taz (*ibid.*, *s.k.* 4) explains:

And it appears to me that since the *chiyuv* (of *kerias Shema*) is on him at this time, he should recite the *kerias Shema* of Ma'ariv while it is still day even though the rest of the *tzibbur* usually read *kerias Shema* specifically at night. Nonetheless, since he will be *patur* once night comes, he shouldn't be *mivatel* accepting עול מלכות שמים upon himself when he has a way to do it before nightfall. (This is permitted because after all,) we recite *kerias Shema* of Ma'ariv even if it is still daytime and one can rely on this to recite *kerias Shema* (when he is an *onein*) in order to recite it before Shabbos ends.

A person who would have been an *onein* had it not been Shabbos is permitted to do *mitzvos* on Shabbos itself. When *motzei* Shabbos arrives, however, they are again forbidden to perform *mitzvos*. The Taz accordingly recommends that since there is a permissible way to recite *kerias Shema* of Ma'ariv during the day, an *onein* who will be *patur* from *kerias Shema* on *motzei* Shabbos should try to recite it while it is still Shabbos-day so that he need not be *mivatel* this *mitzvah*.³⁵

The Shulchan Aruch HaRav (O.C. 71:2) *paskens* like this Taz:

...and he should also recite *kerias Shema* of Ma'ariv while it is still day, even though the rest of the *tzibbur* will recite it only when it is nighttime and *motzei* Shabbos. Nonetheless, since he will be *patur* come nightfall, he should not allow himself to be *mivatel* accepting עול מלכות שמים upon himself since there are many people who during the week recite *kerias Shema* (of night) during the day hours. One can rely on these opinions in this situation...

He adds that the same even applies to davening the *motzei* Shabbos *Shemoneh Esreh* during Shabbos day:

³⁵ What does the Taz mean to say here? After all, we know from the first Mishna in *Shas* that the *zman* of *kerias Shema* is not until *tzeis ha'kochavim*! Rabbeinu Tam in the first *Tosafos* there writes that really you can be *yotzei* your *chiyuv* of *kerias Shema* from *plag mincha* and onward. What does *plag mincha* mean? There is a *machlokes* as to whether that is 1 ¼ hours before *shekiah* or is it 1 ¼ hours before the *tzeis* of Rabbeinu Tam which would come out to about the time of our *shekiah*. We assume that *plag* is 1 ¼ hours before regular *shekiah*. This *shita* in *Tosafos*, where Rabbeinu Tam says you can say *Shema* from *plag* and on is likely from Rabbeinu Tam's own calculation of *plag*. But the Taz might be making a sort of combination *shita*, that the *onein*-to-be should say *Shema* on Shabbos from our *plag* and be *yotzei* his *chiyuv* in that fashion.

And it goes without saying that he should daven Ma'ariv of *motzei* Shabbos while it is still day, for from *plag ha'mincha* it is considered night for *tefillah* according to R' Yehuda, and even though one normally relies on the opinion of the Chachamim, he can rely on the opinion of R' Yehuda on *motzei* Shabbos in a case like this where the person will not be able to daven otherwise once the night comes.³⁶

The *ba'al* Chavos Yair, **R' Yair Chaim Bachrach** writes in his commentary on Shulchan Aruch, the **Mekor Chaim**³⁷ (O.C. 71:2), a similar idea. Someone who is going to be *על התחום* should make *havdalah al ha'kos* before he leaves since when nightfall comes he will be *patur*.

The **Sdei Chemed (Ma'areches Aveilus, Siman 175)** writes:

And when my righteous mother passed away on Shabbos, I davened the *tefillah* of *motzei* Shabbos while it was still day but close to dark, and I also made *havdalah* on a *kos* during the day. At night, after the *hesped*, my sister and I tore *keriah* before the *kevurah* and then proceeded to do the burial.

All of these *mekoros* that indicate making *havdalah*, reciting *Shema*, and davening Ma'ariv early are really only one side of the *machlokes*. If you look in the Shulchan Aruch you don't see this *eitzah* and most rabbanim don't tell people to do this.

The **Shevus Yaakov (Shaila 8)** addresses this question in a *teshuva*. Someone lost a relative on Shabbos and the *rav* in the community told him that he should daven Ma'ariv with *havdalah* during the day. The *shoel* was asking the Shevus Yaakov if he agreed with the ruling of this *rav*.

He responded that it is a strange thing to do because it seems like a *tarti di'sasrei*. On the one hand, you are davening Ma'ariv which indicates an ending of Shabbos, while on the other hand, you want it to remain Shabbos so that you do not become an *onein* who is forbidden to perform *mitzvos*.

In the *sefer Derech HaChaim*, a compilation of the *psakim* from the *siddur* of the **Nesivos HaMishpat** of **R' Yaakov miLisa**, he writes similarly. Once one says “*אתה הריגתנו*” they are declaring an end to Shabbos, the *dinim* of *aninus* would take effect, and the person would not be permitted to recite the rest of the *Shemoneh Esreh*. Furthermore, he writes, it is like a *tarti di'sasrei* to say *havdalah bi'tefillah* but then not have the *dinim* of an *onein*.

Another approach is found in the *sefer Michtavei Torah*, a collection of the letters of the **Imrei Emes** of **Gur**. In a letter written to **R' Menachem Ziemba** he writes that when his uncle, the Rav miPiltz, was an *onein* on Shabbos, he davened the *tefillah* of *motzei* Shabbos on Shabbos and was *mavdil* on a *kos*. He quotes that the Shevus Yaakov didn't

³⁶ In the *mekoros* on the side of the Shulchan Aruch HaRav he quotes this *din* about reciting *Shemoneh Esreh* from the **Halacha Berurah** (O.C. 71:3) of **R' Pinchas Auerbach**, a *rav* in Frankfurt.

³⁷ Rav Simon said that he remembers that when the *Mekor Chaim* first came out Rav Schachter was very excited about it. In the new Shulchan Aruch's they have the *Mekor Chaim* in the back.

agree with such an approach and **R' Yosef Engel (Gilyonei HaShas, Meseches Berachos 27b)** also disagreed. The Imrei Emes writes:

However in my humble opinion, if I could add on to that which the Shevus Ya'akov says...if one will be *patur* from the *ikar chiyuv* then they don't have the ability to do a *hagdama*...

He explains that since the *ikar zman chiyuv* for *havdalah* is on *motzei* Shabbos, we are only going to allow one to advance the *zman* and make *havdalah* early if they would theoretically have that *chiyuv* on *motzei* Shabbos as well. If, however, when *motzei* Shabbos would come they wouldn't be *chayav*, then they also can't advance it and recite it earlier in the day.³⁸

§

The **Panim Meiros (Shaila 150)** discusses an interesting *shaila* of someone who was unaware of the *halacha* and because of his lack of knowledge made *havdalah* on *motzei* Shabbos despite the fact that he was an *onein*. Does he have to make a second *havdalah* after the *kevurah* on Sunday? He brings both sides of the *machlokes*.

§

There is a *teshuva* of the **Maharshal (Shu"t Maharshal, Siman 70)** in which he was asked how one should conduct himself in a case where he is an *onein* but also has a child who is eight days old and requires a *bris milah*. He writes that there is room to say that one could perform the *bris milah* before the *kevurah* and he brings a proof from the **Gemara in Meseches Kesubos (3b)** that says if someone lost a relative right before his *chasana*, we wait with the *kevurah* and allow him to do the *mitzvah*. He makes this distinction by saying that a "מצוה פרטי," a *mitzvah* that applies specifically to one person, would be permitted even before *kevurah*.³⁹ He gives various other answers as well.⁴⁰

§

We noted that the *onein* doesn't *daven* Ma'ariv on *motzei* Shabbos and he is additionally not required to recite a *tefillas tashlumin* on the next day (see Y.D. 341:2).

In the **Dagel Mirvavah (Y.D. 341:2)**, the Nodeh BiYehuda makes a subtle distinction in regard to this *halacha*:

And it seems that this is specifically when the *meis* died on Shabbos and thus the *chiyuv* of Ma'ariv didn't fall upon the *onein* on *motzei* Shabbos at all. However, if the *meis* would die on *motzei* Shabbos, in which case the *chiyuv* for Ma'ariv had already come into existence prior to the death, yet he is now an *onein* and is unable to *daven*, he would need to *daven* Shacharis twice the next day.

³⁸ The **Nittei Gavriel (Perek 28)** quotes all these *mekoros* and writes that *li'maaseh* it seems that one should not be *machmir* to *daven* and make *havdalah* during the day.

³⁹ Rav Simon wasn't sure exactly what this distinction is.

⁴⁰ Rav Simon noted that he doesn't think that this *teshuva* is the *minhag* nowadays, especially because we don't have such organized and set communal *minhagim*. Back then people always did the *bris* at a certain time of day and the *kevurah* at a certain time of day and so it was a *shaila* whether they should change around the order. Nowadays, people schedule things for whenever they want and so it doesn't really apply.

Not everyone agrees to this *chiddush* of the Nodeh BiYehuda. The **Aruch HaShulchan (Y.D. 341:24)** writes:

And if the *meis* dies at night when the *chiyuv* of Ma'ariv has already come into effect but the *onein* had not yet davened, some say that he should daven a *tefillas tashlumin* the next day after the *kevurah* (as is written in the Dagei Mirvavah and the Pischei Teshuva, s.k. 18). However, there are some who disagree. And it seems to me that you go after the *sof ha'zman*.

The Aruch HaShulchan writes that whatever the person's status is at the end of *zman tefillah* will determine whether he is obligated to recite *tashlumin*, for the *sof ha'zman* is really where the *chiyuv* comes to an end. In the case here, the person is an *onein* at the *sof zman tefillas Arvis* and thus he would not be obligated to recite a second *Shemoneh Esreh* for Shacharis the next day after the *kevurah*.

§

The Nesivos in his *siddur Derech HaChaim (Hilchos Aveilus, Dinei Onein 1)* has a *chiddush* that someone who ate a meal while they were an *onein*, didn't recite *birkas ha'mazon* because of their *aninus*, proceeded to bury the *meis*, and completed the burial before the *zman ikul* (time of digestion), should in fact recite *birkas ha'mazon*. Additionally, if he had gone to the bathroom while an *onein* and didn't have an urge to go again since then, he should recite the *beracha* of '*asher yatzar*' after the *kevurah*.

The **Aruch HaShulchan (Y.D. 341:17)** takes issue with this ruling of the Nesivos:

And some of the *gedolim* ruled that an *onein* who ate without reciting *birkas ha'mazon*, if after the *kevurah* the food has still not digested then he is obligated to recite *birkas ha'mazon*. The same applies to the *beracha* of '*asher yatzar*.' And it seems to me that this is not correct for since at the time of eating and going to the bathroom the person was *patur*, the *chiyuv* does not later come upon them...and even those who hold that one should make *havdalah* (after the *kevurah*.) that is only because they hold that the *zman chiyuva* is until Wednesday...

The Aruch HaShulchan rules that if a person is not obligated in the *mitzvah* at the time the *chiyuv* would have taken effect, he is not obligated to make up the *mitzvah* at a later point. Only if the *mitzvah* still applies after the *kevurah* should a person perform a missed *mitzvah*.

§

If a *kevurah* took place on Sunday morning, a person would still be able to daven Shacharis after the burial. We know that *zman* Shacharis is until *chatzos*, or *lichatchila* until four hours into the day. Accordingly, the **Magen Avraham (O.C. 71:1 d"h *patur mi'kerias shema*)** writes:

And it seems to me that if it is before *chatzos* he should daven Shacharis. But regarding *birchos ha'shachar*, it seems to me that he shouldn't say them since at the time of his *chiyuv* he was *patur*.

The **Machatzis HaShekel (ibid.)** explains that really the *birchos ha'shachar* were instituted by the Chachamim to be recited at very specific times. When the rooster crows in the morning one is supposed to say "אשר נתן לשכוי בינה להבחין בין יום ובין לילה". Since our

hands are *tamei* at that moment, however, we delay the *beracha* until after we wash. Accordingly, if one was *patur* at the specific time in which the Chachamim instituted these *berachos* to be said, he would not recite the *birchos ha'shachar* even later in the day after the *kevurah*.

The **Vilna Gaon** in the **Ma'aseh Rav (Hilchos Birchos HaShachar, no. 9)** is quoted as having said differently:

Regarding all *birchos ha'shachar*, if you forgot to recite them immediately they can be recited throughout the entire day and even at night if you haven't yet gone to sleep. This applies to all of the *berachos* except *birchas ha'Torah* because you already fulfilled your obligation by reciting "אהבה רבה." And therefore on Yom Kippur, where it is impossible to make the *beracha* of "שעשה לי כל צרכי" and the *beracha* of "המעביר שינה," one should recite it at night immediately after putting on his shoes and washing his face.⁴¹

According to this opinion of the Vilna Gaon, one who davened *Shacharis* after the *kevurah* would still be permitted to say *birchos ha'shachar* since the *chiyuv* applies all day.⁴²

§

The **Nodeh BiYehuda (O.C. Mehadura Kamma, Siman 27)** discusses a *shaila* about one who lost a *karov* on one of the nights of *sefiras ha'omer* and the place of burial was going to be far away. The burial wasn't going to take place the night of the death and it wasn't even going to occur the next day. He was going to be an *onein* for one full day and would never have an opportunity to count *sefirah* that day.

The famous opinion of the Behag is quoted in Shulchan Aruch, that if one misses a day of the count, he can no longer count the rest of the days with a *beracha*. Therefore, could it be that the *mitzvah* of *sefiras ha'omer* is different than other *mitzvos* in that we would allow an *onein* to do it, since not doing it now will have a lasting effect on future *mitzvos*?

The Nodeh BiYehuda quotes the **Maharshal (Siman 70)**⁴³ who writes that there are certain *mitzvos*, like a *mitzvah* that is related to a specific person, that an *onein* is *chayav* in. *Mitzvos* that are for all of Klal Yisrael, like *kerias Shema* and *tefillah*, those an *onein* shouldn't do. But personal *mitzvos*, like performing a *bris milah*, a person can do even in a state of *aninus*.⁴⁴ We thus have a precedent for the idea that an *onein* can do certain *mitzvos*.

The Nodeh BiYehuda brings *tzadadim li'hakil* and *li'hachmir* and concludes that the *onein* should count but without a *beracha* because maybe the *svara* is wrong. However, since there is a basis to say that we should allow an *onein* to do a *mitzvah* if it will interfere

⁴¹ Rav Simon noted that though most are not *noheg* like this Gra, the **Satmar Rebbe** was known to put on his shoes right after Yom Kippur and make the *beracha*.

⁴² Rav Simon thought that the *pashtus* was not like the Magen Avraham and that like the Gra, one could recite the *birchas ha'shachar* as well after the *kevurah*.

⁴³ See Maharshal on page 22.

⁴⁴ **R' Moshe Tuchman** thought that *pshat* was that since it is a personal *mitzvah* it is not such a lack of *kavod ha'meis*.

with future *mitzvos*, we allow him to be *yotzei* to the extent that he will be able to continue counting with a *beracha* after the *kevurah*.^{45, 46}

The **Ksav Sofer (Shu"t Ksav Sofer, Y.D. Teshuva 181)** addresses a similar question and comes to the same conclusion, that one should count, but without a *beracha*.

The **Aruch HaShulchan (Y.D. 341:17)** has a *lashon* that one can count *sefirah* without a *beracha* and it will be like a “סיפור דברים בעלמא הוא.” With such a notion, **Rav Soloveitchik** explains that the *pshat* in the Behag is that if you miss a day it's not a 'count' anymore.⁴⁷ Therefore, even if you count in a way that is *lo bi'toras mitzvah*, you can still continue counting the next day with a *beracha* because the Behag doesn't require you to do the 'mitzvah' every day but rather requires you to continue a consistent count.^{48,}
49

§

There is a *teshuva* of **Maharam Lublin (Shaila 73)** quoted in the **Magen Avraham** about a case where someone was *niftar* on *erev* Pesach that fell on Shabbos. The *seder* was set to take place on *motzei* Shabbos and the question was whether the relatives of the *meis* should take part in the *seder* or not?

The normative *halacha* would be that if you were planning to bury the *meis* on Yom Tov, either by a non-Jew on Yom Tov *rishon* or by a Jew on Yom Tov *sheini*, then the *dinim* of *aninus* would apply, just like one who is *machshich al ha'techum* on Shabbos. The Maharam Lublin, however, writes:

However, it appears that...in a situation like this, one would be *chayav* in all the *mitzvos* that are applicable that night...for in this scenario, even though he wants to bury the *meis* tomorrow via a non-Jew, still, he can't deal with finding an *aron* or *tachrichin* until tomorrow...However, regarding saying the *haggada*, since there it is a lengthy section of *midrash* and *pesukim*, it is best if someone else recites it while he sits and listens.

Since there is nothing one can do for the *meis* at this point, they would be obligated in all the *mitzvos* of the *seder*. The Maharam's one recommendation is that the *onein* have someone else read him the *haggada*.^{50, 51}

⁴⁵ Rav Simon noted that Rav Abadi said that certainly according to the *shita* of the **Chochmas Adam**, that when there is a *chevra kadisha* running the show and there are *svaros* to assume that you are really *chayav*, one would certainly be able to count without a *beracha*.

⁴⁶ The case in the Nodeh BiYehuda was where the *aninus* was going to linger on for an entire day. If, however, the *aninus* is going to end during the day, the **Nitsei Gavriel (Perek 35:11)** writes that you should just wait until after the *kevurah* and then count without a *beracha*. Rav Simon noted that R' Abadi disagreed and felt that you should always count at night without a *beracha* because there are some *shitos* that say you can't count during the daytime.

⁴⁷ For example: 1,2,3,5,7,8... is not considered a coherent counting.

⁴⁸ Rav Simon said that he didn't see this *eitzah* in any of the written works about Rav Soloveitchik but he had heard that the Rav would advise an *onein* to count as a “*sippur bi'alma*.” Essentially, the Rav's *psak* is the same *psak* as the Nodeh BiYehuda but with different *lomdus*.

⁴⁹ Rav Simon noted further that he realized years ago that this idea of Rav Soloveitchik is the same thing that the **Ksav Sofer (Shu"t Ksav Sofer, O.C. Teshuva 99)** says about a *kattan* who becomes *bar-mitzvah* in the middle of *sefirah*. The Ksav Sofer explains that as long as he has been counting until now he can continue counting because the *pshat* in the Behag is not that he has to be doing the *mitzvah* every day but that he has to maintain the count and have “*temimos*.”

⁵⁰ This Maharam Lublin is quoted in a number of places, specifically the part about having someone else read the *haggada* to the *onein*. It is quoted by the **Magen Avraham**. It is quoted by the **Maggid Mishna (Hilchos Eivel 4:6)** in

סימן ד: בענין אסורי אבילות בזמן שמתו מוטל לפניו

An *aveil* is forbidden to do certain things: *rechitza, sicha, tashmish ha'mitah, ni'elas ha'sandal* – but when do these *issurim* begin? Do they begin from the moment of death or from the time of the *kevurah*? Certainly the counting of the *shiva* begins after burial but do the other *issurim* of an *aveil* apply already during the state of *aninus*?

The **Rambam (Hilchos Eivel 1:2)** writes:

From when is a person obligated in the *dinim* of *aveilus*? From when the *golel* is sealed (i.e. from the time the coffin is sealed/buried.) But until the *meis* has been buried, a mourner is not bound by any of the *issurim* incumbent on an *aveil*. And for this reason Dovid Hamelech washed himself and anointed himself when his son died, before he was buried.

The Rambam is of the opinion that all the *issurei aveilus* take effect only after the *kevurah*. This, however, is entirely separate from the counting of *shiva*, which according to everyone begins after the *kevurah*.

The **Ramban (Toras HaAdam, pg. 73)** quotes the opinion of **R"itz Geius** who agrees with the Rambam. The Ramban writes:

And the Rav, R' Yitzchak ben Geius *z"l* wrote: That which applies to *shiva* and that which applies to *sheloshim* is *mutar* between the time of death and burial.

According to Ramban and R"itz Geius, if someone lost a relative and had long hair at the time, and they realized that they won't be able to cut their hair for a while, they could go to the barber prior to the *kevurah*.

The **Ramban (Toras HaAdam, pg. 74)**, however, disagrees with the Rambam and R"itz Geius:

And they forbade even eating meat and drinking wine and taking care of all your needs while in a state of *aninus* so that he could focus on the needs of the *meis*. *Kal vi'chomer* that *tashmish ha'mitah* (is not allowed,) for even the simplest of people wouldn't have *tashmish* (at a time like this.)

The Ramban holds that the *issurei aveilus* begin immediately, even before the *kevurah*.

Later in the **Toras HaAdam (pg. 212)** the Ramban writes explicitly that while really all the *issurim* should start right away from the *shas misah*, there are certain things that if we would forbid them right away would hinder ones ability to deal with the *meis*. If we would make an *onein* spend time turning over all the beds in the house instead of dealing

the name of "המנהיר," which **Rav Zinner (Perek 35:7, footnote no. 13)** explains is a nickname for the Maharam Lublin found in the **Chida's sefer Shem HaGedolim**. Rav Zinner writes that it is therefore a *pelah* that the **Gilyon HaMaharsha (Y.D 341)** quotes this *din* from the Maggid Mishna in the name of "המנהיר" as well as from the Maharam Lublin because they are actually the same person.

⁵¹ In regard to the prevalent *halacha*, Rav Simon noted that in most of our circles they don't bury on Yom Tov and so if someone dies on *erev* Shabbos right before a Yom Tov, the *kevurah* usually won't be until after Yom Tov. Therefore, the person would not be considered an *onein* and should certainly partake in the *sefer*.

with the *kevurah*, or if we would make him go change his shoes or do an *atifas ha'rosh*, he won't be able to focus on arranging the burial. Those *nihugim* which an *aveil* has to do in a manner of *kum vi'aseh*, even the Ramban is *modeh* that he doesn't have to do them *bi'shas aninus*. However, there would seemingly be no *heter* for taking a shower for *ta'anug* or getting a haircut *bi'shas aninus*.

There is a discussion as to whether the *issurim* of *aveilus* (*tashimish*, *ni'elas ha'sandal*, *rechitza*, etc.) are *midioraisa* or *midirabanan*. The Ramban writes that out of the eleven things that are forbidden for an *aveil*, there are certain *issurim*, like *rechitza* for *ta'anug*, *sicha*, and *tashmish*, that are pleasure related. If you would partake of those pleasures during the *zman aveilus*, that would be an *issur midioraisa*. There are other *issurim* which are not pleasure oriented (*ni'elas ha'sandal*, *atifas ha'rosh*) and those institutions are only *midirabanan*. Accordingly, the Ramban explains that those things which are *assur midirabanan* during *aveilus* are *mutar* to do if the *meis* has not yet been buried. However, those things which are *midioraisa* become *assur* right away *bi'shas misah*.

The **Gemara** in **Meseches Kesubos (3b-4a)** discusses someone who loses a relative immediately before their wedding:

הרי שהיה פתו אפוי וטבחו טבוח ויינו מזוג ומת אביו של חתן או אמה של כלה מכניסין את המת לחדר ואת החתן ואת הכלה לחופה ובו על בעילת מצוה ופורש ונוהג שבעת ימי המשתה ואחר כך נוהג שבעת ימי אבילות...

If one's bread was already baked, his animals slaughtered, and his wine mixed (in preparation for the wedding feast) and the father of the *chassan* or the mother of the *kallah* died, we bring the *meis* into a room and the *chassan* and *kallah* to the *chuppah*. The *chassan* performs the *bi'ilas mitzvah* and then separates from his *kallah*. (After the burial) he observes the seven days of feasting and only afterwards he observes the seven days of *aveilus*.

In such a situation one might think that you should first bury the *meis*, but the Gemara reveals an extraordinary *halacha*, that you delay the *kevurah* and proceed with the wedding. The *chassan* is *bo'el* the *bi'ah rishona*, the *kevurah* is done, they celebrate the seven days of *sheva berachos*, and then observe the seven days of *aveilus*. We have the *kevurah* delayed so that the wedding can happen. Then, once the wedding has happened it becomes a Yom Tov for the newlyweds and we treat the situation as if someone had died on Yom Tov in which case the *shiva* is postponed until afterwards.

The Gemara concludes:

וכל אותן הימים הוא ישן בין האנשים והיא ישנה בין הנשים. ואין מונעין תכשיטין מן הכלה כל שלשים יום.

And during all those (fourteen) days, the *chassan* sleeps among the men and the *kallah* sleeps among the women. And we do not withhold *tachshitin* from the *kallah* the entire *sheloshim*.

Regularly, there is no *issur yichud* between a man and his wife when she is a *niddah*, even though she is *assur* to be with him at that time. If a man and woman get married, however, and before the *biah rishona* the woman becomes a *niddah*, the *halacha* states that they must separate from one another until she is *tahor* and only then may they be

alone with one another. There is an *issur yichud* in such a case because we know that before the *biah rishona* the desire between the two of them is too great. In the case here, however, we say that there is an *issur yichud* between the man and woman during the days of *shiva* even though they already had the *biah rishona*. Normally, however, when a person is an *aveil*, he may sleep in the same room as his wife, even though they may not be together. Why should this case be treated as strict as a man and his newlywed wife who is a *niddah*?

The Gemara (**ibid.**, **4b**) explains:

רב אשי אמר מי קמדמית אבילותא דהכא לאבילותא דעלמא? אבילותא דעלמא חמיר ולא אתי לזלזולי ביה, אבילות דהכא כיון דאקילו רבנן אתי לזלזולי ביה.

Rav Ashi said: Can you compare the mourning here to a regular mourning? Regular mourning is stringent (in the eyes of the people) and they will not come to treat it lightly. But the *aveilus* here, since the Rabbanan already ruled leniently, (the newlyweds) will come to treat it lightly.

Since Chazal made this tremendous *kulah* of permitting this marriage before the *aveilus*, we're afraid that the new couple might not take this *aveilus* seriously. Therefore, they instituted this extra *chumra* that they cannot sleep near each other, in order that they not be *mizalzel* the *aveilus*.

The Gemara asks:

מאי קולא? אילימא דקתני בועל בעילת מצוה ופורש התם משום דלא חל עליו אבילותא אי לרבי אליעזר עד שיצא מפתח הבית אי לרבי יהושע עד שיסתם הגולל.

What is the *kulah*? If you say it is that which the *beraisa* taught: 'The *chassan* performs the *bi'ilas mitzvah* and then separates,' there (is no *kulah* there) because the *aveilus* did not yet take effect upon him either according to R' Eliezer, who says until the *meis* goes out the door of the house, or according to R' Yehoshua, who says until the top of the casket is closed.

The simple reading of this Gemara implies like the Rambam and the R"itz Geius, that the *issurei aveilus* do not take effect until after *kevurah*. It is therefore not a '*kulah*' that an *onein* married because the *issurim* of *aveilus* hadn't yet begun. Rather, the *kulah* is the fact that we allow you to manipulate the situation by having the *shiva yimei ha'mishteh* before the *shiva yimei aveilus* even though the *misah* came first.

What do Ramban and other Rishonim who say that the *issurei aveilus* begin from the time of *misah* do with this Gemara? For them, allowing the wedding and *biah rishona* to happen after the *misah* is in fact a *kulah*, for *tashmish ha'mitah* is *assur* for an *onein*.

The **Ramban (Toras HaAdam, pg. 73)** answers:

And even though elsewhere there is an *issur* of *tashmish ha'mitah* in order that one can deal with the burial arrangements, still, here they permitted it. However, once the state of *aveilus* comes upon him, they were not *meikil* regarding it. And just because of this *kulah*, that we permit the wedding to occur before the *kevurah*, doesn't mean that it will necessarily lead to a *zilzul* of the seven days of *aveilus*, for in reality, the days of *aveilus* from the time of *kevurah* and onward are as strict as someone in a category of "*mi she'meiso mutal lifanav*"...

The Ramban explains that permitting the marriage is definitely a *kulah*, but it is a *kulah* in *aninus*, not *aveilus*. The Gemara assumed, however, that a *kulah* in *aninus* wouldn't lead someone to be *mizalzel* in *aveilus*. Therefore the Gemara had to find what the *kulah* was in the realm of *aveilus*, which was the fact that we allowed the *aveilus* to be pushed off for a week.

§

Now that we have clarified how we can explain the Gemara according to both the Rambam and the Ramban, how do we explain the story of Dovid HaMelech, that he washed and anointed himself after his son died but before he was buried, according to the Ramban?

The **Derisha (Y.D. 341:6, *d"h kasav ha'Rambam*)** proposes a number of possible answers:

And it is not a *stirah* from Dovid according to the Ramban who forbids *rechitza* (even before the burial) for you can say that the Ramban goes according to the reasoning found later in Siman 381, that during the *seudas havra'ah*, after burying the *meis*, the *minhag* was to wash to remove the *zuhama* and perhaps this is what Dovid was washing. It is possible that the Rambam did not hold of this *minhag* and therefore learned from Dovid that *rechitza* is *mutar* even prior to the *kevurah*. And some explain that the child was not a *bar-kayama* for he died within thirty days... It is also possible to say that a *melech* always has to appear in his glory as the *pasuk* (Yeshaya 33:17) says, “מִלְכָּה בְּגִיּוֹת, תִּתְהַלְלֶנָּה עֵינֶיךָ; תִּרְאֶינָהּ, אֲרָץ מִרְחֻקִּים”...

The Derisha presents three possible explanations for the actions of Dovid HaMelech according to the Ramban:

- 1) There used to be a *minhag* that after the *kevurah* when everyone was dirty, yhe would wash of the dirt and dust before eating the *seudas havra'ah*. The Ramban would learn that the *rechitza* of Dovid HaMelech was not before the *kevurah* like the Rambam explains but was that *rechitza* during the *seudas havra'ah*. That *rechitza* is not one of *ta'anug* and would be permitted.
- 2) It could be that the child was a *neifel* and died before 30 days and therefore one cannot learn out any *dinim* of *aveilus* from that story.⁵²
- 3) Perhaps the *dinim* by a *melech* are different because he must always appear in a glorious manner.

The aforementioned comment of the Derisha is commenting on that which the **Tur (Y.D. 341:5)** writes:

The Rambam wrote that as long as the *meis* is not buried the *issurim* that apply to an *aveil* are not in effect. The R"tz Geius wrote as well that an *onein* is permitted between the time of death and the burial to do all (of the *issurim* of *shiva*.) And the Ramban disapproved of permitting *tashmish ha'mitah*... and a few of the *dinei aveilus* apply at that time, like *rechitza* and *sicha* which are derived from a *kal vi'chomer* from eating *basar* and drinking *yayin*...

⁵² Though we learn out *tashmish ha'mitah* from Dovid HaMelech and so we generally assume that this was a real *aveilus*.

The Tur continues by quoting two more opinions found amongst the Rishonim:

Tosafos (Meseches Moed Kattan 23b, *d"h vi'eino ochel basar*) states that all the *nihugei aveilus* are really for later. The only things forbidden before the *kevurah* were those things that would get in the way of arranging the burial. While the Ramban/R"itz Geius think that all the *issurim* don't apply until later, Tosafos thinks that some of the *issurim* (i.e. *tashmish ha'mitah*) do apply before *kevurah*, either because they will delay the arrangements or because it will be an inappropriate "*simcha yiseirah*."

The **Sma"k (Siman 97, pg. 71 *Din Aveil Ha'bah Mi'chutz La'techum*)** writes that certain *nihugei aveilus*, like *ni'elas ha'sandal* and leaving the house, are permitted in order to accommodate the burial. The **Rabbeinu Peretz (footnote no. 14)** comments that *tashmish ha'mitah* and all of the other *dinei aveilus* are *assur* even before burial.

The Tur quotes this Rabbeinu Peretz along with the Ramban as well as the opinion of the Ba'alei Tosafos:

And similarly Rabbeinu Peretz wrote that anything that is *assur* for an *aveil* is also *assur* for an *onein*, except for *ni'elas ha'sandal*. And from the words of the Ba'alei Tosafos it seems that the only thing *assur* (for an *onein*) is *basar vi'yayin* and *tashmish ha'mitah*, but all other *dinei aveilus* are permitted.

The **Shulchan Aruch (Y.D. 341:5)** rules:

As long as the *meis* is not buried he does not have to remove his shoes, and he is not obligated in *atifas ha'rosh* and *kefias ha'mitah*.

The **Ramah (ibid.)** adds:

And certainly *tashmish ha'mitah* is forbidden (Tur in the name of the Ramban and Tosafos and Mordechai in first *perek* of Meseches Kesubos). And some say that washing, anointing, rejoicing, offering *shalom*, cutting hair, and *melacha* are also forbidden, but one is permitted to leave his house (Hagahos Maimoni in the name of the Sma"k).

The break-up of the Ramah seems strange. We saw according to the Ramban that *rechitza* and *sicha* and all of the things attributed to the '*yeish omrim*' are also *assur* for an *onein* before the *kevurah*. However, the parentheses indicate that the first statement that forbade *tashmish ha'mitah* is attributed to the Ramban while the second statement of the '*yeish omrim*' is not attributed to the Ramban despite his agreement with the *psak*.

The **Aruch HaShulchan (Y.D. 341:26)** writes accordingly:

The Beis Yosef in *Si'if 5* wrote that as long as the *meis* is not buried one does not have to remove their shoes, and they are not *chayav* in *atifas ha'rosh* or *kefias ha'mitah*. However it is *assur* to sit or sleep on a bed even if it overturned. And the Ramah wrote regarding this, and this is his *lashon*: And certainly *tashmish ha'mitah* is *assur*. And some say that *rechitza*, *sicha*, etc. are forbidden but it is *mutar* for him to leave his house. And these words require explanation.

The Aruch HaShulchan proceeds to explain:

And what comes out of this is that the Rambam, R"itz Geius, and Tosafos hold that all *dinei aveilus* are not applicable to an *onein*, and only regarding *tashmish ha'mitah* does Tosafos disagree. But the Ramban and Rabbeinu Peretz hold that all of the *dinei aveilus* are applicable except for those things which are needed in order to deal with the *meis*, like *ni'elas ha'sandal* and walking out in the street and other things of this nature. Accordingly, the Beis Yosef rules like the Rambam and the Ramah comes and adds that even according to this opinion *tashmish ha'mitah* is forbidden according to Tosafos. "And some say" that *rechitza, sicha*, etc. is also *assur*, in accordance with the opinion of the Ramban and Rabbeinu Peretz.

§

What about *ni'elas ha'sandal*?

Some contemporary Poskim felt that *ni'elas ha'sandal* should take effect right away nowadays. Back then, we pushed it off because not wearing shoes would get in the way of dealing with the *kevurah*. Nowadays, when we have non-leather sneakers and other shoes that one can wear during the *yimei aveilus*, perhaps the *issur* should take effect right away, even according to the Ramban.⁵³

Rav Shlomo Zalman Aurebauch in his **Minchas Shlomo (Siman 91:3)** discusses whether an *onein* who wakes up in the morning should put on his *tallis kattan*. He writes that if he doesn't have *kavanah* for the *mitzvah* we have to be concerned about that which the Mishna Berurah writes in the Beiur Halacha (Siman 60), that if one does not have the proper *kavanah* it is like he is violating an *aveirah* and it is like he is wearing a four cornered garment without *tzitzis*.

In the end he writes that since it is the normal way for a person to get dressed in the morning, it is considered like the person is only doing this *mitzvah bi'machshava* which would not be degrading to the *kavod ha'meis*.

In **Siman 91:8** Rav Shlomo Zalman discusses someone who became an *onein* on Tisha B'Av. He writes that since not wearing shoes will detract from the *onein's* ability to deal appropriately with the *kevurah* of the *meis*, *ni'elas ha'sandal* is *mutar* for him. The same would apply to someone who became an *onein* in the midst of sitting *shiva* for a different relative. Concerning Yom Kippur, if someone would be *מחשיך על התהום*, thereby making himself into an *onein*, Rav Shlomo Zalman writes that since nowadays there are non-leather sneakers that are as comfortable as leather shoes, it could be that to wear leather shoes would be *assur* as well.⁵⁴

§

⁵³ Rav Simon said that the *minhag* is not this way. They weren't *gozer* on *ni'elas ha'sandal* before the *kevurah* and so that is the *din*. **Rav Abadi** felt that this was the *din* as well. Rav Simon also said from the **Divrei Soferim** based on the **Biur HaGra (s.k. 18)** that aside from the *lo gazru* approach, another reason why it might not be necessary to wear sneakers nowadays already at the *levaya* is because anything that is a *kum vi'aseh* we are not *michayev* an *onein* to do.

⁵⁴ Rav Simon noted that **Rav Moshe Tuchman** or someone else pointed out that Rav Shlomo Zalman only said by Yom Kippur that you should put on the non-leather shoes. The implication is that normally we allow you to put on the regular shoes and do the *kevurah* (not like those Poskim who say that *bi'zman ha'zeh* we should already wear sneakers to the *levaya*), but since it's Yom Kippur we tell you to put on the sneakers and be *osek* in preparing the *kevurah*.

The **Meseches Semachos (end of Perek 11)** states:

However, as long as the *meis* is *mutal lifanav* he should sleep neither on a bed nor on an overturned bed.

The **Ramban (Toras HaAdam, pg. 74)** quotes this *beraisa* and explains:

However, as long as the *meis* is *mutal lifanav* he should sleep neither on a bed nor on an overturned bed. This means: Rather, he should sleep on the floor.

We saw previously that the **Shulchan Aruch (Y.D. 341:5)** quotes this *li'halacha*:

...however it is *assur* to sit or sleep on a bed, even an overturned one.

The **Acharonim** discuss why people are not *machmir* to do this nowadays. **Rav Gavriel Zinner** in his **Nittei Gavriel (Perek 15)** quotes that *mi'dinah* it is *assur* to sit on a stool or on a bed, but that the *minhag* is to be *meikil* “*mishum chalusha*.” He quotes from the **Shu”t Divrei Malkiel (Chelek 2: Siman 92)** and various other Acharonim who are *miyashev* this *minhag* to be *meikil*. He quotes the **Levush** who writes similarly to the Ramban by other *issurim*, that since this will affect the *onein*'s ability to deal with the *kevurah*, we are *meikil*.

סימן ה': בענין המח' אם אבלות מדאורייתא או מדרבנן

We saw previously that there are several things that are forbidden for an *aveil* to do. Are these *issurim* and *chiyuvim* of an *aveil midioraisa* or *midirabanan*?

We saw that the Ramban in his *Toras HaAdam* has a discussion as to why certain things are *assur* from the time of *kevurah* while other things are forbidden from the time of *misah*. One of the explanations given was that the *idunim*, the pleasurable *issurim* (i.e. *rechitza* for *ta'anug*, *sicha*, *tashmish*), were *midioraisa* and therefore took effect at an earlier time, while the remaining *issurim* were only *midirabanan* and therefore took effect only after the *kevurah*.

We also saw previously the *pesukim* in **Parshas Shemini (10:16-20)** in which Moshe got angry at Aharon's children for burning the *se'ir* Rosh Chodesh, and we saw how the Torah described it as a situation of *aninus*. Perhaps from that case we can derive that just as there is a *din* of *aninus* on the day of the *misah*, there should be a *din* of *aveilus* on that same day. It would be a "*mah matzinu*" of sorts; just as the Torah forbade *korbanos* on that first day after Nadav and Avihu died, perhaps the first day in general has other restrictions of *aveilus*, even though the Torah never spoke about them explicitly. If we can learn out the first day of *aveilus* from *aninus*, perhaps that would be indicative that the first day of *aveilus* is *midioraisa*.

The **Rambam (Sefer HaMitzvos, Mitzvah 37)** writes:

[There is a *mitzvah*] to have the *kohanim* render themselves *tamei* by contact with the dead in respect to those relatives mentioned in the Torah. For since the Torah forbade them from generally becoming *tamei meis*, in order to honor them, yet permitted them to become *tamei* for their *kerovim*, one might think that (becoming *tamei* for relatives) depends upon their choice and is a matter of permission – if he wishes, he becomes *tamei*; if he wishes, he does not become *tamei*. The *pasuk* therefore makes it binding and incumbent upon them, the Exalted One saying (Vayikra 21:3): "To her (his sister) shall he become *tamei*." And the *lashon* of the Sifra is: "לָהּ תִטְמָא" – this is a *mitzvah*; if he does not wish to become *tamei*, we force him to do it." And there was an incident⁵⁵ with Yosef HaKohen where his wife died on *erev* Pesach and he did not wish to become *tamei* for her, whereupon the Chachamim pushed him and forced him to become *tamei*.

The Rambam continues:

This *mitzvah* itself is the *mitzvah* of *aveilus*. That is, every Jew must mourn his close relatives, the six for whom it is a *mitzvah* to mourn...

The Rambam explains that "לָהּ תִטְמָא" is the source for *aveilus* and even though the *pasuk* is not speaking about *rechitza* and *sicha*, nonetheless, it is telling you that you have to be involved with the *meis*. Even though the illustrations of the Torah are that you have to become *tamei* and you can't eat *korbanos*, these are simply examples.

⁵⁵ See Meseches Zevachim (100b).

The Rambam continues accordingly:

And therefore it has already been explained that the *chiyuv of aveilus* is a *mitzvas aseh*. However, it is only (*midioraisa*) on the first day alone while the remaining days are *midirabanan*. Even a *kohen* is (only) obligated to practice *aveilus* on the first day by becoming *tamei* for his close relatives.

The Rambam explains that the *chiyuv of aveilus midioraisa* is learned from “אָנְטֵן הֵזֵ” and is only a *chiyuv midioraisa* on the first day.

The **Rashba (Shu”t HaRashba, Siman 155)** was asked: Regarding that which the **Gemara in Meseches Moed Kattan** states, that “*yom misah vi’yom kevrurah – midioraisa*,” does that mean that only when the *yom misah* and *yom kevrurah* are together the *aveilus* of the first day *midioraisa*? A *nafka minah* would be if the *meis* died on the first day of Yom Tov and they won’t be buried until the next day on Yom Tov *sheini* in which case the *yom misah* and the *yom kevrurah* would be on different days.

In truth, there is really a greater *nafka minah* in the discussion of whether *aveilus* is *midioraisa* or *midirabanan* when it comes to Yom Tov *sheini*. We have mentioned that the **Gemara in Meseches Beitzah** states that one can bury a *meis al yidei akum* on Yom Tov Rishon and *al yidei Yisrael* on on Yom Tov *sheini*. Our practice today is that if someone dies on Yom Tov or Chol Ha’moed, the *shiva observance* begins after Yom Tov but the *minyana shiva* begins on the last day, what we call Simchas Torah in America or Acharon *shel Pesach*.

In context of our discussion of whether *aveilus* is *midioraisa* or *midirabanan*: If someone died on Yom Tov *sheini*, and the *misah* and the *kevrurah* took place on Yom Tov *sheini*, then if you hold that that the first day of *aveilus* is *midioraisa*, in such a case it should push aside the *simcha midirabanan* of Yom Tov *sheini* and not only will it count for the *minyana shiva* but all the *issurim* would apply as well.

The Rashba agrees to such a premise in theory but thinks that this would only apply if you truly had a situation of a *dioraisa*. Thus, we must determine if the *aveilus* is only *midioraisa* if you have the *yom misah* and the *yom kevrurah* on the same day, or whether it can be *midioraisa* even if you have the *kevrurah* and *misah* on different days.

The Rashba answers:

That which you said is taught in Moed Kattan, that “*yom misah and yom kevrurah is dioraisa*,” does not appear at all in the Gemara but rather is said by the Geonim *z”l*. And many of the Chochmei Yisrael disagreed with them and said that there is no such thing as *aveilus midioraisa* and that only *aninus* is *midioraisa* based on the *pasuk* (Vayikra 10:19): “...וְאֵלֶיךָ תִּשָּׂא אֶת־הַטֹּהַר הַזֶּה וְיָסַרְתָּ אֹתוֹ מִיָּמֶיךָ.” And they have endless proofs on which to rely and this is not the place to address this topic. Nonetheless, regarding that which you asked, according to these Geonim it is specifically where the *misah* and the *kevrurah* are together (on one day.) If not, then it is not (*midioraisa*).⁵⁶

⁵⁶ Rav Simon noted that this is a very accepted opinion, that even if you want to say that *aveilus yom rishon* is *midioraisa*, that is only when the *yom misah* and *yom kevrurah* are on the same day.

The Rashba proceeds to bring a proof to his opinion from the **Gemara in Meseches Kesubos (3b)** which discusses having the planned wedding before the *kevurah* and delaying the *kevurah* until later. The Rashba is *Michadesh* that when we say to delay the *kevurah* we mean specifically to the next day so that the *aveilus* is only an *aveilus midirabanan* and once it is *midirabanan* we can be more *meikil* and allow things like *tashmish ha'mitah*.

The Rashba expounds upon the words of the **Rif (Meseches Moed Kattan, 11b dapei ha'Rif)** who writes:

And one who dies on Yom Tov *sheini*, which is Yom Tov HaAcharon or Yom Tov *sheini* of Atzeres, is *noheg aveilus* because it is both the *yom misah* and the *yom kevurah*... and since *aveilus yom rishon* is *midioraisa* (in such a situation,) and Yom Tov Acharon is *midirabanan*, the *dioraisa* of a *yachid* comes and pushes aside the *aseh dirabanan*.

This idea of pushing aside the *simcha* of Yom Tov *sheini* and being *noheg aveilus midioraisa* is originally found in the **Behag (Hilchos Aveil, pg. 244-245)**.

There is another *shita* of the **Geonim**, quoted in the Rif, that all seven days of *shiva* are *midioraisa*. This idea is based on the **Yerushalmi in Meseches Moed Kattan (14b)** which states:

מניין לאבל מן התורה שבעה? (בראשית נ) "ויעש לאביו אבל שבעת ימים." ולמידין דבר קודם למתן תורה.

From where do I know that there is *aveilus min ha'Torah* for all seven days? For the *pasuk* says, "And he made a mourning for his father seven days." And this matter was learned before *mattan Torah*(?/.)⁵⁷

The Yerushalmi says that we learn that *aveilus* is *midioraisa* for all seven days from a *pasuk* in Sefer Bereishis where we see that the *shevatim* mourned for Ya'akov Avinu for a seven-day period.

The **Rif (Meseches Berachos, 9b-10a dapei ha'Rif)** quotes this Yerushalmi and disagrees:

And I saw that there are some who hold that the seven days of *aveilus* are *midioraisa* and this is learned from the *pasuk*, "ויעש לאביו אבל שבעת ימים". And it is not true, for it explicitly says in Perek "Tevul Yom u'Michusar Kippurim" (Meseches Zevachim) that the *pasuk* says, "הן היום, והלילה" – the day is *assur* and the night is *mutar*.

The Rif is assuming that the *issur* of *korbanos* and the *issurim* of *aveilus* are one and the same, and that they are both *midioraisa* only on the first day.

⁵⁷ It is a *shaila* how to read this line of the Yerushalmi. The **Pnei Moshe** say "בתמיהה" which would mean that it is read: "Is it possible that you can learn out something from before *mattan Torah*?! Rather it is learned from..." **R' Moshe Soloveitchik**, the son of R' Aharon, wrote an article years ago about the two ways to read this line in the Yerushalmi. Rav Simon pointed out that even if you hold that this line is a בתמיהה, still, the Yerushalmi learns from a different *pasuk* that all seven days of *shiva* are *midioraisa*.

This is the same way that the Rishonim learn the **Mishna** and **Gemara** in **Meseches Berachos (16b)**. The Mishna states:

משנה: רחץ בלילה הראשון שמתה אשתו אמרו לו תלמידיו 'לא למדתנו רבינו שאבל אסור לרחוץ?'
אמר להם 'איני כשאר בני אדם, אסטניס אני.'

[Rabban Gamliel] washed on the first night after his wife died. [His students] said to him: 'Did you not teach us that it is forbidden for an *aveil* to bathe?' He replied to them: 'I am not like other people for I am an *istinis* (and for me this washing is not a *ta'anug*).'

The **Gemara (ibid.)** explains:

גמרא: מ"ט דרבן (שמעון בן) גמליאל? קסבר אנינות לילה דרבנן דכתיב (עמוס ח) "ואחריתה כיום מר" ובמקום אסטניס לא גזרו ביה רבנן:

What is Rabban Gamliel's reason? He holds that *aninus* of the night (following the day of death of one's relative) is only *midirabanan*, as the *pasuk* says, "And the end thereof as a bitter day," and in the case of an *istinis* the Rabbanan never made the decree.

Tosafos (ibid., d"h aninus lyla dirabanan) asks what this discussion has to do with *aninus* of nighttime:

And if you will say: But *aninus* is only related to the *issur* of eating *ma'aser*, but regarding *rechitza*, that is an *issur* of *aveilus* and is only *midirabanan*. Accordingly, even if the Gemara would have concluded that *aninus* of the night is *midioraisa*, still, it would have been regarding *ma'aser*! (What then is the *maskana* of the Gemara saying?) And one could say: That if (*aninus* of the night) would have been *midioraisa*, then they would have established (the *issurei aveilus* also) to be strict like a *dioraisa* for 'כל דתיקון רבנן כעין דאורייתא תיקון'

Tosafos explains that if *aninus* of the night would have been *midioraisa* then the Rabbanan would have made a strong *takana* for *aveilus* that would have been *ki'ein dioraisa*. But since the *aninus* counterpart is only *midirabanan*, the *aveilus* of the night also remains *midirabanan*. What we see, however, is that the Rishonim connect *aninus* to the *aveilus*.

The **Rambam (Hilchos Eivel 1:1)** writes:

There is a *mitzvas aseh* to mourn for the loss of one's relatives, as the *pasuk* says, "וְאָכַלְתִּי" "הַיֵּיטֵב בְּעֵינֵי ה'". And *aveilus* is only *midioraisa* on the first day which is both the *yom misah* and *yom kevrurah*.

The Rambam, like the Rif, writes that "וְאָכַלְתִּי הַטָּאֵת הַיּוֹם, הַיֵּיטֵב בְּעֵינֵי ה'" is the source for *aveilus yom rishon* being *midioraisa*.⁵⁸

The **Rosh (Meseches Moed Kattan, Perek Shelishi: Siman 2, d"h kasav Behag)** also quotes the Behag and again, the main *nafka minah* from this discussion is whether *aveilus midioraisa* will be *docheh* Yom Tov *sheini* if the *misah* and the *kevrurah* both take place on Yom Tov *sheini*.

⁵⁸ Even though many point out that in the Sefer HaMitzvos he quotes "לָהּ יִטְמָא"

The Rosh quotes the final *shita* found amongst the Rishonim, specifically amongst the Ba'alei Tosafos, that all *aveilus* is only *midirabanan*. He writes:

And **Rabbeinu Tam** wrote that we do not rely on the opinion of the Ba'al Halachos (Behag) in this matter for R' Yehudai Gaon, the Ba'al Halachos, was blind and sometime his students wrote in his name that which he did not command and which he never felt in his heart...

Rabbeinu Tam brings various proofs to show that the Behag would never have said what people claim he did and therefore we assume that all *aveilus* is only *midirabanan*.

In the end of the day the **Shulchan Aruch (Y.D. 399:13)** rules:

In those places where they keep two days of Yom Tov, and someone's relative died on Yom Tov *sheini* which is Yom Tov Acharon *shel* Pesach or Sukkos, or on Yom Tov *sheini* of Shavuos, and they buried the *meis* that day – he is *noheg aveilus* since Yom Tov *sheini* is only *midirabanan* and *aveilus* of the first day in a case where the *misah* and *kevurah* are on that (first) day, is *midioraisa*. However, if he died on Yom Tov *sheini* of Rosh Hashanah and they buried him on that day, he is not *noheg aveilus*, for the two days (of Rosh Hashanah) are like one long day.

The Michaber quotes this whole case from the Behag but concludes:

And in general, people are not *noheg* to practice *aveilus* on Yom Tov *sheini shel galuyos* for any *meis*, even if the *yom misah* and *kevurah* (are on the same day.)

The Shulchan Aruch writes that the *minhag* is not to follow this Behag, even for one of the seven *kerovim*. The **Ramah (ibid.)** explains:

For we hold like those opinions who say that there is no such thing as *aveilus midioraisa*, and this is the simple *minhag* that should not be changed (Rabbeinu Tam, R"i, Rosh).

The *minhag* is to treat all *aveilus* as *midirabanan*, at least regarding this notion of being *docheh* Yom Tov *sheini*.

§

There is another *halacha* that is relevant to *aveilus yom rishon* and that is that an *aveil yom rishon* doesn't put on *tefillin*. One place in the Gemara even makes it sound like he really shouldn't wear *tefillin* for the first two or three days.

The **Shulchan Aruch (Y.D. 388:1)** rules:

An *aveil* is forbidden to wear *tefillin* on the first day (of his *aveilus*). After sunrise on the second day he is permitted to wear them.

The *din* is that an *aveil* really shouldn't wear *tefillin* for the first two days, however, we have a *din* of *מקצת היום ככולו*. Even though the *zman* for putting on *tefillin* is at *מי שיכיר*, the Michaber recommends waiting until true daybreak (i.e. *ha'neitz*) and then it will be as if the *aveil* didn't wear them for two days.

The **Shu"t Maharitatz** has a famous statement regarding this topic:

However, the *issur* of putting on *tefillin* was said specifically by the first day because the first day is *midioraisa*.

The question is: The fact that an *aveil* doesn't put on *tefillin* on *yom rishon*, does that have anything to do with *yom rishon* being *midioraisa*? If you hold *yom rishon* is *midioraisa* then part of that would be to not put on *tefillin*. If, however, *yom rishon* were only *midirabanan*, then perhaps there wouldn't be such a restriction.

We have seen that according to the Rashba and the Rif, *yom rishon* is only *midioraisa* if the *yom misah* and *yom kevrurah* are on the same day. If they are not on the same day, however, then it would seem that a person should seemingly put on *tefillin* after the *kevrurah*.⁵⁹

This Maharitatz is quoted by the **Pischei Teshuva (Y.D. 388:1)** who writes:

אסור להניח: See the Beir Heitev (O.C. Siman 38 s.k. 4) where he writes in the name of the Maharitatz (Chiddushim on *Perek "Eizehu Neshech"*⁶⁰) that it is specifically when the *yom ha'misah* and the *yom kevrurah* are on the same day that you are *patur* from *tefillin*. But if the *misah* is one day and the *kevrurah* is the next, one would be obligated to wear *tefillin* even on the first day (i.e. after the *kevrurah*.)

The **Pischei Teshuva** quotes the **Dagel Mirvavah (ibid.)** who argues on the Maharitatz, claiming that even if the *yom kevrurah* is not on the *yom misah*, still, a person would not put on *tefillin* that day. His *ra'ayah* is from the **Gemara in Meseches Pesachim (4a)** where R' Chiya was told that his mother had died more than thirty days ago. He was together with his *shamesh* and told him to do two things: 1) Take off my shoes and 2) Follow me to the *beis ha'merchatz*.

From this story the Gemara derives three *dinim*:

- 1) An *aveil* has a restriction of *ni'elas ha'sandal* (since he said remove my shoes.)
- 2) A *shemuah rechoka* only observes one day.
- 3) Even on a one day *aveilus* of a *shemuah rechoka*, we still say מקצת היום ככולו (since he went right away to the bathhouse.)

⁵⁹ Rav Simon noted that in certain communities they follow this Maharitatz and will put on *tefillin* after the *kevrurah*, but in most communities the *minhag* is not this way because we assume that the *din* of an *aveil* not putting on *tefillin* on *yom rishon* is unrelated to the discussion of whether *yom rishon* is *midioraisa* or *midirabanan*. **Rav Mordechai Willig** pointed out in *Morasha Kollel* in the Summer of '86 that we can see that *tefillin* and the discussion of whether *yom rishon* is *midioraisa* or *midirabanan* is not related because we follow the Ramah, that everything is *dirabanan*, and still we don't put on *tefillin*.

⁶⁰ The text actually has an incorrect abbreviation and says that it is in *Perek "א"מ"* which should actually read "א"נ" (as the *Dagel Mirvavah* explains.) This led Rav Simon to discuss the greatness of the new Friedman Shulchan Aruchs. "On every page in Shulchan Aruch there are typos and missed *ma'arei mikomos*, so it (i.e. the new Shulchan Aruch) is a big *to'eles*."

The **Ramban (Toras HaAdam, Inyan Shemuah viLikut Atzamos; pg. 237)** writes on this Gemara:

And it appears that R' Chiya would have been wearing *tefillin* at the time that he heard this for it was not the way of this *tzaddik* (R' Chiya) to walk four *amos* without *tefillin*, and nonetheless, he did not remove his *tefillin* at all. And the reason for this is because it is said that on (*yom sheini*) one should not put on their *tefillin*, but if they are wearing them, they don't have to take them off except on the first day. It can't be that a *shemuah rechoka* is stricter than a *yom sheini* for a *karov*. Therefore, if one is wearing *tefillin* at the time of hearing a *shemuah rechoka* they do not have to remove their *tefillin*...

Based on all of this the Nodeh BiYehuda explains that it is *mashma* from the Ramban that the only reason R' Chiya didn't take off his *tefillin* was because he heard a *shemuah rechoka*. Had it been a *shemuah kerovah*, but not necessarily *yom rishon*, in which case the regular *dinim* would have applied, he would have taken off his *tefillin* even though it wasn't *yom misah* and *yom kevurah* on the same day.⁶¹

⁶¹ Rav Simon reiterated that the *minhag ha'olam* is to not wear *tefillin* on *yom rishon* regardless.

סימן ו: בענין אבילות ביום טוב

The **Mishna** in **Meseches Moed Kattan (19a)** states:

משנה: הקובר את מתו שלשה ימים קודם לרגל בטלה הימנו גזרת שבעה. שמונה בטלו הימנו גזרת שלשים.

One who buries his dead relative three days before the *regel*, the restrictions of *shiva* are canceled for him. If (the burial was) eight days (before the *regel*), then the restrictions of *sheloshim* are canceled for him.

From the Mishna it is implied that you need someone to have been buried three days before Yom Tov in order for the *shiva* to be *batel*. This, however, is not the practiced *halacha*.

Rather, we rule in accordance with the *beraisa* found later in the **Gemara (20a)** which states:

ת"ר: קיים כפיית המטה שלשה ימים קודם הרגל אינו צריך לכפותה אחר הרגל דברי רבי אליעזר. וחכמים אומרים אפי" יום אחד ואפי" שעה אחת.

The Rabbis taught: If he fulfilled the overturning of the bed for three days before the *regel*, then he is not required to overturn it again after the *regel*. These are the words of R' Eliezer. But the Chachamim say: Even (if he overturned his bed for only) a day or an hour (i.e. any amount of time).

We follow the opinion of the Chachamim, that even if a person observes *shiva* for only a few moments before Yom Tov, the Yom Tov is *mivatel* the remaining days of *shiva*.

The **Gemara (24b)** explains how this works:

אדבריה רב פפא לרב אויא סבא ודרש: יום אחד לפני ראש השנה וראש השנה הרי כאן ארבעה עשר. אמר רבינא: הלכך יום אחד לפני החג וחג ושמיני שלו הרי כאן עשרים ואחד.

Rav Pappa guided Rav Avya the Elder and announced: If one day (of *aveilus* is observed) before Rosh Hashana and then Rosh Hashana passes, you have here (the equivalent of a total of) fourteen (days of the *sheloshim* complete). Ravina said: Therefore, if one day (of *aveilus* is observed) before Succos and then Succos and Shemini Atzeres pass, you have here (the equivalent of a total of) twenty-one (days of the *sheloshim* complete).

If somebody died a short while before Rosh Hashana and the *kerovim* sat *shiva* for that time, once Rosh Hashana arrives the *shiva* is over. The first day of Rosh Hashana itself counts for seven days and the second day, which is only *midirabanan*, counts as one day. Therefore, if someone would die on *erev* Rosh Hashana, then by Tzom Gedaliah they would already be holding by day sixteen of the *sheloshim*. Once Rosh Hashana comes, it is considered day seven and then the first day of Rosh Hashana will be seven more days (i.e. day fourteen), the second day of Rosh Hashana is one day (i.e. day fifteen) and Tzom Gedaliah is day sixteen.

On Sukkos the counting is as follows: Once Sukkos arrives it is as if he is holding by day seven. The seven days of Sukkos count as seven days and Shemini Atzeres counts as its own seven days. That which we call Simchas Torah in *chutz la'aretz* would count as day twenty-two and the *aveil* would have eight days remaining until the end of *sheloshim*.

The general rule is that if one is observing *shiva* and Yom Tov comes, it is *mivatel* the *shiva*. If one is in the middle of *sheloshim* and a Yom Tov comes, it is *mivatel* the *dinim* of *sheloshim*. Additionally, any *chag* that is one day counts as seven days for the count towards *sheloshim*.

The **Shulchan Aruch** records these *dinim* of how to calculate the counting of *shiva* and *sheloshim* in context of the various Yomim Tovim in **Yoreh Deah 399:1-2**.

§

The **Shach** (*ibid.*, *s.k. 7 d"h lo amrinan di'Shemini Atzeres mivatel*) asks the following question: The Gemara teaches that if someone dies on Chol HaMoed, the *shiva* will take place after Yom Tov because Yom Tov is only *mivatel* the *shiva* when the *shiva* starts prior to Yom Tov. The Gemara says, however, that those days of Chol HaMoed count towards the days of *sheloshim*, and thus we can have a case where *sheloshim* starts even before *shiva*. The Rishonim note that if Chol HaMoed counts towards *sheloshim*, then even though in theory once Shemini Atzeres comes it should be *mivatel sheloshim*, in reality it doesn't. Nonetheless, in such a case, would Shemini Atzeres count as one day or count as seven days like it does when someone dies before Yom Tov?

The Shach writes regarding this case where the *meis* died and was buried on Chol HaMoed:

And Shemini Atzeres will only count for one day when the *meis* is buried during the *regel*. This is what the Hagahos Maimoni writes, which is brought in the Beis Yosef, that it is specifically when the *meis* is buried before the *chag* of Sukkos that Shemini Atzeres counts as seven days...And this is not like the Maharshal (Shu"t Maharshal, Siman 5)...and in the Teshuvos Masa'as Binyamin (Siman 71) he rules like the Maharshal.

Rav Moshe Feinstein (Igros Moshe Y.D. Chelek 1: Siman 256) discusses the parameters of this *halacha* in a short *teshuva* to R' Efraim Greenblat:

Regarding the matter of whether Shemini Atzeres is counted as seven days towards the total days of *sheloshim* when the *meis* is buried on Chol HaMoed, about which the Maharshal and the Masa'as Binyamin argue with the Shach (Siman 399, *s.k. 7*) who the Beis Yosef agrees with in the name of the Hagahos Maimoni and the Bach in the name of Tosafos and the Mordechai and the Taz (*s.k. 4*) holds like them, the practical ruling is that it should only be counted as one day like the Beis Yosef, the Bach, and the Taz rule, for the Magen Avraham (Siman 648, *s.k. 1*) rules this way as well...

§

The **Rosh (Meseches Moed Kattan, Perek Shelishi: Siman 25)** writes:

The Ra'avad writes...that we learn from here that we require a “*kiyum aveilus*” prior to the *regel*, for if the one has not started the *aveilus* before the *regel*, either *bi'shogeg* or *bi'meizied*, the *regel* does not cause a cessation...

What if someone lost a relative before Yom Tov and they didn't perform any *nihug aveilus*? The Rosh explains that in order for the *regel* to be *mivatel shiva* one must have an active *kiyum* of the *aveilus*. If you didn't do anything beforehand, the arrival of Yom Tov is not going to be *mivatel* the *shiva*.

The same *din* would apply, for example, if a person's relative died and they didn't keep *shiva* at all. Now, he wants to know if it is too late to do anything. We tell him, for example on day ten, that he should sit *shiva* now because he never did anything to mark the onset of his *aveilus*. Therefore, as long as it is still within *sheloshim*, he can count his own seven days.

The **Gemara in Meseches Moed Kattan (19b-20a)** states:

בעא מיניה אביי מרבה : קברו ברגל רגל עולה לו למנין שלשים או אין רגל עולה לו למנין שלשים : למנין שבעה לא קמיבעיא לי דלא נהגא מצות שבעה ברגל, כי קא מיבעיא לי למנין שלשים דקא נהגא מצות שלשים ברגל מאי? אייל : אינו עולה. איתיביה : הקובר את מתו שני ימים קודם הרגל מונה חמשה ימים אחר הרגל ומלאכתו נעשית עיי אחרים ועבדיו ושפחותיו עושים בצניעה בתוך ביתו ואין רבים מתעסקין עמו שכבר נתעסקו בו ברגל. כללו של דבר כל שהוא משום אבל רגל מפסיקו וכל שהוא משום עסקי רבים אין רגל מפסיקו.

Abaye inquired of Rabbah: If he buried his relative during the festival, are the festival days themselves included in the count of *sheloshim*, or are the festival days not included in the count of *sheloshim*? (Abaye continued) I have no doubt (that they are not included) in the count of *shiva* since the restrictions of *shiva* are not observed during the *regel*. What I do inquire is whether the *regel* is included in the count of *sheloshim* since the restrictions of *sheloshim* are observed on the *regel*. What is the *din*? He said to him: It is not included (and the *sheloshim* begin after the *regel*.) (Abaye) challenged him (from the *beraisa*): One who buries his dead relative two days before the *regel* counts five days of *shiva* after the *regel*, during which his work may be done by others and his slaves and maidservants may do work for him discreetly in his home; and the public do not occupy themselves with him (i.e. *shiva* calls) since they already occupied themselves with him during the *regel*. The rule is: Whatever pertains to the mourner himself is curtailed by the festival, while whatever pertains to the public's occupation with comforting him is not curtailed by the festival.

The Gemara continues:

קברו שלשה ימים בסוף הרגל מונה שבעה אחר הרגל ארבעה ימים הראשונים רבים מתעסקין בו שלשה ימים האחרונים אין רבים מתעסקין בו שכבר נתעסקו ברגל.

If he buried him (on the *regel* itself), on the third to last day of the *regel*, then he counts seven days after the *regel*. For the first four days the public occupy themselves with him but during the last three days the public do not occupy themselves with him since they already occupied themselves with him during the *regel*.

As we mentioned before, if someone is buried during the *regel*, the *shiva* will take place after the holiday. The *minyan* for *sheloshim*, however, begins even during the *chag* itself.

The **Rosh (Meseches Moed Kattan, Perek Shelishi: Siman 28)** poses the famous question:

If so, when a *meis* dies on Sukkos, let Shemini Atzeres come and be *mivatel* the *sheloshim*!?

The Rosh answers:

It is different over there for he never observed any of the *dinim* of *sheloshim* to begin with. And even though he is *noheg* not to do certain things like cut his hair/shave, that is because it is *assur* to do so on Chol HaMoed, not because of *aveilus*.

The Rosh explains that since you did not do any *nihug aveilus* to mark the onset of *sheloshim*, Shemini Atzeres will not be *mivatel* the *sheloshim* entirely. Even though he did certain things according to the *halachos* of Chol HaMoed which resemble the *denim* of *sheloshim*, we only allow the days to count towards the *minyan* of *sheloshim* but don't allow Shemini Atzeres to cancel the *sheloshim* entirely.

While it's true that there are similarities between the restrictions of Chol HaMoed and *aveilus*, there are also things that apply to *sheloshim* that do not apply to Chol HaMoed (ex. *simcha mei'reius*). Are you supposed to observe those particular things since these days count toward the *sheloshim*?

The simple understanding of the Rosh is that one need only observe the restrictions of Chol HaMoed to “get credit” for those days in the count towards *sheloshim*. The **Ramban (Toras HaAdam, pg. 228)**, however, explicitly disagrees and writes that a person must observe all the restrictions of *sheloshim*. He writes:

And if you will say that the *dinei aveilus* do not apply to a person during the holiday, but rather they need only observe the normal restrictions of the *regel*, that they are only forbidden to shave and wash clothing – but isn't a person permitted according to the *halacha* to wear new and fresh clothing, and cut his nails, and act in a way of *simcha mei'reius*, and if he comes from *medinas ha'yam* or from captivity or any of the other situations that the Chachamim enumerated he is able to shave and wash... Is it possible that (the *aveil*) could be involved in *simcha mei'reius* and the *rabim* are involved with him like an *aveil*? Rather, learn from here that he is *noheg* all aspects of *sheloshim* as if it were a weekday.

The Gemara says that if someone dies on Chol HaMoed, even though the *shiva* is not observed until after the holiday, the *nichum aveilim* can begin right away on the *regel*. We usually observe the *nichum aveilim* and *shiva* simultaneously, but in reality, they are two separate *dinim*. The Ramban explains, therefore, that what the Rosh is saying cannot be true. If it were, a person could be celebrating on the *regel simcha mei'reius* and simultaneously others would be coming to be *menachem aveil*!

The Ramban, writes, therefore, that if a one loses a relative on Chol HaMoed, they should observe all of the *nihugei sheloshim* and not just the restrictions specific to Chol HaMoed.

The **Shulchan Aruch (Y.D. 399:1)** quotes the opinion of the Ramban:

...and it is not *mi'toras regel* alone that it is *assur* but it is also *assur mi'toras aveil* for on the *regel* it would be *mutar* to wear new clothing and to cut your nails and to rejoice with *simchas mei'reius*, and one who came from *medinas ha'yam* or from captivity or any of the other situations that the Chachamim enumerated would be permitted to shave and to wash. But *mi'din aveilus*, all of these things are *assur* as if it were a regular weekday.

We see that *sheloshim* is both *oleh* and *noheg bi'kulo* on the *regel*.

§

We know that if a family observed a small amount of the *shiva* for a relative that died before Yom Tov, the *shiva* would be terminated. We also know that if the *misah* happened on Yom Tov or Chol HaMoed the *shiva* is not going to be until later. Even though we are not counting *shiva*, are there *nihugei aveilus bi'tzina* during the *regel*?

The **Rambam (Hilchos Eivel 10:3)** writes:

On the *regalim* and similarly, on Rosh Hashana and Yom Kippur, we do not observe any of the matters of *aveilus* at all.

The **Ramban (Toras HaAdam, pg. 225-226)** disagrees and writes:

And we don't have to ask about *devarim shebi'tzina* on Shabbos because (we know that) they are *noheg*, but even on the *regel* they are *noheg*.

The Ramban writes that one observes *aveilus bi'tzina* even on Yom Tov.

Accordingly, if someone lost a relative on Yom Tov, would *tashmish ha'mitah* be *mutar* throughout Chol HaMoed? According to the Rambam it would be permitted while according to the Ramban it would be forbidden because even *devarim shebi'tzina* are *noheg*.⁶²

The **Shulchan Aruch (Y.D. 399:1)** rules like the Ramban:

...but he is *noheg* on the *regel* *devarim shebi'tzina* and he counts *shiva* after the *regel*.

Rav Soloveitchik (Shiurei HaRav⁶³, Inyanei Aveilus; pg. 7) had an idea in which he thought to match up this *machlokes* Rambam/Ramban with an earlier *machlokes* Rambam/Ramban we saw regarding when the *issurei aveilus* begin. The Rambam learns that the *issurei aveilus* begin only after the *kevurah*, while the Ramban learns that they begin from the time of *misah*. Here, the Rambam says that *devarim shebi'tzina* are not *noheg* during Yom Tov while the Ramban disagrees and claims that they are.

⁶² Rav Simon pointed out that the root of this *machlokes* is based on a question as to what the *girsah* is in **Meseches Kesubos (4a)**. According to Ramban it is, "אף על פי שאמרו אין אבילות במעך אבל דברים שבצנעה נוהג," while the Rambam must have had "אף על פי שאמרו אין אבילות בשבת אבל דברים שבצנעה נוהג."

⁶³ Written and compiled by **R' Eliakim Koenigsberg**.

We know that there are two *dinim* in *aveilus*. The first is how you calculate and count the days of *shiva* and *sheloshim*, and the second is that there are *nihugei aveilus*. Rav Soloveitchik explained that the Rambam is consistent in his view, that the *nihugim* and the *minyan* are always inextricable. The *nihugim*, therefore, aren't going to take effect until the *kevurah* takes place because you don't start the *minyan* until the *kevurah*. That is consistent with his view that *devarim shebi'tzina* are not *noheg bi'regel* because after all, there is no *minyan bi'regel*. The Rambam in both cases divides the two and says that the *nihugim* start from the time of *misah* and thus, one could be obligated to observe *devarim shebi'tzina* on the *regel* even though the *minyan* will only begin after the *regel*.

There is a famous *teshuva* of the **Netziv (Shu"t Meishiv Davar, Siman 73)** in which he discusses a case in which a woman lit candles, accepting upon herself Shabbos and Yom Tov on a Friday night, and then heard that one of her relatives had passed away. She immediately removed her shoes. In this case, she had already accepted Yom Tov when she lit but it was still before *shekiah*. The question was whether the *regel* would be *mivatel shiva* or not since she did this *nihug* of removing her shoes?⁶⁴

The Netziv writes that according to the Rambam who holds that there is no such thing as *tosefes* Shabbos and Yom Tov, if the woman took off her shoes before *shekiah* then certainly the *regel* would be *mivatel* the *shiva* because she did some *nihug aveilus* before the *regel* came in.⁶⁵ Since we say *halacha ki'divrei ha'meikil bi'aveil*, she can rely on the Rambam's *shita* and we would say that the *regel* is *mivatel* the *shiva*.

The Netziv points out that this is all true if she would have come to the *rav* to ask the *shaila* after having already taken off her shoes upon hearing the news. But if she came before she had done anything and asked what she should do, it is a more difficult question. Since we generally accept the opinion of the Behag, that a woman's candle lighting is considered an actual acceptance of the Yom Tov, we have to see whether an acceptance of Yom Tov is merely an abstention from *melacha* or whether it is an acceptance of the *simchas* Yom Tov. In the end, we would likely tell her not to remove her shoes, tell her to observe *aveilus bi'tzina*, and rule that the *regel* would not be *mivatel* the *shiva*. The *shiva* would be observed after the *chag*.

⁶⁴ Rav Simon noted that there is the superficial way to say over the *teshuva*, like many people do, or you can really work through it and see what it is saying. Rav Simon's dislike of the superficial way stems from his earlier dislike of the way people make this *chakira* in *tosefes* Shabbos as to whether it is "Shabbos-*mamash*" or not really "Shabbos-*mamash*." R' Simon noted that everyone agrees that it's not "Shabbos-*mamash*." You don't get *skilah* for it. People say it superficially and they read it into the Taz and Maharshal and make *shtickel* Torahs. Everyone knows the *din* in Hilchos Milah that if you make early Shabbos and the woman gives birth before *shekiah*, nobody on this planet would say that the *bris* is on Shabbos. Everyone agrees that the *bris* is on Friday.

⁶⁵ The explanation of the Netziv is that even according to the Rambam one could say that since she is *noheg* not to do *melacha* after lighting candles it becomes like a *minhag tov* which is somewhat like a *neder*. Nonetheless, we know that a *mitzvah* can be *docheh* this type of *neder midirabanan*, as is seen in the **Gemara in Meseches Berachos (6)**. If a person comes to shul every day and then one day he doesn't show up, Hakadosh Baruch Hu asks for him. But if you didn't show up because you were involved in a *devar mitzvah*, then you have a good excuse to not keep the *kevius* and you can undo your *minhag tov* of coming every day. Thus, we see that a *devar mitzvah* is *docheh* a *minhag tov* done *shelosh pi'amim* which is *dino ki'neder*.

סימן ז: בענין הכין צרכי חופה ומת לו מת ואיסור נישואין בזמן אבילות

An *aveil* is not permitted to get married during the first thirty days of his *aveilus*. There are, however, two exceptions to this:

- 1) One who was not yet fulfilled the *mitzvah* of *peru u'revu*
- 2) One who has *banim ketanim* and needs a mother to take care of them

The original *halacha* is found in the **Gemara** in **Meseches Kesubos (3b-4a)**. We saw previously⁶⁶ that the Gemara discussed a case in which a wedding was set to take place when suddenly a death occurred in the family of the *chassan* or *kallah*. Seemingly, the *halacha* should be that we push off the wedding and attend to the needs of the *meis*. However, Chazal realized that if the prepared wedding was delayed, it could lead to an enormous *hefsed* of both finances and of the *kallah's* make-up and *tachshitin*. Since it could be a long time until the wedding would be able to take place again, Chazal were *meikil* to allow the wedding to take place before the *kevurah*.

The Gemara says:

פתו אפוי וטבחו טבוח ויינו מזוג ומת אביו של חתן או אמה של כלה מכניסין את המת לחדר ואת החתן ואת הכלה לחופה, ובו על בעילת מצוה ופורש, ונוהג שבעת ימי המשתה ואחר כך נוהג שבעת ימי אבילות. וכל אותן הימים הוא ישן בין האנשים והיא ישנה בין הנשים.

If one's bread was already baked, his animals slaughtered, and his wine mixed (in preparation for the wedding feast) and the father of the *chassan* or the mother of the *kallah* died, we bring the *meis* into a room and the *chassan* and *kallah* to the *chuppah*. The *chassan* performs the *bi'ilas mitzvah* and then separates from his *kallah*. (After the burial) he observes the seven days of feasting and only afterwards does he observe the seven days of *aveilus*. And during all those (fourteen) days, the *chassan* sleeps among the men and the *kallah* sleeps among the women.

The Gemara says that we put the *meis* aside, proceed with the wedding, allow the *chassan* and *kallah* to have the *bi'ilas mitzvah*, have them separate from one another⁶⁷, and then we bury the *meis*. The burial is followed by seven days of *mishteh* and then seven days of *aveilus*.

The Gemara continues:

ואין מונעין תכשיטין מן הכלה כל שלשים יום.

And we do not withhold *tachshitin* from the *kallah* the entire thirty days.

Even though *mi'tzad aveilus* she really shouldn't be dressing up and adorning herself, since we want her to be appealing to her new husband, we allow her to wear these things.

⁶⁶ See pages 27-29.

⁶⁷ **Tosafos (4a, d"b bo'el bi'ilas mitzvah u'poreish)** notes that even though must separate because of the *dam besulim*, the Gemara is stressing that the reason they separate here is because of the *aveilus* and would apply despite the *dam besulim* because *devarim shebi'tzina* are *noheg*.

The Gemara continues:

ודוקא אביו של חתן או אמה של כלה דליכא איניש דטרר להו, אבל איפכא לא.

And it is only when the father of the *chassan* or the mother of the *kallah* died, for there will not be anyone to bother with preparing for them (if the food or adornments are lost.) But in the reverse situation (i.e. mother of the *chassan* or father of the *kallah*), we do not (delay the burial.)

This *heter* in the time of the Gemara only applied when it was the father of the *chassan* or the mother of the *kallah* who was *niftar*. The father of the *chassan* was likely the one who was involved in the financial dealings for the food and arrangements for the wedding, while the mother of the *kallah* was likely in charge of all of the *kallah's tachshitin*. However, had it been the mother of the *chassan* or the father of the *kallah* who passed away, we wouldn't permit all of these things.

The Rishonim wonder why we permit the *chassan* and *kallah* to have the *bi'ilas mitzvah*. If the concern was for the enormous *hefsed*, it is understandable why we allow the wedding to take place, but why do we have to permit the *bi'ilas mitzvah*?

Rashi is quoted in the **Shita Mikubetzes (Meseches Kesubos, 3b)** as explaining that the procedure is that after the wedding we bury the *meis* immediately and then proceed with the seven days of *mishteh*. This is done because it is considered like a *regel* for the *chassan* and *kallah*. The *bi'ilas mitzvah* is needed because without it we only have the *chuppah*, which according to Rashi, is not enough to transform the days into a true *regel*.

The **Shach (Nekudas HaKesef Y.D. 342, s.k. 1 in the Taz)** has a number of comments regarding this topic. He writes:

And it seems that nowadays even if (the death) was the father or the mother, it is considered like the death of *sha'ar kerovim* because there are plenty of other relatives who can deal with the *seudah* or the *tachshitin* of the *kallah*. Therefore, one should be *noheg aveilus* first and should not have *biah* until after the seven days of *aveilus*, and only then will they celebrate the seven days of *mishteh*.

According to the Shach, the *heter* to proceed with a wedding after hearing of the death of a parent no longer applies *bi'zman ha'zeh* for there are plenty of other people who can take the parent's place and make up for the *hefsed* of the *seudah* and the *tachshitin* of the *kallah*.

He quotes another *din* from Rabbeinu Yeruchum:

These *dinim* are explained in **Rabbeinu Yeruchum (Chelek Chava⁶⁸, Nesiv 22: Chelek 2)** and this is his *lashon*: If you already entered into the marriage (i.e. *chuppah*)...and on that day, after the *nissuin* has already occurred, one of his *kerovim* died...he is *noheg* the *yimei ha'mishteh* and then afterwards the seven days of *aveilus* just like one whos *karov* dies on the *regel*, since once he made the *birchas nissuin*, the *yimei ha'mishteh* have already been *chal*. And even though when the father dies we say that he is *bo'el bi'ilas mitzvah* and it seems that the *simcha* doesn't occur until

⁶⁸ The Rabbeinu Yeruchum is divided into two sections, Adam and Chava. The name of the *sefer* is *Toldos Adam viChava*. If you are looking for Rabbeinu Yeruchum in the library you look under "ת" for "Toldos."

he is *bo'el*, that is different because there the case was where the *aveilus* was *chal* prior to the seven days of *mishteh*...

As opposed to Rashi, Rabbeinu Yeruchum writes that really the *regel* should be *chal* with just the *chuppah* alone. The reason we require the *bi'ilas mitzvah* here is because we need a stronger type of *simcha* since we are really doing things out of order. Rabbeinu Yeruchum explains that if you had the *chuppah* first and then afterwards heard about the death of a *karov*, it makes sense that the seven days of *mishteh* should come first since the *nissuin* occurred first. But when you hear about the death even before the *chuppah*, we would think that the seven days of *aveilus* would be *chal* first. Therefore, to overpower that *aveilus* we need a great *simcha* in order to create the status of a *regel*. For that reason the Gemara says that we have the *chuppah* and the *bi'ilas mitzvah*. Those two things combined create the *regel* which is subsequently followed by the seven days of *mishteh* and then the seven days of *aveilus*.

Rav Moshe Feinstein (Igros Moshe, Y.D. Chelek 1: Siman 227) discusses the following *shaila*: A wedding was set to take place on *motzei* Shabbos. Many people were invited and a lot of money had been put into the wedding. On the Thursday before the wedding the mother of the *kallah* was *niftar*. She was buried on *erev* Shabbos. How should they proceed?

Rav Moshe writes that our weddings are so expensive that if you would lose that large amount of money, it may not be so simple to have another wedding soon after. The underlying *svara* behind the Gemara in Meseches Kesubos, that you are going to lose a lot and then you won't be able to retrieve it in the near future, that certainly applied here.⁶⁹

In Rav Moshe's specific case he recommended that they should gather ten people together on Thursday for a *chuppah*. The *chassan* and *kallah* will be *bo'el* the *bi'ilas mitzvah* Thursday night which will make it like a *regel*. Then, on Friday morning they should do the *kevurah*, and on *motzei* Shabbos they could invite everyone to an elaborate *sheva berachos* meal in place of the originally planned full wedding. They would thereby be able to get the case of the Gemara in and also wouldn't lose their money.⁷⁰

In the **Kol HaTorah Journal**⁷¹ (**Choveres 54, Nissan 5763**) R' Yaakov Heftler tells a story about his own *chasana* and about how R' Moshe Feinstein ruled in his case. His father-in-law, R' Eliezer Lipa Gartenberg⁷², owned the Pioneer Country Club, a *chareidi* hotel in America. They had a big *aufruf* in the hotel over Shabbos and the wedding was to

⁶⁹ Rav Simon pointed out that while the ruling of the Shach took the Gemara and made it obsolete, Rav Moshe brought the Gemara's ruling back into practice.

⁷⁰ Rav Moshe wrote that this was a good *eitzah* even though in this specific case it wouldn't have worked because the *kallah* was still a *niddah* in her *shiva nekiyim* on Friday. The greatness of this *eitzah* would have been that you get both the *chuppah* and the *bi'ilas mitzvah* in before the *kevurah* but in this particular case, the *bi'ilas mitzvah* wouldn't have been possible.

⁷¹ The Kol HaTorah Journal comes out twice a year every year. Every once in a while they dedicate it to somebody, usually a particular *gadol*, and then they have stories, *pesakim*, and *divrei Torah* from that *gadol* in that issue. In **Nissan 5763** they dedicated it to Rav Moshe.

⁷² Rav Simon noted that he was also known as Leo Gartenberg and had a weekly *parsha* column in the Jewish Press.

take place there on Sunday. At the very large *aufbruch* there were 250 people, amongst them great rabbonim like R' Moshe Feinstein and R' Eliezer Silver. In the middle of Shabbos, R' Yaakov Heftler's father was unexpectedly *niftar*. The question was whether they should they go on with the wedding and do the *kevurah* afterwards as the Gemara explains, or whether they should do the *kevurah* beforehand? His father-in-law thought that there was no *hefsed mamon* because they could just put all the food in the freezer and the hotel was his so there was no loss there either. They asked Rav Moshe what they should do and he said that they should have the wedding on Sunday and the *levaya* should be on Monday.

Rav Moshe had a *chiddush*: When we say *hefsed*, that is not only a monetary *hefsed* but can be a personal *hefsed* as well. If they had pushed off the wedding, perhaps not everyone would have been able to come all the way back to the mountains and would also resulted in a loss of *matanos* for the *chassan* and *kallah*. All of this will cause a decrease in the *simcha* of the *chassan* and *kallah*. Rav Moshe got up in shul and told the 250 people there that after Shabbos nobody should call other people who weren't there for Shabbos and tell them what had happened because then people who were supposed to come to the *chasana* might not come.⁷³

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The **Gemara in Meseches Moed Kattan (23a)** states:

ת"ר: כל שלשים יום לנישואין.

The Rabbis taught: All thirty days of *sheloshim* he is subject to a marriage restriction (i.e. he can't marry).

The Gemara explains that the *issur* of getting married is for thirty days. This does not contradict the Gemara in Meseches Kesubos, for the case there was where the wedding took place prior to the *kevurah*.

The Gemara has another *halacha*:

מתה אשתו אסור לישא אשה אחרת עד שיעברו עליו שלשה רגלים. רבי יהודה אומר רגל ראשון ושני אסור שלישי מותר.

And if it is his wife who has died, he is forbidden to marry another wife until *shelosh regalim* have passed. R' Yehuda says: Before the first and second *regel* he is forbidden to marry but by the third he can marry.

If a person's wife passes away, one should wait for all three of the *shalosh regalim* to pass until remarrying. **Tosafos (ibid. d"h ad she'yavru shelosha regalim)** explains that this is either because we don't want him to forget "אהבת אשתך" or because we don't want him to be thinking about his old wife while he is with his new wife.

⁷³ R' Heftler ends the story by saying everybody listened to Rav Moshe and nobody let the word leak, to such an extent that he remembers that after the *chuppah* a number of people came over to ask him where his father was.

The Gemara continues:

ואם אין לו בנים מותר לישא לאלתר משום ביטול פריה ורביה. הניחה לו בנים קטנים מותר לישא לאלתר מפני פרנסתן. מעשה שמתה אשתו של יוסף הכהן ואמר לאחותה בבית הקברות 'לכי ופרנסי את בני אחותך'. ואעפ"כ לא בא עליה אלא לזמן מרובה.

And if he does not have children, he is permitted to marry immediately on account of the *bitul piryah u'rivyah*. If she left him with small children, he is permitted to marry immediately because of their care. And it once happened that the wife of Yosef the Kohen had died and he said to (his deceased wife's) sister in the cemetery, "Go and care for your sister's children." Nevertheless, he did not have relations with her until a long time afterwards.

If a person never had children, or if a man needs a mother to take care of his young children, he doesn't have to wait the prescribed three *regalim*. However, even in these cases where we allow you to marry or remarry shortly after *shiva*, one shouldn't have *bi'ah* with his new wife within the first thirty days. Even though *tashmish ha'mitah* is only one of the *issurim* of *shiva* and not *sheloshim*, we consider the *bi'ah rishona a simcha gedolah* and it would therefore be *assur* during the entirety of *sheloshim*.

The **Shulchan Aruch (Y.D. 392:1)** rules:

And it is forbidden to marry a woman for thirty days, even without a *seudah*. After thirty days it is permitted, even if the *meis* was his father or his mother, and one can even make a *seudah*. And it is *mutar* to be *mikadesh* a woman even on the *yom ha'misah*, though he shouldn't make a *seudah* unless thirty days have passed.

The **Ramah (ibid.)** adds:

And some say that even to become engaged is *assur* during the first thirty days and that is the *ikar* (Tur, Rosh, Ramban).

The **Shulchan Aruch (Y.D. 392:2)** continues in the next *halacha*:

If his wife dies, it is forbidden to marry another women until *shalosh regalim* pass. And Rosh Hashana and Yom Kippur do not count as *regalim* for this matter. And if he hasn't yet fulfilled *peru u'revu*, or if he has *banim ketanim*, or he needs someone to help him, it is *mutar* to be *mikadesh* immediately and get married after *shiva*, though he shouldn't have relations until after thirty days unless it is the case of one fulfilling *peru u'revu* in which case it is *mutar* to have relations after *shiva*.

The **Ramah (ibid.)** adds:

The *halacha* is the same by all *aveilus*, even if it is *aveilus* for his father or mother, it is *mutar* to marry and have the *bi'ah* after *shiva* if he has not yet fulfilled *peru u'revu*. And some say that this only applies if he is wealthy and is able to hire servants and maids, but nonetheless he doesn't have a daughter or daughter-in-law in his house to help him with (certain things) that he would be embarrassed to have other people do. And therefore, the *minhag* is that many are *meikil* in this matter (i.e. to wait *shalosh regalim*) and they marry women within the *shalosh regalim*, but a *ba'al nefesh* should restrict himself (from doing such a thing)...

The **Rosh (Meseches Moed Kattan, Perek Shelishi: Siman 49)** writes:

Rabbeinu Tam *z"l* permitted a woman whose brother died shortly before the wedding to get married within the *sheloshim* because of the *peru u'revu* of the *ba'al*, for if he wouldn't marry her he might not marry another woman...

The **Shulchan Aruch (Y.D. 392:3)** records this Rosh *li'halacha*:

(In a case where) one has not yet fulfilled the *mitzvah* of *peru u'revu* and he is engaged to marry a woman, and after the *chuppah* is already arranged the woman's brother dies, it is permissible for them to marry and for him to have relations with her after *shiva*.

Even though there is no *mitzvah* of *peru u'revu* for her, we permit them to get married and have the *bi'ilas mitzvah* immediately after *shiva* because of the man's *mitzvah*.

The **Ramah (ibid.)** adds:

If he has *banim ketanim* and he is going to marry his wife's sister (i.e. the aunt of the children), it is *mutar* to marry her then because she will be kinder to the children of her sister than any other person will be.

The **Shach (ibid., s.k. 7)** writes that we permit this marriage to happen immediately, even during the *shiva*, for since she is the aunt of these children she will care for them especially well and we want to be certain that this *shidduch* takes place as soon as possible. The *bi'ilas mitzvah*, however, must take place after the *shiva*.

We saw before that **Rav Moshe Feinstein** dealt with a case where a *chasana* was to take place *motzei* Shabbos and the *kallah's* mother was *niftar* on Thursday. He gave an *eitzah* that they should do that which the Gemara in Meseches Kesubos recommends and have ten people be at a smaller wedding on Thursday before the *kevurah* and then have the *seudah* on *motzei* Shabbos. In this particular case, that plan could not work because the *kallah* was still a *niddah* on that Thursday. Rav Moshe therefore gave a different *eitzah* based on what we have seen. He writes:

Therefore, I say that you should do the *nissuin* on *motzei* Shabbos *kodesh*, in the middle of the days of *aveilus*, for since there will be a *hefsed* and since the *chassan* has no children it is permissible to marry even in the middle of *shiva* as is explicit in the Shach (Y.D. 392, s.k. 7) where he explains that it is *mutar* to marry her immediately and will be *bo'el* after *shiva*... and the Shach there is commenting also on the words of the Michaber, and is not like the Taz (s.k. 5) who forbids her to marry within the *shiva*.

We learned that the only time we permit a wedding to take place during the days of *shiva* is when it is a case of *banim ketanim* and the *shidduch* is with the aunt. The case Rav Moshe was dealing with was neither a case of *banim ketanim* nor the aunt and yet he permitted the wedding to take place during *shiva*. Why? Rav Moshe explains that when the Shach permits the wedding to take place “מיד,” he is not only commenting on the Ramah who is discussing the unique case of the aunt but is also commenting on the case in the Michaber who quotes the Rosh that a woman who is engaged to a man who has never fulfilled *peru u'revu* may marry during her *sheloshim*. If so, then the Shach is

saying that in this case too she may marry “מִיָּד,” even during *shiva*, and will simply have the *bi’ilas mitzvah* at a later point.⁷⁴

Rav Moshe was not the first to give this *kulah*. The **Pischei Teshuva (Y.D. 392:6)** quotes a similar idea from the son of the **Meir Nesivim (Siman 79)** who also permitted one to get married *bi’toch shiva*.

How does this work with the Gemara in Meseches Kesubos which seemingly writes that you have to postpone the *shiva* so that you can first do the *shiva yimei ha’mishteh*?

The **Perisha (Y.D. 392:12, d”h li’chein)** quotes this *kulah* and explains:

And one could say that this is the explanation, that the reason of “*hefsed*” alone wouldn’t be enough to permit (a marriage during *shiva*), but with the combination of the reason that anyway we need to permit her to marry after *shiva* since he (i.e. the *chassan*) has not fulfilled *peru u’revu*, and since we need to delay the *aveilus* a little bit to have the *simchas nissuin* in the middle of the *sheloshim*, we can permit them to even marry during *shiva* because of the *hefsed*, though the *bi’ah* is not *mutar* until after *sheloshim*.

The Perisha’s *chiddush* is that the Gemara in Meseches Kesubos is talking about someone who has already been *mikayem peru u’revu* and if so, we are only going to be *meikil* in a case of *hefsed* where they didn’t yet start the *shiva*. But if they already started the *shiva*, and the *chassan* has already fulfilled *peru u’revu*, even though it is difficult to retrieve everything that will be lost, we are not so concerned and assume that they will get married at some later time.

Rav Shlomo Kluger has a *teshuva* in his **Shu”t Tuv Ta’am ViDa’as (Teshuva 245)** where he calls the ruling of the son of the Meir Nesivim a “הוראה רע.” He writes that we never heard of such a *psak*, the Meir Nesivim didn’t write this, and even if he did we still wouldn’t listen to him.

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Unfortunately, these situations come up and we have to know that there are various ways of dealing with these *shailos*. Each case, however, must certainly be judged on its own.

⁷⁴ I thought that this seemed strange based on the fact that the Michaber is quoting the opinion of the Rosh who quotes Rabbeinu Tam. The *lashon* in the Rosh is that she can marry him even “תוך ל’ יום.” If the *chiddush* was that she can marry even within *shiva*, one would think that the Rosh would have said so explicitly.

סימן ח: בענין התחלת האבילות

We have discussed that there is a *machlokes* as to whether the *issurim* of *aveilus* begin *bi'shas misah* or *bi'shas kevrurah*. Everyone, however, agrees that the *minyán* of *shiva* only begins following the *kevrurah*. That, however, is only the case for those who are present at the *kevrurah*. What is the *din*, however, if a person will not be present at the *kevrurah*? When do they start the counting?

A common example of this *shaila* is when a person is *niftar* in America and the body is being taken to Eretz Yisrael to be buried. Only a few of the family members are accompanying the body while the others are remaining back in America. When do those *kerovim* remaining in America begin to count?

The **Gemara** in **Meseches Moed Kattan (22a)** states:

אמר להו רבא לבני מחוזה אתון דלא אזליתו בתר ערסא מכי מהדריתו אפייכו מבבא דאבולא אתחילו
מנו :

Rava told the people of Mechoza: Those of you who do not follow the coffin (to burial,) when you turn your faces away from the gates of the entrance (of the city to go home,) begin to count.

Rava explained that as soon as those accompanying the *meis* turn around to go their separate ways, they should immediately begin counting the days of *shiva*.

The **Rambam (Hilchos Eivel 1:5)** writes:

When it is customary for people to send the *meis* to another city to be buried and they do not know when the burial will take place, from the moment they turn back from accompanying the *meis* they are obligated to count *shiva* and *sheloshim* and begin to observe *aveilus*.

Those who are not accompanying the *meis* to the *kevrurah* cannot know when the actual *kevrurah* will take place. Therefore, immediately when they part from the group who will be accompanying the *meis* to burial, they begin their count and practice of *aveilus*.

The simple reading of this Rambam is that those who are not going with the *meis* start counting when they turn back because they do not know when the *kevrurah* will occur. It could take any amount of days until they reach the burial location and so there is no way to estimate when the *kevrurah* will actually occur. The implication is, however, that if one would know when the *kevrurah* was taking place, even if they weren't with the body, they would start counting *bi'shas ha'kevrurah*.⁷⁵

⁷⁵ If the Rambam hadn't used the *lashon* of "ואינם יודעים מתי יקבר" it would have made things much clearer. But since his *lashon* is that they don't know when the burial is occurring there are tremendous *nafka minos bi'zman ha'zeh* when we have cell phones and satellites and a person can know in New York the exact moment that the body is buried in Eretz Yisrael. See, however, **Aruch HaShulchan (Y.D. 375:7-8)** and **Shu"t Zerah Emes (Y.D. 373, Siman 162)** who write that "אינם יודעים" is *lav davka*.

The **Bach (Y.D. 375:3)** writes:

It seems that the reason is because they don't know when he will be buried and if so, they do not know when the *golel* will be sealed shut and when to start counting. Therefore, they begin to count immediately from the time they turn their faces (i.e. depart from the *meis*) because turning their faces is like the sealing of the *golel*. However, a *karov* in the city who knows when the *golel* will be sealed shouldn't begin counting until after the closing of the *golel*. And the Behag held that anyone who does not see the closing of the *golel*, even though he knows when it will happen because people will tell him, still, from the time he turns his face, he has abandoned himself from the *meis* and should begin counting from that moment.

The Bach writes that if you know that the cemetery is a two-hour walk away from your house then you can wait for those two hours until you begin counting. This is true even if those two hours end up carrying into the next day past *shekiah*, in which case the next day will count as day one of the *shiva*.⁷⁶

Rav Moshe Feinstein (Igros Moshe, Y.D. Chelek 1: Siman 253) discusses this topic in a *teshuvah* written to R' Naftali Carlebach. The question was that there was a *meis* in Belgium and while some of the relatives were going from America to Belgium to be at the *levaya*, others were not. When should those relatives remaining in America begin their count of *shiva*?

Rav Moshe answers that he thinks that those who are not going to Belgium should begin counting right away. Regarding that which it says in Shulchan Aruch (Y.D. 375:2), that when a *meis* is being sent to a different *medinah* those remaining behind begin counting from the time they turn their faces, it is not that we are *bi'safek* as to when the burial will take place and therefore we go *li'kulah* and begin counting right away. If that were so, the *halacha* would be that if we are dealing with a case where we know it will be at least a few hours until the burial, then we shouldn't begin the *aveilus* until later. And if they depart shortly before *shekiah* and we know *bi'toras vadai* that they won't bury the body by *shekiah*, still, there is no *halacha* that the *minyán* begins the next day. Rather, “אינם יודעים” is a way of saying that it's far away and that your association with the *meis* as far as the *kevurah* is concerned is finished.

Rav Moshe adds that this, however, applies when they are taking the *meis* to a *makom rachok*. However, when they are dealing with the burial in a cemetery close by, the person always has in mind that they might come back and ask him to do something or decide something about the *kevurah*. In such a case he would not begin his *aveilus* until they return and tell him that the *kevurah* has been completed.

⁷⁶ Rav Simon said that this explanation of the Bach, which is also found in a **Teshuvah Radvaz (Chelek 4: Siman 1135)**, makes a lot of sense. See also **U'Metzur Devash (Y.D. Siman 26)** and **Shu"t Maharsham (Chelek 2: Siman 260)** who mention the possibility of beginning *aveilus bi'shas kevurah* even from a distant place if one can be informed via telegraph or some form of communication when the burial is taking place. Nonetheless, Rav Simon felt, and Rav Abadi told him, that the *minhag* seems to be that those who don't go to the *kevurah* begin their *minyán* from the time they separate from the *meis*, like the Behag quoted at the end of the Bach. **Rav Zinner (Nittei Gavriel, Perek 133:2)** writes that he thinks, however, if the *kevurah* is going to be in close proximity, from New York to New Jersey for example, one should wait until the *kevurah* is completed and should begin sitting *shiva* together with the others.

The **Ramban (Torah HaAdam, pg. 122 d"v ha di'amar lahu Rava)** writes this explicitly as well:

It appears to me that we don't say these things except in a case where the *meis* is taken from one city to another city, for in such a scenario, as soon as they turn their faces from him they have abandoned (their involvement with) the *meis*. This abandonment is equivalent to the sealing of the *golel*. But when they are burying the *meis* in a cemetery near to the city, and they plan to return that day, he is not *noheg aveilus* until the other *kerovim* return and say to him that the *meis* has been buried, for until that point his *da'as* is on them and it is like the *meis* is still before him.

The **Shulchan Aruch (Y.D. 375:2)** quotes the *lashon* of the Rambam *li'halacha*:

When it is customary for people to send the *meis* to another city to be buried and (those remaining behind) do not know when the burial will take place, from the time they turn back from accompanying the *meis*, they are obligated to count *shiva* and *sheloshim* and they begin to observe *aveilus*. And those that accompany the *meis* begin counting from the time the *meis* will be buried.

The *halacha* reappears later in **Shulchan Aruch (Y.D. 399:14)** in the *halachos* of *aveilus* on Yom Tov:

If one's relative dies on *erev* Yom Tov and (the *kerovim*) are worried that they won't be able to bury him while it's still day (i.e. before Yom Tov) and so they sent the *meis* with non-Jews to bury him, once the hired non-Jews leave the city and are out of the vision of the *kerovim*, the *nihugei aveilus* apply to the *kerovim*. And if there is only a moment before the *regel* and they are *noheg aveilus* for that moment, the *gizeira* of *shiva* is *batel*, even if the *meis* is buried on Yom Tov.

From the time the *kerovim* part from the *meis*, their *chiyuv* of *aveilus* begins. Even if the *meis* ends up being buried by the non-Jews on Yom Tov itself, still, since they had given over the *meis* to others and then performed some *nihug aveilus*, the onset of Yom Tov will be *mivatel* the *shiva*.

Do these *halachos* also apply if the relative was never with the *meis*? What if the relative lives in Florida and the *meis* is in New York and the relative has no plans to come to New York to attend the *levaya*? When should he start *aveilus* and *shiva*? On the one hand, one could say it's a *kal vi'chomer* from the Gemara: If when you are somewhat involved with the *meis* you begin *aveilus* when you turn your face and don't wait until the *kevurah*, certainly if you weren't involved with the *meis* at all you would begin your *aveilus* immediately and not wait until the *kevurah*. On the other hand, one might think that perhaps we only say that the *aveilus* doesn't follow the *kevurah* when a person involves themselves to some extent with the *meis*, but if they are totally uninvolved then they should wait to hear that the *kevurah* has been completed and only then begin counting.

This is a *machlokes* between the Netziv and Rav Refael Shapira⁷⁷, but we must first examine a related discussion which lays the groundwork for this *machlokes*.

⁷⁷ Author of the classic *sefer*, **Toras Refael**, in which he shows how everyone in *Shas* is *li'shitaso*. He matches up all different Gemaras to show how everyone holds of their own opinions. This led Rav Simon to say that many years ago they had a symposium on "*Derech HaLimud*" and there were three speakers: 1) Rav Schachter, 2) Rav Parnes and 3) Rav Nissan Alpert z"l. Rav Schachter presented his *derech*, Rav Parnes presented his *derech*, and then Rav Nissan Alpert got up and said, "This *derech* is good, and this *derech* is good, and if you want to learn like the Toras Refael that is good too." Rav Alpert noted that the only way you can *shlug*-up the Toras Refael is to show that a *girsas* is R' Elazar

The **Rosh (Shu"t HaRosh, Klal 27:8)** was asked the following question:

Someone was crucified by non-Jews and people came and told his brother who was in a different city (that his brother had been crucified) and he was *noheg aveilus* right away. After three days he was told that they would leave the *meis* on the cross until the (Jews) paid a large sum of money. The *zekeinim* of the city went and gave them a little money but they were still not appeased. Eventually they gave up hope of ever being able to bury him. When does the *aveilus* begin? Does it begin from the time he hears (that his brother was killed) or from the time they gave up hope?

The Rosh responds:

And know that *aveilus* prior to the *kevurah* or prior to the *yeiush* (giving up hope of burying) is not called *aveilus* at all because he has not yet been obligated to mourn. And it would be like one who heard that a certain sick relative had died, began to mourn for him, and then later heard that his relative had still been alive before but now had actually died. (In such a scenario,) he would have to begin the mourning all over again.

The **Shulchan Aruch (Y.D. 375:6)** quotes this *teshuva* of the Rosh *li'halacha*:

One who knows that non-Jews crucified his relative in another city and he immediately was *noheg aveilus*, and then afterwards he heard that he is still hanging, the original *aveilus* does not count for him and he must return and count again from the time the *meis* is either buried or from when they gave up hope of getting him buried.

The **Netziv (Shu"t Meishiv Davar, Siman 72)** brings this *din* as a *ra'ayah* that if a person heard that his relative died in a far off city and he does not plan on attending the *kevurah*, yet he knows that they will not bury him until tomorrow, he should not begin observing *aveilus* until tomorrow. Since there has not been a *kevurah* or *yeiush* that a *kevurah* will take place, he should wait until the *shas ha'kevurah* to begin mourning.⁷⁸

The **Sdei Chemed (Ma'areches Aveilus, Siman 14; sect. vi'zehu ha'kuntres)**, however, quotes a *teshuva* from the **Toras Refael**⁷⁹ in which he disagrees with the ruling of the Netziv. He writes that if one received a telegram from another city that his relative had passed away and the *kevurah* will be tomorrow, he should begin his *aveilus* right away. He quotes the Gemara in Meseches Moed Kattan (22a) and writes that we see from this Gemara that since the *meis* is in a different city and the exact time of burial is uncertain, it is a case of "לא ידע" and the *aveilus* would begin immediately.

What about the Teshuvos HaRosh that the Shulchan Aruch quotes *li'halacha* and that the Netziv brings as a proof to his opinion?

and not R' Eliezer. Rav Alpert also said that he thinks it's not *shayach* to say that anyone up until the Maharsha would have forgotten any Gemara and so if they have a *chiddush* it can't be against any Gemara. He said, "And if you think you have a *kasha* on a Gemara from any Rishon or Acharon up until the Maharsha, give me a sabbatical and I'll figure out the *teretz*, and it'll be a good one too." Rav Simon noted that the *yeshiva* was learning Meseches Berachos that year.

⁷⁸ We know based on the *machlokes* we saw earlier between the Rosh and Rabbeinu Tam that there will be a *machlokes* in this case whether during the in-between-time there will be *diminim* of *aminus* since someone else is tending to the *meis* in the other city. However, regarding *aveilus*, the Netziv says you don't observe until after the *kevurah*.

⁷⁹ Rav Simon noted that people often think to find this *teshuva* one has to look in the Toras Refael but if you look there you won't find it. It's only quoted here in the Sdei Chemed. Rav Simon noted that every *teshuva* of the Toras Refael is a knockout and it's *kedai* to know every *teshuva*.

The Toras Refael explains that the *chiluk* is as follows: If you are with the *meis*, for example, in New York, and you are going to accompany the *meis* to the airport and send it to be buried in Eretz Yisrael, then those who are going with the *meis* on the airplane will start the *aveilus* after the *kevurah* while those who are not going with the *meis* will start as soon as they “turn their faces.” They will begin their *aveilus* then because they know that the *meis* is in the process of being buried.

In the case of the crucified brother, however, the *meis* wasn't on its way to be buried at all and so it doesn't make sense to begin the *shiva* then. The *shiva*, therefore, will only begin when either the *kevurah* actually takes place or the family has given up hope of ever retrieving the body.

The Toras Refael continues and applies his reasoning to a *machlokes* between Rabbeinu Tam and the Rosh that we examined earlier. When Rabbeinu Tam's sister died and her husband was attending to her in a different city, Rabbeinu Tam proceeded to eat meat and drink wine. The Rosh disagreed with his actions and said that there would be *aninus* in such a case which would prohibit meat and wine.

Asks the Toras Refael: If the case of Rabbeinu Tam is talking about a case where he was in a different city, the reason why there was no *aninus* was not because she had a husband to take care of her but rather because his *aveilus* started right away! Why does everyone come to explain Rabbeinu Tam's actions using all these different reasons?⁸⁰

The Toras Refael explains that we have to explain Rabbeinu Tam's actions this way because there is one part of the story that has been left out until now which **Rabbeinu Yonah** fills in for us in **Meseches Berachos**. We thought that Rabbeinu Tam, for example, was living in Florida and his sister and her husband lived in New York and she was going to be buried in New York. In reality, however, she died in New York but they were planning on bringing the *meis* to Rabbeinu Tam in Florida to bury her. The idea that the *meis* is “כאילו נקבר” when you are not going to be present at the *kevurah* is only when the *kevurah* is taking place elsewhere. But if the *meis* is coming to you, you can't say that it is as if the *meis* is buried. Therefore, we had to give the reason that Rabbeinu Tam was not obligated because his sister's husband was taking care of the arrangements.

What it says in Shulchan Aruch, that there is *aninus* even if the *meis* is in an “עיר אחרת,” that is only if they are going to bring the *meis* to you or you are going to go to the *meis*. But if you are not going to the *meis* and the *meis* is not coming to you, and you hear of the *petirah* of a relative, then there is no *aninus* because the *aveilus* would in fact begin right away.^{81, 82}

⁸⁰ In other words, *bishlama* if you say like the Netziv, that the *aveilus* is not going to be until the *kevurah* and so we want to know if during the interim period there is *aninus*. But according to the Toras Refael, of course there is no *aninus* because at that point one is already observing *aveilus*!

⁸¹ R' Refael was married to the Netziv's daughter and when his wife heard that her father, the Netziv, had been *niftar*, he *paskened* like his own *psak* that they shouldn't wait until the next day but should start *shiva* right away. Rav Chaim Brisker was married to R' Refael's daughter and was thus his son-in-law. Rav Chaim had one daughter, Sara Rascha, who married R' Tzvi Hirsch Glikson who was *chassidish* and had a *yeshiva* in Warsaw. R' Chaim was impressed with him because he was a *baki* in Mishnayos. Rav Simon heard this all from Rav Mandelbaum who was the librarian in

The classic case in which the topic of *gadol ha'bayis* is discussed is if a person, for example, dies in New York and the body is going to be buried in Eretz Yisrael. Some of the *kerovim* will accompany the *meis* to *kevurah* while others plan to remain in America. We've seen that those that are in America will begin sitting *shiva* a day before the others, from the time they depart from the *meis*. The question becomes: When the others return from Eretz Yisrael do we say that they sit *shiva* for one day longer than those who began earlier, or do we say that they are *mitztaref* to the other *kerovim* and everybody should end *shiva* together?

The Gemara in Meseches Moed Kattan (21b) states:

ת"ר: אבל ג' ימים הראשונים בא ממקום קרוב מונה עמהן בא ממקום רחוק מונה לעצמו, מכאן ואילך אפי' בא ממקום קרוב מונה לעצמו. ר"ש אומר אפי' בא ביום השביעי ממקום קרוב מונה עמהן.

The Rabbis taught: An *aveil* (who was unaware of the death and arrived while the others were sitting *shiva*), if he arrived within the first three days, then if he comes from a nearby place he counts *shiva* with them, but if he comes from a distant place then he counts *shiva* on his own. From then on (i.e. if he comes after the third day,) even if he comes from a nearby place he counts *shiva* on his own. R' Shimon says: Even if he comes on the seventh day, as long as he came from a nearby place he counts with them.

If the person is coming from a *makom karov* and theoretically, had he heard about the *petirah* earlier, he could have made it there in a short time and sat *shiva* with the rest of the *kerovim*, he is able to count *shiva* with the others. If he is coming from a *makom rachok*, however, and couldn't even have potentially gotten there, then even if he had heard the news immediately, he must count by himself. This is all if he comes within the first three days of *shiva*. According to the Tanna Kamma, however, if he comes later than the first three days, even if he is coming from a *makom karov*, he would count himself. R' Shimon disagrees and says that he is *mitztaref* to the others even if he shows up on the seventh day, as long as he is coming from a *makom karov*. The *halacha* is in accordance with R' Shimon.

The Gemara continues:

א"ר חייא בר אבא א"ר יוחנן והוא שיש גדול הבית בבית.

Y.U. from 1948-1998. He lived in that world, in Warsaw. He attended Rav Menachem Zemba's Friday night Midrash Rabbah *shiur*. He was in the *mikveh* with the Aish Kodesh. He had stories that you wouldn't hear anywhere else.

⁸² Rav Hershel Schachter says over from R' Moshe Soloveitchik a *chiddush* that is not really so *mikubal*. We say *halacha ki'divrei ha'meikil bi'aveil* and so if someone dies on Chol HaMoed Pesach we will count *shemini shel Pesach* as day one even though he is not sitting *shiva*. He says that we *psaken halacha ki'divrei ha'meikil bi'aveil* even in a case where it is going to be *tarti di'sasrei*. Here, even though you are going to have less than seven days because you will start *shiva* after *shemini shel Pesach* but *shemini shel Pesach* is going to count as day one, Rav Moshe Soloveitchik's *psak* was that you can be *meikil* for the Netziv in the beginning and start the *shiva* late but at the end you could get up earlier based on the Toras Refael. Rav Simon noted that the *pashtus* is that we *psaken* like R' Refael.

⁸³ Rav Simon wrote an article about this and the previous *shiur* (*Bi'inyan Kevius Zmanei Aveilus*) in the *sefer zikaron* for the late R' Yosef Wanefsky z"l (Ketones Yosef, pg. 461), a blind *talmid chacham* who worked in the library for many years and who Rav Simon became close with.

R' Chiya bar Abba said in the name of R' Yochanan: This is only true if the *gadol ha'bayis* was at home (where the *shiva* was being observed).

Whether one can be *mitztaref* to the *minyana shiva* of others, explains R' Chiya bar Abba, is dependent on whether the “*gadol ha'bayis*”⁸⁴ is present in the *beis aveil* when he arrives.

The **Rif (Meseches Moed Kattan, 13b dapei ha'Rif)** qualifies the distance of a *makom karov* mentioned in the Gemara:

And how far is a *makom karov*? Ten (10) *parsah*, the amount of time it takes to walk one day. Since had he heard on the first day he could have come to them (within the first day⁸⁵), it is as if he was there from the beginning.

If the *karov* was coming from a distance from which he could have been with the others within a twenty-four hour period, he is permitted to count his *shiva* along with the others.

The **Nachal Eshkol**, found on the bottom of the **Sefer HaEshkol (Hilchos Moed Kattan vi'Aveilus no. 49:9)**, writes accordingly:

...and therefore, nowadays, where it is possible to come from a faraway place via train, even if he comes from fifty *parsah* he is counted amongst them (in regard to *shiva*)...

Nowadays, where we have trains and airplanes, a person could travel many *parsaos* within a days time and be with the family and count with them for *shiva*.

§

We have to understand exactly what this *sugya* is talking about. Is the case that one did not know about the *petirah* and he happened to come back to his family and find them sitting *shiva*, or did he find out later than everyone else, start his own *shiva*, but then ultimately join with the others and now wants to adjust his count?

This is a *machlokes* Rishonim, but before seeing the specifics let us first examine the ramifications of each opinion:

If we say that one cannot change their count once they have begun, and that the whole *sugya* is only if one did not know anything originally, it is going to be hard to say that *bi'zman ha'zeh* this *sugya* has any relevance. The chances are so slim that a person would have no idea that his relative had died and would stumble across his family sitting *shiva*.

⁸⁴ There are various explanations of precisely who is the “*gadol ha'bayis*.” **Rashi** says that the *gadol ha'bayis* is the eldest brother or the eldest of the relatives observing *shiva*. Others (**Rosh, Shulchan Aruch Y.D. 375:2**) say that the *gadol ha'bayis* is the one on whom the other family members rely and whose instructions they follow, regardless of age.

⁸⁵ Rav Simon noted that even though sometimes in reality it could be that the “first day” is only a few minutes in a case where *kevurah* finishes right before *shekiah*. However, when we say the “first day” we mean a full 24-hour period.

If, however, we assure like those Rishonim who hold that even if there was knowledge, one can change their count when they join up with the rest of the family, this case would be extremely relevant *bi'zman ha'zeh*.

The **Ramban (Toras HaAdam, pg. 162; d"h vi'ein hefreish)** writes:

And there is no difference whether one hears about the death of a relative while he is in that place, or whether he hears about it while he is in a *makom karov*, or whether he didn't hear at all until he came home and found *aveilim* in his house. The *din* is the same by all of them.

The Ramban writes that it makes no difference whether you knew about the death or not. You can switch your count when you join with the family.

The **Rosh (Meseches Moed Kattan, Perek Shelishi: Siman 38)**, however, disagrees. He writes:

But it needs to be that he did not know about the *meis* until he arrived to his family, for if it was made known to him on Monday and he began to mourn, it doesn't make sense that he should shorten his *aveilus* just because he joined his family. But if he hadn't begun (to mourn) at all and he then joins his brothers, he is considered as if he began to mourn with them (when they began.)

If you started your own count, you can't change that count in the middle. The *sugya* here is specifically dealing with one who had no count to begin with because he didn't know anything about the *petirah*. In such a situation we say that he can be *mitztaref* to the others who had begun to sit *shiva*.

The **Shulchan Aruch (Y.D. 375:9)** quotes the opinion of the Rosh *li'halacha*:

In what situation are we discussing? When he didn't hear about the *meis* until he arrived. However, if he found out on Monday and he began to mourn, he should not shorten his *aveilus* when he comes to them.

Once the Shulchan Aruch rules like the Rosh, that the *karov* must have no knowledge of the death, the probability of such a case occurring becomes very unlikely *bi'zman ha'zeh* and the entire *sugya* of *gadol ha'bayis* is rarely relevant *li'maaseh*.

The **Gemara in Meseches Moed Kattan (21b-22a)** states:

איבעיא להו : הלך גדול הבית לבית הקברות מהו?

They inquired: If the *gadol ha'bayis* went to the cemetery, what is the law?

What is the *din* if the *gadol ha'bayis* went to the *beis ha'kevoros*?

Precisely what this question is asking is also a *machlokes* between the Rosh and the Ramban.

The **Rosh (Meseches Moed Kattan, Perek Shelishi: Siman 38)** explains:

They inquired: If the *gadol ha'bayis* went to the *beis ha'kevoros* to do something for the *meis*, either to deal with the *matzeivah*⁸⁶ or to help make the *kever*, and one of the brothers comes to the house within the first three days – what is the *din* (regarding whether the newly arrived brother can be *mitztaref* even though the *gadol ha'bayis* is not home)? Do we say that since he only left in order to deal with the *meis* it is as if he is still in the house, or not? Come and learn: R' Chiya bar Abba said in the name of R' Yochanan that even if the *gadol ha'bayis* is in the *beis ha'kevoros*, he (i.e. the newly arrived brother) can be counted amongst them.

Even if the *gadol ha'bayis* is at the *beis ha'kevoros* dealing with things related to the *meis*, the newcomer can come and join the count, assuming he meets all of the other requirements.

The **Ramban (Toras HaAdam, pgs. 160-161)** understands the *sugya* of “הלך גדול הבית” לבית הקברות” entirely differently. He writes:

And this is the explanation: The Gemara says “as long as the *gadol ha'bayis* is in the house,” but if the *gadol* comes from another place, then he is not counted amongst the others. The Gemara asks: What is the *din* if “הלך גדול הבית לבית הקברות”? Is he counted with them or is he not counted with them and he should this count from the time of the sealing of the *golel*? R' Yochanan says that even if the *gadol ha'bayis* went to the *beis ha'kevoros* he is counted amongst them...and the explanation applies whether he was in a *beis ha'kevoros* that was *karov* or *rachok*, since he had been with them *bi'makov karov* at the time that their *aveilus* had set in.

The Ramban explains that “הלך גדול הבית לבית הקברות” is the case that we encounter quite often *bi'zman ha'zeh*. Someone died in New York and the family is now taking the body to be buried in Eretz Yisrael and will then be coming back to New York. Those who remain in America will start sitting *shiva* right away, while those who go to the *kevurah* will begin after the *kevurah*. Therefore, “הלך גדול הבית לבית הקברות” means that the *gadol ha'bayis* is going to the *beis ha'kevoros* to do the burial. Now, when he comes back to New York, do we say that he is *mitztaref* to the rest of the family, since in this case there was no *gadol ha'bayis*, since after all, he is the *gadol ha'bayis*, or do we say that he continues his own count that he started in Eretz Yisrael?

The Gemara answers that he can count with them. How can it be that he can be *moneh* with them if there was no *gadol ha'bayis* present? It must be, explains the Ramban, that since when the *aveilus* began they were all together, that created a *tziruf*. Even though the *gadol ha'bayis* then left them, when he returns they can regroup into that *tziruf* and he can count with them even though there was no *gadol ha'bayis* to pull him in.^{87, 88}

⁸⁶ Rav Simon was ending Morasha Kollel in 1979 when the Satmar Rav passed away. Rav Simon went home and his family used to go on a trip for that one week, the week after camp but before *yeshiva*. They went to the mountains and on the way up there was so much traffic. They said that the reason for the traffic was that everyone was going to the *hakamas ha'matzeivah* of the Satmar Rebbe. It was only within a week or two of his *petirah*! Today, people take a long time and try to get it up within the year but the old *minhag* was to do it as soon as possible. In our case in the Gemara, he is even doing it during *shiva*!

⁸⁷ Someone in the *shiur* asked and Rav Simon explained accordingly that from this reading of the Gemara we see that this *svara* is true regardless of who accompanies the *meis*. The Gemara only used the *gadol ha'bayis* as an example in order to show that when he returns there is no *gadol ha'bayis bi'bayis*. In other words, if the *gadol ha'bayis* is in Mexico and the *meis* died in New York and now one of the brothers in New York is going to take the *meis* to Eretz Yisrael to be buried and then return, when he comes back, he should be *mitztaref* to the others since he was with them

The **Tosafos HaRosh (Meseches Moed Kattan, 22a d"v ibayei lahu)** points out that it could be that these opinions of the Rosh and the Ramban are each *li'shitaso*. The Ramban and the Rosh. The Ramban learns that the Gemara here is talking about the *minyán* of the *gadol ha'bayis*. The *gadol ha'bayis* did the *kevurah* and thus started his *shiva* later than the others. Now he is going to change his *minyán*. That is the Ramban *lishitaso* who explains that the *sugya* of coming *miba'chutz* can be that someone changes their *minyán* even though they already started counting. The Rosh couldn't learn like the Ramban for he holds that once you started counting you cannot change your *minyán*, and thus the whole *sugya* there is where he didn't know anything beforehand. Accordingly, the *sugya* here has to be that the *gadol ha'bayis* is not around because he went to deal with the *tzarchei ha'meis*, but it is as if he is here.⁸⁹

The **Shach (Y.D. 375, s.k. 12)**, amidst a lengthy entry, writes:

However, it seems that the *ikar* is like that which the Ramban writes, like the opinion of the Rif and that which is brought in the Beis Yosef, that if the *gadol ha'bayis* comes back within the *shiva*, he counts with them and does not count from the time of the burial. This applies whether he is coming from a *makom karov* or a *makom rachok*...

The Shach *paskens* like the opinion of the Ramban.^{90, 91, 92, 93}

at the time of the *misah*. It doesn't make a difference that he is not *gadol ha'bayis* because the case of the Gemara, where the *gadol ha'bayis* was the one who went to the *kevurah*, was only chosen to show that when he returns there is no *gadol ha'bayis bi'bayis*.

⁸⁸ Rav Simon also noted that he saw many years ago in a *sefer* by R' Yaakov Gruman, a *talmid* of R' Aharon Kotler, that maybe this Ramban is *lishitaso*, that the *issurei aveilus* begin from the *shas ha'misah* and so the fact that you were there *bi'shas misah* means you have another connection with the others. Rav Simon wasn't certain that this was *muchrach* because who says that the *issurei aveilus* are connected to the *minyán* of *shiva*.

⁸⁹ Rav Simon noted that Rav Willig was *michaven* to this idea on his own in his *sefer*. Afterwards, Rav Simon showed him that the Tosafos HaRosh has the same *svara*.

⁹⁰ It is known that **Rav Moshe Feinstein** had a *psak* against the Shach, that if someone goes to Eretz Yisrael to bury the *meis*, starts *shiva* a day later, and then returns to America, they should get up from *shiva* a day later than the others. In fact when Rav Moshe died, Rav Reuven Feinstein accompanied the body to Eretz Yisrael and he got up a day later than those who had remained in America. People want to know: Why did Rav Moshe *pasken* against the Shach? Rav Simon noted that a couple of years ago he was at David Eikowitz's wedding and was sitting next to R' Aharon Felder. Rav Willig had pointed out years before that R' Aharon Felder wrote in his *sefer* that Rav Moshe *paskend* against the Shach and so Rav Simon asked him what the reason was. He said (and Rav Simon called R' Felder again before giving this *shiur* to make sure he was saying it correctly) that Rav Moshe told him that he felt that even if you hold like the Shach, he didn't think that if a person was going to be so far away it still applies. The Shach is talking about within closer proximity, but if you are going to Eretz Yisrael it wouldn't apply. Rav Simon thought, and he wrote in his article, a different *mihalech*: The Shach is based on the Ramban and the Ramban is *lishitaso* but the Rosh is also *lishitaso* and after all, we don't *pasken* like that original Ramban. The Shulchan Aruch (Y.D. 375:9) *paskens* that the *sugya* follows the explanation of the Rosh! It could be that this is not what Rav Moshe had in mind (and Rav Simon called R' Aharon Felder a second time that morning to clarify if that was R' Felder's own explanation or whether he had heard it from Rav Moshe. He seemed to say that he had heard it from Rav Moshe and told Rav Simon, "It seems like this is very important to you." Rav Simon told him that he was giving *shiur* on it and wanted to make sure to say it right) but it could be another explanation for why one would not *pasken* like the Shach. Rav Simon felt that if there is no pressing reason not to, one should keep the extra day.

⁹¹ Rav Simon pointed out that people try to figure out who exactly is considered the "*gadol ha'bayis*," but if you learn the *sugya* as we have, it is not usually relevant *bi'zman ha'zeh*. According to the Shulchan Aruch who *paskens* like the Rosh, the whole case is only a case where the newcomer was "*lo yadah*." And if you *pasken* like the Shach, then you don't even need a *gadol ha'bayis*.

⁹² One of the first things Rav Simon was excited to see when **Rav Feivel Cohen** put out the **Badei HaShulchan on Aveilus** was to see how he *paskened* on this *shaila*. He *paskened* like the Shach, as many rabbonim do, but Rav Simon is still not convinced.

⁹³ Rav Simon mentioned that it took him many years to figure this all out. He learned it in Morasha Kollel in 1986 and then one 17th of Tammuz he went through the whole Shach and then years later Rav Simon went back to Morasha

סימן י': בענין מאבד עצמו לדעת

This topic in *hilchos aveilus* unfortunately becomes relevant every once in a while. While all death is tragic, the *shaila* of suicide has its own dimension of tragedy. Unfortunately, sometimes people find life to be too burdensome and take their own lives.⁹⁴

The **Torah** tells us in **Parshas Noach (9:5)**:

וְאֵף אֶת־דַּמְכֶם לְנַפְשֹׁתֵיכֶם אֲדַרְשׁ מִיַּד כָּל־חַיָּה אֲדַרְשֶׁנּוּ וּמִיַּד הָאָדָם מִיַּד אִישׁ אָחִיו אֲדַרְשׁ אֶת־נַפְשׁוֹ הָאָדָם:

But, your blood of your souls I will demand, of every beast will I demand it; but of man, of man for his brother, I will demand the soul of man.

Rashi (ibid. d"v vi'ach es dimchem) explains:

ואף את דמכם: אף על פי שהתרתיו לכם נטילת נשמה צדקה, את דמכם אדרש מהשופך דם עצמו.

Even though I permitted you the taking of a soul with regards to animals, I will demand your blood from one who spills his own blood.

A person should not think that it is only forbidden to hurt or injure others, but that they may hurt or kill themselves. Rashi explains that the *pasuk* teaches us that one will be held accountable for the spilling of his own blood as well.

The source for this, quoted by Rashi, is the **Gemara in Meseches Bava Kamma (91b)**. The Gemara there states:

מאן תנא דשמעת ליה דאמר אין אדם רשאי לחבל בעצמו? אילימא האי תנא הוא דתניא (בראשית ט) "ואף את דמכם לנפשותיכם אדרש" ר' אלעזר אומר "מיד נפשותיכם אדרש את דמכם." ודלמא קטלא שאני.

Who is the Tanna that you heard him say that a person is not permitted to wound himself? Perhaps you will say that it is the following Tanna, for it was taught in a *beraisa*: "But your blood of your souls I will demand," and R' Elazar says: "From the hand of your souls I will demand your blood" (i.e. I will exact retribution from the soul of the man who sheds his own blood). (Still this doesn't prove that wounding yourself is forbidden) for perhaps killing oneself is different.

Kollel for a week to relearn that *sugya* and that is when he discovered the Tosafos HaRosh and put it all together. Then when Rav Wanefsky z"l passed away he thought it would be appropriate to write up the whole thing.

⁹⁴ We have to be aware of these things and know that we have to help people who may have these feelings which often stem from feeling irrelevant. Rav Simon once heard the famous *michanech* in Eretz Yisrael, **Rav Dov Brezak**, and he told a story about a certain *bachur* in the *yeshiva* who was contemplating the worst and what stopped him was that the *mashgiach* was passing by and gave him a warm 'shalom aleichem.' He felt at least someone is *makir* that he exists and that stopped him. We never know what little things can be *mischazek* someone and help them from falling into this situation. Rav Simon said over an idea that he likes to say from the **Ohr HaChaim HaKadosh**, that by the *mishkan* it says that Bnei Yisrael brought all the supplies and it was "וְיָזִים וְהוֹתֵר" it was enough and it was excessive. Which one was it? Was it the right amount or was it too much? The Ohr HaChaim explains that really it was too much but Hashem made a miracle that everything was used so that nobody should feel like his contribution was irrelevant. It's important that people feel like they are relevant.

The **Rambam (Hilchos Rotzeiach u'Shemiras Nefesh 2:1-3)** codifies these *dinim*. He writes:

- (1) Whenever a person kills his friend with his hands, for example, he strikes him with a sword or with a stone that can cause death, strangles him until he dies, or burns him in fire – he should be executed by the *beis din*, for he himself has killed him.
- (2) But a person who hires a murderer to kill another, one who sends his slaves and they kill him, one who binds another and leaves him before a lion or the like and the beast kills him, and a person who commits suicide, are all considered to be “shofech damim”; the sin of bloodshed is upon their hands, and they are liable for death at the hands of G-d. They are not, however, liable for *misas beis din*.
- (3) Which source indicates that this is the law? The *pasuk* (Bereishis 9:6) states: “When a person sheds the blood of a man, by a man his blood shall be shed.” This refers to a person who kills another by himself, without employing a *sheliach*. The *pasuk* continues: “Of the blood of your own lives I will demand an account.” This refers to a person who commits suicide. “From the hand of every wild beast will I demand an account (9:5). This refers to a person who places a person before a wild beast so that he will devour him. “From the hand of a man, from the hand of one’s brother, will I demand an account for the soul of a man.” This refers to a person who hires others to kill another. In all of the three last instances, the *pasuk* uses the expression “will I demand an account,” indicated that their judgment is in heaven’s hands.

The **Minchas Chinuch (Parshas Yisro, Mitzvah 34, d”h vi’hinei)** explains:

And committing suicide is not included in the *lav* of *לא תרצח*, but one is *חייב מיתה בידי שמים* as the Rambam explains in *Hilchos Rotzeiach (2:2)*. And the *nafkah minah* is if he breaks vessels at the time of the act. It also seems that a *ben-Noach* is not commanded in this for it is learned from “*וְאָדָם אֶרְשָׁתוֹ לְנַפְשׁוֹתֵיכֶם אֲדַרְשׁ אֶת-דַּמְכֶם*,” and it was not taught at Sinai, and if so, it was said to Yisrael and not to the *bonei-Noach*.⁹⁵

§

If someone kills themselves ח"ו, is there a *chiyuv shiva*? What about all of the other *nihugei aveilus*?

Though the **Beraisa in Meseches Semachos (2:1-7)** outlines the parameters of these *dinim*, it is still unclear exactly what we do or do not observe for such a person. The *beraisa (2:1)* states:

Regarding one who commits suicide, we do not involve ourselves with him for any matter (lit. אין מתעסקין עמו בכל דבר...)

The *lashon* of the *beraisa* does not explicitly relate what we should or should not do.

The **Rashba (Shu”t HaRashba, Siman 763)** writes in a *teshuva*:

...even though they said “בכל מקום אין מתעסקין עמהם לכל דבר,” that was not regarding *kevurah* and *tachrichin*, but rather was said regarding *keriah*, *chalitza*, and making *hespedim*. We do, however, stand in a line (and say *birkas aveilim*) etc. as is explained in *Aveil Rabasi [Perek 2]* etc.

⁹⁵ **Footnote no. 18** in the *Minchas Chinuch*, however, directs you to the **Pesikta Rabbasi, Parsha 25** where the following *derasha* is made: “לא תרצח – לא תתצח,” that you aren’t able to kill yourself because of *תרצח* as well.

We certainly bury such a person and put them in *tachrichin*, but when we say “אין מתעסקין”⁹⁶ that is regarding those other things listed later in Meseches Semachos.

The **Ramban (Toras HaAdam, pg. 83 d”h vi’nirah li)** adds a few *chiddushim* relevant to this topic:

And it seems to me that that when we say “אין קורעין” (i.e. not to tear *keriah*) that is talking about (tearing *keriah*) *li’kavod*. But the *kerovim* who are fit to mourn certainly tear *keriah*, for *keriah* is a *chiyuv*.

When we say one should not tear *keriah*, that refers to people who are not related to this person and would have torn *keriah* as a sign of respect. This additional type of *keriah* should not be performed in the case of such a death. But the *kerovim* of the *meis* are certainly obligated to tear *keriah*.

What about *aveilus*? The Ramban continues:

And if you’ll say that this person didn’t act in a way of “מעשה עמך” and therefore you should be *patur* from *aveilus* all together, (that can’t be because) how can it be that we stand in the *shurah* and recite the *birkas aveilim* if we are not *noheg aveilus* for such a person? On the other hand, the **Rambam (Hilchos Eivel 1:11)** writes that we are not *noheg aveilus* (for such a person) at all.

It seems to be a *machlokes* between the Ramban and Rambam whether we are *noheg aveilus* for someone who committed suicide.

The **Shulchan Aruch (Y.D. 345:1)** rules:

For one who commits suicide, we do not involve ourselves with him for any matter, and we do not mourn over him, and we don’t give *hespedim* for him, and we do not tear *keriah*, and do not do *chalitza*. But we stand in a line and recite *birkas aveilim* and any other thing that is *kavod li’chaim*.

The strict *din* in the Shulchan Aruch is, therefore, that there is no *aveilus* for one who committed suicide.

There is a *din* recorded elsewhere in **Shulchan Aruch (Y.D. 344:10)** that states:

If someone commands that no *hespedim* be made for him, we listen to him.⁹⁶

The **Ramah (ibid.)** adds:

But if they command that they should not be *noheg shiva* or *sheloshim*, we do not listen to him [Mahari Vayil, Siman 4].

⁹⁶ The **Pischei Teshuva (Y.D. 344:1)** there brings an interesting discussion of whether we can ignore the person if they are a big *gadol*, since the *hespedim* of *gedolim* are important for the people. He quotes from the **Teshuva MeiAhava (Chelek 1: Siman 174)** who discusses this topic and writes that the Nodeh BiYehuda gave a *hesped* for the Pnei Yehoshua even though the Pnei Yehoshua asked that none be given for him. The Nodeh BiYehuda said, “We don’t listen to one who is the Rabban of all of the Bnei HaGolah (when he says not to give *hespedim* for him.)”

R' Akiva Eiger (Chiddushei R' Akiva Eiger, Y.D. 344:10) in his glosses on the Shulchan Aruch connects the statement of the Ramah and our case of one who commits suicide. He writes that the source for this *din* of the Ramah is found in the Mahari Vayil who writes that all of this is dependent on whether the actions in question are *kavod li'meisim* or *kavod li'chaim*. If something is *kavod ha'meis*, like *hespedim*, so then the *meis* has the right to be *mivatel* it. But if the action is *kavod li'chaim*, for those *kerovim* who are still alive, so then it should be up to them to decide whether a certain action is made *batel*. The Mahari Vayil writes, therefore, that if someone is *mochel shiva* or *sheloshim* you cannot listen to them because then one could technically be *mochel* on all of Hilchos Aveilus.

R' Akiva Eiger explains that it can't be like the Mahari Vayil writes, that we don't listen to him just because it will end up being *mivatel* all of Hilchos Aveilus. The real question, says R' Akiva Eiger, is whether these *dinim* are for *kavod ha'chaim* or *kavod ha'meis* and this *machlokes* is really based on our *machlokes* Rishonim regarding “מאבד עצמו לדעת.” According to the Rambam, we are concerned with the *kavod ha'meis* and since he did this *aveirah* of committing suicide, he loses out on that *kavod*. According to the Ramban we are concerned with the *kavod ha'chaim* and therefore, we do have some *aveilus* for the remaining relatives.

It could be that we *pasken bi'toras vadai* like the Rambam, that “מאבד עצמו לדעת” is an issue of *kavod ha'meis* and that is why the Shulchan Aruch says there is no *aveilus*. Perhaps, however, we are uncertain about which is correct and therefore we go *li'kulah* and we say that there is no *aveilus*, but really we are not siding on the issue of whether it is *kavod li'meis* or *kavod li'chaim*.

Since we see that it is either *vadai kavod ha'meis* or at least a *safek*, when it comes to the *din* in the Ramah, that an *aveil* wants to be *mochel* on *shiva* or *sheloshim*, we don't listen at all and require the *kerovim* to observe.⁹⁷

The **Chasam Sofer (Y.D. Teshuva 32)** has an important *teshuva* in regard to this issue. He writes:

...Nonetheless, I say that (if the situation is such) that the *kavod* of this distinguished family will be seriously damaged and embarrassed as a result of the fact that someone from their family did such a terrible action (i.e. committed suicide), and if we *pasken* to allow them to sit *shiva* then people will assume that the rabbis looked into the matter and it was not a suicide, then one is able to *pasken lichatchila* to allow the family to mourn, even if in reality it was a *din* of מאבד עצמו לדעת.

When the family comes to the *rav* and it looks like it was a suicide, there is still room to *pasken* that they can sit *shiva*. Even though there is technically no *chiyuv shiva*, it will be a tremendous embarrassment to the family if the word gets out that someone from their

⁹⁷ Essentially, R' Akiva Eiger has a *taina* on the Ramah as to why he just quoted the Mahari Vayil without any ‘*sfeikos*’ or a ‘*yeish omrim*.’ Really it should be dependent on that *shaila* of מאבד עצמו לדעת, and that *shaila* was *paskened* in Shulchan Aruch as an issue of *kavod ha'meis* and accordingly, the two explanations of that *psak* (i.e. *vadai kavod ha'meis* or *safek kavod ha'meis*) should have bearing on this *din* as well. In the end of the day the *din* is how it is and can't be changed but this is something to be *mifalpel*. The *velt* says: If you assume R' Akiva Eiger's assumptions you can never beat him in logic, so the only way to answer R' Akiva Eiger is to question his initial assumption.

family committed suicide. To prevent this embarrassment we allow the family to sit *shiva*.⁹⁸

§

The **Ramban (Toras HaAdam, pg. 83)** quotes from Meseches Semachos as to what exactly is considered suicide:

What is considered *מאבד עצמו לדעת*? It's not that he goes up into a tree and then falls and dies, or goes up onto the roof and falls and dies. Rather, it is one who says, "See that I am going to go up into the tree to make myself fall and die" or "I am going up to the roof..." Such a person has a *chazaka* of *מאבד עצמו לדעת*. Even though you did not see him make himself fall, since he said it, there is a *chazaka* that he followed through with his intention...

In the **Rambam (Hilchos Eivel 1:11)** writes similarly:

What is meant by a person who is *מאבד עצמו לדעת*? Not necessarily one who climbs up on a roof, falls, and dies, but rather, one who says: "I am going up to the top of the roof" (i.e. to commit suicide). If we see him climb up immediately in anger or know that he was distressed and see him fall and die, we presume such a person is one who committed suicide. If, however, we see him strangled and hanging from a tree or slain and lying on the back of his sword, we presume that he is like all other *meisim*. We engage in activity on his behalf and do not withhold anything from him.

If you only find his body lying on top of a sword, there is no way to know for certain if he killed himself or if someone else killed him. But if he pronounced that he is going up and we see him going up and then he falls, he is *מאבד עצמו לדעת* *בהזקת מאבד עצמו לדעת*.

The **Bach (Y.D. 345:2 *d"h vi'zeh lashon Maharshal*)** quotes the **Maharshal** who disagrees:

And this is the *lashon* of the Maharshal (in his explanation on the Tur *d"h vi'nofel*): 'And it appears to me that even if the person says: "See that I am going up etc..." but you don't see him ascend, you can't rely on his words alone and he is not *מאבד עצמו לדעת* *בהזקת מאבד עצמו לדעת*.' And his words seem to be correct. And this is also implied in the *lashon* of the *beraisa* brought by the Beis Yosef.

The Bach likes that which the Maharshal says, that you have to actually see the person ascend after he says he is going to in order to consider the *meis* *מאבד עצמו לדעת* *בהזקת מאבד עצמו לדעת*.

The **Shulchan Aruch (Y.D. 345:2)** quotes the *lashon* of the Rambam:

What is meant by a person who is *מאבד עצמו לדעת*? For example one who says: "I am going up to the top of the roof" and we see him climb up immediately...

The **Shach (Y.D. 345, s.k. 3)** quotes the other opinions:

And the Rambam writes that even if you didn't see him make himself fall, for example if he says, "I am going up to the top of the roof and I will make myself fall and die," he has a *chazaka* that he did as he intended. And the Bach quotes the Maharshal that even if he says, "See that I am going

⁹⁸ Rav Simon pointed out, however, that based on this *teshuvah* we would tell them that they do not have to do *devarim shebi'tzina* because it is not a real *chiyuv shiva*.

up etc.” and he didn’t see him go up, we can’t rely on his words alone and he does not have a *chazaka* of מצמו לדעת. And he wrote that his (i.e. the Maharshal’s) words seem correct.

The **Aruch HaShulchan (Y.D. 345:4-5)** writes that in the end of the day, even if he technically said he was going to kill himself and then proceeded to do it, still, we can always pin the actual suicide on all sorts of things – depression, fear, or other psychological conditions, and we can assume he had some sort of *daita mitzurefes*.

In the *sefer Nachalas Shimon* of **Rav Shimon Krasner**⁹⁹ from Baltimore he quotes from the **Shu”t Besamim Rosh (Siman 345)**¹⁰⁰ that it is not considered to be מצמו לדעת unless a person kills himself for some sort of philosophical reason. If, however, he kills himself because of his excessive *tzaros* or because he is depressed, that is not called מצמו לדעת.¹⁰¹

In the end of the day, it’s hard to distinguish where philosophy ends and depression begins. Regardless, we have to know the basis of these *halachos* and how to deal with them should they come up, ה”ו.¹⁰²

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The **Ramban (Toras HaAdam, pg. 84)** quotes from the **Meseches Semachos (2:4)** a story in which a boy ran away from school and as a result his father punished him by pulling his ear and hurting him. He was afraid of his father and so he killed himself. Rabbi Tarfon said that we don’t treat this like a case of מצמו לדעת. Another story (**Meseches Semachos 2:5**) is told where a young child from Bnei Brak broke a plate on Shabbos and his father hit him. He was afraid of his father and as a result he killed himself in a pit. R’ Akiva ruled that we do not treat this like a מצמו לדעת. The Ramban writes accordingly that if a child kills himself it is not considered like one who is מצמו לדעת.¹⁰³

⁹⁹ Rav Simon noted that Rav Krasner wrote these *lomdishe seforim* on Nach. He found all of the *halachik* topics in Nach and wrote nice pieces on them. Rav Simon noted that Rav Schachter likes the *sefer*.

¹⁰⁰ The forgery “Teshuvos HaRosh.”

¹⁰¹ Rav Simon quoted this from the *sefer Nachalas Shimon* instead of the original because in his edition of the Shu”t Besomim Rosh this *teshuva* was taken out.

¹⁰² Though we noted before, in context of the Chasam Sofer, that perhaps the family wouldn’t keep *devarim shebi’tzina*, it could be that once we have all these *tzeirufim* (Aruch HaShulchan, Besomim Rosh) that really they should keep a full *aveilus* (i.e. including *devarim shebi’tzina*.) Rav Simon thought that they should keep a full *shiva* for these reasons and additionally because it probably wouldn’t work out psychologically for a person if their *rav* told them they can do *devarim shebi’tzina*.

¹⁰³ Rav Simon pointed out that from here we see that a rebbi or a parent has to know what is an appropriate way to give *mussar* to a child. What is appropriate in one generation might not be appropriate in another generation. Rav Simon remembers that when they dedicated a Torah in memory of Rav Dovid Lifschitz, his son-in-law, R’ Nosson Kamenetsky, son of R’ Yaakov Kamenetsky (“and the author of two volumes”), said from his father that when the Gemara says ‘a rebbi should make his *talmidim* fear him’ – that is not for this generation. In this generation, if you do that they will leave the *derech*. Rav Simon said he has in his *sefer* a *vort* from R’ **Matsiyahu Solomon**, that Chazal say from the *pasuk* by the *chatzotzros*, “עָשֵׂה לְךָ שְׂתֵי חֲצוֹצְרוֹת,” that each generation had to make their own *chatzotzros*. Yehoshua couldn’t use what Moshe used because for his generation it wasn’t appropriate. When the late R’ **Goldwicht** first started the *hesder yeshiva* he was asked about the change in the regular *yeshiva*-format and he used to respond that he felt that that is what they needed at that point. He always said, “The *tochen* of a *yeshiva* has to be the same, even if the *tzurah* changes.”

The **Shulchan Aruch (Y.D. 345:3)** quotes this *li'halacha*:

A *kattan* who is מצמו לדעת מאבד is considered as if it was שלא לדעת. And similarly, a *gadol* who killed himself in a situation of *ones*, like when the king asks for him, we do not withhold from them anything.

If a child kills themselves we consider it as if it was not done with *da'as* and we treat them like a regular *meis*. If a *gadol* kills himself because he fears, as the **Shach (Y.D. 345, s.k. 6)** explains, that the king has sent people after him to kill him, and he knows that they will get him, we also do not withhold anything from him and consider him like a regular *meis*.

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There is also a discussion regarding people who kill themselves rather than violate certain *aveiros* during a time of persecution.

The **Da'as Zekeinim (Parshas Noach 9:5)** of the Ba'alei HaTosafos comments on the *pasuk* from Parshas Noach:

“אֵת דְּמִקְּמָם”¹⁰⁴: This is a warning against one killing themselves. And it says in **Bereishis Rabbah (Noach, Parshas 34: Siman 13)** that one might think this applies even in a case like Chananya, Mishael, and Azarya – the *pasuk* therefore teaches: “אֵת”. You might think this applies to those who are *moser* themselves *al kiddush Hashem* for they feel that they won't be able to stand up to the test, the *pasuk* therefore says “אֵת” (to not include such a group.) And similarly by Shaul ben Kish... And from here they bring a *ra'ayah* for those who killed their children during a time of *gizeirah*.

While some forbade taking life under all circumstances and considered such actions tantamount to murder, other said that the “אֵת” of this *pasuk* limits the scope of suicide. Accordingly, one who kills themselves or their children during a time of *shmad* or *gizeira* has acted within the boundaries of the Torah.¹⁰⁴

¹⁰⁴ These teachings of the Ba'alei HaTosafos and others are quoted by the **Ritva (Meseches Gittin 18a, d"h hah di'amrinan)**. See also the story in **Meseches Gittin (57b)** and **Tosafos (ibid., d"h kaftzu kulan vi'naflu li'toch ha'yam)** there.

סימן יא: בענין אבילות במשומד ובמנודה

There is a *si'if* in Shulchan Aruch that discusses a very sensitive topic, namely, whether *aveilus* is observed for somebody who was not necessarily an observant Jew. It is not uncommon nowadays to have a child who has returned to *yiddishkeit* despite the fact that his parent's may not yet be observant.

Another part of this discussion is that there may be an *inyan* for parents to sit a quasi-*shiva* for a child who chooses to no longer be traditionally observant.¹⁰⁵ We must examine and see precisely what the *dinim* are in each situation.

The **Shulchan Aruch (Y.D. 345:5)** states:

One who is פורש מדרכי הצבור, and they are those who have removed the עול מצוות from upon their neck, and they do not include themselves amongst Klal Yisrael in their dealings, or in the *kavod* of their holidays, or sitting in their shuls and *batei midrash*, but rather consider themselves like *bnei chorin*, like the rest of the nations, and similarly, the *mumarim* and the *mosrim*, one does not become an *onein* on account of them and one does not mourn over them. Rather, their brethren and relatives wear white and wrap themselves in white and eat, drink, and rejoice.

The Shulchan Aruch writes that there is no *chiyuv aveilus* for individuals who have entirely rejected the Jewish religion and do not wish to be associated with Klal Yisrael at all.¹⁰⁶

In the **Teshuvos HaRosh (Klal 17:9)** the Rosh elaborates:

And that which I was asked, whether one must mourn over the death of a *mishumad* – it is taught in Meseches Semachos (2:10) that for one who is פורש מדרכי הצבור, we do not concern ourselves with them, and we are not *oneinim* on account of them, and we do not mourn over them.

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The **Mordechai (Meseches Moed Kattan, end of no. 886)** relates that Rabbeinu Gershom sat *shiva* for fourteen days when his son became a *mumar*.

There are various explanations of when Rabbeinu Gershom sat *shiva* for his wayward son.

¹⁰⁵ Which Rav Simon said is usually expressed, for example, by marrying a non-Jew.

¹⁰⁶ “It’s not like they’re not *frum* but they still march in the Israeli Day Parade or give to Jewish charities,” said Rav Simon. These are people who went totally off the deep end and want nothing to do with *Yiddishkeit*. Rav Simon said that he remembered one Chol HaMoed Sukkos he was in Boro Park and he ended up in R’ **Menashe Klein**’s shul for Mincha/Ma’ariv. R’ Klein was *darshening* and said over *bi’derech drush* an explanation of that which we say: “*Hoshana, rishumim bi’shemecha, hoshana.*” The *pashut pshat* in the phrase is like Rav Simon said over at Yisrael Pinchas Simon’s *bris*, that Klal Yisrael are called ‘Yisrael’ which has Hashem’s name of “*keil*” within it. But R’ Menashe Klein said that it could also mean that there are some people who may not be so religious but they still want to be known as Jews and as part of the Jewish people. For those people we *daven* that they should also have a *yeshua* for wanting to be enlisted under Your name and not wanting to be elsewhere.

The **Chochmas Adam (Hilchos Aveilus, Klal 156:6)** writes:

And there was an incident where one of the *gedolim*'s children was a *mishumad* and he immediately sat *shiva* for fourteen days; seven days for his *guf* and seven days for his *nefesh* that was lost. But at the actual time of death one does not have to sit, even the seven days, but rather (one) should cry and mourn over the fact that he brought such a *rasha* into the world.

The Chochmas Adam says that the *adam gadol* (Rabbeinu Gershom) sat *shiva* right away after the son went off the *derech* but the story has nothing to do with his son actually dying.

The **Levush (Siman 345:6)** explains the story with similar details but with a slightly different timeline:

And it is found that one *gavrah rabbah* mourned over his son who was a *mumar*. When his son died he sat for fourteen days...he did not do this because of *aveilus* but because of his own pain over the fact that his son never did *teshuva* and that his *guf* and *nefesh* were lost.

The Levush writes that this *gavrah rabbah* (Rabbeinu Gershom) sat *shiva* for fourteen days after his son who had become a *mumar* passed away since he had never done *teshuva*.¹⁰⁷

The **Taz (Y.D. 340, s.k. 3)** agrees with the understanding of the Levush and writes:

Rabbeinu Gershom sat for fourteen days when his son who was a *mumar* died...

Some communities have this *minhag*, that if someone intermarries ח"ו, the family will sit *shiva* for them.

Rav Hershel Schachter in his *sefer Eretz HaTzvi (Siman 17:4)* makes this distinction that we saw in the Shulchan Aruch, between a person who doesn't want anything to do with Klal Yisrael and one who is just non-observant. When the **Gemara in Meseches Sanhedrin (44a)** states "אע"פ שהטא ישראל הוא," that is said about anyone who has *kedushas Yisrael*. Nonetheless, there is another level where a person doesn't even want to be part of the *העם הישראלי*, the nation of Klal Yisrael.^{108, 109}

¹⁰⁷ Rav Simon noted that **Rav Charlap** likes to say over that if you look in **Tosafos (*d"h vi'chi mihader apei*)** in **Meseches Sotah (39a)** there is a line there said by Rabbeinu Gershom in context of the *sugya* of *birkas kohanim*. Tosafos writes: And in the Shi'iltos on Parshas Korach it says: 'A *kohen* who is *oveid avodas kochavim* cannot *duchan* for he is like less than a *kohein* who has killed...and Rabbeinu Gershom, the Meor HaGolah, answers in his *teshuvos* that he does *duchan* and he gets the first *aliyah* for since he was *chozer bi'teshuva* he is also *chozer bi'kedusha*.' Rav Charlap wanted to say that Rabbeinu Gershom says this comment because he was sensitive to his own son's predicament and had an affinity to those who would go off the *derech* and would do *teshuva*. He told this over to the late **Rav Garelick** and Rav Garelick was upset that he would say such a thing, that Rabbeinu Gershom would *paskan* on this *shaila* because of something in his own personal life. Somehow Rav Soloveitchik got involved. Rav Charlap told the Rav and the Rav thought it was good. Then Rav Garelick went to the Rav and Rav Soloveitchik agreed with him. Rav Garelick said, 'But he said you told him that...etc.' Rav Simon noted that Rav Charlap tells the whole story over much more dramatically.

¹⁰⁸ Rav Schachter continues to quote from **Rav Soloveitchik** that based on the **Gemara in Meseches Shevuos (13a)** it could be that a person who doesn't want to be part of the nation of Klal Yisrael wouldn't get *kaparah* for certain things on Yom Kippur because the *kaparah* of Yom Kippur is not awarded to *yechidim* but to the nation as a whole.

What are the guidelines for being included in Klal Yisrael? Rav Schachter writes that the guidelines are found in the *bris* between Hakadosh Baruch Hu and Avraham Avinu. That *bris* was contingent on: 1) believing in the *achdus* Hashem, 2) *mitzvas milah*, 3) not marrying foreign women, and 4) Hakadosh Baruch Hu would give Avraham and his children Eretz Yisrael. With these *gedarim* we see that someone who, for example, marries a non-Jewish woman, would not be included in Klal Yisrael.¹¹⁰

R' Yehuda Gershuni¹¹¹ in his *sefer Kol Tzofayich* quotes a *teshuva* from **Mahari Brunah (Shu"t Mahari Brunah, Siman 135)** in which someone took a *neder* that they weren't going to play sports with any Jew, and they asked if they could play with someone who was a *mishumad*. He was told that they could play with them for they were not considered part of the nation of Klal Yisrael.

The **Ramah (Y.D. 151:4)** in Hilchos Avodas Kochavim discusses selling *avodah zarah* products:

Some say that it is *assur* to sell to him something for his *avodah zarah* specifically when there is nobody else he can get that thing from, or if he is unable to get it in another place. But if he is able to buy it in another place, it is *mutar* to sell him anything (Mordechai, First Perek of Meseches Avodah Zarah). And some are *machmir*. The *minhag* is to be *meikil* like the first *svara*.

If someone wants to sell something to a *goy/mumar* that he knows will be used for *avodah zarah*, there are two possible *aveiros* that he may be violating: 1) The *aveirah midioraisa* of *lifnei iver*, which we assume is only when you help someone do an *aveirah* that he wouldn't have been able to do without you, and 2) the *aveirah midirabanan* of *misayei'ah*, where he could have done it without you but you made it easier for him.

The **Shach (ibid., s.k. 6)** explains that what the Ramah is saying is that there are two opinions as to whether there is an *issur dirabanan* of *misayei'ah* in this case. If there is an *issur*, then you obviously couldn't sell it to him. If there was no *issur* then it would be permitted.

The Shach, however, explains that he thinks that really everyone agrees that there is normally an *issur misayei'ah*. The *chiddush* here is that if someone is a *mumar*, you can't violate *lifnei iver* because he is still *chayav* in all the *mitzvos*, but the *issur dirabanan* of *misayei'ah* would not apply.¹¹²

¹⁰⁹ Rav Simon referenced here a famous case of "Brother Daniel," a Jew who went off and then wanted to become an Israeli citizen based on the "Law of Return" which allows anyone who Hitler would have killed (i.e. one Jewish grandparent) to become a citizen of Israel. **Rav Lichtenstein** wrote an English-article on "Brother Daniel."

¹¹⁰ Rav Schachter continues to quote **Rav Yaakov Kamenetzsky** who would tell those involved in *kiruv* that if the only thing they do is cause someone to not marry out of the religion, that is a very big accomplishment. It means that the person remains included in Klal Yisrael.

¹¹¹ Who Rav Simon said was "a very 'colorful' person." He was the son-in-law of R' Lazer Silver, who was also a very 'colorful' person. He wrote very 'colorful' *seforim* and Kol Tzofayich is one of the many. See footnote no. 239.

¹¹² The **Dagel Mirvavah (ibid.)** has an even bigger *chiddush*, that whenever a person is doing an *aveirah bi'meid*, there is no *issur misayei'ah*. For example, I have non-religious Jewish neighbors and I know that every Sunday morning they go to a certain *treif* restaurant to get bacon and cheese sandwiches. If on one Sunday morning I'm driving and I see them walking, and I know they're going to the restaurant, can I honk and ask them if they want a ride since they are going to get there eventually and I'm just helping them out? It could be that according to this Dagel Mirvavah,

The Avnei Nezer (Shu"t Avnei Nezer, Hilchos Avoda Zarah; Siman 126:3-4) has a *teshuva* in which he explains the Shach using the words of the Maharal¹¹³:

Even though the Poskim forbid lending money to a *mumar* with *ribis*, nonetheless, there may be room to permit it based on the words of the Maharal miPrague who explains that the *arvus* of Klal Yisrael only came into effect after Bnei Yisrael crossed the Yarden. The Maharal explains that (this is because) Eretz Yisrael unifies and makes all members of Klal Yisrael who live there like an '*ish echad*.' Therefore, when they arrived in Eretz Yisrael they became responsible for one another.

The Shach explained that essentially there is no *din* of *arvus* for a *mumar*. The question remains: How can we say such a thing when we know that a *mumar* is still *chayav* in *kol ha'Torah kulah* since they can never be *mafkih* their *kedushas Yisrael* and the *din* of *arvus* stems from that *kedushas Yisrael*?

The Avnei Nezer quotes the Maharal who explains that the Gemara in Meseches Sanhedrin teaches that the *klal* of "כל ישראל ערבים זה לזה" only began once Klal Yisrael entered Eretz Yisrael and went to Har Gerizim and Har Eivel. Thus, being in Eretz Yisrael is what makes Klal Yisrael into one unified unit.¹¹⁴

The Avnei Nezer writes that accordingly, anyone who is not permitted to live in Eretz Yisrael is not included in our responsibility of *arvus*. Anyone who keeps Torah and *mitzvos* is allowed to live in Eretz Yisrael, but the *pasuk* (Shemos 23:33) warns: "פן ינקטיו" *אֶתְּךָ לִי*, that anyone who sins will be removed from Eretz Yisrael and cannot live there.¹¹⁵

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We see that there is no *chiyuv aveilus* for all these people who entirely left the *tzibbur*. But then there are many people who want to be part of the Jewish religion and partake in Jewish causes but don't necessarily keep Shabbos and would be very insulted if you told them that they are not really Jewish. Such a person is termed by the Michaber a "*mumar*" and the Shulchan Aruch says that there is no *aveilus* for these people either.

since they are doing it *bi'meizid*, there is no *issur* of *misayei'ah* here. This *shaila* comes up often. Rav Simon got a *shaila* where someone's wife was in some sort of nurses-rotation in which everyone worked different days of the week. Sometimes she would get Shabbos as her time-slot. Usually one is able to simply switch their Shabbos time-slot with a *goy*, but in this situation there weren't so many *goyim*. There were, however, non-religious Jews. Can she ask to switch with them since they aren't going to be keeping Shabbos anyways? **Rav Moshe Feinstein** has a *teshuva* written to Dr. Zemba where Rav Moshe entertains the *svara* that perhaps this could be worse than *misayei'ah* but then writes that maybe one can be *meikil* since it is better that the non-religious person do *melacha* in the hospital and help people out then do other *melacha* on Shabbos. Rav Moshe also has a *teshuva* about whether a person who owns a catering hall can rent it to people who may not be so *tznius*. In this case they could always rent a different hall, so it could be there is no *din* of *misayei'ah*. Rav Moshe discusses when we apply this Dageil Mirvavah and the Shach.

¹¹³ Rav Schachter likes to say that when the Maharal was alive he was known as a *posek* and he wrote *derush* on the side. When he passed away, most of his *kesavim* were in *machshava* and so now he is known as the big mystic. Every once in a while the Magen Avraham will quote a Maharal in a famous *halachik* piece. This particular Maharal is not a *halachik* piece but the Avnei Nezer uses it in a *halachik* context.

¹¹⁴ Rav Simon noted that this would be a good to use in a speech for Yom Ha' Atzmaut.

¹¹⁵ Rav Simon noted that **Rav Meir Goldwicht** recently showed him a similar idea from the **Ohr HaChaim HaKadosh** in **Parshas Bechukosai**. Rav Simon noted, "It's all hidden in the Ohr HaChaim HaKadosh, you just have to find it. Everything you need to know for life is in the Ohr HaChaim HaKadosh. In *machshava* at least."

The **Maharam miRutenberg** in his **Hilchos Semachos HaShalem**¹¹⁶ (**Siman 37, pg. 56**) discusses tearing *keriah bi'shas yetzias neshama*. He writes:

...However, if this person sometimes did an *aveirah li'teiavon*, or if he didn't fulfill a *mitzvah* because it was burdensome, for such a person we are *chayav* to tear *keriah* at the *shas yetzias ha'neshama* since he was not a *kofer* and didn't act *li'hachis*...

We know there are two types of people who are called a '*mumar*.' There is a *mumar li'teiavon* and a *mumar li'hachis*. A person who is a *mumar li'teiavon* is someone who would gladly buy kosher meat if not for the fact that it is more expensive. For them, it's simply more convenient to buy the non-kosher meat. A *mumar li'hachis*, however, is someone who if both kosher and non-kosher meat were available and were entirely the same, he would still take the non-kosher meat because he is simply not *makpid* either way.

The Maharam miRutenberg explains that if a person does an *aveirah* every now and then *li'teiavon*, we would still tear *keriah* for him since he is neither a *kofer* nor acting *li'hachis*.

The **Mordechai (Meseches Moed Kattan, no. 937)** quotes this Maharam miRutenberg and writes:

And that which Maharam explains, that if sometimes he does an *aveirah li'teiavon* (we tear *keriah* for him), he explains well, for if the person was regularly performing *aveiros*, (even *li'teiavon*,) he would be included amongst those who are פורש מדרכי הצבור.

If a person does an *aveirah li'hachis*, then even if he didn't do it on a regular basis he is considered a *mumar*. The Mordechai adds that if one commits an *aveirah li'teiavon*, but does it regularly, they are also considered a *mumar*.

The **Tur (Y.D. 340)** writes:

And the *rav*, Rabbeinu Meir from Rotenberg wrote that one is obligated to tear *keriah* for everyone except for a *mishumad oveid avodah zarah*, or one who transgresses any *mitzvah* in the Torah *li'hachis* which is considered like a *mishumad*¹¹⁷. But if he sometimes does an *aveirah li'teiavon* or doesn't do a certain *mitzvah* because it is a burden for him, for such a person we are *chayav* to tear *keriah* since he is not a *kofer ba'Torah* and is not acting *li'hachis*.

The **Beis Yosef (Y.D. 340, d"h u'mah she'kasuv kol ha'omed)** quotes the explanation of the Mordechai:

Anyone who is present at the time of the *yetzias neshama* of any person is obligated to tear *keriah*...and the Mordechai at the end of Meseches Moed Kattan (Siman 937), commenting on that which Rabbeinu Meir (i.e. Maharam miRutenberg) wrote, explains that if a person does an

¹¹⁶ Which Rav Simon noted is a very important *sefer* in Hilchos Aveilus because whenever the Rosh quotes the Maharam miRutenberg he is quoting from this *sefer* and we know the Rosh is quoted *li'halacha* often in Hilchos Aveilus.

¹¹⁷ Rav Simon pointed out that this doesn't really mean "*mishumad*" like we use the term today (i.e. to refer to one who converted to another religion.)

aveirah li'teiavon every so often (he is not a *mumar*). But if he regularly does an *aveirah* he would be included in those who are פורש מדרכי הצבור.

Even though we might have thought that a *mumar* is only someone who has totally left the fold and married a non-Jew, it seems that really anyone who is *ragil* to do *aveiros*, even if it is only *li'teiavon*, would be included amongst those who are termed “*mumar*.”

This *din* is quoted in Hilchos Keriah in **Shulchan Aruch (Y.D. 340:5)**:

One who is present at the time of *yetzias neshama* of a man or woman from (Klal) Yisrael is *chayav* to tear *keriah*. (This applies) even if they sometimes did an *aveirah li'teiavon* or if they didn't perform a *mitzvah* because it is burdensome.

The **Ramah (ibid.)**, however, adds:

But if a person is *ragil* to do an *aveirah*, we do not mourn for him and certainly (we don't mourn) for a *mumar li'avodas kochavim*...

From the Ramah it seems that we would not observe *aveilus* for someone who, for example, is not *shomer* Shabbos.

The **Shulchan Aruch (Y.D. 345:5)** records the *halacha* that we saw previously of not mourning for one who is פורש מדרכי הצבור. The Michaber writes: “וכן המומר”, and thus includes a *mumar* amongst those who we do not mourn but rather, celebrate their demise.¹¹⁸

How do these *dinim* apply practically? Could it be that we say that those who are non-observant nowadays are not really *mumarim* but are more likely cases of *tinokos she'nishbau* and that they were simply raised with this improper *derech*?^{119, 120}

R' Yaakov Kamenetzsky (Emes LiYaakov, Y.D. Siman 345 in the *ha'arah*) writes an important *klal* for this discussion:

Regarding those who are *michalel* Shabbos *bi'zman ha'zeh*, one is required to be *noheg aveilus* for them, for they are unaware of the strict (guidelines) of Shabbos Kodesh. And even if they learned a little in their youth, nonetheless, that was not adequate enough to instill in them the seriousness of these matters. And even though they see those who are *shomrei* Shabbos, and are related to those who are *shomrei* Shabbos, still, in their eyes, those (who are *shomer* Shabbos) are considered confused or insane. They are therefore like a *tinok she'nishba*.

¹¹⁸ Rav Simon heard a story from Rav Schachter that years ago there was a *talmid* in Lakewood who received a phone call that one of his irreligious parents had passed away. Nobody in the Lakewood community knew them anyhow, so **Rav Aharon Kotler** told him to keep learning in accordance with the straight *halacha* found in Shulchan Aruch.

¹¹⁹ Like that which the **Rambam (Hilchos Mamrim 3:1-3)** writes, that the real *apikorsus* was the first generation of Tzadok and Beitus who were *kofer bi'Torah sheba'al peh*. Their children and grandchildren who were raised in the second generation and never knew better, however, were considered like *tinokos she'nishbau*.

¹²⁰ Rav Simon noted interestingly that there is a new *sefer* that came out recently called **Binah viDa'as** that discusses every aspect in *halacha* regarding *michalelei Shabbos bi'zmaneinu* (as far as *bishul akum, aveilus*, etc.)

This became the common practice, that we sit *shiva* and practice regular *nihugei aveilus* even for *kerovim* who are not necessarily observant and most likely never knew any better.

There is a *teshuva* from the **Maharshag**¹²¹ (**Shu"t Maharshag, Y.D. Siman 25:6**) where he writes that there was a certain individual who died who was known to shave with a razor daily and was *michalel Shabbos bi'farhesia*. The family was coming to the *rav* to ask all these different *aveilus*-related questions. How should he answer? The *rav* feared that if he said that you can do whatever you want since there is no *din aveilus*, that might cause *eivah*.

The Maharshag writes that if the only thing the *meis* did was shave with a razor, even though it is *assur midioraisa* and carries a *chiyuv malkos*, one could certainly observe *aveilus* for him since it could be that he was are not really *pasul li'eidus*¹²² since he didn't think it was anything serious. He writes that there is a *chiluk* between those who are *ba'alei aveirah* and those who are *mamash poreish mi'darkei ha'tzibbur*. Accordingly, the *rav* should take their *shailos* seriously and should not distinguish between this case and any other case of *aveilus*.

Rav Moshe Feinstein (Y.D. Chelek 1: Siman 235) has a *teshuva* in which he discusses a woman who "converted" to join a group which Rav Moshe called 'Christian Science.' One of their main beliefs was that you can't go to a doctor if you get sick but rather, you pray to אלהים to heal you. The question was whether this woman could be buried in a Jewish cemetery?¹²³

Rav Moshe presents two reasons why it could be *mutar*. Firstly, it could be that this whole Christian Science is just considered craziness. Secondly, three weeks before her death she agreed to go to a doctor, which could be a sign that she retracted on the Christian Science doctrine.

The first reason, writes Rav Moshe, is not a good reason because you could say that anyone who worships any *avodah zarah* is crazy and should be *patur*. The second reason is also not convincing because it could be that she was just experiencing *yissurin* and wanted to see a doctor but that doesn't mean she was truly *chozer bo*.

He writes that she should be buried wherever they were planning on burying her in the non-Jewish cemetery, but they can still do the *taharah*, *tachrichin*, and a proper *kevurah*. Then, after she was buried, preferably for twelve months, she can be exhumed and transferred to the Jewish cemetery in accordance with that which the Gemara in

¹²¹ **R' Shimon Grunfeld**, a *talmid* of the Maharam Shik who was a *talmid* of the Chasam Sofer. Rav Simon noted that in the *chassidische* circles the Maharshag is very well used. In the *litvishe* circles they probably never even heard of it.

¹²² He quotes that the source for this is a **Teshuvos R' Akiva Eiger**, though he writes "איני זוכר כעת באיזה סימן"

¹²³ The *halacha* is that you are not allowed to bury a *goy* in a Jewish cemetery. Rav Simon recently got an interesting *shaila* related to this topic: There was a certain elderly woman who was not Jewish but she was married to a Jew. The couple go to shul all the time and she is very involved in the shul and with the *kiddush* and is always helping out. She wants to convert. Why? So that she can be buried next to her husband. The *shaila* was essentially can she convert *li'shem kevurah*?

Meseches Sanhedrin states, that once a person is buried they obtain some sort of *kapparah*.¹²⁴

§

In **Meseches Semachos (5:11)** the *din* of a *menudah*, someone who was put in *cherem*, is discussed:

When a *menudah* dies, he is deserving of *skilah*. We don't stand over him and stone him with large stones like was done by Achan. Rather, the *sheliach beis din* takes a stone and places it on his coffin in order to fulfill the *mitzvas skilah*.

Since such a person is *chayav skilah*, we don't really stone him but rather put a stone on top of his coffin to fulfill the *mitzvah* in some form.

The **Emek Beracha (Inyan 'Menudah,' Siman 2)** gives a different explanation than the Meseches Semachos. He writes:

Moed Kattan (15): A *menudah* who dies, *beis din* stone his *aron*. It's not that they stand over him and stone him with rocks like they did to Achan but rather, *beis din* sends someone to put a large stone on his *aron*.

He continues:

And that which it says, that they "stone" his *aron*, it seems that it is not a *din* in *skilah* per se but is rather a *din* in his *nidui*. Since the *ikar din* by one in *cherem* is that they should be distanced and should not be within your four *amos*, though after they die you have to be within their four *amos* in order to bury them, one has to make a visible sign that one should distance themselves from this person and this is done by putting the stone on top of his aron. And this is the *kavanah* of the **Rambam (Hilchos Talmud Torah 7:4)** where he writes: 'He places a stone on his coffin, as if to say that they are stoning him because he was separated from the *tzibbur*.'

The Emek Beracha concludes:

However, in Meseches Semachos (5:11) it is implied that this is done because of the *din skilah*...and it is also explained like this in the Mordechai, and one can learn from this that he has a *din* of *harugei beis din* which means we don't mourn for him.

The Emek Beracha notes that the **Mordechai (Meseches Moed Kattan, no. 937)** also explains that a person in *nidui* is *chayav misas beis din* and accordingly, we do this ceremonial stoning as a fulfillment of his due *skilah*.¹²⁵

¹²⁴ And the *halacha* is that on the day you exhume the body, you should tear *keriah* and keep *aveilus* on that day of the new *kevurah*.

¹²⁵ Tangentially, R' Simon noted that Rav Schachter always explains that a *nidui* is not just a *richuk* but it is a *klalah*. The *beis din* curses him that he should drop dead and if he drops dead we attribute his death to our curse. It's a type of *harugei beis din* of sorts and we treat him like a real *harugei beis din* and bury him in the cemetery for the *harugei beis din*.

סימן יב: בענין סעודת הבראה

There is a *minhag* that when the *aveil* comes home from the *beis ha'kevoros* he eats a special *seudah* supplied by someone else called the *seudas havra'ah*.

The **Gemara** in **Meseches Moed Kattan (27b)** states:

אמר רב יהודה אמר רב: אבל יום ראשון אסור לאכול לחם משלו מדאמר ליה רחמנא ליחזקאל (יחזקאל כד) "ולחם אנשים לא תאכל." רבה ורב יוסף מחלפי סעודתייהו להדדי.

Rav Yehuda said in the name of Rav: An *aveil* on his first day of mourning is forbidden to eat of his own bread. We learn this from that which the Merciful One said to Yechezkel: "And the bread of other people you shall not eat." Rabbah and Rav Yosef exchanged their meals with each other.

Hashem told Yechezkel in a *nevuah* that He was going to take away his wife but that he should not openly mourn or be *noheg aveilus*. The prophecy was a *mashal* and the death of his "wife" was a reference to the impending destruction of the Beis Hamikdash. Hashem told him that nobody should be *noheg aveilus* on an individual level because mourning individually would be strange if the whole *tzibbur* will be mourning. What we therefore learn from these *pesukim* is that all the things that Hashem told Yechezkel not do as a sign of mourning should regularly be done by an *aveil*. The *pasuk* says, "ולחם אנשים לא תאכל," that Yechezkel was told not to eat from the bread of other people, implying that usually an *aveil* should usually eat the bread of others.

We have to understand exactly what the parameters of this *halacha* are. The Gemara says that an *aveil* should not eat his own bread on "*yom rishon*." Does that mean the whole first day? If the family comes back from the *beis ha'kevoros* at 3 P.M. and *shekiah* is not until 8 P.M., does that mean that they can't eat their own food for those entire five hours?

Tosafos (ibid., d"h yom rishon assur) explains:

...(the food must be supplied by others) even if he eats a number of times throughout the day for the Gemara didn't teach "סעודה ראשונה."

Tosafos explains that "*yom rishon*" means the entire first day and therefore an *aveil* is forbidden to eat from his own food, even if he has numerous meals, throughout that first day.

The **Rosh (Meseches Moed Kattan, Perek Shelishi: Siman 89)**, however, disagrees with the explanation of Tosafos. He writes:

Rav Yehuda said in the name of Rav: An *aveil* on *yom rishon* is forbidden to eat from his own food. (This is known) from the fact that Hashem said to Yechezkel, "ולחם אנשים לא תאכל," which refers to the first meal on the first day. (We know this) for in the second *perek* of Meseches Pesachim (36a) it states: One should not knead the dough (for the *matzah*) with wine, oil, or honey, and the Gemara there establishes that this is for 'יום טוב ראשון,' which really means the first meal on the first night of Pesach (i.e. the *seder*).

The Rosh learns that the *aveil* is only forbidden to eat his own food for the first meal upon returning from the *kevurah*. He brings a *ra'ayah* for this from another case in *Shas* where “*yom rishon*” really only means the first meal.

The **Rambam (Hilchos Eivel 4:9)** writes:

On the first day alone, it is forbidden for a mourner to put on *tefillin* or eat food of his own.

From the fact that the Rambam groups this *din* of food on *yom rishon* with the *din* of *tefillin* on *yom rishon*, which we know applies to the entire *yom rishon*, it must be that he agrees with Tosafos, that the *aveil* is forbidden to eat his own food for the entire first day.

Nonetheless, the **Tur (Y.D. 378:1)** *paskens* like his father, the Rosh:

An *aveil* is forbidden to eat his own food for the first *seudah* (after the *kevurah*.) But for the second it is *mutar* even on *yom rishon*.

The **Beis Yosef (ibid., d”h u’mah she’kasuv)** quotes all the different opinions:

And the Rosh (Siman 89) also wrote like this, that it refers to the first *seudah* on *yom rishon*. The Hagahos Maimoni (Perek 3: Os 9) in the name of the Smag (Hilchos Aveilus 247a) writes like this as well. And this is not like Tosafos (*d”h yom*) who writes that the *aveil* is forbidden to eat his own food for the entire first day, even if he eats two times on the first day, for the Gemara never said “*seudah rishona*” but said “*yom rishon*.” And even though the explanation in the Rambam seems to be like Tosafos, nonetheless we *pasken ki’divre ha’meikil* in questions of *aveilus*.

The **Shulchan Aruch (Y.D. 378:1)** *paskens* accordingly:

An *aveil* is forbidden to eat his own food for the first *seudah* (after the *kevurah*) but for the second it is *mutar* even on *yom rishon*. And it is a *mitzvah* for his neighbors to give from their own food in order that the *aveil* doesn’t eat from that which is his. And one is able to supply food for his friend when (his friend) is in *aveilus* and then have the favor returned and (have his friend) supply food for him when he is a mourner, as long as it is not stipulated as a set condition.

§

The **Gemara in Meseches Bava Basra (16b)** discusses the sources for the *seudas havra’ah*:

שלא מרד עשו בימיו מנלן? דכתיב (בראשית כה) "ויבא עשו מן השדה והוא עיף," ותנא אותו היום נפטר אברהם אבינו ועשה יעקב אבינו תבשיל של עדשים לנחם את יצחק אביו.

From where do we know that Esav did not rebel during Avraham’s lifetime? For it is written: “Esav came in from the field, weary.” And a Tanna taught in a *beraisa*: On that day Avraham Avinu passed away and Yaakov Avinu made a stew of lentils to comfort his father, Yitzchak.

Esav came in from the field and was hungry. He saw Yaakov cooking a stew and he offered his *bechor* rites in exchange for the meal. Originally, the Gemara explains, the meal was intended to be a *seudas havra’ah* for Yitzchak, for on that day his father, Avraham, had died.

The Gemara describes the foods that Yaakov was preparing to serve Yitzchak Avinu at this *seudah*:

[ומ"ש של עדשים?] אמרי במערבא משמיה דרבה בר מרי מה עדשה זו אין לה פה אף אבל אין לו פה.
דבר אחר מה עדשה זו מגולגלת אף אבילות מגלגלת ומחזרת על באי העולם.

Why did Ya'akov choose lentils? In the West they explained in the name of Rabbah bar Mari: Just as a lentil has no "mouth," so too an *aveil* has no mouth (i.e. he sits silently). Another explanation: Just as a lentil is round, so too mourning goes around, befalling the inhabitants of the world.

The foods served at this meal should be round, since circular foods represent different emotions or ideas that relate to the mourner.¹²⁶

§

The **Levush (Hilchos Aveilus, 378:1)** explains the reason for the *seudas havra'ah*:

And it appears to me that the reason (for the *seudas havra'ah*) is included in *nechama*, that it shows the *aveil* that they care about him...

The Levush explains that the *seudas havra'ah* is supplied to the *aveil* by his *kerovim* in order to show him that people care for him. That, explains the Levush, is also the reason why a person can swap meals as long as they don't make a *tannai* that they are going to do so. Once you make a *tannai* with another person then it becomes binding and the *aveil* will view it as if the *seudah* is coming to him because of a prior obligation, not because anybody truly cares about him.

Rabbeinu Yeruchum (Toldos Adam viChava, Nesiv 28: Chelek 2) presents a different reason:

And the reason (for the *seudas havra'ah*) is because the *aveil* will be anxious and depressed because of the *meis* and he won't want to eat because he (feels like he) also wants to die. Therefore he can only eat from the food of others...

Upon returning from the *kevrach* the *aveil* will be so depressed and will feel like life has no purpose. Other people, therefore, are commanded to take care of him and tend to his needs.¹²⁷

¹²⁶ Rav Simon noted that the *minhag* is that people give round things like hard-boiled eggs and bagels. The **Hagahos Maimoni (Hilchos Eivel 4:7)** comments that some have the *minhag* to have meat and wine since the Gemara in Meseches Sanhedrin says that these things were only created in order to comfort mourners.

¹²⁷ Rabbeinu Yeruchum continues to say that in some areas the *minhag* developed to bring meals for all seven days. He explains that the reason for this is because when the poor would have to sit *shiva* and couldn't work, they wouldn't be able to make any money for meals and so they needed others to supply the food for the entire week. In order not to embarrass those who were poor, the *minhag* developed to give everyone food for the whole week. This is quoted in the **Be'er HaGolah (Y.D. 378:21)**. Rav Simon said he's seen this more in Sefardi/Syrian communities. Rav Simon also noted that **Rav Dovid Cohen** has this same *svara* in one of his *seforim* for the *minhag* to give Chanukah-gelt. Since there is a *din* that a poor person is required to sell the shirt of his back for Chanukah *neiros*, so in order to not embarrass those who have to collect for *neiros* Chanukah we give money to everyone.

The **Yerushalmi (Meseches Moed Kattan, 14a)** states:

הרי שאין לו מה לוכל ביום הראשון ובשני אינו עושה מלאכה בשלישי הוא עושה בצינעה אבל אמרו
תבוא מאירה לשכיניו שהצריכוהו לכך.

If he doesn't have what to eat, on the first and second day he can't work. On the third day he can do *melacha bi'tzina*, but a curse will come upon those neighbors who did not help him with his needs.

If an *aveil* doesn't have food for the first two days he is still forbidden to do *melacha*. On the third day he is able to work in private in order to make some money to buy himself food. The Yerushalmi warns, however, that a neighborhood that doesn't help an *aveil* who is struggling to get food will be cursed.

§

The **Yerushalmi (Meseches Berachos, 22b)** writes elsewhere:

כד דמך ר' יסא קביל רבי חייא בר ווא אביליו ואייכלון בשר ואשקיון חמר. כד דמך רבי חייא בר אבא
קביל רבי שמואל בר רב יצחק אביליו ואייכלון בשר ואשקיון חמר. כד דמך רבי שמואל בר רב יצחק
קביל רבי זעירא אביליו ואייכלון טלופחין מימר כמה דהוא מנהגא.

When Rav Yassa died, R' Chiya bar Va received (R' Yassa's) mourners and gave them meat to eat and wine to drink. When R' Chiya bar Abba died, R' Shmuel bar Rav Yitzchak received (R' Chiya bar Abba's) mourners and gave them meat to eat and wine to drink. When R' Shmuel bar Rav Yitzchak died, R' Zeira received (R' Shmuel bar Rav Yitzchak's) mourners and gave them lentils to eat. This is to say that one follows whatever is the prevalent custom.

The Yerushalmi continues:

רבי זעירא מימדך פקיד ומר לא תקבלון עלי יומא דין אבילא ולמחר מזרחיא.

When R' Zeira was about to die, he issued the following instruction: Do not accept for me on this day (i.e. the day of my burial) the mourner's meal; and tomorrow, fulfill the mourning (custom of accepting the *seudas havra'ah*.)

The **Pnei Moshe (ibid., d"ח mizrachaya)** explains that R' Zeira didn't want them to have a *seudas havra'ah* on the first day because he felt that it would lead to *shichrus*. On the next day, however, when there is no *inyan* of a *seudas havra'ah*, it would be controlled.

This raises the question: Is an *aveil* required to have a *seudas havra'ah*, or is the *halacha* merely that if he wants to eat he can't eat from his own food?

The **Shulchan Aruch (Y.D. 378:3)** discusses this *din*:

If the *aveil* decides that he does not want to eat on the first day, he is permitted to eat from his own food (on the second day,) even if that will be his first meal (since the *kevurah*).

The **Shach (ibid., s.k. 4)** writes explicitly:

And it is implied from here that if he wants to fast on the first day, he is permitted to.

This *din*, that the *aveil* doesn't have to eat on the first day if he doesn't want to, is based on the Yerushalmi where R' Zeira told his family not to eat a *seudas havra'ah* on the first day after his death.

§

The **Shulchan Aruch (Y.D. 378:9)** writes further on:

In a place where the *minhag* is to have meat, wine, and other tasty foods at the *seudas havra'ah*, they should do this. And the *aveil* should first make a *beracha* on eggs¹²⁸ or on lentils as a *zecher* to the *aveilus* and afterwards eat whatever they desire.

§

Another question that the Poskim deal with is that when we say an *aveil* who comes home can't eat from his own food, does that apply to everything he has or is that talking about the main food of his first meal?

The **Divrei Malkiel (Chelek 2: Siman 97)** of **R' Malkiel Tzvi Tennenbaum** has a *teshuva* where he writes that he thinks the simple *din* should be that it would be permitted to eat one's own light food because the straight reading of the Gemara is that others have to supply the bread (i.e. the main meal.) Nonetheless, he writes that *li'maaseh*, it is probably *assur* for one to eat one's own fruit because the Poskim write that he can't eat anything that is his based on other possible *girsas* that didn't necessarily have the word "להם." He brings a *ra'ayah* from the Yerushalmi, that from the fact that R' Zeirah told his relatives not to eat anything and they fasted rather than eat their own *peiros*, it must be that eating one's own food, even fruit, is forbidden on the first day.

The **Aruch HaShulchan (Y.D. 378:2)** also discusses this *din*. He writes:

And it appears that the *ikar* is the *lechem* like the *lashon* of the *pasuk* and the *lashon* of the Gemara: "It is *assur* for him to eat his own bread," but other *tavshilin* he is able to eat from his own food...

While the Aruch HaShulchan says that only the bread cannot be from the *aveil's* own food, the Divrei Malkiel disagrees and says that "ישראל קדושים" don't eat anything before the *seudas havra'ah*.

§

The **Gemara in Meseches Moed Kattan (19b-20a)** states:

הקובר את מתו שני ימים קודם הרגל מונה חמשה ימים אחר הרגל ומלאכתו נעשית ע"י אחרים ועבדיו ושפחותיו עושים בצינעא בתוך ביתו ואין רבים מתעסקין עמו שכבר נתעסקו בו ברגל. כללו של דבר: כל שהוא משום אבל רגל מפסיקו וכל שהוא משום עסקי רבים אין רגל מפסיקו.

One who buries his dead relative two days before the *regel*, counts five days of *shiva* after the *regel* during which his work may be done by others on his behalf and his slaves and maidservants may do work for him *bi'tzina* in his home; and the *rabim* do not occupy themselves with him since

¹²⁸ Though **R' Akiva Eiger (ibid.)** notes that the *aveil* shouldn't peel the eggs himself so it doesn't look like he is excessively hungry.

they already occupied themselves with him during the *regel*. The rule is: Whatever pertains to the *aveil* is curtailed by the festival, while whatever pertains to the *rabim*'s occupation with him is not curtailed by the festival.

The Gemara here is of the opinion that you need three days of *aveilus* prior to the *regel* in order to be *mivatel* the *shiva*. If, however, there were only two days of *aveilus* before Yom Tov arrived, everything is temporarily put on hold. After the *regel* the *shiva* resumes and they sit for the remaining five days. The Gemara says that after the *regel*, however, the people don't do *nichum aveilim* because "כבר נתעסקין בו ברגל."

Tosafos (20a, d"h she'kvar nisaskin bo ba'regel) explains what "כבר נתעסקין בו ברגל" means:

(They offered him) *tanchumin* and *beracha bi'shura*. And the Ri"t, who explained that this is regarding *havra'ah*, is against the Machzor Vitri who explains in the name of Rashi that 'we don't make *havra'ah* on the *regel* since there is no *aveilus*, and after the *regel* you also won't do it since the *seudah rishona* has been *batel*...

Tosafos quotes the Ri"t, that if someone loses a relative on Yom Tov, the *havra'ah* is done immediately on the *regel*. Rashi disagrees and says that you don't do the *havra'ah* on Yom Tov and since after Yom Tov the *yom rishon* has already passed, you won't do a *seudas havra'ah* at all.

The **Mordechai (Meseches Moed Kattan, no. 880)** writes:

Since he needs to count seven days after the *regel* it seems that you need to make a (*seudas*) *havra'ah* as it says "אכילה ראשונה אינו אוכל משלו" and he is now beginning his *aveilus*. And this is also the *din* if he hears of the passing of his *karov* on Shabbos. And some disagree for since the first day is pushed aside (because it is Yom Tov or Shabbos,) we don't do *havra'ah*.

The **Rambam (Hilchos Eivel 11:1)** is *michalek* between Yom Tov and Chol HaMoed:

Although *aveilus* is not observed at all during the festival, one should rend his garments because of his dead on a festival and uncover his shoulder. Similarly, we bring the *aveilim* a *seudas havra'ah* during a festival. All of the above applies during Chol HaMoed. But on Yom Tov, even on Yom Tov *sheini*, one should not rend his garments, nor uncover his shoulder, nor bring a *seudas havra'ah*.

The Rambam writes that on Yom Tov we don't have a *seudas havra'ah* while on Chol HaMoed we would.

The **Shulchan Aruch (Y.D. 401:4)** rules on this issue:

We do not uncover his shoulder on Chol HaMoed and we do not do *havra'ah* except for the *kerovim* of the *meis*, but the *kerovim* themselves do have *havra'ah*. And this is also the *halacha* on Chanukah, Purim, and Rosh Chodesh...but on Yom Tov, even on Yom Tov *sheini*, we do not tear *keriah* and we don't uncover his shoulder and we do not do a *seudas havra'ah*. And on Chol HaMoed for a *chacham* we do *havra'ah* for everyone, like we usually reserve for *kerovim*, because everyone is like his *kerovim*.

The Shulchan Aruch rules like the Rambam, that on Chol HaMoed we do have a *seudas havra'ah* for the *kerovim* but on Yom Tov we do not.

R' Akiva Eiger (Y.D. 401:4) in his glosses on the Shulchan Aruch points out interestingly that the Michaber's opinion is that one can even have *aveilus* on Yom Tov *sheini*, yet *havra'ah*, which is not as severe, will not be *docheh* Yom Tov.¹²⁹

¹²⁹ Unless you say that the Michaber only means that there is no *seudas havra'ah* when there will not be *aveilus* on Yom Tov *sheini* (i.e. if the *yom misah* and *yom kevarah* are not on the same day and it is thus not *midioraisa*.) But if there was going to be *aveilus*, perhaps there should also be *havra'ah*.

סימן יג: בענין איסור שאילת שלום ותלמוד תורה לאבל

The *pasuk* in **Yechezkel (24:17)** states:

(כד:יז) הָאֵנֶק דָּם מֵתִים אֲבָל לֹא־תַעֲשֶׂה פְּאָרָה חֲבוּשׁ עָלֶיךָ וּנְעָלֶיךָ תִּשִּׂים בְּרַגְלֶיךָ וְלֹא תַעֲטֶה עַל־שִׁפְּם וְלֶחֶם אֲנָשִׁים לֹא תֹאכַל:

Be silent from groaning; do not practice rites of mourning for the dead; don your headgear upon yourself and place your shoes upon your feet; do not veil yourself to the lips, and do not eat the bread of (other) people.

Hakadosh Baruch Hu told Yechezkel that his wife was going to die and that he should not observe mourning. This, we have learned, was a *mashal* that Klal Yisrael would suffer the *churban* Beis Hamikdash and that would not make sense to observe individual *aveilus* since the entire *tzibbur* will be in mourning. We saw that from this *nevuah* in which Hashem told Yechezkel not to mourn and do specific, we learn what actions should be performed by a mourner during a standard *aveilus*.

The one exception to the rule, where Hakadosh Baruch Hu told Yechezkel to do something and regular mourners follow that command as stated, is: “הָאֵנֶק דָּם,” that you have to be quiet. Yechezkel had to show in some way that he was an *aveil* and if he didn't do any public display of *aveilus*, nobody would have understood the *mashal*, that he is an *aveil* but is not observing *aveilus*.

The **Gemara in Meseches Moed Kattan (15a)** states:

אבל אסור בשאילת שלום דקאמר ליה רחמנא ליחזקאל (יחזקאל כד) "האנק דם."

An *aveil* is forbidden to engage in *sheilas shalom*¹³⁰ for the Merciful One said to Yechezkel, “Grieve and be silent.”

The Gemara says further on:

אבל אסור בדברי תורה מדקאמר רחמנא ליחזקאל "דום."

An *aveil* is prohibited to engage in studying the words of Torah from that which the Merciful One said to Yechezkel: “Be silent!”

Tosafos (ibid., d”h asur bi’sheilas shalom) explains:

(From the word “דום”) it is implied silence from offering *shalom*. And it also implies (a silence) from *talmud Torah*...and that which Yechezkel was *noheg aveilus* in a way of “הָאֵנֶק דָּם” and by all the other (*nihugei aveilus*) he did not do, this was because he needed to show in some small (external) way that he was an *aveil*...

¹³⁰ As a translation of “*shi’eilas shalom*” I will be using the colloquial term of “offering *shalom*” though a more proper definition would be “asking about a person’s wellbeing.”

It doesn't seem likely that a person would have to be completely silent throughout their period of *aveilus* and so the Chachamim had to make some sort of *hagdara* as to what degree one has to be "דום".

The Gemara in Meseches Moed Kattan (21b) outlines the specifics of these *dinim*:

תנו רבנן : אבל ג' ימים הראשונים אסור בשאילת שלום, משלשה ועד שבעה משיב ואינו שואל, מכאן ואילך שואל ומשיב כדרכו.

An *aveil* during the first three days of *shiva* is forbidden to greet others. From the third day until the seventh he may respond but may not greet. From then on he may greet others and when greeted, may respond in his normal fashion.

The Gemara continues with a story about the death of R' Akiva's son:

מעשה ומתו בניו של ר"ע נכנסו כל ישראל והספידום הספד גדול בשעת פטירתו, עמד ר"ע על ספסל גדול ואמר 'אחינו בית ישראל שמעו אפי' שני בני חתנים מנוחם הוא בשביל כבוד שעשיתם ואם בשביל עקיבא באתם הרי כמה עקיבא בשוק אלא כך אמרתם (תהילים לז) "תורת אלהיו בלבנו" וכ"ש ששכרם כפול. לכו לבתיכם לשלום. ' כבוד רבים שאני.

It happened that the sons of R' Akiva died and all of Yisrael entered and eulogized them greatly. As they took leave, R' Akiva stood on a large bench and said: '*Acheinu, Beis Yisrael*, listen. Even had I buried two married sons, I would have been consoled by the great honor that you have done for me. For if you came to honor Akiva, there are many other Akivas in the marketplace. Rather, (you obviously came because) you said: "The law of G-d is in his heart," (and you wished to honor the Torah.) All the more so is your reward doubled. Go to your homes in peace. (How could he offer *shalom*?) Showing respect to the public is different (and is even permitted during the first three days of *shiva*.)

R' Akiva got up and thanked everyone for coming because they had shown *kavod* to the Torah through their presence. He then offered them a parting greeting, "Go to your homes in peace." This, the Gemara says, was permitted even though it was considered extending a greeting, because *shi'eilas shalom* is permitted when it is a *kavod* for the *rabim*.

The Gemara continues:

מג' ועד ז' משיב ואינו שואל מכאן ואילך שואל ומשיב כדרכו : ורמינהו : המוצא את חבירו אבל בתוך ל' יום מדבר עמו תנחומין ואינו בשלומו לאחר ל' יום שואל בשלומו, ואינו מדבר עמו תנחומין. מתה אשתו ונשא אשה אחרת אינו רשאי ליכנס לביתו לדבר עמו תנחומין, מצאו בשוק אומר לו בשפה רפה ובכבוד ראש.

"From the third day until the seventh he may respond but may not greet. From then on he may greet others and, when greeted, may respond in his normal fashion": They contrasted this with the following *beraisa*: One who meets his friend who is in mourning, during the thirty days of *sheloshim* offers him condolences but does not greet him. After the thirty days of *sheloshim* he greets him and does not offer condolences. If his (friend's) wife died and he married another woman during *sheloshim*, he may not enter his home to offer him condolences, but if he meets him in the marketplace he offers him condolences quietly and seriously.

The first *beraisa* stated that after *shiva*, an *aveil* can greet and receive greetings. The later *beraisa* indicates that even after *shiva* one should not greet an *aveil*.

The Gemara answers the contradiction:

אמר רב אידי בר אבין : הוא שואל בשלום אחרים שאחרים שרויין בשלום אחרים אין שואלין בשלום שהוא אינו שרוי בשלום.

Rav Idi bar Avin said: Once *shiva* has passed he may greet others since those others are at peace. But others may not greet him until after *sheloshim*, since until then he is not at peace.

After *shiva* the *aveil* can give a '*shalom aleichem*' to someone else because the person he is saying it to is presumably in a state of *shalom*. Another person, however, is not permitted to offer *shalom* to the *aveil* because he is presumably not *bi'shalom* at this time. And even though it seems from the *lashon* of the *beraisa* that someone offered him *shalom* first, the Gemara is coming to explain that within *shiva* we tell the *aveil* that he shouldn't respond but after *shiva* he can respond even though the other person shouldn't have initiated.

The Gemara concludes:

א"ר מאיר המוצא את חברו אבל לאחר י"ב חדש ומדבר עמו תנחומין - למה הוא דומה? לאדם שנשברה רגלו וחיתה מצאו רופא ואמר לו כלך אצלי שאני שוברה וארפאנה כדי שתדע שסממנין שלי יפין.

R' Meir said: If one meets an *aveil* after his twelve months and offers him consolation, what is he likened too? To a man whose leg was broken and had been healed, and then when he met a physician the physician said, 'Come to me and let me break it and heal it again so that I can convince you that my medication is good.'

After the twelve months are up, one should no longer offer *tanchumin* to the *aveil* because it is like reopening already healed wounds.

There are two *dinim* being discussed here:

- 1) During *shiva*, the *aveil* is not permitted to offer *shalom* to others and others cannot offer him *shalom*.
- 2) Others cannot offer *shalom* to him for the first thirty days after the passing of *sha'ar kerovim* and for twelve months for a father or mother.

We have to understand exactly what it means to "give *shalom*."

The **Rambam (Hilchos Eivel 5:20)** summarizes these *dinim*:

Which source teaches that an *aveil* is forbidden to exchange greetings? The *pasuk* says, "הֲאֵינְךָ דֹם." For the entire first three days, if someone greets him, he does not respond. Instead, he notifies him that he is an *aveil*. From the third day until the seventh, when a person greets him, he should respond with greetings. From the seventh until the thirtieth day, he may greet others, but others should not greet him until after thirty days have passed. And when he is in *aveilus* for his father or mother, he should not be greeted until after twelve months. If an *aveil* is forbidden in *shi'eilas shalom*, one can certainly infer that he is forbidden to engage in lengthy talk and frivolity, as implied by the instruction: "דֹם." He should not hold an infant in his arms so that it will not lead him to laughter. And he should not enter a place of celebration, for example, a feasting hall or the like.

The Rambam indicates that it is not necessarily a *din* in “offering *shalom*” but really it is that he should minimize his speech and joyous interactions.

The **Yerushalmi (Meseches Berachos, 19b)** states:

תני במקום שנהגו לשאול אבילים בשבת שואלין, ובדרום שואלין.

A beraisa has taught: In a place where it is the custom to greet mourners on Shabbos, we may greet them. And in the South, they do greet (mourners on Shabbos.)

Different places had different *minhagim* as to whether one is able to offer *shalom* to an *aveil* on Shabbos.¹³¹

These *dinim* are all recorded in **Shulchan Aruch (Y.D. 385:1)**:

An *aveil* is forbidden to offer *shalom*. How is this (practiced)? On the first three days he cannot offer *shalom* to anyone and if others do not know that he is an *aveil* and offer him *shalom*, he may not respond to them but may make known to them that he is an *aveil*. From (after) day three until day seven he may not offer *shalom* to others and if others don't know that he is an *aveil* and offer him *shalom*, he may respond to them. From (after) day seven until day thirty he can offer *shalom* to others since they are *bi'shalom* but others may not offer him *shalom*. And certainly (from after day seven) he can respond to someone who offers him *shalom*. After thirty days he is like every other person. When do we say that (he is like every other person after thirty days)? (When he was mourning) for *sha'ar kerovim*. But for his father or his mother, he can offer *shalom* to others after *shiva* but others can't offer *shalom* to him until after twelve months.

The **Ramah (ibid.)** adds the *lashon* of the Rambam:

And once we see that offering *shalom* is forbidden, certainly it is forbidden to chatter excessively.

The Ramah continues:

And if it is for the *kavod* of the *rabim*, like if the *rabim* come to be *menachem aveil*, it is permitted to say to them, ‘Return to your homes in peace,’ because for the *kavod* of the *rabim* it is permitted. And some are lenient nowadays regarding offering *shalom* to an *aveil* after thirty days and there is no reason for these people to do this, unless you say that what we do nowadays is not really called *shi'eilas shalom*.¹³² And see O.C. Siman 83.

The Poskim discuss what is really considered “*shi'eilas shalom*” in another context, namely in the discussion of offering *shalom* to a person before davening in the morning.

The Ramah in his **Darkei Moshe HaAruch (Hilchos Tefillah, O.C. 89:2)** attempts to clarify what *shi'eilas shalom* is:

Rabbeinu Yeruchum writes in Toldos Adam vi'Chava (Nesiv 3: Chelek 3) that the explanation of ‘*shalom*’ is a sort of bow (lit. *kariah*), but to verbalize something is *mutar*, for example: ‘*tzafra*

¹³¹ Rav Simon noted that our *minhag* is that we do offer *shalom* on Shabbos. I later saw that the **Rambam (Hilchos Eivel 10:1)** writes that an *aveil* is permitted to offer *shalom* on Shabbos, even *bi'toch shiva*.

¹³² Rav Simon noted that this is interesting for the Ramah doesn't usually talk like this, presenting different *chilukim* and possibilities.

di'marei tav and things like that. And even bowing isn't *assur* unless you go out of your way to go to someone's house. And Rabbeinu Yonah wrote in Perek "Hayah Korei" that some say it is only *assur* if you mention the word "*shalom*" for that is one of the names of Hakadosh Baruch Hu.¹³³

It could be that these *dinim* carry over to the *dinim* of an *aveil* and accordingly the only type of *shi'eilas shalom* that would be forbidden would be to do this bowing acknowledgment or specifically saying something like '*shalom aleichem*.'¹³⁴

There is a *teshuva* in the **Lev Avraham**¹³⁵ (**Siman 95**) of **Rav Avraham Weinfeld** entitled "*Bi'inyan Amiras L'chaim LiAveil*." He explains that as we have seen, there are two *dinim* in *shi'eilas shalom li'aveil*. Firstly, there is the *issur* on the *aveil* to offer *shalom* and secondly, there is the *issur* on everyone else to offer *shalom* to him.

The *issur* of the *aveil* stems from the *pasuk* in Yechezkel, "הֲאַיִן דָּם". Accordingly, all of these things are going to be *assur* for him because we want him to remain silent. The *din* should really have been that an *aveil* shouldn't speak at all but since it would be too hard for most people to take a *ta'anis dibbur* for seven days, Chazal defined "דָּם" as *shi'eilas shalom* and *talmud Torah*.

Now, since the *yesod* of the *issur* is that really you should be silent, if you are going to be talking with everyone excessively but just not saying '*shalom*' then you are going to undermine the whole *issur*.

Rav Weinfeld writes that it could be that during *shiva*, the *issur* for a person to offer *shalom* to the *aveil* might stem from the same source of "הֲאַיִן דָּם". After *shiva* is over, however, there is an entirely different *issur* to offer *shalom* to the *aveil* for the next thirty days (for *sha'ar kerovim*) or twelve months (for a parent.)

Accordingly, he writes, that that which the Ramah mentions in the Darkei Moshe about bowing or saying the word '*shalom*,' that might only be a *chiluk* within the *din* of offering *shalom* during the twelve months. But since the *issur* of offering *shalom* during *shiva* stems from the *klal* of "דָּם," it could be that any sort of *shi'eilas shalom* would be *assur* during *shiva*.

He notes that the Nodeh biYehuda writes in the **Dagel Mirvavah (O.C. 127)** that *birkas kohanim* should be recited in a *beis aveil*, contrary to the opinion of the Shiurei Kenesses HaGedolah. However in Hilchos Tisha B'Av (**O.C. 559**) the Nodeh BiYehuda writes that we should not recite *birkas kohanim* on Tisha B'Av, this time following the opinion of the Shiurei Kenesses HaGedolah. Why does the Nodeh BiYehuda accept this ruling on Tisha B'Av but not by the regular *hilchos aveilus*?

¹³³ Rav Elyashiv's middle name is 'Shalom' so if you notice, whenever he writes his name, he never writes the '*mem*' because that would be completing *shem Hashem*.

¹³⁴ Rav Simon said that that when he was learning this with Rabbi Siff in Morasha he said that by leaving out '*shalom aleichem*' when greeting an *aveil*, perhaps that could be some sort of fulfillment of this *din*.

¹³⁵ Rav Simon noted that Rav Schachter likes this *sefer*.

The Lev Avraham explains that the problem with reciting *birkas kohanim* is that we say “וַיְשֹׁם לָהּ שְׁלוֹם” and so it is a problem of *shi'eilas shalom*. If the *aveil* is davening for the *tzibbur* in the *beis aveil* he is able to say *birkas kohanim* since the rest of the *tzibbur* is *bi'shalom*. The *issur* of *shi'eilas shalom* during *shiva*, as we've explained, stems from his requirement to remain silent, a requirement that is clearly pushed aside in face of regular *tefillah*. However, on Tisha B'Av, when the entire *tzibbur* is not *bi'shalom*, the *sheliach tzibbur* would not be able to offer the same *beracha* of “וַיְשֹׁם לָהּ שְׁלוֹם”.

The **Maharil (Shu"t Maharil, Siman 31:1)** writes that perhaps one should not send gifts or *mishloach manos* to an *aveil* for that is also a *shi'eilas shalom* of sorts. This is quoted by the **Ramah (Y.D. 385:3 and in O.C. 696:6)**.

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The other *din* in question is the *issur* of *talmud Torah* for an *aveil*.

The **Gemara in Meseches Ta'anis (30a)** states:

ת"ר: כל מצות הנוהגות באבל נוהגות בתשעה באב. אסור באכילה ובשתיה ובסיכה ובנעילת הסנדל ובתשמיש המטה ואסור לקרות בתורה ובנביאים ובכתובים ולשנות במשנה בתלמוד ובמדרש ובהלכות ובאגדות אבל קורא הוא במקום שאינו רגיל לקרות ושונה במקום שאינו רגיל לשנות וקורא בקינות באיוב ובדברים הרעים שבירמיה ותינוקות של בית רבן בטלין משום שנאמר (תהילים יט) "פקודי ה' ישרים משמחי לב."

All the restrictions that usually apply to an *aveil* apply to everyone on Tisha B'Av. It is forbidden to engage in eating, drinking, anointing oneself, wearing leather shoes, and marital relations. It is forbidden to read the Torah, Neviim, and Kesuvim, and to study the Mishna, Gemara, Midrash, Halachos, and Aggados. However, one may read (from Tanach) in a place that he is not accustomed to study. He may read from Kinos, Iyov, and the unpleasant passages of Yirmiyah. And the *tinokos shel beis rabban* must remain idle, because it is stated: “*The orders of Hashem are upright, gladdening the heart.*”

An *aveil* can learn something that he doesn't regularly learn because he won't enjoy it too much. He can learn things like *sefer Iyov* which is depressing, he can learn the parts of Yirmiyahu about the *churban*, and he can study the Kinos which are also *churban*-related. The Gemara learns all this from the *pasuk* (Tehillim 19:9): “פְּקוּדֵי ה' יִשְׂרָיִם” *לִבְּךָ מְשַׂמְחֵי-לֵב*”, that learning Torah gladdens the heart.

The **Gemara in Meseches Moed Kattan (21a)** states:

ת"ר: (ואלו) [אלו] דברים שאבל אסור בהן: אסור במלאכה וברחיצה ובסיכה ובתשמיש המטה ובנעילת הסנדל ואסור לקרות בתורה ובנביאים ובכתובים ולשנות במשנה במדרש ובהלכות (ובהש"ס) {ובתלמוד} ובאגדות...

These are the things forbidden to an *aveil*: He is forbidden to do *melacha*, to bathe, to anoint himself, to engage in marital relations, and to wear shoes. And he is forbidden to study the Torah, Neviim, or Kesuvim, or to study Mishna, Midrash, Halachos, Gemara, and Aggadah...

The Gemara teaches that an *aveil* is forbidden to learn different areas of Torah. The Gemara here in Meseches Moed Kattan does not permit an *aveil* to learn that which the Gemara in Meseches Ta'anis permits on Tisha B'Av.

Accordingly, **Tosafos (ibid. d"v vi'assur likros ba'Torah)** writes:

In the Teshuvos Rabbeinu Yitzchak he writes that **Rabbeinu Tam** forbade learning Iyov, Kinot, and the sad parts of Yirmayahu during his *aveilus*, for the Gemara does not teach (that *kulah*) like it does by Tisha B'Av in Meseches Ta'anis (30a). And in his old age he retracted his ruling and permitted it. And in the Yerushalmi it states that an *aveil* may study (any area of Torah) that he is not accustomed to, which implies that he can learn like he does on Tisha B'Av.

Initially, Rabbeinu Tam felt that the *heter* to learn the sad areas of Torah was only a *heter* on Tisha B'Av. An *aveil*, however, was forbidden to study any area of Torah. In his later years he changed his opinion and felt that those areas of Torah could be studied even during the *yimei aveilus*.

The **Ramban (Toras HaAdam, pg. 181)** proposes that perhaps the *issur* of *talmud* Torah is only on the first day but ultimately rejects such a notion:

...because *tefillin* is a *mitzvah*, they only forbade it on the first day. Therefore, perhaps *divrei* Torah, which is also a *mitzvah*, is only *assur* on the first day. But this is not correct for if so, *tashmish ha'mitah* (would be permitted after the first day for it) is also a *mitzvah* of *ona'ah*... (Therefore,) *divrei* Torah about which it is written that they are "משמחי לב" are *assur* for all seven days.

The Ramban writes that learning Torah is forbidden for an *aveil* for all seven days.

The **Meiri (Beis HaBechira, Meseches Moed Kattan 21a)** has an interesting comment related to this topic:

And it seems to me that they did not forbid *divrei* Torah to an *aveil* except in a way of *limud* and *girsah*, but to look into *seforim* that will inspire him to do *teshuva*, that they never forbade. And not only that, but it is fitting that he learn such things. From here it is seen that some are *noheg* like this, though one should refrain from learning everything on the first day. And some say that *divrei* Torah are only *assur* on the first day since *divrei* Torah are similar to *tefillin*. Nonetheless, the *issur* is stated *stam* and in *Aveil Rabbasi* (Perek 6) it is included amongst those things which are forbidden for the entire *shiva*.

Even if one doesn't agree that the *issur* is only on *yom rishon*, perhaps one could say that the only thing that was forbidden is real in-depth *talmud* Torah, but maybe to learn ideas that bring one to *teshuva* would be permitted.¹³⁶

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The *sefer Simchas HaTorah (Perek 1, pg. 31)* discusses the role of *hirhur bi'talmud* Torah in this discussion. We know on Tisha B'Av one would not be permitted to be *miharher* about a *sugya* in Meseches Bava Kamma because that would cause one to be "משמחי לב." However, perhaps this would be *mutar* for an *aveil* to do because his *issur* may only stem from "האגיק דם" and in such a fashion he is not speaking.

¹³⁶ Rav Simon noted that this comment is not *li'halacha*.

He writes that he found in the *sefer* of R' Yavrov, the **Divrei Soferim**, that he quotes from the **Shu"t Maharil (Siman 21)** the following:

There is no *chiluk* between speaking and *hirhur* regarding the *issur* of learning for even *hirhur* is *assur*. Since the *issur* is one of *simcha*, (*hirhur* is also *assur*) for there is *simcha* from *hirhur* like there is from *dibbur*. Sometimes the *simcha* (of *hirhur*) is even greater, for if a person reads all day but doesn't understand, what kind of *simcha* can he have?

The understanding of the Maharil is that *hirhur* is *assur* for an *aveil*. Nonetheless, the *sefer* quotes a different opinion from the Pnei Baruch quoting the **Leket Yosher**¹³⁷ (**Hilchos Semachos**) that it is *mutar* for an *aveil* to be *miharher bi'divrei* Torah as long as the words do not leave his lips. He explains, as we have said, that this is because the *issur* is "הִקְצַנְק דָּם" which only forbids speech.¹³⁸

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The **Yerushalmi in Meseches Moed Kattan (16a)** states:

...and if he is a person who is so passionate about Torah then (learning) is *mutar*.

For a person who is extraordinarily *davuk* to the Torah, the *issur* of *talmud* Torah is waived.¹³⁹

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The **Rosh (Meseches Moed Kattan, Perek Shelishi: Siman 28)** writes:

And *talmud* Torah is considered a *davar shebi'tzinah*. However, to review the *parsha* (i.e. שנים מקרא) is considered like reciting *Shema* and would be *mutar*. And if they call the *aveil* up to read from the Torah, he needs to go up, for if he declines that will be a *davar bi'farhesia*. And I heard that Rabbeinu Tam *z"l* would receive *shelishi* every Shabbos. It happened that when he was an *aveil* the *chazzan* didn't call him and so he went up on his own and said that since he was accustomed to get *shelishi* every Shabbos, if someone saw that he wasn't going up they would say he declined because of his *aveilus* and it would be a *davar bi'farhesia*.

The Rosh writes two *chiddushim*: Firstly, that an *aveil* is permitted to do שנים מקרא and secondly, that an *aveil* is permitted to receive an *aliyah* if he is called up.

¹³⁷ "A *chashuva sefer*," noted Rav Simon. He was a *talmid* of the Terumas HaDeshen and thus has a lot of *psakim* that came from him.

¹³⁸ Rav Simon didn't come to any specific conclusion in this matter but said that even if there is no technical *issur* to be *miharher* it might not be appropriate for a person to say that they are going to sit down now and think out a whole *sugya*. Rav Simon mentioned that he didn't think that this was necessarily tied to the famous *machlokes* between the **Shulchan Aruch** and the **Gra** regarding whether one needs to make *birkas ha'Torah* for *hirhur* because that *machlokes* might just be that certain types of *limud* require a *beracha*.

¹³⁹ The Brisker *vort* for this Yerushalmi is in the *sefer Shai LiTorah* by **Rav Shimon Yosef Meller** (who is very involved with Brisk and who also has the four volume *Uvdos ViHanhagos LiBeis Brisk* and the three volume biography on the Brisker Rav which Rav Simon noted has very good pictures.) The *vort* is that there is a *heter* for an *istanis* to wash themselves during *shiva* because for them, not washing is *mamash tza'ar* and it's not an issue of *ta'anug*. The same applies to one who will have *tza'ar* from not learning. They say that the Rogotchover also learned during *shiva*. I noticed, though it was not in the packet, that the **Beis Yosef (Y.D. 384:4 d"h garsinan)** mentions this Yerushalmi and writes explicitly that none of the Poskim mention it.

In Rav Soloveitchik's *sefer Shiurei HaRav*¹⁴⁰ (**Inyanei Aveilus, Siman 23**) he quotes the Rosh who writes that Rabbeinu Tam would take the *aliyah* on Shabbos because he was concerned that to not take the *aliyah* would be an act of *aveilus bi'farhesia*. On a weekday, however, an *aveil* should generally not get an *aliyah*. Nonetheless, we don't find anywhere that an *aveil* is required to leave during *kerias ha'Torah* and thus listening to *kerias ha'Torah* must not be included in the *issur limud* but is merely considered part of the "*seder ha'yom*."

Even if you say that there is a *heter* of "*seder ha'yom*," still, an *aveil* can't receive an *aliyah* because there is another *issur* of "מלמד תורה לאחרים" based on the **Gemara in Meseches Moed Kattan (21a)**.

The Gemara there states:

רבה בר בר חנה איתרעא ביה מילתא, סבר דלא למיפק לפירקא. אייל ר' חנינא אם היו רבים צריכין לו אינו נמנע. סבר לאוקמי אמורא עליה אייל רב תניא ובלבד שלא יעמיד תורגמן. ואלא היכי עביד? כי הא דתניא מעשה ומת בנו של ר' יהודה בר אילעאי ונכנס לבית המדרש ונכנס ר' חניניה בן עקביא וישב בצדו ולחש הוא לר' חניניה בן עקביא ור' חניניה בן עקביא לתורגמן ותורגמן השמיע לרבים.

An unfortunate thing happened to Rabbah bar bar Channa (i.e. he was an *aveil*). He thought that he would not go to deliver the regular public *shiur*. R' Chanina said to him: If the public needs him to give *shiur* he should not refrain. (Rabbah bar bar Channa) thought to set up a speaker at his side. Rav said to him: It was taught in a *beraisa*: "As long as he does not set up a *turgaman*." What then should he do? He should act in accordance with that which was taught in the *beraisa*: It happened that the son of R' Yehuda bar Ilai died and he entered the *beis midrash* (to give *shiur*). R' Chananya ben Akavya entered and sat next to him and (R' Yehuda bar Ilai) whispered to R' Chananya ben Akavya. R' Chananya ben Akavya in turn whispered to the *miturgaman*, and the *miturgaman* delivered it to the public.

The Gemara relates that when Rabbah bar bar Channa was an *aveil* he gave *shiur* to the *rabim* but did it in a noticeably different manner. He said the *shiur* to R' Chananya ben Akavya who in turn said it to a *miturgaman* who in turn said the *shiur* to the masses.

Rav Soloveitchik writes that the *pshat* in the Gemara is that he wasn't able to give the *shiur* in a regular fashion because he was an *aveil*. If he was going to give the *shiur* to the *rabim*, he could do it but would have to do it with a *shinui* to show that this *shiur* is different. He wasn't able to say it directly to the *miturgaman* because sometimes the regular *shiur* was delivered in that fashion. Only if they placed a middleman between the *maggid shiur* and the *miturgaman* would the *heker* be recognizable enough and could *matir* the regular *issur* of "מלמד תורה לאחרים."

The **Shulchan Aruch (Y.D. 384:1)** rules:

An *aveil* is forbidden for all seven days to read from Torah, Neviim, Kesuvim, Mishna, Gemara, Halachos, and Aggados. If the *rabim* need him to teach them it is permitted as long as he doesn't speak directly to the *miturgaman* but speaks to another who in turn speaks to the *miturgaman* who in turn makes (the *shiur*) heard by the *rabim*.

¹⁴⁰ See footnote no. 64

The **Ramah (ibid.)** adds:

Or he can *darshen* by himself (Mordechai, Hilchos Aveil). And he is able to *pasken* a question of *issur vi'heter* to an individual who asks him if there is nobody else but him, and (the questioner) needs him (to answer). However, he is forbidden to say *halacha* to his students. And that is the *minhag* even though some are *meikil*.

The **Aruch HaShulchan** has an idea that perhaps the *issur* of *shi'eilas shalom* is a *din* in the *beis aveil* and not just on the *aveil* alone.¹⁴¹ The same could apply to the *issur* of *talmud Torah*.¹⁴²

¹⁴¹ See footnote no. 171. One way is to learn that this is a *din* of “*beis aveil*,” which Rav Schachter is fond of saying. The other way is that it is just not proper to be offering *shalom* in such a place but there is no real *issur*. Rav Soloveitchik was very into “*halachik* categories” and so he was into this concept of “*beis aveil*.”

¹⁴² The simple understanding of this is how Rav Mordechai Willig explained, that it refers to the area where the *aveilim* are sitting *shiva*. But if a person wants to go upstairs and learn in their room, that wouldn't be a problem. Rav Soloveitchik felt that the *issur* was also a *din* in the *beis aveil*. He therefore wasn't into the long-standing *minhag* of learning Mishnayos in the *beis aveil* between Mincha and Ma'ariv. When Rav Simon's father was sitting *shiva*, Rav Simon taught the Mishnayos from Moed Kattan in between Mincha and Ma'ariv so that nobody could have a *taina*.

סימן יד: בענין איסור רחיצה ותספורת באבילות

The *pasuk* in **Shmuel II (14:2)** states:

- וישלח יואב תקועה ויקח משם אשה חכמה ויאמר אליה התאבליינא ולבשיינא בגדיי אכל ואל תטוכי
שמן והיית כאשה זה ימים רבים מתאבלת עלימת:

So Yoav sent to Tekoa and brought a wise woman from there. He said to her, “If you please, pretend to be a mourner. Wear garments of mourning and do not anoint yourself with oil; be like this for many days as a woman mourning over a dead person.”

From this *pasuk* the **Gemara in Meseches Moed Kattan (15b)** learns:

אבל אסור ברחיצה דכתיב (שמואל ב יד) “...ואל תטוכי שמן” ורחיצה בכלל סיכה.

An *aveil* is forbidden to engage in bathing for it is written: “...and do not anoint yourself with oil.” And bathing is included in anointing.

The **Gemara in Meseches Ta’anis (13b)** states:

והלכתא: אבל אסור לרחוץ כל גופו בין בחמין בין בצונן כל שבעה אבל פניו ידיו ורגליו בחמין אסור
בצונן מותר אבל לסוך אפילו כל שהוא אסור, ואם לעבר את הזוהמא מותר.

And the *halacha* is: An *aveil* may not wash his entire body either with hot or cold water during the entire *shiva*. However, regarding washing his face, his hands, and his feet, with hot water it is forbidden but with cold water it is permitted. However, to anoint oneself even minimally is prohibited, but if he does it to remove filth it is permitted.

An *aveil* is not permitted to wash his entire body with cold or hot water, but he may wash his face, hands, and feet, with cold water. One is not permitted to anoint themselves with anything for *ta’anug*, but may anoint in order to remove filth.

The **Shulchan Aruch (Y.D. 381:1)** states:

Rechitza: What is considered a forbidden *rechitza*? (If he washes) his entire body even in cold water. But if he washes his face, hands, and feet in hot water it is prohibited but in cold water it is permissible. And if he is covered in dirt and excrement he may wash himself normally and need not worry.

If a person is washing to merely get rid of filth and not for *ta’anug*, that is not included in this *issur*.¹⁴³

The **Ramah (ibid.)** adds:

And all of this is the *halacha* only during *shiva* but after that, it is *mutar* to bathe. Nonetheless, the *minhag* has become nowadays to forbid *rechitza* for all thirty days and even to wash your head is

¹⁴³ Rav Yitzchak Abadi told Rav Simon that most of the *rechitza* that people do nowadays is showering to either remove sweat or for general cleanliness. Therefore, that would not fall under this *issur* technically speaking. Many are *machmir* that they do not take showers during *shiva* but technically, if there is something that is really bothering someone and they want to shower to remove sweat, there could be room to be *meikil*.

forbidden. And one should not change the *minhag* because this is an early *minhag* enacted by the early (generations.)

The Ramah adds that the *minhag* is not enjoy *rechitza* throughout the entire *sheloshim*.

The Ramah quotes this *din* of forbidding *rechitza* throughout *sheloshim* from the **Maharam miRutenberg (Hilchos Semachos HaShalem, Siman 26; pg. 45)**. The Maharam writes:

However, even though we are *noheg* not to do *rechitza* throughout *sheloshim*, nonetheless, if a *regel* falls in the middle of *shiva* we are not *machmir* to such an extent and we permit one to wash close to nighttime. But they cannot shave.

We know that if a person is in the middle of *shiva* and a *regel* comes, the *shiva* is finished. Similarly, if a person is in the middle of *sheloshim* and a *regel* arrives, the *sheloshim* is *batel*. Though we generally assume that the *nihugei aveilus* are *batel* once *shiva* is *batel*, and *shiva* is only *batel* once the *regel* arrives, nonetheless, we allow an *aveil* to perform the *issurim* of *shiva* even on erev Yom Tov in preparation for the holiday (for ex. get a haircut.) This is true even though the *sheloshim* is not terminated when the *regel* comes and cutting hair is still *assur* throughout *sheloshim*. We know that this is so because the Maharam miRutenberg writes that the *aveil* can shower on *erev* Yom Tov even though he says that *rechitza* is a *din* in *sheloshim* as well.¹⁴⁴

Various reasons are given for the *minhag* quoted in the Maharam miRutenberg to forbid *rechitza* for all thirty days.

The **Bach (Y.D. 381:4)** writes:

And the Maharshah writes that we must say that they forbade *rechitza* (for all thirty days) since cutting hair is *assur* for all thirty days. If you go into the bathhouse we have to be concerned that maybe you will come to cut your hair as well, for it is the way of those who enter the bathhouse to shave and to fix the hairs on their head.

The **Ohr Zaruah (Hilchos Aveilus, no. 435)** gives a different explanation:

And they did not forbid *rechitza* even with hot water, except on *shiva*. And once he observes part of the seventh day he can wash on that day for we say מקצת היום ככולו... and that which we are noheg nowadays, that we don't wash even after shiva, is because we are afraid you will come to comb your hair (and thereby remove hairs) which is *assur* for thirty days.

Even if you don't want to say like the Maharshah quoted in the Bach, that one would come to get a haircut if we permitted *rechitza*, one can at least imagine that if an *aveil* were permitted to bathe, they would comb their hair afterwards and remove hairs in that fashion.

¹⁴⁴ For example: If a person is sitting *shiva* for a brother and an upcoming Yom Tov is going to be *mivatel* the *shiva*, so even though haircuts in this case are *assur* for the entire *sheloshim*, and the Yom Tov is not going to be *mivatel sheloshim*, still, we allow you to violate the *issurim* of *shiva* on *erev* Yom Tov and get a haircut.

The Ohr Zaruah writes a similar *lashon* elsewhere (**Hilchos Aveilus, no. 451**) in regards to whether a woman can do *rechitza* in preparation for her *shiva nekiyim* during *sheloshim*. He mentions that the *issur* of *rechitza* is really during *shiva* but everyone has accepted that we don't do *rechitza* for all of *sheloshim* because we are afraid it will lead to combing of the hair.¹⁴⁵ He writes that for the *shiva nekiyim*, however, we can be *meikil* on the *chumrah*.

R' Akiva Eiger (Y.D. 381:1) comments on the *lashon* of the Ramah, that nowadays we forbid “כל רחיצה כל שלושים.” He writes:

Since the *girsas* is “כל רחיצה כל שלושים” it implies that the Ramah instituted two *chumros*: 1) To cancel that *rechitza* which the Michaber permitted, namely washing one's face, hands, and feet with cold water. According to the *minhag*, all *rechitza* is *assur* – even face, hands, and feet with cold water. 2) He extends the time, that instead of applying the *issur* to *shiva*, he applies it to *sheloshim*. And for this reason the Shach writes that it should have said “רחיצה כל שלושים” which would have meant that all that the Michaber forbade during *shiva* is also forbidden during *sheloshim* because of the *minhag*.

While the Shulchan Aruch records that the *halacha* is that one is permitted to wash their face, hands, and feet with cold water during *shiva*, R' Akiva Eiger says that the Ramah comes to forbid even that degree of washing for the entire *sheloshim*. Therefore, the Shach clarifies and says that the *lashon* should really be “רחיצה כל שלושים” without the preceding “כל” and thus the *minhag* is to extend the *issurim* of *rechitza* that exist on *shiva* to the entire *sheloshim*.

Rav Hershel Schachter in his *sefer Nefesh HaRav (Likutei Hanhagos, pg. 198)* quotes Rav Yosef Dov Soloveitchik quoting his father, Rav Moshe Soloveitchik. Rav Soloveitchik understood that the *dinim* of the three weeks, nine days, and Tisha B'Av were not just arbitrary practices of *aveilus* but were patterned after different levels of *aveilus* that already exist. The first nine-days in the month of Av, he thought, are comparable to an *aveilus* on the level of *sheloshim*. The only reason why the *minhag* Ashkenaz is to not do *rechitza* during the nine days is because they follow the Ramah in Hilchos Aveilus that *rechitza* is a *din* in *sheloshim*. Nowadays, explained Rav Moshe Soloveitchik, when we are not *noheg* like the *minhag* of the Ramah, why should we be *machmir* during the nine days? Accordingly, all types of *rechitza* should be permitted during the nine days, at least up until after *chatzos* on *erev* Tisha B'Av.¹⁴⁶

¹⁴⁵ There are really two *girsas* in the Ohr Zaruah. One says it will lead to combing hair and the other says it will lead to some sort of *kibus* (laundering) but it makes sense that he would say *serika* (combing) in accordance with what he said earlier in no. 435.

¹⁴⁶ Rav Simon made two *ha'aros*: 1) The **Rambam (Hilchos Ta'anios 5:6)** explains the *minhag* of Klal Yisrael is not to bathe on the week Tisha B'Av falls out. The Rambam however never heard of this *minhag* of the Ramah not to bathe during *sheloshim*. It therefore must not be connected. 2) Who said we are not *choshesh* for the Ramah. Rav Moshe Soloveitchik said we see that we are not *choshesh* because people nowadays take showers after *shiva*, but it could be like we said from Rav Abadi, that the showers that people take *bi'zman ha'zeh* are to remove *zuhama* and could be *mutar* even during *shiva*. See Rav Koenigsberg's **Shiurei HaRav (Inyanei Tisha B'Av, Siman 11)** where he has this idea from Rav Moshe Soloveitchik as well.

The **Gemara** in **Meseches Moed Kattan (19b)** states:

אמר רב הונא בריה דרב יהושע: הכל מודין כשחל שלישי שלו להיות ערב הרגל שאסור ברחיצה עד הערב.

Rav Huna the son of Rav Yehoshua said: All agree that if his third day (of *shiva*) fell on *erev* Yom Tov then he may not bathe “until evening.”

Even though the Gemara says that *rechitza* is *assur* “עד הערב,” **Tosafos (ibid., d”h she’asur bi’rechitza)** explains:

And the Ri”t explains that “עד הערב” means until *erev* Yom Tov and (“עד הערב”) comes to teach that (*rechitza*) is not *mutar* on the morning (of *erev* Yom Tov).

Tosafos explains that when the Gemara says “עד הערב,” it doesn’t mean that *rechitza* is *assur* until *shekiah* but rather, that until late-afternoon it is forbidden to shower.

This is quoted in **Shulchan Aruch (Y.D. 399:5)**:

If one of the days of *aveilus*, excluding the seventh day, fell on *erev* Yom Tov, it is *mutar* to launder (clothing), though the clothing may not be worn until the evening. It is good to be careful not to launder until after *chatzos* in order that it is recognizable that he is laundering for the *regel*. However, to wash oneself is forbidden until the evening. And some permit washing after *tefillas* Mincha since it is close to the evening.

The **Ramah (ibid.)** adds:

And this (second opinion) is the *minhag*.

The accepted *minhag* is to permit an *aveil* to shower late in the day on *erev* Yom Tov in preparation for the *chag*.

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The **Gemara** in **Meseches Moed Kattan (14b)** states:

אבל אסור בתספורת מדקאמר להו רחמנא לבני אהרן (ויקרא י) “ראשיכם אל תפרעו” מכלל דכולי עלמא אסור.

An *aveil* is forbidden to engage in haircutting, for since the Merciful One said to the sons of Aharon: “Do not leave your heads unshorn,” it follows by implication that for all other mourners haircutting is forbidden.

Moshe told Aharon and his children that after the death of Nadav and Avihu they should not practice *aveilus*. Part of that command was to not let their hair grow long. From this we infer that an *aveil* is usually supposed to let his hair grow and not cut it.

What is the *zman issur* for this restriction of *tispores*?

The **Gemara** in **Meseches Moed Kattan (22b)** states:

על כל המתים כולן מסתפר לאחר ל’ יום על אביו ועל אמו עד שיגערו בו חבריו.

When mourning for all deceased relatives (except a parent), one may cut his hair after thirty days. (But when mourning) for one's father or mother, he may not cut his hair until his friends reproach him.

When one is mourning for *sha'ar kerovim*, the *issur* of cutting hair is a regular *din* in *sheloshim*. One who is mourning for a parent, however, cannot cut his hair “עד שיגערו בו חבריו,” until a friend comes to tell them that they look unkempt.¹⁴⁷

The simple understanding of the Gemara is that the *shiur* of “עד שיגערו בו חבריו” is a longer *zman* than *sheloshim*. But what if someone is an *aveil* for a parent, and a friend tells him that he looks unkempt on the tenth day? Could it be that we would permit him to cut his hair already at this point?

Nobody would say that this would be permitted *li'halacha* but there were certain individuals who proposed such an idea.

The **Maharshag (Shu"t Maharshag, Chelek 2: Siman 214)** writes:

...and according to this it is possible say another *kulah*, that one can cut their hair (if they have reached a level of) “עד שיגערו בו חבריו” even within the *sheloshim* for a father or mother. And don't ask: If so, it will come out that sometimes we are more *meikil* for an *aveil* mourning for a father or mother than for other *kerovim*, because that which we say that by other *kerovim*, that they can't cut their hair throughout *sheloshim*, certainly it is *mutar* for them to shave if they reach a level of “עד שיגערו בו חבריו” within those thirty days. Thirty days was only said as a *kulah*, that the *aveil* (for *sha'ar kerovim*) can shave after thirty days even if he hasn't yet reached a level of “עד שיגערו בו חבריו” at all.

The Maharshag explains that perhaps you can say that really the *din* across the board is that if an *aveil* reaches a state of “עד שיגערו בו חבריו” he is permitted to cut his hair/shave. The thirty days that the Gemara says for *sha'ar kerovim* is really a *kulah*, that if after thirty days the person still doesn't look unkempt, they can cut their hair regardless. By an *aveil* mourning for a parent, however, there is no limit of thirty days and they can't cut their hair until they look unkempt.¹⁴⁸

The **Nodeh BiYehuda (Mehadura Kamma, O.C. Siman 14)** has a *teshuva* in which he discusses what happens if an individual's *zman hagarah* (time when they look unkempt) comes during Chol HaMoed. A person is really supposed to get a haircut before Yom Tov but because he was an *aveil* he wasn't permitted to. Is this case included in those circumstances listed in Meseches Moed Kattan in which a person is permitted to get a haircut on the *regel* since they had a legitimate reason for not getting one prior to the *regel*?

¹⁴⁷ Poskim point out that this is not literal and if you have no friends, or you're on a desert island, or nobody wants to come over to you, you don't have to be more *machmir*. If you look at yourself in a mirror and you see that you look unkempt then that is “עד שיגערו בו חבריו.”

¹⁴⁸ The Maharshag is only saying this as a suggestion but not *li'halacha* and he writes himself that the Poskim and Beis Yosef don't write this.

Furthermore, what if a person is mourning the loss of his brother and day twenty falls on *erev Yom Tov*? We saw previously that since when the *regel* will arrive the *sheloshim* will be *batel*, we permit already on *erev Yom Tov* the *issurim* that will become *mutar*. Accordingly, if he was mourning for a brother for whom he is only obligated to observe *sheloshim*, we would tell him that he could get a haircut on *erev Yom Tov*.

Let's say, however, someone lost a parent and day twenty is *erev Yom Tov*. If the *zman hagarah* has already come would we say that it would be *mutar* to get a haircut on *erev Yom Tov*? He writes that *mi'ikar ha'din* since the *sheloshim* is going to be terminated and he has reached *ga'arah*, he can get a haircut before the *regel*. Nonetheless, at the end of the *teshuva* he writes that he doesn't know if this would be the practice *lima'aseh*.¹⁴⁹

The **Shulchan Aruch (Y.D. 390:4)** rules:

(An *aveil* mourning) for *sha'ar kerovim* can shave after thirty days. (If he is mourning) for his father and mother (the *shiur* is) “עד שיגערו בו חבריו.”

The **Ramah (ibid.)** adds:

And it is not enough if the *regel* intercedes before he reaches “שיגערו בו חבריו.” And see O.C. Siman 548. And the *shiur* for *ga'arah* is debated but the *minhag* is to wait three months.¹⁵⁰ And in these places the *minhag* is that we don't cut hair (when mourning) for a mother or father for all twelve months...

The **Maharam Shik (Shu"t Maharam Shik, Y.D. 371)** writes that when the Ramah says that the *shiur* of *haga'ara* is three months, really that is counted from the last time one received a haircut and not from the onset of *aveilus*. Nonetheless, he writes that the practiced *minhag* in his area was that one waited a full three months from the time of the *misah* before cutting.¹⁵¹

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R' Akiva Eiger (Chiddushei R' Akiva Eiger, Y.D. 390:4) comments on the Ramah who quotes the opinion of the Ohr Zaruah. He writes:

In the Darkei Moshe he brings the Ohr Zaruah and this is his *lashon*: “I was asked if one is able to cut their hair within the twelve months after the passing of one's father if he is dealing with a job

¹⁴⁹ Rav Simon noted that this *shaila* comes up but the *minhag* is generally not to be *meikil* like this Nodeh BiYehuda.

¹⁵⁰ There are various approaches regarding the Ramah's “three months.” **Rav Aharon Felder** told Rav Simon that Rav Moshe felt that “three months” meant that you should take your regular haircut visit and multiply it by two. If you get a haircut once a month then you should wait two months before getting a haircut. Regarding whether the “three months” is from the last haircut or from the time that the *aveilus* began Rav Felder said that Rav Moshe thought it was from the time of the last haircut. In the *sefer Shulchan Gevoah (Y.D. 390, footnote no. 12)* he comments on the Ramah and says that “three months” was in the Ramah's area, “but in our land, after thirty days and even on day-thirty we shave. And this is what the *rav* himself wrote in the Darkei Moshe.” There is a *teshuva* of the **Divrei Nechemia (Y.D. Teshuva 26)**, a *talmid* of the Alter Rebbe, where he has four different ways to learn the Ramah's “three months.” Rav Simon's “friend from Satmar,” Rav Guttman, told him that if you want to learn *iyun* you should always look in the Divrei Nechemiah.

¹⁵¹ The Maharam Shik also quotes from the **Nodeh BiYehuda (Mehadura Kamma, Siman 14)** that the *shiur ga'arah* might be sooner for shaving the face then it is for the head. People say the same thing from **Rav Soloveitchik**. The difference is that the Nodeh BiYehuda said that the *shiur ga'arah* by shaving was probably after a few weeks while the Rav thought that it could be every day.

in which he is found amongst the noblemen (i.e. non-Jews)...(The *halacha* is that) they did not mention the twelve months regarding growing the hair except “עד שיגערו בו חבריו.” And that which we are *noheg*, not to cut the hair for twelve months is only a *chumra bi'alma* for the honor of the father or mother. Therefore, you are permitted to cut your hair as per usual.” What is implied is that the *ikar din* is that after one waits the *shiur ga'arah*, they are permitted to cut their hair afterwards in a regular fashion.

R' Akiva Eiger writes that from the *lashon* of the Ohr Zaruah it is implied that an *aveil* has to wait the *shiur* of “עד שיגערו בו חבריו” only once and then after that, even if it is within the first twelve months of the *misah*, he can cut his hair as often as he would like.¹⁵²

Rav Moshe Feinstein (Igros Moshe, Y.D. Chelek 3: Siman 156) writes that he thinks that it is proper to wait the *shiur ga'arah* each time unless there is some sort of *tzorech* in which case he writes that one can rely on R' Akiva Eiger.

§

Are the *dinim* the same for a woman who is an *aveil* mourning for her parents?

The **Gemara in Meseches Yevamos (43a)** states:

אמר רב חסדא : ק"ו ומה במקום שאסור לכבס מותר ליארס מקום שמותר לכבס אינו דין שמותר ליארס?

Rav Chisda said: There is a *kal vichomer* – for if in a period during which it is forbidden to launder (i.e. the week of Tisha B'Av) it is permissible to enter into *eirusin*, then in a period during which it is permissible to launder (i.e. the *sheloshim* of an *aveil*) is it not logical that it is permissible to enter in *eirusin*?

The Mishna in Meseches Yevamos teaches that a woman must wait three months before remarrying after a previous marriage. One opinion in the Mishna, however, teaches that the *kiddushin* can be done right away for everyone except an *almanah* since she is in *aveilus*. Rav Chisda in the Gemara disagrees and says even an *almanah* can get engaged right away based on the following a *kal vi'chomer*: If a person cannot bathe on the *shevuah she'chal bo* (i.e. the week Tisha B'Av falls out on) but can get engaged at that time, certainly at a time when a person can bathe (i.e. after *shiva*) they should be permitted to get engaged.

The **Ramban (Toras HaAdam, pg. 195)** quotes this Gemara though with a slightly different *girsas*. He writes:

In Perek “*HaCholetz*” R' Yose says: All women are permitted to get engaged except for an *almanah* for she is an *aveil*. And how long is her *aveilus*? Thirty days. Rav Chisda said: It should be a *kal vi'chomer* – if at a time that cutting hair is forbidden it is permissible to get engaged, when it is *mutar* to cut hair doesn't it make sense that person should be permitted to get engaged? This means: A woman is permitted to cut her hair and launder after *shiva*. And this is an explicit *beraisa* in Aveil (Rabbasi): A woman is permitted to cut her hair after *shiva*...but Rashi *z"l* doesn't have this *girsas* of “to cut (her hair)”...but has “to launder.”

¹⁵² See Rav Zinner's **Nittei Gavriel (Perek 3)** for a discussion of this topic and related *inyanim*.

The Ramban quotes a different *girsas* of R' Chisda's *kal vi'chomer*. If cutting hair is forbidden on *shevuah she'chal bo* yet getting engaged is *mutar*, shouldn't an *almanah* certainly be permitted to get engaged once she is permitted to cut her hair after *shiva*? Nonetheless, he writes that Rashi had a different *girsas*, one that said she is only permitted to launder after *shiva*.

The **Tur (Y.D. 390:5)** quotes this debated *beraisa* from Aveil Rabbasi:

It is taught in Aveil Rabbasi: A woman is permitted to cut her hair after *shiva*. And Rav Alfas also writes that a woman is permitted to cut her hair after *shiva*. And the Ramban questions: If so, she will be permitted to wear pressed clothing and so all the *mitzvos* of *sheloshim* will not apply to her. Therefore, it seems that according to those *meforshim* who permit a woman to remove hair, they mean to apply a cream on her face...in order that she not be disgusting to her husband. But to actually cut her hair is forbidden for all thirty days like it is for a man. This is how my father, the Rosh z"l, wrote as well.

The Tur explains from the Ramban that even those who permitted *tispores* after *shiva* for a woman, they only meant to permit a woman to apply a certain cream that would remove hairs from her face. A woman was never actually permitted to cut her hair and in fact, the *issur* of cutting her hair applies for all thirty days like it does for a man.

The **Rambam (Hilchos Eivel 6:3)**, however, agrees with the *girsas* of the Rif. He writes:

What does the prohibition against cutting one's hair involve? Just as it is forbidden to cut any of the hair of one's body, to shave one's mustache, or to cut one's nails with a utensil through the seven days of *shiva*; so too, he is forbidden throughout these thirty days. To whom does the above apply? To a man. A woman, however, is permitted to remove hair after seven days, though a man must wait thirty days. For one's father or mother, a man is obligated to let his hair grow until it becomes noticeably long or until his colleagues rebuke him (for not attending to his appearance).

The Rambam, like the Rif, writes explicitly that women are permitted to cut their hair immediately after *shiva*.

Accordingly, the **Shulchan Aruch (Y.D. 390:5)** writes:

A woman is permitted to cut her hair after *shiva*.

The **Ramah (ibid.)**, however, disagrees:

And some forbid it even for a woman and that is the *ikar*.

Rav Gavriel Zinner in his **Nittei Gavriel (3:9)** writes that the practice is that since there is not really a *shiur ga'arah* for women, they should wait until after *sheloshim* to cut their hair.¹⁵³

¹⁵³ Rav Simon said that Rav Felder said that Rav Moshe said similarly, that it is better for them to wait until after *sheloshim*.

סימן טו: בענין איסור כניסה לבית המשתה ואיסור שמחת מריעות לאבל

The *shailos* about attending *simchas* and events like a *kiddush* or a party are of the most common that a person asks during their period of *aveilus* and so it is important to be familiar with the *dinim* of this topic.

§

The **Gemara** in **Meseches Moed Kattan (22b)** states:

על כל המתים כולן נכנס לבית השמחה לאחר לי יום על אביו ועל אמו לאחר י"ב חדש.

For all *meisim* (other than one's father or mother), one may enter a house of celebration after thirty days. For one's father or mother they can enter only after twelve months.

The Gemara states that there is a restriction for an *aveil* to partake in a festive occasion.

We have to examine and determine what exactly is included in this restriction because we know that there are so many different "festive occasions" that come up (i.e. weddings, bar-mitzvahs, graduation, Chanukah parties, etc.)

The Gemara continues:

אמר רבה בר בר חנה: ולשמחת מריעות מותר ליכנס לאלתר. והא תניא לשמחה שלשים ולמריעות שלשים? ל"ק הא באריסותא הא בפורענות.

Rabbah bar bar Chanah said: But to a celebration of friendship (lit. *simcha mei'reius*), he may enter immediately. But it was taught in a *beraisa*: To attend a celebration an *aveil* must wait thirty days, and to attend a celebration of friendship he must wait thirty days? It is not a question – this *beraisa* (which forbids) refers to the initial banquet (*arisusa*) whereas this *beraisa* (which permits) refers to the reciprocal banquet (i.e. it was his turn in the rotation to host.)

The Gemara makes a distinction between "*arisusa*" and "*puranusa*" and says that for "*puranusa*" an *aveil* is able to partake.

The **Rambam (Hilchos Eivel 6:6-7)** categorizes these terms. He writes:

(6) A friendly get-together (lit. *simcha mei'reius*) which a person is obligated to pay for immediately may be held immediately after *shiva*. If, however, he is not obligated to pay for such a gathering, he is forbidden to enter one until after thirty days.

(7) When does the above apply? When one is mourning for other deceased relatives. When one is mourning for one's father or mother, by contrast, under all circumstances, one is forbidden to enter a friendly gathering for twelve months.

They used to have a rotation in which different families would make a "*simcha mei'reius*." One week one family would make and sponsor it and the next week a different family would pay for it. The Rambam writes that if a person is mourning over one of the *sha'ar kerovim*, if his turn to make the *simcha mei'reius* comes up during *sheloshim*, he is permitted to make it since it is not a real *simcha* for him. If, however, he

is mourning for a father or mother he cannot partake in the *simcha mei'reius* in any capacity for all twelve months.

Meseches Semachos (Perek 9) presents a vague guideline of what this *issur* is:

For one who is mourning for all *meisim* (i.e. *sha'ar kerovim*) it is forbidden to go to a *beis ha'mishte* within the first thirty days. For his father or for his mother it is forbidden for all twelve months unless it is something *li'shem shamayim*.

It is unclear what exactly the *beraisa* means when it says a person may go to a *simcha* if it is *li'shem shamayim* but we will examine different explanations give by the Rishonim.

The **Yerushalmi (Meseches Moed Kattan, 19a)** states:

על כל המתים הוא אסור לילך בסעודה עד שלשים יום, על אביו ועל אמו עד שנים עשר חדש. אם היתה חבורת מצוה או קידוש החדש מותר.

(When one is an *aveil*) for all *meisim* (i.e. *sha'ar kerovim*) it is forbidden to go to a *seudah* for thirty days. (If he is mourning) for his father or for his mother (it is forbidden) for twelve months. If, however, it was a *mitzvah* gathering or for *kiddush ha'chodesh*, it is permitted.

The Yerushalmi doesn't use the words "לשם שמים" like the Meseches Semachos but has a similar *lashon* of "חבורת מצוה." The **Korban HaEidah (ibid., d"h im hysa chaburas mitzvah)** explains that a *chaburas mitzvah* would be a *chaburah* to eat something like the *korban pesach*, *kodashim*, or *ma'aser sheini*.

The **Rosh (Meseches Moed Kattan, Perek Shelishi: Siman 42)** quotes a question posed by the **Ra'avad**. The Rosh quotes the Gemara in Meseches Moed Kattan (22b) and then writes:

And the Ra'avad *z"l* asked: Here (in Meseches Moed Kattan) it is implied that a *seudas mitzvah* is a greater *issur* than a *seudas rishus*. But in Avel Rabbasi (Perek 9) it is written "...unless it is *li'shem shamayim*" which implies that there is a greater *heter* for a *seudas mitzvah*. And he answers that here, when it says "*li'shem shamayim*" is permitted, that is where he is marrying off a *yasom* and *yesomah*, or a poor man and woman, *li'shem shamayim* and if he doesn't come then the whole event will be canceled. But if the wedding is for wealthy individuals and he is only invited for his *kavod*, he not permitted to attend.

The Ra'avad explains that "*li'shem shamayim*" is not interchangeable with "*seudas mitzvah*." "*Li'shem shamayim*" means that the *aveil* involved is orchestrating the *simcha* and if he doesn't attend the entire *simcha* might not happen.¹⁵⁴ If, however, it is just a regular *seudas mitzvah* then there is no *heter* for an *aveil* to attend.

The **Aruch HaShulchan (Y.D. 391:5)** quotes this Rosh and the opinion of the Ra'avad and extends the Ra'avad's *svara*. He writes:

¹⁵⁴ Weddings then were not like weddings today. Today, you hire a caterer and there is no one person who is so crucial that if they aren't there the wedding can't happen. Back then, there were a few select individuals who were responsible for arranging everything and if they couldn't come then there could be a real concern that the wedding wouldn't happen.

And that which they permitted for a “*mitzvah*” or “*li’shem shamayim*,” this is one of two things. Either he is: (1) Dealing with a *yasom* and *yesomah* and is arranging their wedding and without him there the wedding will not happen, though that doesn’t necessarily mean that the *shidduch* will be entirely *mivatel*. Rather, that the *chassan* and *kallah* will be distressed (that he is not present), or (2) That he has some *chiyuv mitzvah*, like the *korban pesach* or *kodashim*, which is not relevant nowadays. Accordingly, (attending) a *bris milah* or *pidyon ha’ben* would be forbidden, for at every *seudas mitzvah* there is *simcha*.

The *heter* of the Ra’avad is either: 1) If he is the one arranging the wedding and without him there the *chassan* and *kallah* would be upset, or 2) If there is some sort of *chiyuv mitzvah*, which the Aruch HaShulchan writes does not apply *bi’zman ha’zeh*.

This Aruch HaShulchan became one of the *heterim* used to permit a parent who is within their twelve months to attend the wedding of their child, for without them there, there would be a tremendous loss of *simcha* for the *chassan* and *kallah*.

The **Rosh (Meseches Yevamos, Perek Revii: Siman 27)** writes:

And Rav Yosef HaLevi z”l brought a proof that they did not forbid anything except a *beis simcha shel rishus* as it says in Meseches Semachos (Perek 9)...

The Rosh quotes Rav Yosef HaLevi that any *seudas mitzvah* would be *mutar* and even though the Gemara rules differently, perhaps we don’t *pasken* like that Gemara. If we *paskened* like this Rosh it would be a very big *kulah*.

The **Teshuvos Maimoni (Teshuvos HaShaichos LiSefer Shoftim, no. 19)** quotes this opinion and writes:

And R’ Yosef, and his teacher Rabbeinu Yehuda, heard that Rabbeinu Ya’akov (i.e. Rabbeinu Tam) and Rabbeinu Yitzchak would permit (an *aveil*) to go to a *seudas chassan*.

These Rishonim seem to permit an *aveil* to attend any event that would be considered a *seudas mitzvah*, even a *seudas chassan*.

The **Nimukei Yosef (Meseches Moed Kattan, 14a *bi’dapei haRif*)** writes:

And if you’ll say that here it seems that there is a greater *heter* for a *seudas rishus* than for a wedding, yet in Avel Rabbasi it is taught: “For all *meisim* etc. unless it is *li’shem shamayim*,” which sounds like there is a greater *heter* for a *seudas mitzvah*. One can answer that when it says “*li’shem shamayim*” it is dealing with a *seudas mitzvah* that has no *simcha*, like a *bris milah* where the baby is in pain. Or perhaps it is where he is marrying off a *yasom* and *yesomah* and if he doesn’t attend the event will be cancelled.

The Nimukei Yosef writes that one is not permitted, like Rav Yosef HaLevi said, to simply attend any *seudas mitzvah*. However, if the *seudas mitzvah* is “*li’shem shamayim*” and there is no unique *simcha* to the event, then it would be permitted.¹⁵⁵

¹⁵⁵ Rav Simon noted that there are essentially two types of *seudas mitzvah* that the Poskim mention: 1) *chasana* related *seudas mitzvah* and 2) everything else. Meals related to a *chasana* (for ex. wedding meal, *sheva berachos*) are called a

The **Ramban (Toras HaAdam, Section: Bi'Simchas Keitzad; pg. 197)** adds another relevant point to the discussion:

And some Chachamim were *noheg* to be *meikil* to permit an *aveil* to enter a *beis ha'mishteh* and to remain there during the *simcha* and during the meal, for they said that they never forbade anything but eating at the *mishteh*, but to merely enter would be permitted, for there is no *simcha* without eating and drinking.

Nonetheless, the Ramban concludes:

And it is logical to say that the *issur* of entering a *beis ha'simcha* was said whether one eats or whether one enters while they are playing music for the *chassan* and *kallah*, for there is no *aveilus* in a place of *simcha*.

The Ramban says that the *ikar din* is that it is forbidden for an *aveil* even to enter the *beis ha'simcha*, even if they do not plan on eating.

The **Tur (Y.D. 391:3)** summarizes the different opinions on the matter. He writes:

And some are *noheg* to be *meikil* regarding entering a *beis ha'mishteh* and to sit there during the *simcha*. They say that they never forbade anything but eating with them at the time of the *simcha*. But to merely enter would be permitted for there is no *simcha* without food and drink. And the *rav* R' Yehuda Albartzaloni wrote like this, that some are *noheg* that during their twelve months they will enter to the *chuppa* to hear the *beracha* or to visit but will not eat. And some are *machmir* not to enter at all. And the Ramban wrote that it is forbidden to enter at all, whether one eats or whether they are there when they are playing music for the *chassan* and *kallah*. And my father, my master, the *Rosh z"l* wrote like this as well and this is the *minhag Ashkenaz*, that for all twelve months one should stand outside the house and listen to the *berachos* but should not enter the house at all.

The **Beis Yosef (ibid. d"h *uli'inyan*)** writes accordingly:

And regarding the *halacha*, since the Ramban and the Rosh are in agreement, this is the practice.

The Beis Yosef agrees that an *aveil* should not even enter the *beis ha'mishteh* but should remain outside, listening in.

How are all these different *shitos* applied *li'halacha*?

The **Shulchan Aruch (Y.D. 391:1)** rules:

An *aveil* is forbidden to be joyous and therefore, he should not take a baby on his lap during *shiva* lest he come to act playful.

In the next *halacha* (**Y.D. 391:2**) the Michaber writes:

“*seudas mitzvah she'yeish bo simcha*,” while those things not *chasuna* related (for ex. *bar mitzvah*, *siyum*, *milah*, *pidyon ha'ben*) are called a “*seudas mitzvah she'ein bo simcha*” even though these events are certainly big “*semachos*.”

One mourning for *sha'ar kerovim* may enter a *beis ha'mishteh* after thirty days. (One mourning) for his father or for his mother (may enter) after twelve months. Even if it is a leap year it is permissible for him to enter after twelve months. However, a *simchas mei'reius* for which he was obligated to pay for immediately he is permitted to do right after *shiva*. But if he is not obligated to pay, it is forbidden for him to enter until after thirty days. (If he is mourning) for his father or mother, even if he is obligated to pay, it is forbidden until after twelve months.

The **Ramah (ibid.)** adds:

And for a *chaburas mitzvah*, like marrying off a *yasom* and *yesomah li'shem shamayim*, where if he does not go then the whole event will be canceled, it is permissible for him to go after *sheloshim*. However, within *sheloshim*, all types of *seudas mitzvah* are forbidden. However, for a *seudas mitzvah* that has no *simcha* – for example: a *pidyon ha'ben* or a *bris milah*, it is permissible for him to attend. And it is permissible even within *shiva* as long as he doesn't leave his house. And some forbid a *seudas bris milah*. And the minhag is to not eat at any seudah for the whole twelve months if it is outside of his house. If it is inside his house we are lenient to permit him to eat at a *seudas bris milah* and certainly at *seudah she'ein bahem simcha*, but for a *seudas nissuin* we are *machmir*. (If) an *aveil* is the *ba'al bris* or the *mohel*, he should wear *bigdei* Shabbos until after the *milah* and he is permitted to enter to eat there if it is after his *sheloshim* even though the *milah* is not in his house.

What comes out of all this is that the *minhag* Ashkenaz is that an *aveil* does not go to any *simcha*, big or small and eat there. If he is not eating, he may enter to say '*mazal tov*' or to even sit there and listen to the *divrei* Torah.^{156, 157}

The **Shulchan Aruch (Y.D. 391:3)** continues:

To enter to the *chuppah* at a time when they are not eating in order to hear the *berachos* is permitted by some. And some forbid (anything more than) standing outside the house and listening to the *berachos* (from the outside).

The **Ramah (ibid.)** adds:

But he may not enter at all at a time when they are playing songs for the *chassan* and *kallah*. And this is the *minhag* in Ashkenaz and in our *medinos*. And all of this is (dealing) with the house in which the *chasana*, eating, drinking, and rejoicing are taking place, but at the *chuppah*, which is done in the *beis ha'kenesses*¹⁵⁸, where they are making the *birchos eirusin* and *nissuin* and there is no *simcha* at all¹⁵⁹, it is *mutar* for him to attend immediately after *shiva*.

¹⁵⁶ Of course provided that there is no music being played, as the **Ramah (Y.D. 391:3)** writes.

¹⁵⁷ The **Chida**, however, writes, and this can be found in the **Yalkut Yosef** and **Rav Yitzchak Abadi's teshuvos**, that this *chumra* not to eat at any *seudah* was not accepted by the Sefardim and therefore they are permitted to go and eat at a *seudah* that doesn't have music, provided that it's not a *seudas nissuin* (wedding, *sheva berachos*). Rav Abadi writes in his *teshuvos* that originally he thought there should be no *chiluk* between Sefardim and Ashkenazim because even though it's only in the Ramah, there is no indication in the Beis Yoesf that he disagreed. Then he was shown the Chida and he said his *da'as* is *batel* to the Chida in regards to this *chiluk*.

¹⁵⁸ Rav Simon pointed out tangentially that this is one of the places where we see that Jews used to get married in shuls even though there is a whole discussion whether one can do this or whether it is *chukas akum*. It is unbelievable how many things stem from *chukas akum* but are sometimes *mutar* and other times *assur*. All the Hungarian rabbis signed that it is an *issur gamur* to get married in a shul because that was copied from the church. **Rav Dovid Lifschitz** would never attend a wedding in a shul. That was part of his *mesorah*. Some say even the *derasha* under the *chuppah* comes from the church. The *derasha* in shul on Shabbos morning also comes from the church. Old European *rabbonim*, like R' Bick z"l, would only *darshen* Shabbos Shuva and Shabbos HaGadol. Certain things we are allowed to do even though the *goyim* do it since there is a *ta'am*, but other things still are not permitted. There is a *teshuva* of the **Krach**

The two qualifications that come out of this for Ashkenazim are that one may go to a *chuppah* as long as 1) there is no music and 2) one does not eat.¹⁶⁰

The **Mordechai (Meseches Moed Kattan, no. 891)** adds another *chiddush*:

Rabbeinu Tuvia was *machmir* on an *aveil* that they should not eat at the *chuppah* within their *sheloshim* unless they are with the *meshamshim* (i.e. the waiters.)¹⁶¹

The **Ramah (Y.D. 391:3)** quotes this *din li'halacha*:

...and some permit the *aveil* to eat at a *seudas nissuin* or *bris milah* with the *meshamshim*, as long as he is not in the *makom simcha*, for example, in a different house.¹⁶²

§

Rav Moshe Feinstein (Igros Moshe, Y.D. Siman 169) discusses whether a father who is in the middle of *shiva* can attend his daughter's wedding.¹⁶³ Rav Moshe has another *teshuva* (**Y.D. Chelek 1: Siman 255**) about a woman who was an *aveil* within her twelve months and her husband wanted her to come with him to a certain *mishteh* because

Shel Romi that permitted going to a church, listening to their *niggunim*, and then using those *niggunim* on the Yamim Noraim in shul. These topics were all part of Rav Simon's 92-page packet for Shavuos Night 5769.

¹⁵⁹ Which nowadays, when there often is music at the *chuppah*, means after the music has stopped.

¹⁶⁰ Someone recently asked Rav Simon if their parent who was just ending *sheloshim* could come to the shul dinner where they were going to be honored. Rav Simon discussed it with Rav Abadi and he thought that as long as there was not going to be any music and they weren't going to eat, they could go and sit there. Rav Simon mentioned that Rav Abadi has told him a number of times that he thinks the *hagdara* of the Ramah is "special occasions," like a retirement party or anniversary party, and that those things would be like *simcha mei'reius* and would be *assur* for Ashkenazim. People say different things about a Shabbos meal – one couple yes but two couples no, etc. Rav Abadi thought that a Shabbos meal, even if you invite people, is not really like a *simcha mei'reius*. Some ask, if a child lost a parent, how can they go to camp for the summer and eat with their whole bunk? Rav Abadi said that the *pashtus* is that that as well is not a *simcha mei'reius*. Rav Simon said that he's seen people say that since they are in their twelve months they will only go to the shmorg, though he thinks that that is certainly not proper because at the shmorg there is both *achilah* and music!

¹⁶¹ Some people have this thing that if you take a picture at the wedding then you can already do everything because you are like a photographer. "That," said Rav Simon, "is *shevacha ma'asah*." The *pashtus* is that the Mordechai is talking about eating with the "*meshamshim*," not that you just took a picture and are eating with everybody else or you make believe you are the waiter and you dish out soup for everyone. The real *heter* of the *meshamshim* is that you are eating with the waiters in an entirely different room. The **Aruch HaShulchan** writes that a person can serve some food in the main room and that could be a *heter* for them to even remain there but Rav Abadi told Rav Simon that that is not a very good *heter*. Rav Simon asked R' Felder how Rav Moshe felt about this and he said R' Moshe felt that that was a very weak *heter*. Rav Abadi said that in general, there are three issues: 1) Being there, 2) Eating there, 3) Music, and so if a person can sneak in and say '*mazal tov*' and avoid those three things, that is the best.

¹⁶² In our day a "בית אהר" doesn't necessarily mean a different house but means eating with the waiters in a room further away, where you won't hear the "*mizmtei chassan vi'kallah*," or by a *milah*, just any different room.

¹⁶³ Rav Simon explained that the logic behind this was based on what we saw previously from the Aruch HaShulchan quoting the Ra'avad, that without these key players the *simcha* of the *chassan* and *kallah* will undoubtedly be diminished. In a later *shiur*, Rav Simon added that perhaps that *heter* is only by a *yasom* and *yesomah*. The Aruch HaShulchan himself writes that the *heter* for this is that the Hagahos Maimoni writes that all *seudas mitzvah* are permissible and even though we don't *pasken* like that, it could be *bi'makom tzarich*, like for the weddings of children and grandchildren, we rely on that opinion. Nonetheless, Rav Simon still thought the main *heter* is like the Ra'avad and Rav Simon also saw in the **Shu"t Zerah Emes (Chelek 3: Siman 170)**, quoted by Rav Zinner, that he too thinks the *heter* is because of that Ra'avad.

without her he would feel uncomfortable. He writes that she may go because her *aveilus* is *mishubad* to him.¹⁶⁴

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The **Maharam Shik (Shu"t Maharam Shik, Y.D. 368)**, the **Maharil Diskin (Shu"t Maharil Diskin, Kuntres Acharon 196)**, and the **Pri Megadim (Eishel Avraham, Hilchos Tisha B'Av, O.C. 551)** all discuss and permit one who plays music for *parnasah* to perform during their twelve months of *aveilus* because it is not a *simcha* specifically for them.

¹⁶⁴ Rav Simon noted that nowadays it's not uncommon that one spouse will attend a wedding and the other will stay home, especially if there are young children at home. Therefore, most people will go alone. But if the husband will feel very uncomfortable there without his wife, he has this *kulah* of Rav Moshe to rely on.

סימן טז: בעניני עטיפת הראש וכפיית המטה

Atifas ha'rosh and *kefias ha'mitah* are two *chiyuvim* of an *aveil* that are not practiced in full nowadays. Nonetheless, there are certain things we do that mimic these *nihugim*.

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The **Gemara in Meseches Moed Kattan (15a)** states:

אבל חייב בעטיפת הראש מדקאמר ליה רחמנא ליחזקאל (יחזקאל כד) "ולא תעטה על שפם" מכלל דכולי עלמא מיחייבי.

An *aveil* is *chayav* in *atifas ha'rosh* (wrapping the head) for since the Merciful One told Yechezkel, "And do not veil yourself to the lips," it follows by implication that all other *aveilim* are required to do so.

The **Ramban (Toras HaAdam, Section: Vi'chayav Bi'Atifas HaRosh Keitzad; pg. 182)** quotes the Gemara and writes:

"An *aveil* is *chayav* in *atifas ha'rosh* for since the Merciful One told Yechezkel, "And do not veil yourself to the lips," it follows by implication that all other *aveilim* are required to do so. And Shmuel said: Any *atifah* that is not an *atifas Yishmaelim* is not a proper *atifah*. R' Nachman demonstrated it (by covering) right up to the sides of the beard." This means the *atifas ha'rosh* is a covering of the head for the opinion that says there is no *atifah* on Shabbos calls (the opposite) *perias ha'rosh*...and these words apply all day, but when others come to be *menachem* him, he uncovers his head from the *atifah* for the honor of those who have come (and remains like that) until they leave.

The **Shulchan Aruch (Y.D. 386:1)** quotes the Ramban:

An *aveil* is obligated to do *atifas ha'rosh*, which is that his head is covered with a *tallis* or a scarf and he wraps part of it over his mouth and the edge of his nose. This *din* of *atifah* applies all day, but when people come to comfort him he uncovers his head for their honor.

The *aveil* would sit with his head and mouth covered during *shiva*. When people would come to perform *nichum aveilim*, he would uncover his head in order to speak with them in a dignified manner.

The **Ramah (ibid.)**, however, adds:

And some say that we are not *noheg* to do this *atifah* in our lands and that is the *minhag*. And one should not be *machmir* (to do it and thereby) do that which our fathers did not do.

The Ramah writes that the *minhag* of the *bnei Ashkenaz* is that we no longer practice *atifas ha'rosh*.

The **Yerushalmi (Meseches Moed Kattan, 15b)** states:

"ולא תעטה על שפם" מיכן שהוא צריך לכסות את פיו. ויכסינה מלרע? אמר רב חסדא דלא יהוון אמרין פומיה הוא חשש.

“*And do not veil yourself to the lips:*” From here we see that (an *aveil*) needs to cover his mouth. And let him cover it from below (but not the entire mouth)? Rav Chisda said so that people will not say, ‘He has a pain in his mouth (and that is why he covers it up.)’

Normally, when we think of the *din* of *atifas ha'rosh* we think of it as a *din* in covering the head. The Yerushalmi, however, explains that it is really a *din* in covering the mouth. If so, why isn't one merely obligated to put a scarf around his mouth? Why is covering the entire head necessary as a means to covering the mouth? Rav Chisda explains that if an *aveil* were to only cover his mouth, people might think that he is wearing a scarf around his mouth because of some sort of toothache but not because of *aveilus*. Once you wrap the entire head and the mouth along with it, it becomes obvious that the *atifah* is because of the *aveilus* and his required silence.

The **Shach (Y.D. 386, s.k. 1)** comments on the Ramah:

And some say that we are not *noheg* to do this etc.: For it will lead to great laughter amongst the non-Jews and the slaves and maidservants amongst us. Nonetheless, some are *noheg* to do some form of *atifah* by pulling their hat below their eye line.

The Shach writes that we don't do the full *atifah* today because the non-Jews would come to mock the practice. Nonetheless, some have a *minhag* to do a *zecher* to the *atifah* by lowering their hat below their eyes.¹⁶⁵

The **Chida** in his **Birkei Yosef (Y.D. 386:2)** has another comment:

Atifah all day etc.: The general *minhag* is that the *aveil* does not wrap his head the entire day but does so only when visitors come to comfort him. This is the opposite of what the Poskim write, that the *atifah* should be the entire day and when people come to be *menachem aveil* he should uncover his head. And R' Chaim Kefusi in a *teshuva ksav yad* expanded on this (and justified the *minhag*) and concluded that it is good how it is performed nowadays since ‘מנהג ישראל תורה היא.’

Again, we see that the accepted *minhag* is to not perform the *atifah* as proscribed in the Gemara. Nonetheless, there are various *minhagim* and ways that the *atifah* is commemorated and performed *bi'zman ha'zeh*.

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There is another *din* that applies to an *aveil* that is also not really practiced *bi'zman ha'zeh*, namely *kefias ha'mitah*, the overturning of the beds.

The **Gemara** in **Meseches Moed Kattan (15a-b)** states:

אבל חייב בכפיית המטה דתני בר קפרא דמות דיוקני נתתי בהן ובעונותיהם הפכתיהו כפו מטותיהן עליה.

¹⁶⁵ Rav Simon noted that Rav Schachter is into this Shach but that it is generally put into practice in a different way, that is, that people wear a hat throughout the entire *shiva* as a *zecher* to the *atifas ha'rosh*. Rav Simon thought that the entire premise was strange because as we've seen, the purpose of the *atifah* was to cover the mouth. Furthermore, the *minhag* has become that the *aveilim* put on the hat when people come to be *menachem aveil* while the original *din* was that you take off the *atifah* when visitors come.

An *aveil* is *chayav* in *kefias ha'mitah* (overturning the bed) for Bar Kappara taught: (Hashem said:) "I bestowed a likeness of my image upon mankind, but I overturned it on account of their sins. Therefore, let them overturn their beds over it."

Since the *tzelem Elokim* was distorted, we show some sort of distortion from our daily routine which is achieved by turning over the beds.

Tosafos (Meseches Moed Kattan, 21a d"h eilu devarim she'aveil) writes:

And that which we are not *noheg* to perform nowadays *atifas ha'rosh* and *kefias ha'mitah*, we rely on the Yerushalmi that says an inn-guest is not obligated to do *kefias ha'mitah* so they should not say he is a "חרש." This means: (they may think) he is a *michashef* and it will be spread amongst the non-Jews. And we have amongst us slaves and maidservants.

The reason we don't perform these things nowadays is so that the non-Jews don't assume that we are doing some sort of *kishuf* by wrapping our heads and turning over our beds. And even though the non-Jews are outside the house, still, the non-Jewish slaves and maidservants inside the house will report to the other non-Jews what the Jews are doing inside.

Tosafos presents a second answer:

And another reason (why we don't perform) *kefias ha'mitah* is because one is able to sleep on our beds comfortably on either side and thus, a *kefiah* would not be noticeable.

Our beds are equally comfortable on either side and so turning them over would not be a recognizable change.

We mentioned before that the basis for the *kefias ha'mitah* is that there was some sort of distortion of the *tzelem Elokim*. What is the connection between *tzelem Elokim* and overturned beds?

The **Yerushalmi (Meseches Moed Kattan 16b)** states:

בר קפרא אמר 'איקונין אחת טובה היתה לך בתוך ביתך וגרמתני לכפותה אף את כפה מיטתך. ואית דמפקין לישנא יכפה הסרסיר.

Bar Kapara said: "I had one good likeness of Myself in your house, and you made Me turn it over (and bury it, namely, your children), so you turn over your bed." And there are those who derive the meaning of the expression from the following: "Let the agent (of sin) be overpowered (by mourning ceremonies.)"

The Yerushalmi explains that the connection is that the bed is the "*sarsir*," the middleman, between man and his wife and Hakadosh Baruch Hu. When man and his wife are together on the bed they cause another *tzelem Elokim* to be brought into the world through their offspring. Therefore, since man distorted the *tzelem Elokim* through death, an *aveil* overturns that "middleman" which brings about the *tzelem Elokim*.

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The **Ramban (Toras HaAdam, Section: Bi'Kefias HaMitah Keitzad; pg. 183)** writes:

“An *aveil* is *chayav* in *kefias ha'mitah* for Bar Kappara taught...” And these words apply at the time of sleeping and eating when he reclines on the beds, but throughout the day he shouldn't even sit on an overturned bed but should sit on the ground. Those who come to comfort him should also sit on the ground as R' Yehuda said in the name of Rav: From where do we know that an *aveil* is not permitted to sit on the bed but must sit on the ground? From the *pasuk* which says (Iyov 2:13) “וַיֵּשְׁבוּ אֵתוֹ לָאָרֶץ”.

The beds have to be overturned only during sleeping hours and when they would normally eat in a reclined manner on the bed. The rest of the day, however, the *aveil* is supposed to be sitting on the ground along with those who come to comfort him.^{166, 167}

The **Rambam (Hilchos Eivel 4:9)** writes:

On the first day alone, it is forbidden for an *aveil* to put on *tefillin* or to eat food of his own. He must sit on an overturned bed. During the remainder of the days of mourning, he may eat his own food, sit on a mat or on the ground, and put on *tefillin*.

The Rambam disagrees with Ramban and says that the *kefias ha'mitah* is a *din* like *tefillin* that only applies on *yom rishon*. On the rest of the days, however, the *aveil* can sit on a mat or on the ground.

The **Ra'avad (ibid.)** comments on that which the Rambam said, “he must sit on an overturned bed”:

I have never seen a source for this.

The Ra'avad doesn't think that the Rambam is correct. We saw that the Ramban and Rambam write that there is a *din* of *kefias ha'mitah* and that part of that is that one is required to sleep on the bed while it is overturned. But perhaps, argues the Ra'avad, the *din* is that you can fulfill this *chiyuv* by merely overturning the beds. That alone will serve as the *kiyum* of showing that the *tzelem Elokim* was distorted.

Is this *din* that an *aveil* sits low to the ground part of the *din* of *kefias ha'mitah* or is it a separate *din*?

The **Yerushalmi (Meseches Berachos, 22b)** states:

מניין לכפיית המיטה? ר' קריספא בשם רבי יוחנן (איוב כח) "וישבו אתו לארץ" יעל הארץ אין כתב כאן אלא "וישבו אתו לארץ" דבר שהוא סמוך לארץ, מיכן שהיו ישנין על גבי מיטות כפופות.

¹⁶⁶ Some point out that the *din* of an *aveil* sitting on the ground is only by the *nichum aveilim*. But if he is going into a sideroom to eat, he doesn't have to sit on the ground.

¹⁶⁷ It seems that our *minhag* is that only the *aveilim* sit low, but the *menachamin* do not. The Poskim say that the reason that the *menachamin* should sit low is because it is a *kavod* for the *aveilim*. Nowadays, however, we assume that the *aveilim* are *mochel* on such a *kavod*. The *minhag* usually is that when a person visiting the *aveil* is ready to leave they stand up and say, “המקום ירחם...” though some write based on this discussion that when you say “...המקום ירחם...” you should really say it while sitting down. That way, even though you are not on the floor with them, at least you are close to their level. That is not the general *minhag* but some are *noheg* to do like this.

From where do we derive the law concerning the overturning of the bed? R' Krispa said in the name of R' Yochanan: "They sat with him to the ground." It does not state here that they sat with him "upon" the ground, but rather: "They sat with him 'to' the ground." (This indicates that they sat on) something that was *close* to the ground. From here we see that they sat and slept upon overturned beds.

The Yerushalmi seems to pair the two *chiyuvim* together and writes that a person should sit low to the ground on an overturned bed but not entirely on the ground.

The Ramban learned from the Bavli that these are two separate things: 1) There is a *din* of *kefias ha'mitah* and 2) there is a *din* of *yishuv al gabei ha'karkah*. The Yerushalmi, however, learned that the *din* is to overturn the beds and then to sit on those beds.¹⁶⁸

The **Aruch HaShulchan (Y.D. 387:3)** writes:

...and not specifically "על הקרקע" but on a small stool or on pillows. And some require literally sitting on the ground. But in the Yerushalmi, in the beginning of the third *perek* of Meseches Berachos, there seems to be a proof that this is not so. The Yerushalmi writes that it says in *Iyov*, "וישבו אתו לארץ" but not "על הארץ" which indicates something close to the ground (but not on the ground.) And if someone is weak or if a woman is pregnant, they should not sit at all on the floor but should sit higher up. And regarding sleeping, some are *machmir* to sleep on the ground and some are *meikil* and that is the *minhag* (i.e. to be *meikil*.)

Rav Hershel Schachter in his *sefer Nefesh HaRav (Likutei Hanhagos, pg. 253)* quotes from Rav Soloveitchik that he thought that as long as the *aveil* makes a *shinui* in the way he sits, it doesn't necessarily have to be three *tefachim* from the ground.

In *Sefer Kavod HaRav*¹⁶⁹ (pg. 277), Rav Schachter quotes another *din* from Rav Soloveitchik, that just like by Chanukah we say that the *hadlaka* is a *din* in the *bayis*, so too by *aveilus*, we say that it is a *din* in the *bayis*. Accordingly, we can draw *halachik* comparisons between the two. We've seen that the Gemara discusses the *din* that if someone can arrive to the *beis aveil* from a *makom karov* (i.e. within one day), then he can be *mitztaref* to the *bayis* and their counting of *shiva*. Rav Soloveitchik explained that similarly, by Chanukah, if a person is in a place where he can get to the *bayis* within one day, he too can be *mitztaref* with the *hadlaka* of the *bayis*.¹⁷⁰

Rav Soloveitchik's *ra'ayah* for this concept of "beis aveil" was that the **Gemara in Meseches Moed Kattan (27a)** says that the *din* of *kefias ha'mitah* does not only apply to the *aveil*'s bed but applies to all the beds in the house. It is apparent from this that there are *dinim* of *aveilus* that apply both to an *aveil* and to the *beis aveil*.¹⁷¹

¹⁶⁸ Nowadays, we are not *noheg* to do the *kefias ha'mitah* at all but the *aveilim* still sit either "al ha'aretz" or "samuch la'aretz."

¹⁶⁹ This was a *sefer* written many years ago in honor of Rav Soloveitchik.

¹⁷⁰ Rav Simon pointed out that even if you want to say that Chanukah is a *din* in the *bayis*, it is still a big *chiddush* to take the *gedarim* in Hilchos Aveilus and apply them to Hilchos Chanukah.

¹⁷¹ We had mentioned previously a similar idea found in the **Aruch HaShulchan (Y.D. 385:4)** that just like *shi'eilas shalom* is *assur* to and from the *aveil*, one should refrain from offering all *shi'eilas shalom* in the *beis aveil*. Accordingly, if a person is coming to be *menachem aveil* and they see someone else who has also come to be *menachem aveil*, they should not offer them *shalom*. One should just nod and then if you wish to speak at length you should wait until you go outside.

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Rav Ovadia Yosef (Yabia Omer, Y.D. Chelek 4: Siman 35:3) discusses the *minhag* to cover the mirrors in a *beis aveil* throughout *shiva*. He writes that the simple reason for the *minhag* is because people will be davening in the *beis aveil* and one is not supposed to daven in front of a mirror. He continues and writes that he saw in the **Shu”t Ginzei Yosef Schwartz (Siman 188)** that the mirrors are covered because of the *ruach ra’ah* and the *mezikim*. Finally, he quotes the **Chasam Sofer (Derashos Chasam Sofer, Chelek 2, pg. 387c)** that perhaps this *minhag* is some sort of *zecher* to the *kefias ha’mitah*, that because we have distorted our *tzelem Elokim* we cover the mirrors so as not to see our face.¹⁷²

¹⁷² That is why some have a similar *minhag* to cover up pictures.

סימן יז: בענין אבילות בשבת

The **Mishna in Meseches Moed Kattan (19a)** states:

משנה: הקובר את מתו שלשה ימים קודם לרגל בטלה הימנו גזרת שבעה, שמונה בטלו הימנו גזרת שלשים מפני שאמרו שבת עולה ואינה מפסקת רגלים מפסיקין ואינן עולין.

...for the Sages said: Shabbos is included (in the seven days of *shiva*) and does not cut them short, and the *regalim* cut them short but are not included in them (i.e not included in *minyan shiva*¹⁷³).

The Mishna says that while Shabbos counts towards the *minyan* of *shiva* but does not end the *shiva* entirely, Yom Tov ends *shiva* but doesn't count towards the *minyan*. The remaining days, according to this opinion, would be counted after the *regel*.

The **Rambam (Hilchos Eivel 10:1)** writes:

Shabbos is counted as one of the days of *aveilus*. Nevertheless, the laws of *aveilus* are not observed on the Shabbos with the exception of *devarim shebi'tzina*, like *atifas ha'rosh*, *tashmish ha'mitah*, and washing with hot water. With regard to matters which are obvious, however, the laws of *aveilus* are not observed. Instead, one may wear shoes, position his bed upright, and greet everyone.

On Shabbos we *pasken* that *devarim shebi'tzina* like *atifas ha'rosh*, *tashmish ha'mitah*, and washing, are *noheg*.¹⁷⁴ Those things which are *devarim bi'farhesia*, however, are not observed. Once Shabbos is over, all the *nihugim* return and the beds are flipped again, even if there is only one day left of *shiva*.

The **Yerushalmi (Meseches Moed Kattan, 16b)** addresses the issue as to why Shabbos counts towards the *minyan* of *shiva* while the *regel* does not:

אמר ר' בא: איפשר לשבעה בלא רגל אבל אי אפשר לשבעה בלא שבת.

R' Bah said: It is possible to have *shiva* without a *regel* but it is impossible to have a *shiva* without a Shabbos.

Really Shabbos shouldn't count towards the *minyan* because only *devarim shebi'tzina* are observed. However, since every *shiva* has to have a Shabbos, if it wasn't counted you would never truly have a "*shiva*" because it would always be "*shemoneh*." Built into the system, therefore, is the fact that Shabbos is counted towards the *minyan*.¹⁷⁵

¹⁷³ The Mishna is talking about a case where the burial took place fewer than three days before the *regel*, or on the *regel* itself, in which cases the *regel* does not cancel *shiva* (according to that opinion in the Gemara.)

¹⁷⁴ We learned previously that *devarim shebi'tzina* are also *noheg* on Yom Tov. What does that mean? It means if there is a *misah* on Yom Tov or Chol HaMoed, the *kerovim* observe *devarim shebi'tzina* until the *shiva* begins. If the *misah* occurred before Yom Tov then obviously there are no *devarim shebi'tzina* on Yom Tov proper because the *shiva* is entirely *batel* as long as they did a *nihug* beforehand.

¹⁷⁵ See also the **Yerushalmi (Meseches Moed Kattan, 15b)** where the Gemara describes Shabbos as a *zman* of *beracha* and not of *atzvus* based on the *pasuk* in **Mishlei (10:22)**, "בְּרַכַּת יְהוָה, הִיא תַעֲשִׂיר, וְלֹא-יוֹסֵף עָצָב עִמָּה," **Tosafos (Meseches Moed Kattan, 23b d"h ma'an di'amar yeish aveilus)** quotes this Yerushalmi. Rav Simon pointed out that there is a whole discussion whether there is a *chiyuv* of *simcha* on Shabbos. It says in **Parshas Beha'alochecha (10:10)** by the *chatzotzros*, "וּבְיֹום שְׂמֵחָתְכֶם" and the **Sifrei** says that this is a reference to Shabbos. Also, in the Shabbos *zemer* "כי" we describe Shabbos and say, "כי יום שמחות הוא ותשמחני," Rav Simon pointed out that in the end of the day

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The **Shulchan Aruch (O.C. 548:9)** in Hilchos Chol HaMoed writes:

...if one of the days of *aveilus*, excluding the seventh day, fell on *erev* Yom Tov it is *mutar* to launder (clothing), though they may not be worn until the evening. It is good to be careful not to launder until after *chatzos* in order that it is recognizable that he is laundering for the *regel*. However, to wash is forbidden until the evening. And some permit washing after *tefillas* Mincha close to the evening.

The **Magen Avraham (ibid., s.k. 14 d"h acher tefillas ha'mincha)** comments:

This implies that one needs to daven Mincha first for then the *kedushas ha'regel* falls upon him...And it is specifically these things that are permitted (to be done) for the upcoming *regel* for by bathing now one will benefit from it on the *regel* itself, but other *dinei aveilus*, like sitting on the ground and not wearing shoes, one should be careful to do them until nightfall.

Things that require substantial time in order to be performed before the *regel*, we permit to be done on *erev* Yom Tov. Those things, however, that require little preparation, like getting up from sitting on the ground or putting on shoes, we tell an *aveil* not to do until the night fully comes in.

The **Shulchan Aruch (Y.D. 400:1)** records similar *dinim* regarding the *halachos* of *aveilus* on Shabbos:

Shabbos does not end *aveilus* and it counts towards the *minyan* of *shiva* since some of the *dinei aveilus* are still practiced on it. (Included are) those things that are *devarim shebi'tzina*, like *tashmish ha'mitah* and *rechitza*. However, *devarim bi'farhesia*, like removing the *atifah*, and wearing shoes, and straightening the overturned beds, and not wearing torn garments, (are performed)...and (the *issur* of) *talmud Torah* is considered a *davar shebi'tzinah* (and would still be forbidden) but to review the *parsha* is *mutar* since a person is obligated to complete the *parsha* with the *tzibbur*. It is just like saying *Shema*.

The **Pischei Teshuva (Y.D. 400:1)** comments:

See the Teshuvos Givas Shaul (Siman 72) where he writes: That which the *olam* is *noheg* to do on *erev* Shabbos during *shiva*, to sit on a chair or stool and to put on their shoes immediately after *chatzos* and say it is for *kavod* Shabbos, is a mistake. And it is fitting for all *ba'alei* Torah to protest and rebuke those individuals who are lenient in this matter and to be *mivatel* their *minhag*.

People tend to think that there is something magical about *chatzos*, that after *chatzos* on *erev* Shabbos a person is immediately permitted to put on their shoes, sit on chairs, and ignore the *nihugei aveilus*. The Pischei Teshuva explains that this is a big mistake and that most *issurim* still apply.¹⁷⁶

it doesn't make a difference in our discussion whether there is *simcha* on Shabbos or whether it is just a "yom beracha" because either way the *din* is that we practice *devarim shebi'tzina* and not *devarim shebi'farhesia*.

¹⁷⁶ Rav Simon noted that Rav Schachter likes to point out that the only time that *chatzos* is a significant time for *aveilus* is on *erev* Pesach because then it is *zman hakravas korban pesach*. In that case, after *chatzos* is already treated like a small Yom Tov. Regarding all the other "erev's," however, no special *din* of *chatzos* exists.

The **Ramah (ibid.)** comments on that which the Shulchan Aruch writes, that “removing the *atifah*” is done because *atifas ha’rosh* is a *davar bi’farhesia*:

And that is specifically when it is wrapped with an *atifas Yishmaelim* as we explained above in Siman 386. However, the less severe *atifah* that people are *noheg* in some places to wear for all of *sheloshim*, one does not have to remove that on Shabbos since they are wearing shoes on their feet.

The Ramah comments that if a person is wearing a less severe *atifah* then they do not have to remove it on Shabbos because the fact that they are wearing regular shoes will indicate to onlookers that they are not outwardly practicing *aveilus*.

The **Shach (Y.D. 400:2)** comments on this observation of the Ramah:

I don’t know what the connection is between wearing shoes and this (i.e. wearing a less severe *atifah*) for the one who permits *atifah* when wearing shoes permits even an *atifas Yishmaelim*, as is implied in the Gemara and in the Ramban.

The Shach asks: From the Gemara it seems that if a person is wearing shoes that will make known to all that he is not observing the *nihugei shiva*. Accordingly, when wearing shoes, even a full *atifas Yishmaelim* would be permitted. Why then, does the Ramah say that we only permit an “*atifas ketzas*” when shoes are worn?

The Shach continues:

And the Mahari Vayil writes that here, the real reason (an *atifas ketzas*) is *mutar* is because people are *noheg* to wear this type of *atifah* even after *shiva*, and they did not forbid *devarim shebi’farhesia* except to those *nihugim* that apply specifically to the seven days of *shiva*.

The Mahari Vayil has a *yesod*, that when we say that *devarim shebi’farhesia* are not *noheg* on Shabbos, that only applies to *shiva*-related matters (i.e. *atifas ha’rosh*, *begeid keruah*.) However, things that are *sheloshim*-related (i.e. shaving, going to parties) are *noheg* on Shabbos, even *bi’farhesia*. Since this “*atifas ketzas*” is *noheg* even after *shiva*, it became like a *sheloshim halacha* and is therefore *mutar bi’farhesia* even on Shabbos.¹⁷⁷

We know that the Ramah recorded that the *minhag* was to refrain from *rechitza* for the entire *sheloshim*. Accordingly, what would be the *din* if the thirtieth day of *sheloshim* fell on Shabbos? Would one be permitted to shower on *erev* Shabbos?

The **Ramah (Y.D. 400:2)** addresses this issue:

If the thirtieth day of *aveilus* falls on Shabbos and accordingly, day twenty-nine is *erev* Shabbos, it is permissible to bathe on *erev* Shabbos. (This applies) even in those places that are *noheg* not to bathe for the entire *sheloshim* since *mi’ikar ha’din* it is permitted (to bathe) after *shiva* but some have the practice to refrain for all of *sheloshim*. Therefore, in such a situation it would be permitted (to bathe) in honor of Shabbos.

¹⁷⁷ The Shach notes, however, that the *atifah* performed nowadays (i.e. the tilted hat which covers the eyes,) would be considered something that is a *davar bi’farhesia* and could not be performed on Shabbos.

Since the *minhag* of not doing *rechitza* for all of *sheloshim* is not *mi'ikar ha'din*, when Shabbos will fall on the last day of *sheloshim* one can shower already on *erev* Shabbos in honor of Shabbos.

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What is the *din* when the last day of *shiva* will fall on Shabbos? Usually we say *מקצת היום ככולו* and then *shiva* is over in the morning, but in that case there is usually some sort of *nihug* done on that last day. But on Shabbos, when only *devarim shebi'tzina* are performed, what is the *nihug* going to be?

The **Tur (Y.D. 402:7)** quotes the opinion of **Rabbeinu Yechiel**:

...And the *rav*, R' Yechiel writes that Shabbos cannot count as the first day of the *minyan*. Rather, you begin the counting from Sunday.¹⁷⁸ And when Shabbos is the seventh day of *aveilus* one can be *noheg devarim shebi'tzina* for *miktzas ha'yom*.

Rabbeinu Yechiel held that the first day of *shiva* can never be on Shabbos.¹⁷⁹ Since on Shabbos we are only *noheg devarim shebi'tzina*, that is not strong enough to get the *ikar shiva* going. However, if the last day of *shiva* fell on Shabbos, the requirement is not as strong and one need only be *noheg devarim shebi'tzina* for *miktzas ha'yom*.

The **Bach (Y.D. 402:5-6, *d"h vi'od nirah di'afilu bi'meis*)** disagrees with Rabbeinu Yechiel. He writes:

And it seems that even if one's relative died on Sunday, in which case Shabbos will be the seventh day, *devarim shebi'tzinah* are forbidden for the entire seventh day... for that which it says in Perek "*Eilu Migalchin*," that *miktzas ha'yom* is *ki'kulo*, that is only during the week since he is able to do some form of *ma'aseh aveilus* and thereby fulfill his *chiyuv* with that recognizable action. But on Shabbos, when we are only *noheg* to perform *devarim shebi'tzinah* and he can't perform a recognizable act of *aveilus*, he has not fulfilled his *chiyuv* of counting (for *shiva*)...

A person needs to do an outward expression of *aveilus* in order to count part of that day as a full day of his *shiva*. On Shabbos, when only *devarim shebi'tzina* are performed, no outward expression can be done and a person would not have the *kulah* of *miktzas ha'yom*. They would therefore have to observe the entire day.

The Bach continues:

And since on Shabbos he can't do a *ma'aseh*, he has to observe *devarim shebi'tzina* for the entire day. And therefore, one should not call him to receive an *aliyah* from the *sefer* Torah¹⁸⁰ when his

¹⁷⁸ Prior to questioning this opinion, the Tur quotes the **Sefer HaMitzvos** who disagrees and writes that *shiva* can begin on Shabbos and the *keriah* will be performed after Shabbos. This, however, is not what we are focusing on here.

¹⁷⁹ How could it even be possible to have the first day of *shiva* on Shabbos if the *kevurah* can't happen on Shabbos? There are various situations which could lead to this: 1) A person who is a *shemuah kerovah* hears about the death on Shabbos or 2) if they were trying to get a body out of captivity and then on Shabbos the *kerovim* finally had *yeiush*.

¹⁸⁰ Of course we are not dealing with a person like Rabbeinu Tam, since for him it would be a *davar shebi'farhesia* to not receive an *aliyah* as we saw *בנין איסור שאילת שלום ותלמוד תורה לאבל* in *סימן יג: בענין איסור שאילת שלום ותלמוד תורה לאבל*.

seventh day of *shiva* falls on Shabbos, even at Mincha, for he must observe all *devarim shebi'tzina* for the entire day since he did not perform a recognizable act of *aveilus*.

The Bach concludes and attempts to show that his opinion is correct based on the *minhag ha'olam*:

And the *olam* is *noheg* that on *motzei* Shabbos after *havdalah*, they sit on the ground and remove their shoes. The Chachamim have tirelessly searched for a reason for this. And in my humble opinion the reason is...that even though on Shabbos the *aveil* is *noheg devarim shebi'tzina*, this is not enough. Therefore, one must perform a recognizable action of *aveilus* on *motzei* Shabbos since they were unable to perform one on Shabbos...And according to this, even if the seventh day of *aveilus* is Shabbos one needs to observe *aveilus* for a moment on *motzei* Shabbos after *havdalah*...And according to this, an *aveil* certainly has to observe the *devarim shebi'tzina* for the entire day (of Shabbos), even in regard to *tashmish ha'mitah*, for if not (and he would have ended his *aveilus* after *miktzas ha'yom*.) it would be strange that one is able to return back to his *aveilus* (and observe a moment of recognizable *aveilus*) after making *havdalah*.

The Bach writes that since the *minhag* is to perform a concrete act of *aveilus* on *motzei* Shabbos so that the day can count for the *minyan* of *shiva*, one must observe *devarim shebi'tzina* for the entire Shabbos day. If not, it would be as if one ended his *aveilus* by relying on *miktzas ha'yom* and then somehow returned to his state of *aveilus* after Shabbos when observing that recognizable act of mourning.

The **Taz (Y.D. 402, s.k. 5)**, however, disagrees with his father-in-law the Bach and writes:

...And therefore if the seventh day of *shiva* falls on Shabbos it is permitted to observe *miktzas ha'yom*, even though he didn't do a *ma'aseh* during that *miktzas*. (This is true) for on Shabbos in general, one does not perform a recognizable act yet it still counts towards the *minyan* of *shiva* because he observes the *devarim shebi'tzina*...And I saw that my father-in-law z"l wanted to argue on R' Yechiel and say that when Shabbos falls on the seventh day of *shiva*, we don't say *miktzas ki'kulo*. And he wanted to forbid such an *aveil* to read from the Torah, even at Mincha, since the *aveil* hadn't done a recognizable act of *aveilus*. And based on this he wished to explain the *minhag* that people have that when Shabbos falls on the seventh day of *shiva*, they sit on the floor on *motzei* Shabbos in order to perform a recognizable act of *aveilus*, for on Shabbos they had not performed one. And this *derech* is very far (from the truth) for how can one make up on the eighth day that which they were required to observe on the seventh?

When the seventh day of *shiva* falls on Shabbos, the Taz disagrees with the Bach and writes that an *aveil* need only perform *devarim shebi'tzina* for *miktzas ha'yom* (i.e. the morning). After that, even at Shacharis, *mi'ikar ha'din* he can receive an *aliyah* and act as if the *shiva* had been completed.¹⁸¹

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¹⁸¹ Nonetheless, the Taz writes that since when the seventh day falls during the week, even though *miktzas ha'yom* could theoretically be five minutes after *neitz*, we still wait until after Shacharis, so too, when the seventh day of *shiva* is on Shabbos, an *aveil* should remain in *aveilus* until after Shacharis and shouldn't receive an *aliyah* that morning. Rav Simon noted that in general the *minhag* is like the Taz, that *miktzas ha'yom* applies even when the seventh day is on Shabbos.

The Gemara in Meseches Moed Kattan (20b) states:

אמר רבי יוסי בר אבין : שמע שמועה קרובה ברגל ולמוצאי הרגל נעשית רחוקה עולה לו ואינו נוהג
אלא יום אחד.

R' Yose bar Avin said: If he received a current report (*shemuah kerovah*) on a *regel* but by the end of the *regel* it became delayed (*shemuah rechokah*), the *regel* is included (in the thirty days required to become a *shemuah rechokah*) and he observes only one day of *aveilus*.

The *halacha* is that if a person receives a delayed message that one of his *kerovim* died, if he hears this news within thirty days of the death it is considered a “*shemuah kerovah*” and he observes all seven days of *shiva*. If he hears after thirty days since the death, it is called a “*shemuah rechokah*” and he observes only one day of *shiva*.

The Gemara here discusses a case in which a person heard on the *regel* that his relative died a few weeks ago. At the time that he heard, it was within the thirty day period which would make it a *shemuah kerovah*. However, since he heard in the middle of a holiday, he is not *noheg* any *aveilus* until after the *regel* is over. By the time the *regel* is over, however, it will be later than thirty days from the time of death. Do we say that since he heard the news within thirty days of the passing it is considered like a *shemuah kerovah* and he observes all seven days of *shiva*, or, do we say that since he won't begin observing *shiva* until after day thirty it is like a *shemuah rechokah* for which only one day is observed?

The Gemara answers that such a situation is treated like a *shemuah rechokah*.

The Shulchan Aruch (Y.D. 402:5) records this *din li'halacha*:

If a person hears a *shemuah (kerovah)* on Shabbos or on the *regel*, and by *motzei* Shabbos or *motzei regel* it will be (a *shemuah*) *rechokah*, he is only *noheg* one day. And on that Shabbos or *regel* he is forbidden to perform *devarim shebi'tzina*.

Rav Soloveitchik (Shiurei HaRav, Inyanei Aveilus; pg 59)¹⁸² raised the following question in regard to this *din*: We don't *pasken* like R' Yechiel's statement quoted in the Tur, that if the first day of *shiva* is Shabbos it doesn't count towards the *minyan* because we only observe *devarim shebi'tzina*. We hold that the first day would count even though only *devarim shebi'tzina* are observed. If so, why is it that when a relative hears of his *karov's* death and the thirtieth day is on the *regel*, we treat it as a *shemuah rechoka* after the *regel*? Shouldn't it be the same as Shabbos, where if he observes *devarim shebi'tzina* it is counted towards the *minyan*? In this case specifically, it would mean he started observing some form of *aveilus* before the thirtieth day and it should be treated as a *shemuah kerovah*?¹⁸³

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¹⁸² And Rav Simon noted that the Aruch HaShulchan brings from a Rashba the same question.

¹⁸³ Rav Simon noted that different people have different ways of giving answer to this question and it's a good question but in the end of the day, the *din* remains the same and we are not going to change the *din* from the Gemara and the Shulchan Aruch because of it.

The **Gemara** in **Meseches Moed Kattan (23a)** states:

ת"ר : אבל שבת ראשונה אינו יוצא מפתח ביתו, שניה יוצא ואינו יושב במקומו, שלישית יושב במקומו ואינו מדבר, רביעית הרי הוא ככל אדם.

A mourner does not go out of the door of his house for the first week. The second week he may go out but he does not sit in his regular place (in shul.) The third week he may sit in his regular place but he does not speak. The fourth week he is like any other person.

The first week, when an *aveil* is sitting *shiva*, he doesn't leave from his house at all. The second week, he is permitted to leave his house but can't sit in his regular seat. The third week he can return to his seat but refrains from speaking. The fourth week, the *aveil* returns to his normal way of life.

The **Shulchan Aruch (Y.D. 393:2)** rules:

An *aveil* doesn't leave his house during the first week, even to hear *birkas chuppah* or *birkas milah*.

The **Ramah (ibid.)** adds:

However, some are *meikil* to go out at night...and that which they forbade leaving one's house, that is if he is going out for a stroll or to do business or things of that nature, but if the governor requests him, or he needs to go on the road, or for any other need, it is like a *davar oveid* and it would be *mutar* for him to go out.

The **Shulchan Aruch (ibid.)** continues:

And in the second week he goes out and he does not sit in his *makom* and he refrains from speaking. In the third week he sits in his *makom* but refrains from speaking.

The **Ramah (ibid.)** adds:

And if he wishes to not return to his *makom* and to speak in the third week, he may choose to do so. And now, the *minhag* is that we do not sit in our places for the entire *sheloshim*, and for a father and mother, for all twelve months. And this *minhag* is not *ikar*. Nonetheless, one should not change this *minhag* but should follow the *minhag* of his place.¹⁸⁴

The Ramah quotes the accepted *minhag*, that an *aveil* does not return to his *makom* for the entire *sheloshim* for *sha'ar kerovim* and for the entire year when mourning the loss of a parent.

The **Shulchan Aruch (Y.D. 393:4)** writes in the next *halacha*:

There are those who have the *minhag* that when they are *aveilim*, they do not change their *makom* in the *beis ha'kenesses* on Shabbos, and they are doing properly.

¹⁸⁴ Rav Simon mentioned that when his father was an *aveil* for Rav Simon's grandmother, they were uncertain as to what he should do during the *Yamim Nora'im* when it is generally harder to switch your seat. Rav Simon asked Rav Willig and Rav Willig told him that Rav Simon and his father should just switch seats that year.

The **Ramah (ibid.)**, however, disagrees:

And some say that even on Shabbos they change their *makom*. And this is the *minhag* and one should not change it.

The **Shach (Y.D. 393, s.k. 7)** comments on this last ruling of the Ramah:

For they hold that this is not a *davar shel farhesia* since *aveilus* is not specifically recognizable through this, for a person will often switch his seat even if he is not an *aveil*.¹⁸⁵

The Shach explains that switching seats is not a public display of *aveilus* for it is not uncommon, even for someone who is not an *aveil*, to sit in one place one Shabbos and to sit in a different place the next Shabbos.¹⁸⁶

In the **Gesher HaChaim**¹⁸⁷ (**Perek 22, pgs. 250-251**) of **R' Yechiel Michel Tucazinsky** he discusses the *gedarim* of this *din* of *shinui makom* that are brought in Shulchan Aruch. He quotes from the *sefer Chamudei Doniel* quoted in the **Pischei Teshuva (Siman 393)** that the distance of *shinui makom* is four *amos*. He also adds that a person shouldn't go from a seat that is less *michubad* to one that is more *michubad* but rather should go down in status.

There is also a *teshuva* of the **Lev Avraham (Siman 96)** where he discusses whether this is only a *din* by *tefillah*, or if a person has a set *makom* in a *shiur* whether he should alter that as well. He quotes the **Chochmas Adam (Klal 167:2)** who writes that one should change his seat even in his house.¹⁸⁸

He quotes various different explanations from the Rishonim as to what is the reason for this *din* of *shinui makom*, amongst them the **Nimukei Yosef (Meseches Bava Basra, end of Perek "HaMocher es HaPeiros")** who says it is a form of *kavod ha'meis*, that you don't just return to your regular place, the **Mordechai** who says it is to let others know that he is an *aveil*, and the **Orchos Chaim miLunil** who says that it is some sort of *galus* because *galus* is *michaper*.

¹⁸⁵ The Shach also mentions here the *kulah* that he mentioned elsewhere, that only those *nihugei aveilus* unique to *shiva* are *assur bi'farhesia* on Shabbos, but *sheloshim* things would be observed. Rav Simon noted in a different context that it seems that if someone is invited to a Shabbos bar-mitzvah lunch while in *aveilus*, they probably should not attend based on the *minhag* of the Ramah. We saw previously that there are three types of gatherings: 1) *mitzvah shel simcha*, 2) *mitzvah* that is not *simcha*, 3) *rishus bi'alma*. The *ikar ha'din* is that it only applies to *mitzvah shel simcha*, but the Ramah writes that Ashkenazim are *machmir* on all *seudas shel mitzvah*. Therefore, if there is a Shabbos bar-mitzvah and they are having a luncheon, an *aveil* should not attend unless it's their own child. In terms of a concern that it may be *bi'farhesia* not to attend, **Rav Yitzchak Abadi** noted that nowadays, when we have so many different shuls and the community is more spread out, people always have reasons to be different places and a missing person won't be as noticeable. Others say like this Shach, that there is no concern of *aveilus bi'farhesia* if it is a *devarim shel sheloshim*.

¹⁸⁶ Rav Simon said he remembered that when Rav Schachter's father passed away a few years ago, he went to a different shul. It was Purim that fell on *motzei* Shabbos and so Rav Simon went with the *shiur* to the Bridge Shul for Mincha, *shalosh seudos*, and then *kerias ha'megillah*. Rav Schachter never davens in the Bridge Shul but Rav Simon said that he thinks Rav Schachter said that he was *misupak* about this *din* of whether this was part of the *ikar ha'din* of *shinui makom*. To steer clear of the question, he simply went to a shul where he had no *makom*.

¹⁸⁷ A classic *sefer* on Hilchos Aveilus. "It would be *chaval* to go through Hilchos Aveilus without having a xerox from the *Gesher HaChaim*," noted Rav Simon.

¹⁸⁸ Rav Simon noted that many people are not *noheg* like this Chochmas Adam.

The **Rambam (Hilchos Eivel 14:1)** writes:

It is a *mitzvas aseh* of Rabbinic origin to visit the sick, comfort mourners, to prepare for a funeral, prepare a bride, accompany guests, attend to all the needs of a burial, carry a corpse on one's shoulders, walk before the bier, mourn, dig a grave, and bury the dead, and also to bring joy to a *kallah* and *chassan* and help them in all their needs. These are deeds of kindness that one carries out with his *guf* that have no limit. Although all these *mitzvos* are *midirabanan*, they are included in the *mitzvah midioraisa* of “וְאַהֲבַת לְרֵעֵךְ כָּמוֹךָ” which implies that whatever you would like other people to do for you, you should do for your comrade in Torah and *mitzvos*.

There is a *mitzvas aseh midirabanan* to do all different types of *gemilas chassadim*. Though there are no specific *pesukim* in the Torah that explicitly requires these things to be done, they are all included in the *mitzvah* of “וְאַהֲבַת לְרֵעֵךְ כָּמוֹךָ”.

Further, the Rambam (14:7) writes:

It appears to me (lit. *yeira'eh li*¹⁸⁹) that comforting mourners takes precedence over visiting the sick. For comforting mourners is an expression of kindness to the living and the dead.

The Rambam writes that *nichum aveilim* takes precedence over *bikur cholim* because as opposed to *bikur cholim* which is a *chessed* to the living, *nichum aveilim* is a *chessed* to both the *meis* and the living.

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The **Mishna in Meseches Megillah (23b)** states:

משנה: אין פורסין על שמע ואין עוברין לפני התיבה ואין נושאים את כפיהם ואין קורין בתורה ואין מפטירין בנביא ואין עושין מעמד ומושב ואין אומרים ברכת אבלים ותנחומי אבלים וברכת חתנים ואין מזמנין בשם פחות מעשרה...

We may not divide the Shema, nor go before the *aron*, nor may the *kohanim* lift their hands, nor do we read the Torah, nor do we conclude from the Navi, nor do we make standing and sitting tributes at a funeral, nor do we say the mourners' blessing, nor the consolations to the mourners, nor are the wedding blessings recited, nor is G-d's name mentioned in the invitation (to recite *birkas ha'mazon*), in the presence of fewer than ten men...

The Mishna lists those things that require a *minyan*, amongst them, *tanchumei aveilim*.

What is *tanchumei aveilim*? **Rashi (ibid. d"ה vi'tanchumei aveilim)** explains:

When they (i.e. the *aveilim*) return from the *kevaros*, the others stand and comfort them (while standing in a *shura*). And there is no such thing as a *shura* that is less than ten as it says in Meseches Sanhedrin (19a).

¹⁸⁹ Whenever the Rambam writes something that is not found in the Gemara or Midrash but is his own thought, he prefaces it with the words “*yeira'eh li*.”

After the burial is completed, the *minhag* is that two parallel columns of people are made and the *aveilim* pass through the middle while everyone says, “המקום ינחם.” This *din* of making a *shura* is only done when a *minyan* is present.

Why should *nichum aveilim* require a *minyan*?

Rav Soloveitchik (Mesorah Journal, Nissan 5749; pg. 27) liked to explain this based on the **Gemara** in **Meseches Bava Basra (8b)** where Rava forced Rav Nosson to give four-hundred *zuz* to *tzedakah*. The **Gemara** in **Meseches Chullin (110b)** explains that we only force someone to do a certain *mitzvah* when the Torah doesn't say what the reward is, but if the Torah mentions a specific reward then we don't force anyone to do it because the reward in the Torah should be incentive enough. Isn't *tzedakah* a *mitzvah* that the Torah tells us what the reward is, that as the *pasuk* says that if one gives *tzedakah* then “כִּי בִגְלַל הַדְּבָר הַזֶּה, יִבְרַכְךָ ה' אֱלֹהֶיךָ”?

Rav Soloveitchik explained from his grandfather, Rav Chaim Brisker, that there are two *chiyuvim* when it comes to *tzedakah*: 1) the *chovas ha'yachid* and 2) the *chovas ha'tzibbur*. The **Rambam (Hilchos Matnos Aniyim 9:3)** writes that he never found a Jewish community that didn't have a *kupah shel tzedakah*.¹⁹⁰ Rav Soloveitchik understood this to mean that it is not enough for each individual to give *tzedakah* but that the community has to have some sort of *tzedakah* organization.¹⁹¹ The Torah offers the reward to each individual who personally gives *tzedakah*, but for the *chovas ha'tzibbur* where no specific reward is stated, for that we can force a person to give.

He explained that there are similarly two *dinim* in *tanchumei aveilim*, the *chovas ha'yachid* to individually pay a *shiva*-call and the *chovas ha'tzibbur* to do *nichum aveilim* by doing the *shuros*.

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The **Gemara** in **Meseches Shabbos (152a)** states:

אמר רב חסדא: נפשו של אדם מתאבלת עליו כל שבעה שנה "ונפשו עליו תאבל." וכתוב (בראשית נ)
"ויעש לאביו אבל שבעת ימים."

R' Chisda said: A person's soul mourns over him all of the seven days (after death) for it says (Bereishis 50:10): "...and he ordained a mourning for his father, seven days."

The **Gemara** continues:

אמר רב יהודה: מת שאין לו מנחמין הולכין י בני אדם ויושבין במקומו.

Rav Yehuda said: If a *meis* has no mourners, ten men should go and sit in his place (i.e. the place where he died.)

¹⁹⁰ Rav Simon noted that “this is a good Rambam if you need to speak if the Satmar *bikur cholim* honors you, or if they honor your wife.”

¹⁹¹ Rav Simon noted that this is similar to that which the **Tosefta** says, that it's not enough that everyone davens with a *minyan* but there should be a *beis kenesses* for the community.

The **Rambam (Hilchos Eivel 13:4)** writes:

When a *meis* has no mourners who must be comforted, ten upright men from the community at large come and sit in his place throughout the seven days of *shiva*. Others gather around them. If there are not ten fixed people who remain throughout the seven days, each day ten other people are selected and they sit in his place.

If someone dies and doesn't have family, we appoint ten people to sit *shiva* for him. People come and are *menachem* these people even though they are not direct relatives.¹⁹²

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The **Gemara in Meseches Moed Kattan (28b)** records another *din*:

א"ר יוחנן : אין מנחמין רשאים לומר דבר עד שיפתח אבל שנאמר (איוב ג) "אחרי כן פתח איוב את פיהו" והדר "ויען אליפו התימני."

R' Yochanan said: Those who come to console an *aveil* are not allowed to speak until the *aveil* begins, for it says in the *pasuk* (Iyov 2:14): "(They sat with him on the ground for seven days...no one said a word to him...) After that, Iyov opened his mouth." And subsequently it is written: "Eliphaz the Teimani then spoke up."

The Gemara says that the *menachamin* are not supposed to initiate conversation but should wait until the *aveil* begins speaking with him.

The **Levush Ateres Zahav (Hilchos Aveilus, Siman 376:1)** explains this *din*:

And the logical reason for this is that the *aveil* begins by showing his *tza'ar*, for he is very pained over the loss of his relative, and then afterwards others can begin to comfort him. But before, it doesn't make sense to comfort him since perhaps he is not in pain over the loss.¹⁹³ And this is found in Iyov, that his friends did not begin to speak with him until he first spoke, as the *pasuk* (3:1) says, "...אחרי כן, פתח איוב את פיהו..." and then (4:1) we see, "ויען אליפו התימני".

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The **Gemara in Meseches Moed Kattan (28b)** continues and records another *din*:

א"ר אבהו : מנין לאבל שמיסב בראש? שנאמר (איוב כט) "אבחר דרכם ואשב ראש ואשכון כמלך בגדוד כאשר אבליים ינחם."

R' Abahu said: From where do we know that the *aveil* reclines at the head? For it is stated (Iyov 29:25): "I would choose their way; I would sit at the head, I would rest like a king among his troops as one who consoles mourners."

Usually when people would do *heseibah*, there would be a configuration of who was in the front and who was on the side. The *aveil* sits in the most *chashuv* place at the head. Since the *pasuk* says "*aveilim*" in the same breath as "*melech bi'gidud*," we have a notion that an *aveil* has some status like a *melech*.

¹⁹² Rav Simon mentioned that he's not really sure how often this *din* is practiced nowadays. When Rav Yosef Wanefsky, the blind librarian from Y.U. passed away, he didn't have any family, and so they didn't do this *din* precisely but people went to his house every night and sat there and told stories about him.

¹⁹³ Rav Simon noted that the *minhag* is that once the *aveil* says anything the *menachem* can speak. However, based on the Levush it could be that they really should have to say something that indicates their *tza'ar*.

Accordingly, the **Gemara in Meseches Moed Kattan (27b)** states:

ואמר רבי יוחנן : הכל חייבין לעמוד מפני נשיא חוץ מאבל וחולה.

And R' Yochanan said: All are obligated to rise before the Nasi except for an *aveil* and a *choleh*.

When the *nasi* comes into the room, everyone must stand up except for an *aveil* and a *choleh*.¹⁹⁴

The **Levush Ateres Zahav (Hilchos Aveilus, Siman 376:1)** explains that the reason for this *din* is because the *aveil* is “*tarudim bi'tzaaram*.”

The **Chida (Birkei Yosef, Y.D. 376; Shiyurei Beracha no. 2)** writes:

And the Levush wrote that the reason is because they are “*tarudim bi'tzaaram*.” And the Shevus Yaakov there rejects his words for an *aveil* is *chayav* in all the *mitzvos*...

The Chida writes that an *aveil* is still *chayav* in all *mitzvos* and one of those *mitzvos* is “*מִפְּנֵי שִׂיבָה תְּקוּם, וְהִדְרֵתָּ פָּנֵי זָקֵן*,” so why should the fact that he is “*tarud bi'tzaaram*” exempt him from this *mitzvah*?

Rather, the Chida proposes his own explanation:

Rather, it seems that the reason is that since an *aveil* sits at the head (of the table), as is written in Meseches Moed Kattan (28) and in Meseches Kesubos (69), and we learn from a *pasuk* to honor the *aveil*...if so, then he is similar to the *melech* and that is why he is not obligated to stand before a *rav* or the *nasi*.

The Gemara learns that an *aveil* in some respect is *domeh li'meleh* and a king is not obligated to stand before the *nasi*.

Rav Hershel Schachter in his **MiPininei HaRav (Likutei Hanhagos, pg. 207)** quotes **Rav Soloveitchik**'s remarks concerning the *minhag* that some have, that if they can't make it to a *beis aveil*, they will do *nichum aveilim* over the phone. Rav Soloveitchik felt that since the Gemara compares an *aveil* to a *melech* it is not *derech erez* for the king to get out of his chair to go speak on the telephone to someone calling.^{195, 196}

¹⁹⁴ That is generally the practice, that an *aveil* doesn't stand up for people when they enter the room. **Rav Blau** likes to say though that when he escorted Rav Soloveitchik to pay a *shiva*-call to Rav Shneur Kotler, Rav Kotler stood up when Rav Soloveitchik entered.

¹⁹⁵ Rav Simon felt that the *minhag* is not like this and that in the end of the day, if one cannot pay a *shiva*-call in person, it is certainly worthwhile to call on the telephone.

¹⁹⁶ Rav Simon saw recently another application of this Gemara in the **Kinyan Torah BiHalacha** from **Rav Horowitz** of the Eidah Chareidis. There is a *din* that it is not *kavod* for a *sefer Torah* to be moved around from place to place because people should come to the *sefer Torah*, not the *sefer Torah* to the people. The **Yerushalmi** in **Meseches Yoma** comments on the Mishna that on Yom Kippur the Kohen Gadol would read the Torah and the *chazzan* would pass the Torah to the *sgan* and the *sgan* would pass it to the Kohen Gadol. Isn't it a *bizayon* to pass the Torah to a person? The Yerushamli answers that since these people are *chashuv*, it is a *kavod* for the *sefer Torah* to go to them. That's why the **Shulchan Aruch (O.C. 135)** quotes from the Mordechai that if a person is locked in jail, we don't bring a *sefer Torah* to him unless he is an *adam chashuv*. How come we allow a *sefer Torah* to be brought to a *beis aveil*? The **Ramah** says

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The Gemara in Meseches Moed Kattan (27b) states:

”אל תבכו למת ואל תנודו לו” : ”אל תבכו למת” יותר מדאי, ”ואל תנודו לו” יותר מכשיעור. הא כיצד? שלשה ימים לבכי ושבעה להספד ושלשים לגיהוץ ולתספורת. מכאן ואילך אמר הקדוש ברוך הוא אי אתם רחמנים בו יותר ממני?”

“Do not cry for a deceased, and do not shake your head for him.” ‘Do not cry for a deceased’ to excess; ‘and do not shake your head for him’ beyond the measure. How so? Three days for weeping, seven days for lamenting, and thirty days to refrain from pressing clothes and haircutting. From that point and on Hakadosh Baruch Hu says, “You are not more compassionate on the deceased than I am.”

The Gemara says that the first three days of *shiva* are days of crying. The remaining days of *shiva* are for *hesped*. At day thirty it is the time to permit cutting of the hair and after *sheloshim* (for *sha'ar kerovim*) Hakadosh Baruch Hu doesn't want the *aveil* to continue to mourn excessively.¹⁹⁷

The Ramban (Toras HaAdam, pg. 217) quotes from Aveil Rabbasi (Perek 6) and writes:

An aveil, for the first three days he doesn't enter Har HaBayis. From (the third day and) on he enters (Har HaBayis) and goes to the left. And these are those who turn to the left (on Har HaBayis): an *aveil*, a *menudah*, someone who has a *choleh* in his house...and to the *aveil* they say to him, “May the One who dwells in this house comfort you”...and the three first days there is no din of offering nechama because the first three days are for crying.

In the times of the Beis Hamikdash, an *aveil* would ascend *Har HaBayis* after the first three days and would stand there, receiving *nechama* from those visiting *Har HaBayis*. The *din* is, however, that for the first three days they do not enter *Har HaBayis* nor receive *nechama* because those days are reserved for crying.

The Ohr Zaruah (Hilchos Aveilus, no. 440 – *Yetzias Aveil min haBayis*) quotes the Gemara that for the first three days an *aveil* doesn't leave his house to go to another *beis aveil*. But from day three and onward, he may go to another *beis aveil* but doesn't sit amongst the *menachamin* but rather sits amongst the *aveilim*.¹⁹⁸

that it is permitted if you bring the Torah before and leave it there after and you thereby are *koveiah a makom* for it. But it could be that based on the Gemara in Meseches Moed Kattan that compares the *aveil* to a *melech* that the *aveil* is considered an *adam chashuv* for whom a Torah can be brought to without having to utilize any other *heterim*.

¹⁹⁷ Rav Simon noted that this is like the comment of the Ramban in Parshas Re'eh (14:1) on the *pasuk*, “לא תתגדדו, ולא תשימו קרחה בין עיניכם למת” where he writes that it is *assur* to mourn excessively because we believe that the *neschama* is forever. If a person does this excessive *aveilus* it shows that a person doesn't believe in the eternal nature of the soul and must feel that the *neschama* is totally lost.

¹⁹⁸ All these sources seem to indicate that one should not pay a *shiva*-call during the first three days. Rav Simon noted, however, that nowadays it seems that the *minhag* is that people pay a *shiva*-call whenever they can go, even if it is within the first three days.

The **Rambam (Hilchos Eivel 13:11)** writes:

A person should not become excessively broken hearted because of a person's death, as the *pasuk* states (Yirmiyahu 22:10): “Do not weep for a dead man and do not shake your head because of him.” That means not to weep excessively. For death is the pattern of the world and a person who causes himself grief because of the pattern of the world is a fool (lit. *tipesheh*¹⁹⁹).

The **Rambam (Hilchos Eivel 13:12)** continues:

Whoever does not mourn over his dead in the manner which our Sages commanded is cruel. Instead, one should be fearful, worry, examine his deeds, and do *teshuva*. If one member of his group dies, the entire group should worry. For the first three days, one should see himself as if a sword is drawn over his neck. From the third day until the seventh, he should consider it as if it is in the corner. From that time onward, as if it is passing before him in the marketplace. All of this is so that a person should prepare himself and repent and awake from his sleep. Behold it is written (Yirmiyahu 5:3), “You have stricken them, but they have not trembled.” Implied is that one should awake and tremble.

The **Beis Yosef (Y.D. 380:2, d”h u’mah she’kasuv avel amru)** writes:

And it is explained there in the Yerushalmi that the reason that the first three days are more *chamur* than the remaining days is because for three days the *neshama* hovers over the body, for it thinks that it will return to it. Once it sees that the face is changing, it leaves and goes away.

We have different *halachos* that indicate that the first three days are a stronger form of *aveilus*. Why is that? The Yerushalmi explains because for these three days the *neshama* thinks that it is going to go back into the body and remains hovering above it. After three days, when it sees that the body is decaying, the *neshama* leaves. Since the *neshama* is still around for those first three days we are stricter in different areas of *aveilus*.²⁰⁰

The **Beis Yosef** continues and quotes the opinion of **Rabbeinu Yeruchum**:

And **Rabbeinu Yeruchum** wrote in the name of the **Ra’avad** that the reason even a poor person is forbidden to do *melacha* for the first three days is because **Chazal** say that the first three days are for crying and if he is involved with his work he will not be involved in crying.

The **Tur (Y.D. 393:3)** records various *minhagim* that used to exist:

...And my master, my father, the **Rosh**, wrote that they were *noheg* in Ashkenaz that the *aveil* would go to the *beis ha’kenesses* on Shabbos and after *tefillah* the *aveil* would leave first and sit in front of the *beis ha’kenesses*. The *kehilla* would then walk out after and sit next to him. The *aveil* would stand up and go to his house and the entire *kehilla* would follow behind him and sit with him for a moment. And they would rely on that which is taught in **Pirkei diRebbi Eliezer**: **Shlomo**

¹⁹⁹ Rav Simon noted that every now and then the **Rambam** will call someone a name. The *pesukim* discuss in **Parshas Shoftim** planting a vineyard and marrying a woman. The **Rambam** “gives a name” to someone who reverses the order, marrying before having a *parnasah*.

²⁰⁰ There is another **Gemara** in **Meseches Shabbos** where one of the **Amoraim** said, “אחים בהספידא דהתם קאימנא,” give a good *hesped* because I’m going to be there listening. Rav Simon heard a *vort* from R’ Gelly when Rav Schwab was *niftar*, and he quoted from the *hesped* that R’ Akiva Eiger gave for the **Gra**. R’ Akiva Eiger got up and said, “How can I even begin to give a *hesped* for the **Gra**? But since **Chazal** tell us “אחים בהספידא דהתם קאימנא,” that the *neshama* of the *meis* is present at the time of the *hesped*, and we know that you can only give *miktzas shevacho* in the person’s presence, so *miktzas shevacho* I can give of the **Gra**.”

saw that the *middah* of *gemilas chesed* was great before Hakadosh Baruch Hu and therefore, when he built the Beis Hamikdash, he built two gates, one for the *chassanim* and one for the *aveilim* and *menudim*. People would come on Shabbos and sit between these two gates. If the person was sitting by the *sha'ar chassanim*, everyone would know that he was a *chassan* and they would say to him, "The One who dwells in this house should allow you to rejoice with sons and daughters." If he was sitting by the *sha'ar aveilim* with his moustache covered, everyone would know that he was an *aveil* and they would say to him, "The One who dwells in this house should comfort you." If he entered the *sha'ar aveilim* and his moustache was not covered, they would know he was a *menudah* and they would say to him, "The One who dwells in this house should put it in your heart to listen to your friends and bring you close to them."

The Tur concludes:

And from the time that the Beis Hamikdash was destroyed, the Chachamim established that *chassanim* and *aveilim* go to the *batei kenassiyos* and the *batei midrashos*, and the people of the place see the *chassan* and rejoice with him, and they see the *aveil* and sit with him on the ground, in order that all of Klal Yisrael fulfill their obligation of *gemilas chassadim*. And about them it is said, "ברוך נותן שכר טוב לגומלי חסדים."

We don't necessarily have these *minhagim* but we have *minhagim* that seem similar to this. Specifically, the **Pnei Baruch (Siman 11:9)** writes that there is a *minhag* that on *erev Shabbos*, before reciting 'מזמור שיר ליום השבת', the *aveil* enters the *beis ha'kenesses* and the *tzibbur* is *menachem* him.

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The **Gemara in Meseches Shabbos (12b)** states:

ואמר רבי חנינא : בקושי התירו לנחם אבלים ולבקר חולים בשבת.

And R' Chanina said: It was with difficulty that the Rabbis permitted one to console mourners and to visit the sick on Shabbos.

The Gemara says that Chazal were initially reluctant to permit *nichum aveilim* on Shabbos. **Rashi (ibid., d"h bi'koshi)** explains that they didn't want people to feel distressed on Shabbos. Nonetheless, they ultimately permitted it.

Accordingly, the **Shulchan Aruch (O.C. 287:1)** rules:

One is able to be *menachem aveil* on Shabbos.²⁰¹ Similarly, one is permitted to visit the sick. And one shouldn't speak to him as he would speak to him during the week but should say, "שבת היא",²⁰² "מלזעוק ורפואה קרובה לבא ורחמי מרובים ושבתו בשלום."

²⁰¹ When **Rav Shmuel Maybruch** was sitting *shiva* for his mother, Rav Shulman, a big *talmid chacham*, knocked on the door on Shabbos and quoted this Gemara: "בקושי התירו לנחם אבלים בשבת." Rav Simon noted as a side point that the **Yerushalmi** says "בקושי התירו" to even say 'Hello' on Shabbos because just like Hashem rested from *amirah* so too we should rest from speaking. That is why **Rav Scheinberg** doesn't speak anything but *divrei Torah* on Shabbos.

²⁰² Tangentially, the **Ramah (ibid.)** writes that some say that we don't need to say "ורחמי מרובים ושבתו בשלום" and that is the *minhag*.

The **Mishna Berurah (ibid., s.k. 3)** writes the *lashon of nichum aveilim* on Shabbos:

...and for *nichum aveilim* he should say to him: “שבת היא מלנחם ונחמה קרובא לבא.” And some are *meikil* to even say, “המקום ינחמך.” And the Pri Megadim wrote that if the *aveil* comes to the *beis ha'kenesses* after “מזמור שיר ליום השבת” the *shamash* should no longer direct attention to the *aveil* for we do not mention *aveilus bi'farhesia* (on Shabbos). Nonetheless, one may go over by themselves and say, “שבת היא מלנחם...”

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The **Gemara in Meseches Sukkah (41b)** states:

תניא : רבי אלעזר בר צדוק אומר כך היה מנהגן של אנשי ירושלים : אדם יוצא מביתו ולולבו בידו, הולך לבית הכנסת לולבו בידו, קורא קריאת שמע ומתפלל ולולבו בידו, קורא בתורה ונושא את כפיו מניחו על גבי קרקע, הולך לבקר חולים ולנחם אבלים ולולבו בידו, נכנס לבית המדרש משגר לולבו בידו בנו וביד עבדו וביד שלוחו.

R' Elazar bar Tzadok says: This was the custom of the people of Yerushalayim (on Sukkos) – a person leaves his home with his *lulav* in his hand. When he goes to the *beis ha'kenesses* his *lulav* is in his hand. He recites *Shema* and davens with his *lulav* in his hand. But when he reads the Torah or raises his hands (i.e. if he is a *kohen*), he places his *lulav* on the ground. When he goes to visit the sick or to comfort the mourners his *lulav* is in his hand. When he enters the *beis ha'midrash* he sends his *lulav* home with his son, his servant, or his messenger.

The Gemara discusses that the *minhag* of the Anshei Yerushalayim was to hold their *lulavim* on Sukkos for the entire day. The Gemara says when they would go to be *mivaker choleh* and *menachem aveil* they would continue to carry their *lulavim* in their hands.

The **Ohr Sameach (Semachos, Perek 14: Halacha 7)** asks that if the Rambam's opinion is true, that *nichum aveilim* takes precedence to *bikur cholim*, how come the Gemara says that the Anshei Yerushalayim would do *bikur cholim* and then *nichum aveilim*?

The Ohr Sameach answers:

And so too in the first *perek* of Meseches Shabbos (12b) it says “בקושי התירו לנחם אבלים ולבקר בחוליים בשבת,” putting *nichum aveilim* first. But in Meseches Sukkah (41b) *bikur cholim* is put first because on the *regel* even *devarim shebi'tzina* are not *noheg* as the Rambam rules (in 10:3). Therefore, there, *bikur cholim* came first because on the *regel* the *tza'ar* of the *aveilim* is minimized.

Even though there is *nichum aveilim*, the Rambam rules that an *aveil* doesn't even observe *devarim shebi'tzina* during the *regel*. Since the Gemara in Meseches Sukkah was talking about Chol HaMoed, a time when an *aveil* is supposed to minimize his mourning and be *bi'simcha*, *bikur cholim* is listed first.

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The **Shulchan Aruch (Y.D. 399:2)** states:

One who buries his relative on the *regel*, on Chol HaMoed he is *noheg* the *dinim* of *aninus* until the *meis* is buried, and after he is buried (the *aveilim*) are *noheg devarim shebi'tzina*...and the

rabim are not involved with *nichum aveilim* after the *regel* for the number of days that they have already comforted him on the *regel*...

If the *meis* died and there were still four days left to the *regel*, so for those four days people would comfort the *aveilim*. Then, even though after the *regel* the *aveilim* will sit a full seven-day²⁰³ *shiva*, the *rabim* only have to do *nichum aveilim* for three of those days because they had already done four days on the *regel*.²⁰⁴

The **Lev Avraham (Siman 93)** of **Rav Avraham Weinfeld** has a *teshuva* where he quotes the Rambam, that *nichum aveilim* comes before *bikur cholim* because it is *chesed* for the dead and living, and he explains that this is based on that which the Gemara says that the *nefesh* is *misabeles* for *kol shiva*.²⁰⁵ Based on this *svara*, he writes, it could be that maybe this *din* of the Rambam only applies when the person is sitting *shiva* in a regular timeframe because the *neshama* is only *misabeles* for the seven days after the *petirah*. If the *shiva* was delayed, however, it could be that it would only be a *chesed* for the *aveil*.

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Sometimes people are unsure of whether they should go pay a *shiva* call or not. In general, a person should always go if they are able to. The *aveilim* appreciate it and notice the visitors. Even the presence of someone who is not so close to the *aveilim* often brings *nechama* as well.

²⁰³ Really it's six more days because the count begins from Yom Tov *sheini*.

²⁰⁴ Rav Simon said he doesn't know how it evolved but our *minhag* is not to do this type of *nichum aveilim* in an official manner. Close friends can certainly go over to the *aveilim* and comfort them, but we don't have this formal *nichum aveilim* on the *regel* followed by a diminished count of *nichum aveilim*.

²⁰⁵ Rav Simon noted that that is why some have the *minhag* to say, "המקום ינהם אתכם" and not "אותך," even if only one person is sitting *shiva*, because you are wishing *nechama* for the *aveil* and for the *neshama*.

The *pasuk* says in **Parshas Shemini (10:6)**:

(י:ו) ויאמר משה אל־אהרן ואל־עזר ואל־יתמר | בְּנָיו רְאִשֵׁיכֶם אֲלֵתִפְרְעוּ | וּבְגְדֵיכֶם לֹא־תִפְרְמוּ וְלֹא תִמְתּוּ וְעַל כָּל־הַעֲדָה יִקְצֹף וְאַחֲיֵכֶם כָּל־בֵּית יִשְׂרָאֵל יִבְכּוּ אֶת־הַשְּׂרִפָּה אֲשֶׁר שָׂרַף יְהוָה:

Moshe said to Aharon and to his sons Elazar and Itamar, “Do not leave your heads unshorn and do not rend your garments so that you not die and He become wrathful with the entire assembly; and your brethren the entire *Beis Yisrael* shall bewail the conflagration that Hashem ignited.

Nadav and Avihu entered the *mishkan*, offered an “אש זר,” and were killed. Aharon and his children seemingly should have observed the *nihugei aveilus* for them, but since it was a day of great *simcha* (i.e. the day of the *hakamas ha'mishkan*) the regular *dinim* of *aninus* and *aveilus* were suspended. Part of the instructions given to them by Moshe was that they should not let their hair grow and they should not tear their clothing. The implication from these *pesukim* is that normally an *aveil* should do these things. We thus see that an *aveil* is supposed to tear his garments.²⁰⁶

The **Gemara in Meseches Moed Kattan (24a)** states:

אמר רב תחליפא בר אבימי אמר שמואל: אבל שלא פרע ושלא פירם חייב מיתה שנאמר (ויקרא י) “ראשיכם אל תפרעו ובגדיכם לא תפרמו ולא תמותו וגו'” הא אחר שלא פרע ושלא פירם חייב מיתה.

Rav Tachlifa bar Avimi said in the name of Shmuel: A mourner who did not let his hair grow long or did not rend his clothing is liable to death, as the *pasuk* stated (Vayikra 10:6): “*Do not let the hair of your heads grow long and do not rend your garments, and you will not die etc.*,” implying that another *aveil* who did not let his hair grow long or who did not rend his clothes is liable to death.

The **Ramban (Toras HaAdam, pg. 63)** writes:

And it says in the Gemara that an *aveil* who doesn't let his hair grow and doesn't rend his garment is *chayav misah*, as the *pasuk* says, “ולא תמותו.” And that is just an *asmachta*. This *misah* is a punishment *mi'divrei soferim*, like the statement: “כל בר ישראל העובר על דברו חכמים חייב מיתה”.

The Ramban says that this *din* of not cutting hair and *keriah* is not really a *din midioraisa* but rather is a *din midirabanan* with an *asmachta* from the *pasuk*. The only *dinei dioraisa* according to the Ramban are the restrictions of *aveilus* on *yom rishon* when the *yom misah* and *yom kevrurah* are together.

The Ramban (**ibid., pg. 214**) quotes a differing opinion of the **Ra'avad**:

And the Ra'avad *z"l* held that the *gizeira* of wearing pressed clothing and cutting hair are *midioraisa*, since it is written by the *bnei* Aharon, “ראשיכם אל תפרעו ובגדיכם לא תפרמו ולא תמותו”.

§

²⁰⁶ Rav Simon noted that in Yiddish the term is “*reis* (pronounced: rice) *keriah*.”

One of the *halachos* of *keriah* is that it must be done *mi'umad*, while standing.

The **Gemara** in **Meseches Moed Kattan (20b)** states:

אמימר שכיב ליה בר בריה קרע עילויה אתא בריה קרע באפיה אידכר דמיושב קרע קם קרע מעומד.
אמר ליה רב אשי לאמימר : קריעה דמעומד מנלן? דכתיב (איוב א) "ויקם איוב ויקרע את מעילו."

The son of Ameimar's son died. Ameimar tore his garment over him. His son arrived and so Ameimar tore his garment again in his presence. He then remembered that he had torn the garment while sitting and so he stood and tore (a third time) while standing. Rav Ashi said to Ameimar: From where do we derive that the rending must be performed while standing? For it is written (Iyov 1:20): "And Iyov arose and tore his coat."

From the Gemara we see that *keriah* needs to be done while standing.

The **Rosh (Meseches Moed Kattan, Perek Shelishi: Siman 44)** quotes an assortment of Rishonim on the issue of *keriah mi'umad*:

And the **Ra'avad** wrote that *lichatchila* it must done *mi'umad*. From where do we know that even *bidieved* one is not *yotzei* if he does it while sitting? And he answers: From that which is taught by Dovid and Iyov. And even though it is said by Iyov (that he tore standing up), perhaps he was just doing something extra...but now that *keriah mi'umad* is written by Dovid, we learn that it was *li'ikuva* by both of them...And it seems that the **Rif** held that if you tear *keriah* while sitting you are *yotzei* (and this is learned) from the fact that he leaves out the story of Ameimar (tearing a second time). And **R' Yitzchak Geius** wrote that if one tore *keriah* while sitting he is not *yotzei* and he should tear *keriah* again while standing. And it seems like this is the opinion of the **Ramban** (as well)...

The **Shulchan Aruch (Y.D. 340:1)** rules:

One whose relative dies, and the *meis* is one of the *kerovim* for whom one mourns, (the *karov*) is obligated to tear *keriah*. And he must tear *keriah* while standing. And if he tears while sitting he is not *yotzei*.

The **Ramah (ibid.)** adds:

And he would, therefore, need to tear *keriah* again (Tur in the name of the R"tz Geius, Rosh, Hagahos Maimoni, and the Beis Yosef in the name of the Ra'avad, Rif, Ramban, and Mordechai.)

§

The **Gemara** in **Meseches Moed Kattan (26b)** states:

תניא נמי הכי : רבי יוסי אומר תחילת קריעה טפח ותוספת כל שהו.

It was taught similarly in a *beraisa*: R' Yose says: The initial *keriah* must measure at least a *tefach* and the extension may be any size.

When a person tears *keriah*, the tear has to be a *tefach* downward. If a person loses another relative and wants to add to a tear, he can be *mosif* on that *keriah* even a *kol she'hu*.

§

The **Gemara in Meseches Moed Kattan (22b)** lists the differences between a *keriah* done by one who loses a parent and one who loses one of their *sha'ar kerovim*:

על כל המתים כולן קורע טפח על אביו ועל אמו עד שיגלה את לבו.

For all deceased relatives one tears a *tefach*. But for one's father or mother, until he exposes his heart.

For all relatives except a parent, one is required to tear a *tefach* vertically²⁰⁷. For the loss of a parent, however, one is obligated to tear “עד שיגלה את לבו”.

The **Yerushalmi (Meseches Moed Kattan, 19a)** explains:

רבי שמואל בשם רבי אבודמי בר תנחום מפני שבטלת ממנו מצות כבוד.

R' Shmuel in the name of Rabbi Avdumi bar Tanchum (said that he tears until his heart) because the *mitzvah* of *kibud* no longer applies to him.

The **Pnei Moshe (ibid. d"h mipnei she'batla)** explains that since the parent has passed away, the child is no longer obligated in their *kibud*, something which stems from the heart. They therefore tear *keriah* until the heart is revealed.

The **Shach (Y.D. 340, s.k. 19)** quotes a *minhag* of the **Maharshal**:

The Maharshal wrote that the *minhag* was that for a father or mother they tear on the left side and for *sha'ar kerovim*, like a son or brother, they would tear on the right side.

This idea of tearing until the heart, *mi'ikar ha'din* means that you make a longer tear for a parent. The Maharshal, however, quotes a *minhag*, not necessarily from the Gemara, that we tear on the left side for a parent because the heart is on the left side of the body.

§

The **Gemara in Meseches Moed Kattan (22b)** states another *din*:

על כל המתים כולן אפילו לבוש עשרה חלוקין אינו קורע אלא עליון על אביו ועל אמו קורע את כולן...

For all deceased relatives, even if one is wearing ten shirts, he tears only the outer one. For one's father or mother, one tears all of them.

If a person is wearing ten layers of clothing, if he is tearing *keriah* for a parent he has to tear all ten layers. If he is tearing for *sha'ar kerovim*, however, he tears only his outer garment.

²⁰⁷ Rav Simon noted that sometimes you have to tear a bit horizontally in order to be able to tear vertically, but the *ikar keriah* is the vertical one.

The Gemara continues:

...ואפיקרסותו אינה מעכבת.

But his ‘*apikarsuso*’ is not necessary (i.e. it doesn’t have to be torn).

Rashi (ibid. d”h vi’apikarsuso) explains what an “*apikarsuso*” is:

The *apikarsuso* that is on his head is not *mi’akev*, that is to say that it does not require *keriah*.

Rashi understands “*apikarsuso*” to be some sort of garment worn on your head, a turban of sorts. On head coverings, explains Rashi, we don’t tear *keriah*.

The **Rosh (Meseches Moed Kattan, Perek Shelishi: Siman 43)** quotes a different explanation in the name of the **Ra’avad**:

“And the *apikarsuso*”: Rashi explains that it is some sort of scarf worn on the head that falls in front and because it is not a *malbush* it is not *mi’akev* the *keriah*. And the Ra’avad z”l wrote: It seems to me that from the fact that it did not say “it does not need to be torn” that implies that *lichatchila* one should tear it if tearing for a father or mother, but that if he does not it is not *mi’akev* and he has fulfilled his *mitzvah* of *keriah* nonetheless. From here it is implied that if he doesn’t tear all of the other *begadim*, he has not fulfilled his obligation of *keriah* and we reprimand him like one who did not fulfill a *mitzvas aseh midirabanan*.

The Rosh quotes the Ra’avad who writes that from the *lashon* of “אינו מעכבת” we learn that tearing the *apikarsuso* is not required but that *lichatchila* it should be torn for a father or mother.

The Rosh continues and quotes the **Ramban**:

And the Ramban z”l wrote that even *lichatchila* one does not need to tear it.

Unlike the Ra’avad, the Ramban wrote that even *lichatchila* one is not required to tear the *apikarsuso*.²⁰⁸

The Rosh continues and quotes the **Aruch**’s definition of “*apikarsuso*”:

And the Aruch explained that an “*apikarsuso*” is an under garment.

The Aruch understands “*apikarsuso*” to be a type of undershirt, which we treat as a *begeid zeiah* and do not tear.

The **Smag (Mitzvas Aseh 2, Midivrei Soferim)** gives a third explanation of the “*apikarsuso*”:

And the rabbis in France were known to say that a *matrona* is not obligated in *keriah* because it is like an *apikarsuso* which is an outer shawl that is only worn for *tznius* purposes.²⁰⁹

²⁰⁸ Rav Simon said this is how we understand this *din*. Whatever the *apikarsuso* is, we hold that you don’t have to tear it even *lichatchila*.

The **Shulchan Aruch (Y.D. 340:10)** writes:

An *apikarsuso* does not need to be torn. Some explain that it is a *beged ha'zeiah* that is stuck to the body. And some explain that it is an outer garment which is called a *kappa*, and it is certainly the *minhag* that we don't tear the *kappa* for any *meis*, even a father or mother...

We assume that the *apikarsuso* is either a *beged zeiah*, like the Aruch, or an outer coat, like the Smag, and we do not tear either of these things, even for someone mourning for a parent.

The **Taz (Y.D. 340, s.k. 5)** writes:

...for we have a *rak*, which is like a *kappa* that they have in other areas, and both of these (i.e. *kappa* and *rak*) are called outer garments, for a person does not walk around (wearing them) in his house. And even if he does sometimes wear it indoors, his *da'as* is *batel* to the majority of people (who don't wear them indoors.)

The Taz explains that in order for a certain *beged* to be *chayav* in *keriah*, it has to be something that you wear in your house.

The Taz continues:

And furthermore, I say that it is not fitting, even *li'chumra*, to tear the *rak* because it is a *chumra* that will lead to a *kulah*. For by *sha'ar meisim*, where the *din* is that we tear only the *beged ha'elyon*, it is certainly not proper that he tear nothing but the *rak*...

Most people certainly don't wear an overcoat while in their house, but many also don't even wear their suit or sport jacket while inside. If so, the suit jacket, like the overcoat, might not be included in the *chiyuv keriah*. The Taz says that you shouldn't tear the suit jacket when tearing for a parent for it will lead to an inappropriate *kulah* by *sha'ar kerovim*, namely, since you are only going to tear the *beged elyon*, you might only tear the suit jacket which might not be *chayav* to begin with and would not fulfill the obligation of *keriah*.²¹⁰

The **Shach (Nekudas HaKesef Y.D. 340, s.k. 5 in the Taz)** adds that he thinks another *klal* for determining what is considered a '*beged*' is that it has to be something that you always wear in the street, and if you didn't wear this garment, you would be considered undignified, one of the "*pechusim*."

The **Gemara in Meseches Moed Kattan (22b)** continues:

אחד האיש ואחד אשה.

Both a man and a woman (are obligated to tear *keriah*.)

²⁰⁹ Rav Simon said that nowadays, when we don't really wear shawls, this would be the same thing as some outer layer, like an overcoat.

²¹⁰ Rav Simon noted that this is why many contemporary Poskim hold that for *sha'ar kerovim* we tear the shirt. It comes out that based on this, for a father or mother, one would also only tear the shirt. Nonetheless, many have a *minhag* that for a parent they will also tear the jacket because it's not *vadai patur*.

The *chiyuv keri'ah* applies to both men and women.²¹¹

The Gemara continues:

על כל המתים כולן רצה מבדיל קמי שפה שלו רצה אינו מבדיל. על אביו ועל אמו מבדיל. רבי יהודה אומר כל קריעה שאינו מבדיל קמי שפה שלו אינו אלא קרע של תיפלות.

If one wishes, he may separate the garment beyond the border (of the neck slit,) and if he wishes he need not separate (the garment that far.) But for one's father or mother, he must separate (the *be'ged* beyond the border of the neck slit.) R' Yehuda says: Any rending in which one does not separate the garment beyond the border (*kamei saffah*) is no more than a rending of uselessness.

If the *keriah* doesn't tear the "קמי שפה," the rim of the shirt, then it is not a good *keriah*. If, for example, you tore a polo shirt and you punctured it with a key and then tore downward, the tear is not going to be noticeable. But if you tear from the rim then it will be a recognizable tear. We therefore tear vertically and then horizontally so that it is a noticeable tear.

The Gemara then speaks about sewing up the torn *keriah*, which we don't really do nowadays because we live in a wealthier society. In the times of the Gemara, if you tore *keriah*, you were tearing your one shirt. Nonetheless, the *din* in the time of the Gemara was that for *sha'ar kerovim* one could sew up the tear sloppily after *shiva* and properly after *sheloshim* while for a parent one could sew the tear sloppily after *sheloshim* and was never permitted to sew it up properly. A woman was permitted to pin it up for *tznius* reasons immediately.

The Gemara continues:

כי אתא רבין א"ר יוחנן: על כל המתים רצה קורע ביד רצה קורע בכלי על אביו ועל אמו ביד.

When Ravin came (to Bavel) he reported in the name of R' Yochanan: For all deceased relatives, if one wishes he may tear *keriah* by hand, or if he wishes he may do it with an instrument. But for one's father or mother, one must tear by hand.

One tearing *keriah* for *sha'ar kerovim* is permitted to make the tear with a *kli*. One tearing *keriah* for a father or mother has to tear the *ikar keri'ah* with his hand.²¹²

The Gemara continues:

וא"ר חייא בר אבא א"ר יוחנן: על כל המתים כולן מבפנים על אביו ועל אמו קורע מבחוץ.

²¹¹ Rav Simon noted that it's become popular in the funeral chapels today, that they have this black ribbon that they tear and then the mourners pin it on. "I don't know what that is. It seems to be very nothing," noted Rav Simon. Really a woman should tear *keriah* and then pin up the tear if necessary for *tznius* reasons. Some people are not on the level of understanding and so they do that because they do not want their clothing to be ripped. In such a case there is nothing one can do and they merely did not perform the *mitzvah*.

²¹² Rav Simon pointed out that again, that means the vertical tear must be done by hand. If, however, one wanted to start the tear by making a horizontal tear with a *kli* (i.e. scissors), that would be permissible.

And R' Chiya bar Abba said in the name of R' Yochanan: For all deceased relatives one tears on the inside. For one's father or mother, one must tear on the outside.

There are two explanations of these *lishonos* of 'בפנים' and 'בחוץ.' Either it is describing the actual rip, and בפנים means you put your hand inside the *begeh* and rip that way and בחוץ means you tear from the outside, or it describes whether you should make the tear in front of people or do it privately.

The **Rambam (Hilchos Eivel 8:3)** records this *din*:

...but for his father and mother, by contrast, he must tear his garment until he reveals his heart. He must rip apart the border of the garment; he may not tear it with a utensil, and must tear it outside, in the presence of people at large. He must tear all the garments he is wearing. His *begeh zeiah*, worn next to his flesh, need not be ripped. If he changes his clothes, he is required to rend them for all seven days.

The **Shulchan Aruch (Y.D. 340:13)** quotes both understandings *li'halacha*:

For *sha'ar kerovim* one should tear on the inside and not in front of people. Therefore, he should reach his hand to the inside (of the *begeh*) and tear in private. However, for his father or mother, he should tear on the outside, in front of everybody.²¹³

§

The **Yerushalmi (Meseches Shabbos, 72a-b)**²¹⁴ states that if a person tears *keriah* for a *meis* on Shabbos, he is *yotzei* his *keriah*. The Yerushalmi asks:

משנה הקורע בחמתו ועל מתו כל המקלקלין פטורין... גמרא...: חברייא בעון קומי רבי יוסה לא כן אמר רבי יוחנן בשם ר' שמעון בן יוצדק: 'מצה גזולה אינו יוצא בה ידי חובתו בפסח?' אמר לון 'תמן גופה עבירה. ברם הכא הוא עבר עבירה.'

One who tears (his clothing) because of his anger or on account of his *meis*, and all those who destroy (lit. *mikalkalin*), are *patur* (from Shabbos violation)... They asked before R' Yose, "Did R' Yochanan not say in the name of R' Shimon ben Yotzedek, 'A person is not *yotzei* his *chiyuv* of *matzah* on Pesach with stolen *matzah*'? (How is this *mitzvah haba'ah ba'aveirah* by *matzah* different than *keriah*, that by *matzah* he is not *yotzei* while by *keriah* he is *yotzei*?) He said to them, 'In that case, the *matzah* itself is subject to the *aveirah*, while here, it is the man (and not the torn garment) that is subject to the *aveirah*.'

The **Pnei Moshe (ibid., d"ח matzah gezula)** explains that when it comes to stolen *matzah*, the *matzah* itself is the *cheftza shel aveirah* and thus cannot be used for the *mitzvah*. The *keriah* performed on Shabbos, however, though it may have been a *chilul* Shabbos, in the end of the day the *keriah* was performed.^{215, 216}

²¹³ Rav Simon said that the practice is generally that they tear *keriah* at the funeral chapel after they say the *beracha* of "ברוך...דיין האמת."

²¹⁴ "Everyone likes to quote this Yerushalmi. If you have to give *shiur* on something, so you should quote this Yerushalmi," said Rav Simon.

²¹⁵ Rav Simon noted that every *sefer* quotes this Yerushalmi and explains it with Brisker *lomdus* of *gavra/cheftza*.

²¹⁶ This is one of the *lomdishe* topics that people discuss in Hilchos Keriah. Rav Simon noted that there is one other *lomdishe* topic that people like to talk about in Hilchos Keriah based on the **Gemara in Meseches Nedarim** and that is: What if a person tears *keriah* over a person who is still alive? **R' Shimon Shkopp** has *torah*'s on what if you tear it while they are alive and then *bi'toch kidei dibbur* they die, is that a valid *keriah*?

The **Shulchan Aruch (Y.D. 340:28)** quotes this Yerushalmi *li'halacha*:

One who performs *keriah* on Shabbos, even though he has been *michalel* Shabbos, he has fulfilled his obligation of *keriah*.

In the next *halacha*, the **Shulchan Aruch (Y.D. 340:29)** states:

One who tears *keriah* on a stolen garment, has not fulfilled his obligation of *keriah*.

The **Shulchan Aruch (Y.D. 340:31)** continues:

One does not tear *keriah* on Yom Tov, even on Yom Tov *sheini shel galuyos*, even *kerovim* of the *meis*. However, on Chol HaMoed, we tear *keriah* for everyone...

The **Ramah (ibid.)** adds:

And some say that we are not *noheg* to tear on Chol HaMoed except for a father or mother, but for *sha'ar meisim* we tear after the holiday. And in places where they don't have this *minhag*, one can tear for all *kerovim*.

§

There is one other *halacha* that is relevant to Hilchos Keriah and that is the *chiyuv* to tear *keriah* when one sees Yerushalayim *bi'churbana*.

The **Shulchan Aruch (O.C. 561:2)** records these *halachos* of tearing *keriah* for Yerushalayim in Hilchos Tisha B'Av:

One who sees Yerushalayim *bi'churbana* should say, “ציון היתה מדבר שממה” and tears *keriah*. And when one sees the Beis Hamikdash, he should say, “בית קדשנו ותפארתנו אשר הללוך בו אבותינו היתה” and tears *keriah*. And from where is he obligated to tear *keriah*? From Tzofim. When he subsequently sees the Beis Hamikdash he should make another tear. Each *keriah* should be a *tefach*. And if he is coming from the *derech ha'midbar*, in which case he sees the Beis Hamikdash first, he should tear a *tefach* for the Beis Hamikdash and afterwards, when he sees Yerushalayim, he adds to his tear a small amount.²¹⁷

The **Shulchan Aruch (O.C. 561:4)** continues:

All of these tears must be done by hand and while standing. One should tear every garment on his body until he reveals his heart. And one may never mend this tear. However, he is allowed to pull out the tears, hem them, gather them and sew them with ladder-like stitches.²¹⁸

²¹⁷ Rav Simon was by the *Kotel* two years ago and he was ready to tear *keriah*. He always takes scissors with him because the mourning over the Beis Hamikdash is a *din* of אביו ואמו and so you need to make the horizontal cut and then the vertical tear. He didn't know the *nusach* by heart but there was a guy there who saw him and knew it by heart. The guy told Rav Simon, “Repeat after me,” and so he did. Rav Simon doesn't think that the *nusach* is *li'ikuva* but if you know it, you can certainly say it. Rav Simon usually has a *keriah* shirt that he uses when he goes to the *Kotel* but he gave it into the dry cleaner so that it should at least be clean. When he did, the guy saw that it had a rip so he sewed it up which one is really not supposed to do because it's a *din* of a *keriah* for a parent which can never be sewn. Rav Simon noted additionally, that people are usually *noheg* not to tear the jacket when they go to the *Kotel* and so when Rav Simon goes he relies on the *ikar ha'din* not to tear the jacket.

²¹⁸ Rav Simon noted that Rav Schachter wrote a piece where he discusses that if this *keriah* is like one for a parent then people should tear on Chol HaMoed. How come then people usually don't tear? Rav Schachter also thinks that Friday

הלנת המת

The *pesukim* in **Parshas Ki Seitze (21:22-23)** state:

כב וכייהנה באיש תשא משפט־מִוֹת והוֹמַת ותִּלֵּית אִתּוֹ עַל־עֵץ: כג לֹא־תִלִּין נִבְלָתוֹ עַל־הָעֵץ כִּי־קָבוֹר
תִּקְבְּרוּ בַיּוֹם הַהוּא כִּי־קָלְלַת אֱלֹהִים תִּלְוִי וְלֹא תִטְמֵא אֶת־אֲדָמַתְךָ אֲשֶׁר יְהוָה אֱלֹהֶיךָ נָתַן לְךָ נַחֲלָה:

(22) If a man shall have committed an *aveirah* whose judgment is death, he shall be put to death, and you shall hang him on a gallows. (23) His body shall not remain for the night on the gallows, rather you shall surely bury him on that day, for a hanging person is a curse of G-d, and you shall not contaminate your Land, which Hashem, your G-d, gives you as an inheritance.

Rashi (21:23, *d”h ki klalas Elokim*) quotes the Gemara in Meseches Sanhedrin (46b):

כי קללה אלקים תלוי: זלזלו של מלך הוא שאדם עשוי בדמות דיוקנו וישראל הם בניו. משל לשני אחים תאומים שהיו דומים זה לזה. אחד נעשה מלך ואחד נתפס ללסטיות ונתלה. כל הרואה אותו אומר 'המלך תלוי'.

It is a degradation of the King, for man is made in the likeness of His image and Yisrael are His sons. This can be compared to twin brothers who resembled each other. One became a king while one became ensnared in banditry and was hung. Whoever would see him hanging would say, “The king is hanging!”

Since a human being’s countenance is made in the “image” of the Ribono Shel Olam, if a person is left hanging over night, it is as if the image of the Ribono Shel Olam is “left hanging” and that is a disgrace to the King.

This *pasuk* specifically discusses someone who was *chayav misas beis din*. Does this *issur* of leaving the *meis* unburied apply to any *meis*?

The **Mishna** in **Meseches Sanhedrin (46a)** states:

...ולא זו בלבד אמרו אלא כל המלין את מתו עובר בלא תעשה. הלינהו לכבודו להביא לו ארון ותכריכים אינו עובר עליו.

...Not only did the Sages say this (in reference to the corpse of a convict) but anyone who leaves his deceased unburied overnight transgresses a negative commandment. However, if one left the corpse overnight for the sake of his honor, in order to bring an *aron* or *tachrichin* for the body, he does not transgress any prohibition.

The Gemara explains that if you leave the *meis* unburied overnight for no reason, then you violate this *lav* of ‘לא תלין’ as well. However, if you leave the body over for the *kavod ha’meis*, either to obtain an *aron* or *tachrichin*, then it is not a violation of this *lav*.

afternoon is no different than any other time. He often says that it’s all a mistake from the Ramah in Hilchos Pesach because there, *erev* Yom Tov is actually a Yom Tov because of the *zman hakravas korban pesach*.

The Gemara in Meseches Bava Kamma (82b) states:

עשרה דברים נאמרו בירושלים : אין הבית חלוט בה, ואינה מביאה עגלה ערופה, ואינה נעשית עיר הנדחת, ואינה מטמאה בנגעים, ואין מוציאין בה זיזין וגזוזטראות, ואין עושין בה אשפתות, ואין עושין בה כבשונות, ואין עושין בה גנות ופרדסות חוץ מגנות וורדין שהיו מימות נביאים הראשונים, ואין מגדלים בה תרנגולין, ואין מלינין בה את המת.

Ten things were said about Yerushalayim: (1) A house is not permanently sold, (2) the city does not bring an ערופה, (3) it does not become an הנדחת, (4) it is not defiled by *tzara'as* inflictions, (5) we do not extend beams and balconies in Yerushalayim, (6) and we do not make garbage dumps in the city, (7) and we do not make kilns in the city, (8) and we do not create gardens and orchards in the city, with the exceptions of maintaining the Garden of Roses, (9) we do not raise chickens in Yerushalayim, (10) and we do not keep a *meis* overnight in Yerushalayim.

The Gemara lists ten things said about Yerushalayim, the last one being that we never leave a *meis* unburied overnight in Yerushalayim.

The Shita Mikubetzes (Meseches Bava Kamma, 82b *d"h vi'ein malinan bah*) asks the obvious question:

This is difficult to me. What does this have to do with Yerushalayim? The *halacha* is widespread, that it is forbidden to leave a *meis* (unburied overnight.) And one who does leave their *meis* over night violates a *lav*, as it says etc. as is writtin in Perek “*Eilu Migalchin*.”

The Shita Mikubetzes answers:

And perhaps one can say that in Yerushalayim one cannot leave a *meis* overnight even for the *kavod* of the *meis*, for in general, if it is for his honor, it is *mutar*.

The *minhag* of Yerushalayim is that even if one wanted to wait for people to come so that it will be a bigger *kavod* for the *meis*, they don't delay the burial.²¹⁹

The Radvaz (Shu"t Radvaz, no. 311) was asked: If someone dies in the daytime and they bury him at night, is that a violation of *halanas ha'meis* or is the *issur* only if you wait until the next morning?

The Radvaz writes:

Know, that all *linah* that is mentioned in the Torah is only when the entire night passes, as the *pasuk* says, “לא-תלין פְּעֵלֵת שְׂכִיר אֶתְּךָ עַד בֶּקֶר” and this *pasuk* is dealing with a *sechir yom* who withholds the money until the morning. And if he pays him in the middle of the night or two-thirds of the way into the night, he has not violated the *lav* until the morning.

The Radvaz learns that one only violates ‘לא תלין’ when one keeps a *meis* unburied overnight until the morning.

²¹⁹ That's why in Yerushalayim people get buried even at night. A person could die at 7:30 P.M. and by 9:00 P.M. they're buried. In America, you would never have such a thing because the cemeteries would be closed. When **Rav Moshe Feinstein** passed away, his body was supposed to arrive in Eretz Yisrael at night. There was a concern that since there would be so many people, it could be dangerous do to the burial at night. There was a *machlokes* between Rav Shlomo Zalman and Rav Shach as to whether they should follow the *minhag* or wait until morning. Ultimately, the airplane took off but had to come back for technical difficulties and so the funeral was delayed until the day. **Rav Dovid Feinstein** said that it was a *machlokes* between Rav Shach and Rav Shlomo Zalman and Rav Moshe was *machriah*.

Nonetheless, isn't there a *mitzvah* of “קבור תקברנו ביום ההוא”? Even though you only violate the *lav* once you pass the whole night into the morning, still, isn't it a *bitul mitzvas aseh* to allow someone who died in the afternoon to be buried at night?

The Radvaz answers:

This is not a question for specifically with *harugei beis din* is there both a *lav* and an *aseh*, but regarding regularly leaving over one's *meis*, there is only a *lav*.

The *din* of “קבור תקברנו” only applies to those killed by *beis din* since a *misas beis din* usually takes place in the morning and as such, the *meis* could have been buried throughout the entire day. The time of a regular death, however, is not planned and a person could end up dying fifteen minutes before the *shekiah*. You can't assume that the Torah requires one to bury the *meis* in those fifteen minutes and say that if not, he is *mivatel a mitzvas aseh*.

Rav Moshe Feinstein (Igros Moshe, Y.D. Chelek 3: Siman 139) has a *teshuva* where he discusses a case in which someone died on a legal holiday and the funeral chapels and cemeteries were all closed. Rav Moshe writes that here, it was not a *shaila* of *kavod ha'meis* but the issue was that the *shoel* would have had to pay all the workers double for working on the holiday. In fact, having the *levaya* on the holiday would be a greater *kavod ha'meis* because more people would be around to attend. Therefore, he writes, that whenever one is able to enable the burial to take place on the day of death, he is obligated to do whatever he can, even to pay double, to avoid the *issur* of *linah*.

The **Ramban (Parshas Ki Seitze, 21:23 d"v vi'lo si'tamei es admasecha)** adds:

In the opinion of our Rabbis this is not merely a reason, meaning (that a *meis* may not be left hanging) “ולא תטמא את אדמתך,” for if so, it would be permissible (to leave the dead overnight) outside of Eretz Yisrael. Instead, this is a second negative commandment. Now, whoever leaves hanging overnight the body of a criminal, or of any dead body in Eretz Yisrael, transgress two negative commandments (לא-תלין נבלתו על העץ and וְלֹא תִטְמָא אֶת אֲדֹמַתְךָ) and a positive commandment (כִּי קִבּוּר תִּקְבְּרֵנוּ בַיּוֹם הַהוּא). Outside of Eretz Yisrael he violates the positive commandment and the negative commandment (of לא תלין) which is derived from the law of the hanging *meis*, as I have explained.

The Ramban explains that if a person leaves a *meis* unburied overnight in Eretz Yisrael, he violates an additional *lav* of “ולא תטמא את אדמתך”.²²⁰

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הספד

The **Rosh (Meseches Moed Kattan, Perek Shelishi: Siman 63)** quotes a *beraisa* that discusses the concept of *hesped*:

²²⁰ Rav Schachter likes to quote this Ramban and add that there are some medical schools in Eretz Yisrael, and usually in medical schools there are *meisim*. Even if you want to say that it is *meisei akum*, maybe they're still violating “ולא תטמא את אדמתך”. Perhaps, though, one can say that there is some sort of *tzorech* and it may be permitted.

The *beraisa* says in Aveil Rabasi (3:6) one should not add from the beginning but can add on to the *ikar*. That is to say, one should not give a *hesped* of *kavod* to someone who was not worthy of such *kavod*. But if he was worthy of a little *kavod*, you can add a little on to the good traits already found in him. It was taught in a *beraisa* (Berachos 62a): R' Shimon ben Gamliel said: Just as the dead are punished, the funeral orators are punished, as well as those who answer (*amen*) after them... This means that when the one eulogizing the *meis* attributes to the *meis* that which they didn't have at all, this is considered a sin (for the *maspid* and for the *meis*.) Therefore, one should be careful not to exaggerate with abundant praise and *kavod* but should add a little bit to each good *midah* that they had.

The Rosh writes that when giving a *hesped*, one should not bestow praises that are entirely untrue but should take those *midos tovos* that the *meis* did have and slightly embellish them.

§

קבורה

The **Shulchan Aruch (Y.D. 362:1)** writes:

One who places the *meis* in the *aron* and does not bury them in the ground has violated “לא תלין.” And if he put him in an *aron* and buried him in the ground he has not violated this (*lav*). Nonetheless, it is proper to bury him in the ground immediately, even in *chutz la'aretz*.

The best type of *kevurah* is when the body is placed directly into the ground, without an *aron*. In America, however, it is illegal to place the body directly into the ground and so most bury using a coffin.²²¹

Rav Moshe Feinstein (Igros Moshe, Y.D. Chelek 3: Siman 143) has a *teshuva* about leaving the body in *mazali'im*, some sort of house where they put the *aron* in this structure but don't put it in the ground. He writes that it is certainly an *issur gadol* to leave the *meis* in one of these *mazali'im* and that the body has to specifically be put in the earth. Until the body is in the ground one is *mivatel* the *mitzvah* of *kevurah*, they violate “לא תלין”, and the *meis* cannot begin to receive *kaparah*.

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אמירת קדיש

The **Ramah (Y.D. 376:4)** writes famously:

And when the son davens and says *kaddish bi'rabim*, he redeems his father and his mother from *Gehenom*... And during the weekdays, if someone knows how to daven (for the *tzibbur*), this is better than just reciting *kaddish yasom*, for that was only established for *ketanim*. And someone who doesn't know how to daven the entire davening should daven from “למנצה” and “ובא לציון” etc. And the *minhag* is to not say *kaddish* for more than eleven months in order not to establish one's father or mother as a *rasha*, for the judgment of a *rasha* is twelve months.

²²¹ Though Rav Simon noted that some people, even in America, have all types of *shtick* where they pull out the bottom of the coffin when nobody is looking and bury the body directly in the ground.

An *aveil* should ideally daven for the *amud* and say the *kaddeishim* that are designated for the *chazzan* because the *din* of *kaddish yasom* was really instituted for *ketanim* who weren't able to daven for the *amud*.²²²

The source for this idea of a child davening for the *amud* as a *zechus* for a deceased parent is found in the **Menoras HaMeor** of **R' Yitzchak Abuhav**. He writes:

And we find this written at length in the Midrash Rebbi Tanchuma, Parshas Noach: R' Akiva was once walking through a cemetery and he came across a blacksmith (i.e. a spirit of a blacksmith) and he was carrying wood on his shoulders and was running with them like a horse. R' Akiva stopped him and he stood still. R' Akiva said to him, "My son, why are you doing this difficult work? If you are a slave and your master has given you this heavy burden, I will redeem you from him and you will go free. And if you are poor, I will (give you money) and make you rich." ...He responded, "I died and every day they make me chop trees and put them in the fire." R' Akiva said, "When you were alive, what was your job?" He responded, "I was the tax-collector and I used to favor the rich and cause trouble for the poor. Not only that, but I was *bo'el a na'arah ha'meorasa* on Yom Kippur." R' Akiva said, "My son, perhaps you heard of some sort of *takanah* that can be done for you?" He said, "...I heard them say, 'If he has a son that stands before the *tzibbur* and says 'ברכו את ה' המבורך,' he will be freed of his punishments.'"

Rebbi Akiva continued speaking with him and found out that this man's wife was pregnant when he had died. He tracked down the man's family and found out that his wife had given birth to a son who had never even gotten a *bris milah*. Rebbi Akiva found the son, gave him a *bris*, and tried to teach him Torah. The boy wasn't interested in learning, so Rebbi Akiva fasted forty days for him. The son began to learn and R' Akiva taught him *birkas ha'mazon*, *kerias shema*, and *tefillah*, until he was ready to lead the *tzibbur* and say 'ברכו'. When he did, the father was finally vindicated. The father came to R' Akiva in a dream and told him that R' Akiva had spared him from the judgments of *Gehenom*.

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על איזה קרובים מתאבלים

The **Gemara** in **Meseches Moed Kattan (20b)** states:

ת"ר: כל האמור בפרשת כהנים שכהן מיטמא להן אבל מתאבל עליהן, ואלו הן אשתו אביו ואמו אחיו ואחותו בנו ובתו. הוסיפו עליהן אחיו ואחותו הבתולה מאמו ואחותו נשואה בין מאביו בין מאמו.

All those about whom it is stated in the passage regarding *kohanim*, that a *kohen* must be *mitamei* himself for them, an *aveil* mourns for them as well. And these are they: His wife, his sister, his son and his daughter. They (i.e. the Rabbis) added to them his maternal brother and maternal sister who is a *besulah*, and his married sister, either paternal, or maternal.

The **Gemara** continues and quotes the opinion of the **Chachamim**:

²²² Rav Simon said that every now and then a boy in *yeshiva* will come and say that his grandfather passed away and his parents aren't necessarily going to be going to shul and he wants to know if he can say *kaddish* for his grandfather. There are different attitudes towards this *shaila*. Rav Simon thought maybe a good compromise would be that he daven for the *amud* more often than he would have because then he will be able to say *kaddish* but it would not look especially strange because people daven for the *amud* all the time.

...but the Chachamim say: He mourns along with any relative for whom he would himself mourn.

Anyone you would sit *shiva* for, if they are sitting *shiva*, you should sit with them. For example, since a person would sit *shiva* if they lost a parent, if a person's parent loses a parent (i.e. the grandparent to that individual), then both the child and parent should sit and observe *shiva* together.

The Gemara qualifies this last line:

כי הא דאמר ליה רב לחייא בריה וכן א"ל רב הונא לרבה בריה : באפה נהוג אבילותא בלא אפה לא תינהוג אבילותא.

...when you are in front of them, you observe *aveilus*, but when you are not in front of them, you do not observe *aveilus*.

This *din* only applies when you are in the same room with them.²²³

The **Shulchan Aruch (Y.D. 374:6)** states:

Anyone who one would mourn for, one mourns with them if one of their *kerovim* dies. And this is specifically when one is in their presence, but when one is not in their presence he does not have to observe *aveilus*, except for his wife, that even though he mourns for her he does not mourn with her, except for her father or her mother...

The **Ramah (ibid.)**, however, adds:

And some say that nowadays we are *noheg* to be lenient regarding mourning with them for it is done only as a *kavod* to the mourners and we are *noheg* to be *mochel* (on that *kavod*). Therefore, the *minhag* is nowadays not to mourn with the *aveilim* at all.

The Ramah writes that we don't practice this *din* anymore and that one should not even take it upon themselves to be *machmir*.

The Ramah continues:

Nonetheless, we are *noheg* that all the *kerovim* of the *meis* who would have been *pasul li'eidus* (to the *meis*) show a slight sign of personal *aveilus* in the first week, that is, until after the first Shabbos. They don't do *rechitza* and they don't change some of their clothes...²²⁴

R' Akiva Eiger (Chiddushei R' Akiva Eiger, Y.D. 374:4 d"h nesuah) quotes the **Yam Shel Shlomo** as saying:

²²³ Nowadays, the general practice is not like this. If a person is sitting *shiva* and their children are also present, the children will often wear shoes and not observe *nihugei aveilus*. Many Poskim assume like the Ramah (see below), that this is not done because nowadays people are *mochel* on this *kavod*.

²²⁴ Rav Simon said that we don't really have this *minhag* nowadays either, though **Rav Goldwicht** told him that this is the *minhag* in Eretz Yisrael.

If he had a separated from (his wife) and he had in mind to divorce her, and she died during the time that they had separated, the Yam Shel Shlomo writes that he doesn't mourn for her.

If a couple had separated but the man had not yet given his wife the *get* and then the wife died during the divorce proceedings, he does not sit *shiva* for her.

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תחנון והלל לאבא

The **Shulchan Aruch (O.C. 131:4)** states:

The *minhag* is that one does not say *tachanun* neither in a *beis ha'aveil* nor in a *beis ha'chassan*.

The **Mishna Berurah (ibid., s.k. 20)** adds:

That is, for all seven days. And the reason is that at that time the *midas ha'din* is directed towards the *aveil* and therefore, one must avoid intensifying the *midas ha'din*. This accords with the reason why one does not say *tachanun* at night. Even after one has gone out of the *beis aveil*, he does not need to say it...

The Mishna Berurah continues:

Hallel should not be said in a *beis aveil*. When one davens in the house of an *aveil* on Rosh Chodesh, then, even when he goes home afterwards he does not need to say *hallel*. However, on Chanukah, when one says the complete *hallel*, one must say it subsequently at home if he happened to daven in a *beis aveil*. However, when Rosh Chodesh falls on a Shabbos or if the *meis* was buried on Yom Tov, then, even if one davens in the *beis aveil* he should say *hallel* since there is no *aveilus bi'farhesia* on Shabbos and Yom Tov.

The **Rokeiach HaGadol (end of Hilchos Aveilus, pg. 82)** proposes three reasons why we don't say *hallel* in a *beis aveil*:

And we don't recite *hallel* on Rosh Chodesh, firstly, because we don't mention any matter of *simcha*. Additionally, (we don't recite *hallel*) because of *lo'eg li'rash*, for the *neshama* remains there (in the *beis aveil*) and so how can you say “לא המתיים, יהללו קה”)? Furthermore, ten people who separate from the *tzibbur* are considered like *yechidim*.

Firstly, we don't mention matters of *simcha* in a *beis aveil* and *hallel* is certainly a matter of *simcha*. Secondly, since the *neshama* remains in the *beis aveil*, it would be insensitive to point out that a *meis* is unable to sing praises to Hashem. Finally, it could be that a *yachid* is not permitted to say the *hallel mi'tam minhag* (i.e. *chatzi-hallel*), and since some consider ten who separate from the greater *tzibbur* like *yechidim*, they don't recite *hallel*.

The **Maharil (Hilchos Chanukah, no. 11)** writes:

If one goes to an *aveil* to daven on a day when *hallel* is recited, like Chanukah or Rosh Chodesh, he does not say it (i.e. *hallel*) by the *aveil*.

The **Tanya Rabbasi (Hilchos Aveil, Siman 68)** disagrees:

...*davka* on Rosh Chodesh we don't recite *hallel* there for even in the *beis ha'kenesses bi'tzibbur* it is only done as a *minhag*. But on Chanukah, we recite *hallel* and make a *beracha* before and afterwards, for each and every individual is obligated to say it.

The Maharil says that *hallel* is never said in a *beis aveil*, while the Tanya Rabbasi says that on Rosh Chodesh it is not but on Chanukah it is recited.

The **Shulchan Aruch HaRav (O.C. 131:5)** has a *chiddush*. He writes:

...but from *hallel* they are not *patur*, but because of the *aveilus* in this house they don't want to say, “לא המתיים, יהללו קה” because it seems like *lo'eg li'rash*. Therefore, he needs to leave from there and recite *hallel*, like one who arrives to a cemetery after reciting *shemoneh esreh*. He needs to distance himself from there and recite *hallel*. In what case are we speaking about? When it is *hallel* of Rosh Chodesh, where the *chiyuv* is only from a *minhag* and therefore we don't say it in a *beis aveil*. But for Chanukah, where *hallel* is an obligation from a *takkanas Chachamim*, we recite it even in a *beis aveil* for the *aveil* is also *chayav* to say it...

The Shulchan Aruch HaRav rules against the Mishna Berurah that one should recite *hallel* on Rosh Chodesh after coming from a *beis aveil*. Additionally, like the Tanya Rabbasi, he writes that one should say *hallel* in the *beis aveil* on Chanukah.

The **Magen Avraham (O.C. 131, s.k. 10)** quotes the entire discussion:

And we don't say *hallel* there, even on Chanukah (Maharil, Hilchos Chanukah, pg. 409). But the Tanya (Siman 68) writes that *davka* on Rosh Chodesh we don't say *hallel* because that is only a *minhag*. But on Chanukah, we do say. And this is the *lashon* of the Rokeiach (Siman 316): We don't say *hallel* for it is a *d'var simcha*. And furthermore, ten who separate from the *tzibbur* are considered like *yechidim*... and therefore, it seems to me that on Chanukah it is good that each person recite *hallel* in their own house...

The Magen Avraham rules that on Chanukah, each individual should repeat *hallel* in their own house.

This discussion is also found in the **Taz (O.C. 422, s.k. 2)** in Hilchos Rosh Chodesh:

It is written in the name of the *sefer* Rokeiach, that *hallel* is not recited in a *beis aveil* (on Rosh Chodesh) for we say “לא המתיים, יהללו קה” and that is *lo'eg li'rash*.

The **Aruch HaShulchan (O.C. 131:14)** quotes this discussion as well:

And some say that it is proper that the *aveilim* don't say it at all, and those davening there say it when they arrive back to their houses. And this is on Chanukah, but on Rosh Chodesh it is not necessary (to repeat it) because it is only done as a *minhag*.

In the last *teshuva* of the **Nodeh BiYehuda (Mehadura Tinyana, Y.D. Siman 216)**, the Nodeh BiYehuda's son discusses whether it makes a difference if the *aveil* is present or not. He writes that the *ikar* reason of the Rokeiach is that it is a *davar shel simcha* and

therefore, if the *aveil* is not present at the *minyán*, even though it is in the *beis aveil*, *hallel* may be recited and we are not concerned about the *neshama* and *lo'eg li'rash*.

The **Pischei Teshuva (Y.D. 376:2, d"h li'hispallel)** writes that really we are concerned for *lo'eg li'rash* and the *neshama*. However, the only time we are concerned that the *neshama* is present in the house is when *shiva* is being observed in the house where the *meis* passed away. If the *shiva* is being observed in a different place, however, then there is no problem saying *hallel* in the *beis aveil*.

In the *sefer Nimukei Orach Chaim (O.C. 131, s.k. 4)* of the **Munkatcher Rebbe** he brings this discussion and writes that when the Divrei Chaim was sitting *shiva* for his daughter, one of the days was Rosh Chodesh. The Divrei Chaim spoke with R' Tzvi from Liska about what he thought about saying *hallel*. In the end, the Divrei Chaim left the room and everyone else remained and recited *hallel*. The Divrei Chaim said *hallel* in his own room.

Rav Ovadiah Yosef (Shu"t Yabia Omer, Y.D. Chelek 4: Siman 33) has a lengthy *teshuva* on this topic but in the end he concludes that the *minhag* of Yerushalayim is that on Rosh Chodesh, the *tzibbur* goes to another room and says *hallel*. If the *tzibbur* is too big, then perhaps the *aveil* goes into a different room. He says for Sefardim, on Rosh Chodesh the *aveil* goes into another room while the *tzibbur* says *hallel*, and on Chanukah he can even stay. Even for Ashkenazim who follow the *minhagim* of the Maharil not to say *hallel* on either day, the *aveil* can go into another room and the *tzibbur* can say *hallel*. He also quotes the logic of the Pischei Teshuva, that if the *meis* was *niftar* in a hospital or even a different house, *hallel* can be said in the *beis aveil*.

Rav Aharon Felder in his **Yesodei Smochos** writes that the practiced *minhag* is as follows:

- (a) *Hallel* should not be recited in the mourner's house on Rosh Chodesh except when Rosh Chodesh coincides with Shabbos, in which case both the mourner and the *minyán* should say *hallel*.
- (b) If there is no *minyán* in the mourner's house, the mourner should not recite *hallel* on Rosh Chodesh during the service in the synagogue.
- (c) If Rosh Chodesh occurs on the seventh day of *shiva*, the mourner should say *hallel* after the *shiva* has concluded.
- (d) On Chanukah, the mourner should leave the room and the *minyán* should say *hallel* while the mourner should say *hallel* in his own room.

§

אסורים שונים

מלאכה

The **Shulchan Aruch (Y.D. 380:1)** states:

And these are the things that an *aveil* is forbidden to do: *Melacha*, *rechitza*, *sicha*, *ni'elas ha'sandal*, and *tashmish ha'mitah*. And he is forbidden to read from the Torah, and he is forbidden

in *shi'eilas shalom*, and laundering. And he is obligated in *atifas ha'rosh*, and *kefias ha'mitah* for all seven days. And he is forbidden to put on *tefillin* on the first day. And it is forbidden for him to wear pressed clothing, to cut his hair, to rejoice, and to repair his tear for all thirty days.

The **Ramah (ibid.)** adds:

And all the *divrei aveilus* are practiced both by day and by night.

The **Shulchan Aruch (Y.D. 380:2)** proceeds to describe the parameters of each *issur*:

Melacha: How so? For the first three days he is forbidden to do *melacha*, even if he is poor and must be supported from *tzedakah*. From then on, if he is poor and he doesn't have what to eat, he can perform *melacha bi'tzina*, inside his house, and his wife can weave her spindle inside her house. However, the Chachamim said that a curse will come upon those neighbors who make a poor person need to do this (i.e. they do not support him during his *aveilus*.)

The **Ramah (ibid.)** adds:

In the way that it is permissible to write on Chol HaMoed, so too, it is permissible to write during his days of *aveilus*. But this is not the case regarding any other matter.

The Michaber rules that one may not work under any circumstances during the first three days of *shiva*. After those three days, if he needs funds for his daily living expenses, he may perform *melacha bi'tzina*.

תשמיש המטה

The **Shulchan Aruch (Y.D. 383:1)** writes:

An *aveil* is forbidden in *tashmish ha'mitah*, but in regards to all other *harchakos* he is *mutar* – even in regards to *mezigas ha'kos* and *hatza'as ha'mitah* and washing his face, hands, and feet, whether it is his *aveilus* or her *aveilus*.

The **Ramah (ibid.)** adds:

However, one should be *machmir* regarding *chibuk* and *nishuk*.

Although *tashmish ha'mitah* is forbidden, the *harchakos* that regularly apply by Hilchos Niddah need not be kept by an *aveil* during their days of *aveilus*.

נטילת ספרונים

The **Shulchan Aruch (Y.D. 390:7)** writes:

Just like it is forbidden to shave for all thirty days, so too it is forbidden to cut one's nails with a *kli*. But to cut them with his hands or with his teeth is *mutar*, even in the middle of *shiva*. And a woman who is preparing for her *tevilah* after *shiva* but within *sheloshim*, if she cuts her nails by hand or with her teeth she won't cut them appropriately. She should therefore tell a non-Jew to cut them for her with a razor or scissors.

The **Ramah (ibid.)** adds:

And you don't necessarily need a non-Jew, but the *din* would be the same by a Jew...

The Michaber rules that one may not cut their fingernails with an instrument for the entire thirty days.

איסור יציאה מהבית

The **Shulchan Aruch (Y.D. 393:1)** states:

An *aveil*, for the first three days, is not permitted to leave (his house to go to another) *beis aveil*, nor to the cemetery. From then on, if someone else loses a relative, he can follow the *mitah* to the cemetery. (If he visits the mourners) he does not sit amongst the *menachamim* but amongst those being comforted.

The *din* is that an *aveil* is not allowed to leave his house for the first three days of *aveilus*.²²⁵

§

מקצת היום ככולו

The **Gemara in Meseches Moed Kattan (19b)** states:

תנן : קסבר אבא שאול מקצת היום ככולו ויום שביעי עולה לו לכאן ולכאן. אמר רב חסדא אמר רבינא בר שילא הלכה כאבא שאול.

Abba Shaul maintains that part of the day is like the whole day, and the seventh day counts both ways. Rav Chisda said in the name of Ravina bar Shila: The *halacha* is like Abba Shaul.

We hold like the opinion of Abba Shaul in both of his two *chiddushim*: Firstly, that *מקצת היום* is *ככולו*. If a person sits *shiva* for only a portion of the day, specifically on day seven, it can be counted as a full day of *shiva*. Secondly, *עולה לו לכאן ולכאן* is *יום שביעי*, that if the seventh day is *erev Yom Tov*, you have *מקצת היום ככולו* in the morning and then the rest of the day is already like day eight. Now you have performed *miktzas sheloshim* and the *regel* will be *mivatel sheloshim* as well.

Rav Hershel Schachter (Bi'Ikvei HaTzon, Siman 17; pg. 89) quotes from **Rav Soloveitchk** an idea that *מקצת היום ככולו* only applies to days that are a “מלאה,” days that are superimposed onto the calendar, like countings of *shiva*, *zivah*, *cherem*. Obviously, nobody would say that a person only has to keep part of Shabbos because you already kept *מקצת היום*.

²²⁵ They used to have this *minhag* where one *aveil* would go to another *beis aveil* to sit with other mourners, but we don't really have this today. Nonetheless, the *issur of yotzei mi'bayis* still applies. The Poskim point out that the reason for this is because it is a *hesach ha'daas* for the *aveilus*. Sometimes, in certain situations, a person needs to sit *shiva* in different locations. Technically speaking, we assume that there is no *hesach ha'daas* and they sit part here and part there. This is not the ideal but it's not a technical violation of *hesach ha'daas*. People do this all the time when they bury the *meis* in Eretz Yisrael, begin sitting *shiva* there, and then return to America.

Further (pg. 93), Rav Schachter quotes the Michaber (Y.D. 395:3) that one doesn't say *מקצת היום ככולו* by the last day of the counting of the twelve months. The Shach and Taz explain that the reason for this is because the twelve months is a *din* in months and we can only say *מקצת היום ככולו* when we are dealing with a *din* of days, like *shiva* or *sheloshim*. Rav Schachter writes that another reason could be that for *מקצת היום ככולו* one need only do some sort of *nihug* to demonstrate some *aveilus* on that day, but by the twelve months there is no *nihug* that can be done. Even though by *sheloshim* there is also no distinct *nihug*, the lack of shaving can serve as a positive display of *nival*.

Rav Hershel Schachter, in a piece entitled: “*Birurim biDinei Aveilus*” (Ohr HaMizrach, Tishrei 5743)²²⁶, quotes from the *sefer Chaim uVeracha LiMishmeres Shalom*²²⁷ (Os 100, Siman 85) from the Maharsham, that if someone is mourning for a parent and they change their shirt, they have to tear *keriah* again.

After he gets up from *shiva*, he is going to want to take a shower and to put on fresh clothing. The Maharsham says that as long as it's still the seventh day you have to rip again, even though the seventh day is over. Why? Because *מקצת היום ככולו* is really a *machlokes* in the Gemara between Abba Shaul and the Chachamim. Really we should *pasken* like the Chachamim because ‘*yachid vi'rabim halacha ki'rabim*,’ but since we *pasken halacha ki'divrei ha'meikil bi'aveil*, we hold like Abba Shaul here. However, we know the Gemara says ‘*אבילות לחוד וקריעה לחוד*,’ that the *halachos* of *aveilus* are one thing and the *halachos* of *keriah* are an entirely different topic. Therefore, when it comes to *keriah*, perhaps we should follow the Chachamim's counting in which case it would still be considered *shiva*.

The *minhag* is certainly not like this Maharsham and the simple understanding of why not is because once we *pasken* like Abba Shaul, we hold like him across the spectrum. Rav Schachter, however, gave a different explanation. The Gemara says ‘*כל קרע שאינו בשעת*’, that the *din* of *keriah* is really for when the *meis* just died and the *kerovim* are still very emotional. What is this other *din*, that you tear for all seven days if it is not going to be *בשעת הימום*? Rav Schachter says perhaps this later *keriah* is really a separate *din* in Hilchos Aveilus, not in Hilchos Keriah, and we would in fact say *halacha ki'divrei ha'meikil bi'aveil*.

²²⁶ Rav Schachter wrote this piece in memory of his father-in-law, R' Avrahm Yeshaya Shapira, the *rosh yeshiva* of Torah Vodaas.

²²⁷ Which Rav Simon noted is a very *chashuv sefer* written on two topics: *aveilus* and *hilchos daled minim*. Some old Shulchan Aruch's have it in the back, but now you can buy it separately. Nowadays, they like to print the *daled minim* one with the Mateh Efraim. It has a *haskama* from R' Chaim Brisker and it is written alphabetically. If you want to know something about *kevurah*, for example, you look under ‘ק’.

סימן כא: בענין קביעות מות בהלכה

We must examine at what point a person is considered truly dead according to *halacha*. Certainly, when all bodily function ceases, everyone would agree that such a person is dead. Can a person, however, be declared dead if there is still some bodily movement occurring? If a certain vital organ is no longer functioning, can we declare him dead even though other organs may still be functioning?

The *pasuk* in **Parshas Noach (7:22)** states:

(ז:כב) כָּל אֲשֶׁר נִשְׁמַת־רוּחַ חַיִּים בְּאַפֵּיו מִכָּל אֲשֶׁר בְּחַרְבָּה מֵתוּ:

All in whose nostrils was the breath of the spirit of life, of everything that was on dry land, died.

The **Mishna in Meseches Yoma (83a)** states:

...מי שנפלה עליו מפולת ספק הוא שם ספק אינו שם ספק חי ספק מת ספק (כותי) [נכרי] ספק ישראל מפקחין עליו את הגל. מצאוהו חי מפקחין ואם מת יניחוהו:

A person upon whom a building collapsed (on Shabbos) and it is uncertain whether he is there or not, whether he is alive or dead, whether he is a non-Jew or a Jew, they must clear away the heap of rubble to rescue him. If they find him alive, they must continue to clear away the rubble, but if he is dead, they leave him.

The **Gemara in Meseches Yoma (85a)** expands on the Mishna:

תנו רבנן: עד היכן הוא בודק? עד חוטמו. ויש אומרים עד לבו. בדק ומצא עליונים מתים לא יאמר כבר מתו התחתונים.

(When cleaning rubble from a victim,) up to where on the person's body does one examine (to see if they are still alive)? Up to his nose. And some say up to his heart. If one checked and found the upper ones (i.e. the bodies found in the top layer of the rubble heap) to be dead, he should not say that the lower ones must surely have died already.

Further on, the Gemara states:

אמר רב פפא: מחלוקת ממטה למעלה, אבל ממעלה למטה כיון דבדק ליה עד חוטמו שוב אינו צריך דכתיב "כל אשר נשמת רוח חיים באפיו."

Rav Pappa said: The *machlokes* (regarding whether one must check up to the heart or up to the nose is only when checking) from the bottom towards the top. However, (if one is clearing and checking) from the top towards the bottom, all agree that once he has checked up to the nose (and found no sign of breath,) he is not required to check any further, for it is written (Bereishis 7:22): "All in whose nostrils was the breath of the spirit of life."

Rav Pappa explains that the *machlokes* as to where one check for signs of vitality is only when one starts from the feet and progress towards the head, in which case you will reach the heart first. However, everyone agrees that if you start from the head and work downward, one only has to check until the nose.

The **Rambam (Hilchos Shabbos 2:18-19)** states:

(18) When a building has fallen, and there is a doubt whether or not it has fallen over a person, it may be cleared. If the person was discovered to be alive, but was crushed (by the fallen debris) to the extent that it is impossible that he will recover, (the debris) may be cleared and the person taken out to enable him to live however long he does.

(19) If (in the process of clearing the debris), they reached his nose and saw that he was not breathing, he should be left there, for he has died already. Although it is discovered that people on the upper level of a landslide have died, one should not assume that those on the lower levels have died. Instead, (the debris) should be cleared away from all of the people, for in a landslide it is possible that those on the upper level will die, while those on the lower level will remain.

The Rambam rules like the Gemara, that checking only for breath in the nose is sufficient to determine whether a person is living.

The **Mishna in Meseches Ohalos (1:6)** states:

אדם אינו מטמא, עד שתצא נפשו מפיו מגוייד, אפילו גוסס... הוזהו ראשיהן אף על פי שהן מפרכסין
...טמאין

A person does not convey *tumah* until his soul departs, even if he is fatally wounded or even if he is a *goses*...if their heads were severed, they are *tamei*, even if they are still moving convulsively...

Part of the discussion of brain-death is that if you assume that there is no circulation to the brain, even though there is no physical decapitation, perhaps that lack of circulation is equivalent to a *halachik* decapitation and is sufficient to declare a person dead.

Rav Moshe Feinstein (Igros Moshe, O.C. Chelek 1: Siman 8) has a *teshuva*²²⁸ where he discusses whether a person with a paralyzed left arm can still put *tefillin* on it or whether the arm is no longer considered an arm anymore. Rav Moshe concludes that only if the arm is “יבש לגמרי,” that it would not be *motzi* any *dam* if one were to poke it, would it no longer be considered an arm. But an arm that is only on paralysis is not considered “*yavesh li'gamrei*” and one could still put *tefillin* on it.

Some use the logic of this *teshuva* to say that perhaps if there is no circulation to the brain it is also considered *yavesh li'gamrei*, and that once circulation is cut off, we can view it as if there is no more brain and can declare death.

The **Gemara in Meseches Chullin (21a)** also deals with this discussion of *hutaz rosho*:

אמר רב יהודה אמר שמואל: נשברה מפרקת ורוב בשר עמה מטמא.

Rav Yehuda said in the name of Shmuel: If a person's neck bone is broken together with most of the flesh upon it, the person is *mitamei (bi'ohel)*.

²²⁸ Written to R' Yaakov HaKohen Meskin, *ba'al michaber* of the Even Yaakov on Meseches Chagiga.

If a person's neck bone broke and "rov basar" was with the neck bone, he is considered dead and is *mitamei bi'ohel*.²²⁹

The **Rambam (Hilchos Tumas Meis 1:15)** records this *halacha*:

A *meis* conveys *tumah* only after its soul has gone forth. Even though a man is mortally wounded or is a *goses*, even though both his gullet and windpipe are cut through, he conveys *tumah* only after his soul has gone forth, as it says (Bamidbar 19:13): "...ל-ה-נ-נ-ע ב-מ-ת ב-נ-פ-ש ה-א-ד-ם". If his neck is broken off together with most of the flesh, or if flesh is torn from his back as from a fish, or if his head is cut off, or if he is severed into two pieces at his belly – such a person conveys *tumah*, even though there is still a twitching in any of his limbs.

Even though a person might still be moving, if "rov basar" is torn with the break in his neck then the body is *mitamei* because it is already considered to be a *meis*.

The **Ramban (Chiddushei HaRamban, Meseches Chullin 20b d"h ha di'amar)** writes:

That is to say that it is *mitamei bi'masa* already from now. And this is like Shmuel who says if the neckbone is broken and "rov basar" is with it, it is *mitamei* – and this is while it is still "alive," for if it is after death (i.e. it has entirely stopped moving), it obviously (is *mitamei*)!

The Ramban writes that it is clear from this Gemara that one doesn't have to be completely dormant in order to be proclaimed dead. The *chiddush* of the Gemara is that even if the body is still moving around it could still be considered dead.

The **Chasam Sofer (Shu"t Chasam Sofer, Y.D. Siman 338)** has a famous *teshuva*²³⁰ about a *kohen* who was a doctor in a certain town where the law of the town was that the doctor was required to check and declare a person dead before they would be buried. Can a *kohen* enter to check to see if the person is truly dead or not?

The Chasam Sofer notes that the *shoel* thought that there were two reasons to permit the doctor to do this *bedikah*. Firstly, if we don't allow the doctor to check, it could be that the person is still alive and we might end up burying a living person. Therefore, this concern of *sakanas nefashos* should override our concern for *tumas kohanim*. Secondly, in the Shu"t Beis Ya'akov he is *mifalpel* as to whether we should permit a *kohen* to enter to see a *choleh* who is a *goses*.

In the same *teshuva* he writes that at that time, the government had made a rule that a *meis* had to be left over a certain number of days before burial to assure that the said dead person was truly no longer alive. The Chasam Sofer writes that this doesn't mean that

²²⁹ Rav Simon was staying at the home of Dr. Robert Weiss on the West Side during Shavuot 5769 and he figured that if he was in a doctor's house and was reviewing this *sugya*, he should discuss with him exactly what the Gemara here in Meseches Chullin means. Dr. Weiss said that inside the neckbone you have the chord that connects the head to the rest of the body. Then, around the bone, you have tissue. If the neck bone breaks, it is certainly not a good thing but it doesn't necessarily mean that it will be fatal if it stays in place. If the tissue around it will stay in place, then you have a broken bone but the neck will stay in place. However, once its support system of tissue is torn, then the bone will fall out of place, the chord will rip, and it will be similar to *hutaz rosho* and will be *mitamei*.

²³⁰ Rav Simon mentioned that he once discussed this *teshuva* with R' Dovid Feinstein in the *sukkah*. He also discussed it with R' Zalman Nechemia Goldberg two times.

such a *gizeira* is *al pi halacha*. He writes that R' Moses Dovid Mendehlson, the famous *maskil*, wanted to permit this delayed burial by saying that until we see that the *basar* is decaying we can't really know if a person is dead. Therefore, because of the *sakanas nefashos* of burying a living person, we should override the *issur of halanas ha'meis* and leave him unburied until we see that he begins to decay. The Chasam Sofer writes that the Ya'avetz was very upset about this *kulah*.

The Chasam Sofer writes that he too was very upset about these excessive measures and explains that we don't have to be *choshesh* to such a degree that a person is still living. He writes:

And we see without *safek* that the Torah says... “לא תלין... קבור תקברנו ביום ההוא” and that one who violates this has violated an *aseh* and a *lav*... Moshe Rabbeinu received the *shiur* (of death) as a *halacha Moshe mi'Sinai*, or Chazal relied on the *pasuk*: “כל אִשׁוּר נְשַׁמַּת-רוּחַ תֵּימִים בְּאָפִי” to say that everything is dependent on the breath coming from the nose, as is explained in Meseches Yoma (85a) and codified by the Rambam and Tur.

The Chasam Sofer writes that we have a *mesorah* that we check the *neshimas ha'af* to determine whether a person is still alive and there is no reason to be stricter than what the Torah requires. Anyone who attempts to be stricter and leaves the body over, first allowing it to decay, violates the *lav* of “לא תלין” and the *aseh* of “קבור תקברנו”.²³¹

Rav Moshe Feinstein (Igros Moshe, Y.D. Chelek 2: Siman 174) has a *teshuva* written to the Minchas Yitzchak where he writes that the early heart transplants were a “double *rechitza*.” The doctors would take the heart from a person who had brain damage but was not brain dead and was thus still alive according to *halacha*. Then, since they had not yet perfected the transplant, they would try to put the heart into another person and end up killing them as well.

There is a famous *teshuva* of the **Chacham Tzvi (Shaila 74)**, which was termed by **Rabbi Dr. Eddie Reichman (Torah U-Madda Journal, 1993; pg. 160)** as “*The Chacham Tzvi and the ‘Heartless’ Chicken.*” R' Reichman wrote:

²³¹ Later in the *teshuva*, the Chasam Sofer has a different *lashon* which seems to imply something slightly different. He writes: “Rather, after the body is still as a rock and there is no longer a *neshima*, we have only the words of our Torah *kedosha* (to rely on) that he is dead and we should not leave him over. And one is *mitamei* to him if he is a *kohen*...” From this *lashon* it sounds like the *neshima* is not the only concern, but that the body has to be still as well. **Rav Zalman Nechemia Goldberg** told Rav Simon that he feels *mi'ikar ha'din* the *neshima* is the *koveiah* of life based on the Gemara in Meseches Yoma. The only reason why one would require other signs is because there is always a *chashash* that the *neshima* is only temporarily gone because he fainted. If there is such a *chashash* so then certainly a lack of *neshima* will not determine that he is dead because he could be breathing again the next day. If, however, you know medically that the cessation of breath is not because he fainted but because he is brain dead and the *neshima* is not going to come back, then checking for *neshima* alone would be sufficient to establish death. Rav Simon wasn't asking him a real *shaila* at the time. They were just talking in learning. But that is what R' Zalman Nechemia told him in Machon Lev where he spends his Tuesday mornings in the *beis midrash*. Rav Simon heard similarly from **R' Dovid Feinstein** in the name of **R' Moshe** that *neshima* is the *koveiah* of life. There is, however, the other side, who claim like **R' Bleich**, that unless the brain and heart and everything has shut down, the person could still be alive. The two major discussions that are dependent on this determination of life are: 1) pulling the plug on someone who is brain dead and 2) doing a heart-transplant from a person who is brain dead (because once the heart stops pumping, you can't do the transplant anymore.) Rav Simon noted that this has been a *machlokes* for a very long time and there were always *gedolei Torah* on both sides. For some reason, however, people have difficulty grasping how there could be a *machlokes* in this issue. “Anything short of the Sanhedrin is not going to be *machriah* this *shaila*,” noted Rav Simon.

The discussion of whether an animal could live without a heart has occupied a prominent place in halakhic responsa literature as it relates to the status of an animal as *trefah* or *nevelah*. A case in the year 1709 caused a great sensation when a young girl, preparing a hen for dinner, was unable to locate its heart. There was some suspicion that a nearby cat may have eaten it. The case was brought before R. Tzvi Ashkenazi (Chacham Tzvi) to decide if the hen was kosher. During the course of his discussion, the Chacham Tzvi took the opportunity to elaborate on the importance of the heart, both from a halakhic as well as a physiological perspective. His famous responsum on this subject has already been incorporated into the halakhic discussions of brain death, but I wish only to highlight a few of the medical historical elements...

The Chacham Tzvi wrote that it couldn't be that the chicken didn't have a heart, for if there was no heart, the chicken couldn't have lived. Many, therefore, include this Chacham Tzvi in this discussion and say that you need a heart to live and if the heart is still functioning then the person is still living.

Rabbi Dr. Reichman writes that you can't really bring a *ra'ayah* from the Chacham Tzvi because if you look in his *teshuva* you see that he clearly assumed that the heart is a respiratory organ. Therefore, the Chacham Tzvi also held that the determining factor really was the *neshima*.

§

Rav Hershel Schachter has a different understanding of the entire *sugya*.²³²

The **Mishna in Meseches Arachin (20a)** states:

...וערך ידי וערך רגלי עלי לא אמר כלום. 'ערך ראשי וערך כבידי עלי נותן ערך כולו. זה הכלל דבר שהנשמה תלויה בו נותן ערך כולו.

...If one says, "I undertake to pay the value of my arm," or "of my leg," he has said nothing. If, however, he says "I undertake to pay the value of my head," or "of my liver," then he gives to *hekdesh* the value of his whole person. This is the general principle: (If one pledges the value of) a vital organ, he gives the value of his whole person.

The Mishna explains that if one says, for example, "I want to be *makdish* to the Beis Hamikdash the value of a leg of an animal," he doesn't have to donate anything. If, however, he says, "I want to be *makdish* the heart," he has to give the value of the entire animal because without the heart the animal would perish. From here we see that there are two types of limbs: 1) אבר שהנשמה תלויה בו and 2) אבר שאין הנשמה תלויה בו. A person can live without a leg but they cannot live without certain vital organs, like the heart.

The **Rambam (Hilchos Arachin vaCharamin 2:1)** writes:

When a person says: "I pledge the value of my hand," "...my eye," or "...my foot," or "...that person's hand," or "...that person's eye," his words are of no consequence. If he says: "I pledge the value of my heart," or "...my liver," or "...that person's heart," or "...that person's liver," he

²³² R' Simon was discussing this with R' Stein who told him that even in the Encyclopedia, Rav Schachter is the only one who had this approach. R' Simon noted that Rav Schachter always used to say, "Everyone is quoting the Gemara in Yoma but really they should be looking at the Gemara in Arachin."

must pay the entire value. Similarly, with regard to any limb which if removed would cause the person to die, if one says: "I pledge its value," he must pay the value of the entire person.

From this *din*, Rav Schachter wants to claim that death is the cessation of the אברים שהנשמה תלויה בו. Which are those limbs? The Rambam mentions specifically that these are the heart, brain, and liver. Accordingly, Rav Schachter has a discussion whether a person is dead if one of these organs is no longer functioning or whether we require all three to stop functioning in order to declare death.²³³

§

The Gemara in Meseches Pesachim (25b) states:

ושפיות דמים גופיה מנלן? סברא הוא, כי ההוא דאתא לקמיה דרבא א"ל ימרי דוראי אמר לי זיל קטליה לפלני ואי לא קטלינא לך' א"ל יליקטלוך ולא תיקטול, מאי חזית דדמא דידך סומק טפי? דילמא דמא דההוא גברא סומק טפי.

From where do we know with regard to murder itself (that one must sacrifice his life rather than commit the transgression)? It is based on logic as is evidenced in the case of a certain individual who came before Rabbah and said to him: "The governor of my town said to me, 'Go kill so-and-so. And if you do not kill him, I will kill you.'" Rabbah said to him: "Let him kill you and do not kill anyone for what do you see to assume that your blood is redder? Perhaps the blood of that man is redder than yours!"

The Gemara records a story in which Rabbah told a certain individual to be killed rather than kill another. After all, why should one person be killed to save another?²³⁴

The Poskim discuss whether this statement is true in all situations. What about killing a *treifah* who will die regardless within the year and who we know the Torah considers substandard?²³⁵ On the one hand, maybe if someone says to Reuven, "We will kill you if you don't kill the *treifah*," he would be permitted to kill the *treifah* because in this case, Reuven really is "סומק טפי." On the other hand, perhaps we say that in the end of the day there is a *din* of יהרוג ואל יעבור on all people.

The Rambam (Hilchos Rotzeiach u'Shemiras Nefesh 1:9) writes:

This, indeed, is one of the negative *mitzvos* – not to take pity on the life of a *rodef*. On this basis, our Sages rules that when complications arise and a pregnant woman cannot give birth, it is permitted to abort the fetus in her womb, whether with a knife or with drugs. For the fetus is considered a *rodef* of its mother. If the head of the fetus emerges, it should not be touched,

²³³ Rav Simon mentioned that he thinks there are two difficulties with this analysis. The first he discussed with R' Shabtai, and that is that this Gemara has nothing to do with brain death. What the Gemara means to say is not that if this particular אבר שהנשמה תלויה בו is not functioning then the person is dead. Rather, if a person is missing these limbs it will lead to death but it doesn't mean they are dead right now. Nonetheless, Rav Schachter explains that once one of these organs go, the person is *safek*-dead, and once all three go, he is *vadai* dead. Rav Schachter essentially argues on those who say that brain death is *vadai* alive and says that you can't say he is *vadai* alive based on this Gemara in Meseches Arachin. Rav Schachter writes this *mihalech* in the *RJJ Journal* (Vol. XVII, pg. 32) in an article entitled, "Determining Death" and in his *sefer Bi'Ikvei HaTzon (Siman 36:7)*.

²³⁴ Rav Simon pointed out that although we have a *Mishna* in Meseches Horayos as to the order of *kadimah bi'hatzalah*, who we save first if we can save someone from death (for ex. a *kohen*, or a *levi*, a *talmid chacham*, etc.), when it comes to killing another person, all Jews are equal.

²³⁵ This is so because the *halacha* is if you kill a *treifah* you are not *chayav misah*.

because one life should not be sacrificed for another. (Although the mother may die,) this is the nature of the world.

The Rambam writes that if a woman is having trouble giving birth and it could be a life-threatening situation, one is permitted to kill the fetus inside of her as long as the head has not emerged. Once the head comes out, however, killing the baby would be akin to killing one life to save another and would be forbidden.

The **Nodeh BiYehuda (Mehedura Tinyana, C.M. Siman 59)** discusses this Rambam in a *teshuva* to R' Yeshaya²³⁶ in which R' Yeshaya asked: Why does the Rambam have to say the child has a *din* of a *rodef*? Even if you don't want to call him a *rodef*, one can say that since we are dealing with a fetus, which is considered a substandard life in the eyes of the Torah²³⁷, the mother's blood is undoubtedly "סומק טפי" and she should have the priority of life.

The Nodeh BiYehuda writes that if what R' Yeshaya says is true, then one would be permitted to kill a *treifah* in order to save a *shalem* and about this he writes "זה לא שמעו מעולם."²³⁸

The ruling of the Nodeh BiYehuda is usually considered normative in this matter and the opinion of R' Yeshaya is not. If you assume like the Nodeh BiYehuda then the *shaila* of a heart transplant from a living person never gets off the ground. But if you assume like Rav Yeshaya, then it could come out that it would be permissible to kill a person in critical condition by taking their heart and giving it to someone who has a greater chance of living.

We see further proof from the **Yerushalmi in Meseches Terumos (47a)** that one is not permitted to kill one person in order to save another, or in this case, even many others:

תני : סיעות בני אדם שהיו מהלכין בדרך פגעו להן גוים ואמרו יתנו לנו אחד מכם ונהרוג אותו ואם לאו הרי אנו הורגים את כולכם, אפי' כולן נהרגים לא ימסרו נפש אחת מישראל. ייחדו להן אחד כגון שבע בן בכרי ימסרו אותו ואל ייהרגו. אי"ר שמעון בן לקיש : והוא שיהא חייב מיתה כשבע בן בכרי, ורבי יוחנן אמר : אע"פ שאינו חייב מיתה כשבע בן בכרי.

It was stated: A group of people on the road were met by Gentiles who said to them, 'Give us one of you so that we may kill him, otherwise we will kill all of you.' Even if all of them are killed they should not hand over a Jewish person. If they designate one, like Sheva ben Bichri, they should hand him over so as not to be killed. R' Shimon ben Lakish said: (You may hand over such a person only) on condition that he is guilty of a capital crime like Sheva ben Bichri. But R' Yochanan said: Even if he is not guilty of a capital crime like Sheva ben Bichri.

If non-Jews come and say to a group of Jews, "Give us one Jew to kill or we'll kill all of you," the Jews are not permitted to give over anyone. If the non-Jews specify a person to be killed, R' Yochanan says that the person may be handed over regardless, while R'

²³⁶ Rav Yeshaya Pick, the *ba'al Mesoras HaShas* on the side of every page of Gemara.

²³⁷ Again, because one is not *chayav misah* for killing an *ubar*.

²³⁸ Rav Yeshaya Pick would likely say, *ein hachi nami*, that if someone tells you: 'Kill this *treifah* or we'll kill you,' he can kill the *treifah* who is considered substandard by the Torah.

Shimon ben Lakish says that they may only be handed over if they are truly *chayav misah* like Sheva ben Bichri was.

The **Rambam (Hilchos Yesodei HaTorah 5:5)** records these *dinim li'halacha*:

If gentiles tell a group of women: “Give us one of you to defile. If not, we will defile all of you,” they should allow themselves all to be defiled rather than give over a single Jewish soul to the gentiles. Similarly, if gentiles told a group of Jews: “Give us one of you to kill. If not, we will kill all of you,” they should allow themselves all to be killed rather than give over a single soul to the gentiles. However, if the gentiles single out (a specific individual) and say: “Give us so-and-so or we will kill all of you,” – if the person is obligated to die like Sheva ben Bichri, they may give him over to them, although, at the onset, this instruction is not conveyed to them. If he is not obligated to die, they should allow themselves all to be killed rather than give over a single soul to the gentiles.

The **Minchas Chinuch (Parshas Emor, Mitzvah 295-296:7 d”h vi’lichora)** writes:

And seemingly it appears that if a Jewish *rodef* is chasing after a *treifa*, since if he kills the *treifa* he is not *chayav misah* as is explained in Meseches Sanhedrin (78a) and in the Rambam (Hilchos Rotzeiach 2:8), it is possible that this is not called *retzicha* and it would be forbidden to kill the one chasing the *treifah*.

The **Meiri (Beis HaBechira, Meseches Sanhedrin 72b)** has a similar *svara* where he writes that it could be that a *katan* is considered like a *gadol* in regards to the *dinim* of a *rodef*, but a *treifah* has a lower status.

These *mekoros* are all recorded in **Hashtalas HaLev LiOhr HaHalacha** written by **R’ Yehuda Gershuni**²³⁹.

Usually in contemporary *psak halacha*, even though there are *mekoros* that assume like R’ Yeshaya Pick, most assume like the Nodeh BiYehuda and don’t even consider the possibility of “trading” one life for another.

²³⁹ Most famously known for writing the Shita Mikubetzes on Meseches Pesachim. It’s obviously not the same Shita Mikubetzes of R’ Betzalel Ashkenazi, but it is a *likut* from different Rishonim and Acharonim. He was a big *talmid chacham* and was known as “Reb Yudela.” In Europe people were not known by their last names. You were known by your first name and the town you came from. R’ Chaim Shmuelevitz was not known as R’ Chaim Shmuelevitz in Europe but was known as R’ Chaim Stutchiner. R’ Nachum Perchovitch was not R’ Nachum Perchovitch but was R’ Nachum Trucker. R’ Yehuda Gershuni learned in Kamenetz by R’ Baruch Ber and he made *aliyah* to Eretz Yisrael. R’ Baruch Ber wrote a letter to R’ Kook (which we have) praising Rav Gershuni so that Rav Kook should know about this new fellow he was getting in the *yeshiva*.

סימן כב: בענין אדר ראשון ואדר שני ואבילות בפורים

The **Mishna** in **Meseches Megillah (6b)** states:

משנה: קראו את המגילה באדר הראשון ונתעברה השנה קורין אותה באדר שני. אין בין אדר הראשון לאדר השני אלא קריאת המגילה ומתנות לאביונים:

If they read the *megillah* in the first Adar, and subsequently an extra month (of Adar) was added to the year, they must read it again in the second Adar. There is no difference between the first Adar and the second Adar except in respect to reading the *megillah* and gifts for the poor.

The **Gemara (ibid.)** explains:

גמרא: הא לענין סדר פרשיות זה וזה שוין. מני מתני? לא תנא קמא ולא ר' אליעזר ברבי יוסי ולא רשב"ג, דתניא: קראו את המגילה באדר הראשון ונתעברה השנה קורין אותה באדר השני שכל מצות שנוהגות בשני נוהגות בראשון חוץ ממקרא מגילה, ר"א ברבי יוסי אומר אין קורין אותה באדר השני שכל מצות שנוהגות בשני נוהגות בראשון, רשב"ג אומר משום רבי יוסי אף קורין אותה באדר השני שכל מצות שנוהגות בשני אין נוהגות בראשון. ושוין בהספד ובתענית שאסורין בזה ובזה.

But with regard to the *seder parshiyos* (i.e. *Shekalim, Zachor, Parah, and HaChodesh*) both Adar *rishon* and Adar *sheini* are the same. Who is the author of our Mishna? It is neither the Tanna Kamma (of the following *beraisa*), nor R' Eliezer ben R' Yose, nor Rabban Shimon ben Gamliel. For it was taught in a *beraisa*: If they had read the *megillah* in the first Adar, and subsequently an extra month was added to the year, they must read the *megillah* again in the second Adar because all the *mitzvos* that apply in the second Adar can apply in the first Adar as well, except for reading the *megillah*. R' Eliezer ben R' Yose says: They do not have to read the *megillah* again in the second Adar because all the *mitzvos* that apply in the second Adar apply in the first Adar. Rabban Shimon ben Gamliel says in the name of R' Yose: They must even read it again in the second Adar because all the *mitzvos* that apply in the second Adar do not apply in the first Adar. And all these Tannaim agree in regard to eulogizing and fasting, that they are prohibited on both the first Adar and the second Adar.

The Gemara continues:

ר"ש בן גמליאל היינו תנא קמא?! אמר רב פפא סדר פרשיות איכא בינייהו, דתנא קמא סבר לכתחילה בשני ואי עבוד בראשון עבוד בר ממקרא מגילה דאף על גב דקרו בראשון קרו בשני, ורבי אליעזר ברבי יוסי סבר אפילו מקרא מגילה לכתחילה בראשון, ורבן שמעון בן גמליאל סבר אפילו סדר פרשיות אי קרו בראשון קרו בשני.

Rabban Shimon ben Gamliel is the same as the Tanna Kamma!? Rav Pappa said: There is a disagreement between them regarding the *seder parshiyos*, for the Tanna Kamma holds that ideally they should be read in Adar *sheini*, but if they are read in the first Adar, that is sufficient. The exception is reading the *megillah*, that even if they read it in the first Adar they must read it again in the second Adar. And R' Eliezer ben R' Yose holds that even the reading of the *megillah* should be performed in the first Adar. And Rabban Shimon ben Gamliel holds that even in regard to the *seder parshiyos*, if they had read them in the first Adar, they must read them again in the second Adar.

The simple understanding of the Gemara is that there are three opinions. Two opinions say that *mikrah megillah* has to be in Adar *sheini* and one opinion says that you can even be *yotzei* in Adar *rishon*. The difference between the two opinions that say that you should read *megillah* in Adar *sheini* is in regard to when you read the four *parshiyos*.

The Vilna Gaon (**Beur HaGra, O.C. 568:7**) comments that one observing a *yahrtzeit* in Adar on a year when there are two Adar's has to fast in both months. Where does he learn this from if it is not a *din* in the Gemara?

The Tanna Kamma's *shita* is "כל מצות שנוהגות בשני נוהגות בראשון חוץ ממקרא מגילה". R' Shimon ben Gamliel says in regard to *mikrah megillah*: "אף קורין אותה באדר השני". The Vilna Gaon explains that according to the Tanna Kamma, you have to read the *megillah* twice, once in Adar *rishon* and once in Adar *sheini*. The simple understanding of the Gemara is that the first time you read it in Adar *rishon*, you didn't know that there was going to be an Adar *sheini*. Then it turned out that there was a second Adar and so you had to read it again.

But perhaps the *pshat* is really that even if you would have known that there would be an Adar *sheini*, still, *mi'ikar ha'din* any *mitzvah* that applies in Adar applies in both months because both months are "Adar."²⁴⁰ When the Gemara says that the Tanna Kamma and R' Shimon ben Gamliel have the same opinion, that only means that in this situation, where you already read it in Adar *rishon*, both opinions would agree that you have to repeat it again in Adar *sheini*. The Tanna Kamma would say, however, that you have to read it again because there is a *chiyuv* to read it in every Adar, while R' Shimon ben Gamliel would say you have to read it again because you can only be *yotzei* in Adar *sheini*. When the Gemara says: "ר"ש בן גמליאל היינו תנא קמא" it doesn't mean that they have the same *shita* but rather, both opinions hold that you are going to have to read it again in the second Adar.

The Vilna Gaon understands the *halacha* by a *yahrtzeit* to be like the *svara* of Tanna Kamma, that when Adar *sheini* arrives it is like Adar is here again and everything that usually applies in "Adar" applies in this month as well. Accordingly, if a person had a *yahrtzeit* in Adar they would have to fast in Adar *rishon* as well as in Adar *sheini*.

Why, in general, would we think to observe the *mitzvos* of Adar in one Adar over the other?

The Gemara (**ibid.**) explains:

בשלמא רבי אליעזר ברבי יוסי מסתבר טעמא דאין מעבירין על המצות, אלא רשב"ג מ"ט? אמר רבי טבי טעמא דרבי שמעון בן גמליאל מסמך גאולה לגאולה עדיף.

It is understandable why R' Eliezer ben R' Yose interprets how he does for his reason is logical, namely, that we do not pass over the opportunity to perform *mitzvos*. But what is Rabban Shimon ben Gamliel's reason (to say that it should be in the second Adar, closer to Nissan)? R' Tavi said: Rabban Shimon ben Gamliel's reason is that the juxtaposition of the *geulah* (of Purim) to the *geulah* (of Pesach) is even more worthwhile (than the principle of 'אין מעבירין על המצות').

²⁴⁰ Rav Simon noted that Rav Willig likes to formulate it like this: It's not that one of the two Adar's is *ikar*, but it is like there is an Adar A and and Adar B. They're both "Adar" and so it's like Adar came again and all the *mitzvos* apply again.

On one hand, one might think to perform the *mitzvos* in Adar *rishon* for we have a concept of ‘על המצות אין מעבירין’ that one should do a *mitzvah* as soon as one possibly can. On the other hand, it could be that we want Purim to be as close to Pesach as possible in order to connect the *geulah* of Purim to the *geulah* of Pesach.

The **Terumas HaDeshen (Shaila 294)** asks:

If someone’s parent was *niftar* in Adar of a *shana peshuta*, which Adar should they say fast and say *kaddish* and *barechu* in on a leap year?

He answers:

And the Gemara rules that the *halacha* is like R’ Shimon ben Gamliel. And the Gemara asks there: ‘R’ Elazar’s reasoning makes sense (that the *mitzvos* should be done in Adar *rishon*) because he holds ‘אין מעבירין על המצות’, but R’ Shimon ben Gamliel, what is his reason?’ And the Gemara answers, ‘כדי לסמך גאולה לגאולה... (Therefore,) anything that has no relation to the reasoning of ‘אין מעבירין על המצות’ should follow the first reasoning of ‘אין מעבירין על המצות’ and be done in Adar *rishon*.’

Since having a *yahrtzeit* has nothing inherently to do with Purim, there is no reason to follow R’ Shimon ben Gamliel’s reasoning of connecting the *geulah* of Shushan with the *geulah* of Mitzrayim. Rather, we should observe the *yahrtzeit* at the earliest possible time in Adar *rishon*.²⁴¹

The **Mishna in Meseches Nedarim (63a)** states:

משנה: 'קונם יין שאיני טועם לשנה' נתעברה השנה אסור בה ובעיבורה, 'עד ראש אדר' עד ראש אדר הראשון, 'עד סוף אדר' עד סוף אדר הראשון:

If one vowed, “*Konam*, wine that I will not taste for the year,” and the year was a leap year, he is forbidden to drink wine during the year and during its extension. “Until the beginning of Adar,” (and then the year was declared a leap year), wine is forbidden to him until the beginning of the first Adar. “Until the end of Adar,” wine is forbidden to him until the end of the first Adar.

If a person takes a *neder* that he is not going to drink wine for the whole year, then he can’t drink wine even in Adar *sheini*. If he says that he won’t drink wine up until Rosh Chodesh Adar or until the end of Adar, he means until Rosh Chodesh or the end of Adar *rishon*.

The **Gemara (ibid.)** explains:

גמרא: אלמא סתמא דאדר דקאמר ראשון הוא. לימא מתני רבי יהודה היא דתניא: אדר הראשון כותב 'אדר הראשון' אדר שני כותב 'אדר' סתם דברי ר"מ. ר' יהודה אומר אדר הראשון כותב סתם אדר שני כותב תיניין.

We see that *stam* “Adar” is a reference to Adar *rishon*. Let us, therefore, say that our Mishna is attributable to R’ Yehuda, for it was taught in a *beraisa*: During the first Adar, one writes the date

²⁴¹ The Terumas HaDeshen adds that certainly if a person died in a leap year in Adar *rishon*, one would observe the *yahrtzeit* in Adar *rishon*. However, if the person died in a leap year on Adar *sheini*, then the *yahrtzeit* should be observed in Adar *sheini* on every leap year to come.

on a document as “Adar *rishon*.” During the second Adar, he writes “Adar” *stam*. These are the words of R’ Meir. But R’ Yehuda says: During the first Adar, he writes “Adar” *stam* and during the second Adar he writes “Adar *sheini*.”

The Gemara quotes a *machlokes* between R’ Meir and R’ Yehuda. R’ Meir holds that if you’re writing a *shtar* and you want to specify Adar *rishon*, you write ‘Adar *rishon*,’ while if you want to specify Adar *sheini* you just write *stam* ‘Adar.’ R’ Yehuda, however, disagrees and says that *stam* ‘Adar’ is Adar *rishon* and Adar *sheini* must be specified.

The **Rambam (Hilchos Nedarim 10:6)** rules in accordance with R’ Meir, that *stam* Adar is Adar *sheini*. He writes:

When one says: “I will not drink wine until Rosh Chodesh Adar,” if it was a leap year, but he did not know that it was a leap year when he took the *neder*, he is forbidden only until Rosh Chodesh Adar *rishon*. If he took the *neder* until the end of Adar, he is forbidden until the end of Adar *sheini*. If he did know that it was a leap year, he is forbidden until Rosh Chodesh Adar *sheini*.

The **Rosh (Meseches Nedarim, Perek Shemini: Siman 2)** disagrees and writes that the *halacha* is like R’ Yehuda:

It was taught in a *beraisa*: During the first Adar etc. but R’ Yehuda says: During the first Adar, he writes “Adar” *stam* and during the second Adar he writes “Adar *sheini*.” And the *halacha* is like R’ Yehuda.

The **Mahari Vayil (Shu”t Mahari Vayil, Dinin Vi’halachos no. 5)** writes:

If the day that a father or mother passed away was in Adar, I heard that Mahri miValin ruled that one should fast in both months. However, it seems to me that one should fast in the second Adar and not in the first for it say in Meseches Nedarim (63a): One who took a *neder* ‘until Adar,’ if he did not know that the year was a leap year then he is obligated until Adar *rishon*, but if he knew that it was a leap year he is obligated until Adar *sheini*. And so too here he knows...

The Mahari Vayil writes that based on the Mishna in Meseches Nedarim it could be that one should really fast in the second Adar for an Adar *yahrtzeit* in a leap year.

SUMMARY: When does one observe a *yahrtzeit* for a parent who died in Adar?

- 1) Vilna Gaon – both months
- 2) Terumas HaDeshen – Adar *rishon*
- 3) Mahari Vayil – Adar *sheini*

The **Shulchan Aruch (O.C. 568:7)** in Hilchos Ta’anis rules:

When the day of a father or mother’s death falls in Adar, in a leap year one should fast in the second Adar.

The **Ramah (ibid.)** disagrees:

And some say that he should fast in the first month as long as the (parent) didn't die in a leap year in Adar *sheini*, in which case he should fast in Adar *sheini* (in leap years). And this is the *minhag*, to fast in Adar *rishon*. However, some are *machmir* to fast in both of them.

While the Shulchan Aruch rules that one should fast in the second Adar, the practice among the Ashkenazim is to follow the Ramah and fast in the first month. If, however, one is able to, the Ramah notes that some are *machmir* to fast in both the first and second Adar.²⁴²

The **Magen Avraham (ibid. s.k. 20)** writes:

And therefore, it seems that the *din* should be that one should fast in both months. However, since fasting on the day of the death of one's father or mother is only a *minhag*, one need only do how they accepted upon themselves from the beginning.

The Magen Avraham shows from various Gemaras that during the time when those holidays recorded in Megillas Ta'anis were observed, Adar *sheini* was the time for those observances. Nonetheless, he concludes like the Vilna Gaon, that if possible one should try to observe the *yahrtzeit* and fast in both Adars. If a person, however, is only able to fast in one of the two months that would also be acceptable since the whole concept of fasting on the *yahrtzeit* is really only a *minhag*.

In the *sefer Itturei Megillah*²⁴³ (**Meseches Megillah 6b, no. 3**) he explains that even the Ramah and Magen Avraham would agree that if someone was born in Adar *rishon*, he would have his bar-mitzvah in Adar *sheini*. What about the Ramah who quotes the Terumas HaDeshen that we observe a *yahrtzeit* in Adar *rishon* unless the death occurred during a leap year in Adar *sheini*? He explains that when it comes to a *yahrtzeit*, one has to merely determine when the appropriate time to observe it is. Therefore, if the person died in a leap year, specifically in the second Adar, then we will keep it as similar as possible to the year of death and observe the *yahrtzeit* in the second Adar. A bar-mitzvah, however, is dependent on *gadlus*. We need the child to become thirteen years and one day old, and thus we have to wait for the entire year to pass, which in a leap year means two Adars.

§

What happens when Purim and *aveilus* coincide? Does Purim cancel *shiva*? If not, does one sit *shiva* on Purim day?

The **Tur (O.C. 696:4-6)** quotes the opinion of the **Shi'iltos**:

The Shi'iltos²⁴⁴ writes that if a relative dies on Purim it is forbidden to eulogize him and we are

²⁴² Accordingly, Rav Simon noted that if you are a *rav* in a shul and someone asks you which month to fast it, you should tell them the first month. If, however, they can't fast in the first, then they should fast in the second because there is what to rely on to do that as well.

²⁴³ Rav Simon noted that this is an excellent *sefer* on Meseches Megillah.

²⁴⁴ Rav Simon noted that this opinion is not found in our standard version of the Shi'iltos.

not *noheg aveilus* for him. And if he died before Purim and then Purim arrived in the middle of *shiva*, the *shiva* is *batel*. And this specifically applies to Purim, but for Chanukah and Rosh Chodesh, they are not entirely *mivatel* the *shiva*, but one cannot eulogize on them.

The **Rambam (Hilchos Eivel 11:3)** disagrees with the Shi'iltos. He writes:

Similarly, we do not eulogize the *meis* on Chanukah, Purim, or Rosh Chodesh. We do, however, observe all *nihugei aveilus* on those days. It is permitted to deliver eulogies on the days which precede and which follow Chanukah and Purim.

The Rambam disagrees and says that basically all *aveilus* applies on Purim.

The **Hagahos Maimoni** (end of **Hilchos Purim**) quotes the opinion of **Maharam miRutenberg**²⁴⁵:

And in the end of Hilchos Semachos, Maharam writes that it seems to him that *aveilus* is not practiced on Purim at all.

The Hagahos Maimoni does not go as far as the Shi'iltos who writes that Purim is *mivatel shiva*, but he says that *aveilus* is not observed on Purim itself.

The **Shulchan Aruch (O.C. 696:4)** in Hilchos Megillah quotes the opinion of the Rambam:

All matters of *aveilus* are *noheg* on Chanukah and Purim.

The **Ramah (ibid.)** comments:

And nonetheless, he should go to the *beis ha'kenesses* to hear the *megillah* and if he is able to gather a *minyan* in his house to read the *megillah*, that is better. And some say that *aveilus* is not observed on Purim, not on the fourteenth nor on the fifteenth, and this is the practiced *minhag*. And even the first day of *aveilus* is pushed aside because of Purim. However, *devarim shebi'tzina* are practiced. And even though there is no *aveilus* on Purim, it counts towards the *minyan* of *shiva* and *aveilus*, just like Shabbos.

The Ramah writes that *aveilus* is not practiced openly on Purim, but like Shabbos, *devarim shebi'tzina* are *noheg* and it counts towards the *minyan shiva*.

The **Shulchan Aruch (Y.D. 401:7)** in Hilchos Aveilus, however, contradicts its ruling in Hilchos Purim:

If one's relative dies before Purim and then Purim arrives, it does not end the *aveilus*. Nonetheless, *aveilus* is not practiced on it, not on the fourteenth nor on the fifteenth, but *devarim shebi'tzina* are *noheg*. And he is obligated to send *mishloach manos*. And even though he is not mourning then, these days count towards the *minyan* of *shiva*, just like Shabbos.

²⁴⁵ The aforementioned Tur also quotes the Maharam miRutenberg but even more extensively.

The **Shach** (*ibid. s.k. 4*) writes:

And the Maharshah ruled that one needs to observe all *nihugei aveilus* and that is the *minhag*. And the Derisha notes that the Michaber in O.C. 696:4 (writes the opposite of that which he writes here)...and he writes to answer (the contradiction) ‘that in Orach Chaim the Michaber is dealing with a case where the relative died on that day (i.e. Purim was *aveilus yom rishon*), while here he is dealing with a case where the relative had died earlier.’ And this is hard to say for the Ramah already wrote there what the Michaber writes here and he wrote that this is the *minhag*.

The Shach quotes the Derisha who also found the *stirah* in the rulings of the Michaber. He writes that it could be that in Orach Chaim, where the Shulchan Aruch writes that all *aveilus* is *noheg*, the Michaber is discussing a case where the *meis* died on Purim day, in which case it would be *aveilus midioraisa* of *yom rishon*. In Yoreh Deah, the Michaber is discussing a case where the *meis* had died earlier in the week and then Purim arrived. In such a situation, Purim is stronger than the *aveilus* of the day and *aveilus bi'farhesia* would not be observed.²⁴⁶

Nonetheless, the Shach writes that he doesn't think this *chiluk* in the Derisha is correct. Rather, the *minhag* is like the Ramah writes in Orach Chaim and like the Michaber writes in Yoreh Deah, that only *devarim shebi'tzina* are observed, regardless of when the *meis* died.²⁴⁷

§

The **Orchos Chaim (Hilchos Megillah u'Purim, Din Seudas Purim; no. 39)** of **R' Aharon HaKohen miLunil** writes an interesting *halacha* that is quoted in Shulchan Aruch:

...however, an *onein* would be permitted to eat meat and drink wine (on Purim) for the *aseh* of the *yachid* of *aveilus* does not come and push aside the *aseh midioraisa* of the *rabim* to rejoice on Purim, for *divrei kabbalah* are like *divrei Torah*²⁴⁸.

Usually, an *onein* is not permitted to eat meat and drink wine. However, when it is matched against the more *chamur seudah* and *simcha* of Purim, it is pushed aside.

²⁴⁶ Rav Simon noted that there a whole discussion in general of whether one should try to make all the *stirah*'s in the Michaber work with one another. He said that R' Abadi once showed him a **Gra** in **Hilchos Yom Tov** where the Gaon writes that we know that there are many *stirah*'s in the Michaber and we don't necessarily have to defend all the *stirah*'s. We just have to know which opinion we follow.

²⁴⁷ Rav Schachter often says from Rav Soloveitchik, that Rav Soloveitchik was upset that when he was sitting *shiva* on Purim, nobody came to visit him. Certainly *nichum aveilim* is *noheg* even if he won't be observing open *nihugei aveilus*. Rav Simon noted that Rav Schachter also sat *shiva* on Purim.

²⁴⁸ As an aside, Rav Simon noted that because *divrei kabbalah* are treated like *divrei Torah*, some are *machmir* not to have a bar-mitzvah boy *lain* the *megillah* during the daytime because the whole assumption that a bar-mitzvah boy is a true *gadol* is only based on a *chazaka* that he has *simanim*. The Poskim write we only rely on such a *chazaka* for *dinei dirabanan*. That's why we don't call a bar-mitzvah boy to be an *eid* at a wedding because that could also be *shaila* of a *dioraisa*. The **Turei Even** implies that the *laining* of the day is more *chamur* than the *laining* of night for the *laining* of the night isn't even mentioned in the Mishnayos. The **Tchebiner Rav**, the *ba'al* Dovev Meisharim, argued and said that even the day time is only *midirabanan* for he writes that for *divrei kabbalah* to be like a *dioraisa* it has to be a *tzivui* in the *divrei kabbalah*, not just mentioned tangentially.

The **Shulchan Aruch (O.C. 696:7)** writes:

There are those who say that an *onein* is permitted to eat meat and drink wine (on Purim,) for the *aseh* of the *yachid* of *aveilus* does not come and push aside the *aseh dioraisa* of the *rabim* to rejoice on Purim, for this is from *divrei kabbalah* which is like *divrei Torah*.²⁴⁹

We see from here that Purim has a very high level of *simcha* that can push aside aspects of *aninus* and *aveilus*.

In the *sefer Ner LiMe'or* of **R' Shraga Feivel Paretzsky**²⁵⁰ he quotes that his son pointed out interestingly that from the fact that the Michaber quotes this Orchos Chaim, we see that a person should specifically eat meat on Purim.

§

What are the *gedarim* for the Purim *seudah* of someone who is in their twelve months of *aveilus* after the death of a parent?

Many assume that a person should have a low-key *seudah*, not inviting many guests, but should just have a *seudah* with the family.²⁵¹

In the *sefer Zekan Aharon*²⁵² he discusses that maybe certain *nihugim* of *sheloshim* and the twelve months are not *noheg* on Purim. He writes:

Nevertheless, it is *davka aninus* and *shiva*, but all of the *nihugei aveilus* of *sheloshim* and of the twelve months for a father or mother are *batel* when it comes to Purim...

Since these things are not *noheg* on Purim, a person could have a regular *seudah* on Purim and would not have to tone down their *seudah* at all.²⁵³

²⁴⁹ The Ramah writes interestingly that accordingly 'an *aveil* (i.e. an *onein*) is certainly *chayav* in *mikrah megillah* and *tefillah* and *kerias Shema* (on Purim)...' The **Magen Avraham (ibid. s.k. 14)** writes, 'And on the words of the Ramah - *tzarich iyun gadol*. I understand *basar* and *yayin* because of *simchas Purim*, but from *kerias Shema* and *tefillah* they should be *patur* in order to be involved with the *meis*. Why should it be different than any other day of the week?'

²⁵⁰ He was the *bochen* in Y.U. before Rabbi Shulman. The original *bochen* in the *yeshiva* was R' Mendel Zaks, the son-in-law of the Chofetz Chaim. He lived on the West Side together with R' Aharon Kotler. R' Paretzsky learned in Radin and knew the Chofetz Chaim. He used to make sure that Rav Simon would sit in on his *bechinas* when he gave them to other people. His big *yesod* in giving a *bechina* was that he would say, 'I want to see what the fellas know, not what they don't know.' He wasn't interested in catching someone on a *yediah* that they didn't know. The point was to have them say over the *sugya* that they were learning at the time and here how they said it. He used to write *divrei Torah* before the Yomim Tovim and he once wrote this piece about this topic entitled: '*Achilas basar bi'seudas Purim, Shabbos, vi'Yom Tov*.'

²⁵¹ Rav Simon said he heard this from R' Aharon Felder. On the other hand, Rav Abadi told him that we see from the Orchos Chaim that a person doesn't have to be so *midakdek* when it comes to *seudas Purim* because the *simcha* overrides the standard parameters of *aveilus*.

²⁵² Not of R' Aharon Walken, but of R' Eliyahu HaLevi.

²⁵³ Rav Zinner quotes these *mekoros* and this discussion in his **Nittei Gavriel (Perek 31)**.

סימן כג: בענין טיפול בחולה הנוטה למות

This topic is one that is often spoken about when discussing end of life issues. To what extent is one obligated to prolong the life of the ill or dying? Do we consider every sick person a case of *pikuach nefesh* for which we must do all that we can to assure the prolongation of life? Do we consider the pain of the patient and/or ask for their personal opinion in the matter?

The **Rambam (Hilchos Rotzeiach 2:1-2)** writes:

(1) Whenever a person kills his friend with his hands, for example, he strikes him with a sword or with a stone that can cause death, strangles him until he dies, or burns him in fire – he should be executed by the *beis din*, for he himself has killed him.

(2) But a person who hires a murderer to kill another, one who sends his slaves and they kill him, one who binds another and leaves him before a lion or the like and the beast kills him, and a person who commits suicide, are all considered to be “*shofech damim*”; the sin of bloodshed is upon their hands, and they are liable for death at the hands of G-d. They are not, however, liable for *misas beis din*.

The Rambam explains that if one actively kills another, they are *chayav misah* from *beis din* and are killed accordingly. However, if someone kills in an indirect fashion, either hiring someone to kill or sending a slave to kill, they are called a ‘*shofech damim*’ but are only חייב מיתה בידי שמים.

The **Rambam (Hilchos Rotzeiach 3:10)** continues:

However, if a person binds another and leaves him to starve to death; he binds him and leaves him in a place that will ultimately cause him to be subjected to cold or heat, and the cold/heat indeed come and kill the victim; he covers him with a barrel; he uncovers the roof; or he causes a snake to bite him...in all the above instances, the person is not executed. He is, nevertheless, considered to be a murderer, and “the One who seeks vengeance for bloodshed” will seek vengeance for the blood he shed.

The Rambam explains that if you tie someone up so that they cannot get food, or tie them up and leave them to die in the heat of the sun, these actions are also considered killing through *grama* and one would be חייב מיתה בידי שמים.

What we see from here, however, is that if a person withholds food or basic needs from another and that person dies as a result, the one who withheld those basic needs is considered to be a *rotzeiach*.

The **Shiltei Giborim (Meseches Moed Kattan, 16b dapei ha'Rif; no. 4)** quotes the **Sefer Chassidim**:

After many years, I found in the Sefer Chassidim (Siman 723)...that if he is a *goses* and he is not able to die until being moved to another place, do not move him from there...In the beginning, however, he wrote: And if he is a *goses* and there is someone nearby chopping wood, you can send away the wood chopper (so that the *goses* will die.) And this seems to be the opposite of what he wrote earlier.

The Shiltei Giborim quotes the Sefer Chassidim that if a person is dying and there are certain sensations (i.e. a rhythmic chopping of wood or salt on the tongue) that are keeping him alive, one may not perform a positive action to hasten the death but may passively remove those things which are preventing the onset of death.

This *din* is quoted by the **Ramah (Y.D. 339)**:

And similarly, it is forbidden to cause the *goses* to die quicker...and it is forbidden to remove the pillow and cushion from beneath his head...However, if there is something that is preventing the *yetzias ha'nefesh*, like the noise of someone chopping wood nearby, or there is salt on his tongue...it is permitted to remove these things, for this is not considered a *ma'aseh* at all...

From the Ramah we see that if something external is keeping a person alive, one is permitted to make that thing stop or go away, thereby bringing about the *yetzias ha'neshama*.

The **Steipler Gaon, R' Yaakov Yisrael Kanievsky (Kiryana Dilgarta, pg. 201)** wrote in a letter:

And the *yesod* of 'whatever a person can do to extend the life of a *choleh*, even if only for a minute, one should do,' the truth is, that even though I heard such a saying in my youth, I never knew if it was said by a reliable person. This matter requires more investigation because in Y.D. Siman 339 it is quoted that it is permissible to remove that which is preventing the *petirah* of a *choleh*. Only a *ma'aseh* is forbidden to do...

The Steipler elaborates and writes that if the *choleh* is experiencing *yissurim*, there is no need to necessarily prolong the *choleh's* life. One can rely on the Ramah and remove those things which are passively sustaining the life.

The **Gemara in Meseches Kesubos (104a)** is often quoted in conjunction with this topic.²⁵⁴ The Gemara states:

ההוא יומא דנח נפשיה דרבי גזרו רבנן תעניתא ובעו רחמי ואמרי כל מאן דאמר 'נח נפשיה דר' ידקר בחרב'. סליקא אמתיה דרבי לאיגרא אמרה 'עליוני' מבקשין את רבי והתחתוני' מבקשין את רבי, יהי רצון שיכופו תחתונים את העליונים'. כיון דחזאי כמה זימני דעייל לבית הכסא וחלץ תפילין ומנח להו וקמצטער אמרה 'יהי רצון שיכופו עליונים את התחתונים'. ולא הוה שתקי רבנן מלמבעי רחמי, שקלה כוזא שדייא מאיגרא [לארעא] אישתיקו מרחמי ונח נפשיה דרבי.

On that day that Rabbi died, the Rabbis, (because of his illness,) decreed a public fast and begged for Heavenly mercy. And they said: 'Whoever shall say that Rabbi has died shall be pierced with a sword.' The maidservant of Rabbi ascended to the roof and said: 'Those above seek to take Rabbi, and those below seek to keep Rabbi. May it be His will that those below overcome those above.' Once she saw that Rabbi entered the *beis ha'kisei* many times and that each time he removed his *tefillin* and replaced his *tefillin* and he suffered greatly, she said: 'May it be His will that those above overcome those below.' But the Rabbis did not cease to pray for mercy, so she took a small earthenware vessel and threw it from the roof to the ground. (When the Rabbis heard the sound of the breaking vessel) they ceased momentarily to pray for mercy and Rabbi died.

²⁵⁴ Rav Simon mentioned that Rav Moshe quotes it and others quote it as well, but he personally doesn't feel like this has anything to do with the question at hand.

The **Ran (Meseches Nedarim, 40a d”h ein mivakesh alav rachamim)** comments:

It seems to me that what is being said is that sometimes a person needs to daven that a sick person should die when the *choleh* is so pained by his sickness and it will be impossible for him to (recover) and live, as we see by the maidservant of Rabbi...

We see that sometimes it is even appropriate to pray that a sick individual should die in order to relieve them from their excessive pain.²⁵⁵

Tosafos in Meseches Niddah (44a-b, d”h ihu mayis bi’reisha) writes:

And one could say that nevertheless, because of *pikuach nefesh* one can violate Shabbos...even for a *goses bidei adam*.

Tosafos concludes that one can even be *michalel* Shabbos in order to help save a *goses*.

The **Teshuvos Beis Ya’akov (Shaila 59)** takes issue with this ruling of Tosafos. He writes:

...but with a *goses*, sometimes it’s even worse if you do some *refuah* to keep them alive for a bit longer, for you are preventing the *yetzias ha’nefesh*...and therefore, by a *goses*, it does not make sense to say it is a case of “*pikuach nefesh*” and it is not proper to prevent the *yetzias ha’nefesh*.

There are many different ways to learn the Ramah. One could say that when a person is a state of *kesisa*, in the throes of death, that there is no *din* of *hatzalah* anymore. You can’t kill him because he is still technically alive, but one does not have to actively save them any longer. Here, the Beis Ya’akov learns differently. In general, one is even *michalel* Shabbos to try to save a *goses*, like Tosafos says, but the case of the Ramah is when the *choleh* is in a lot of pain and you are doing a disfavor for him by keeping him alive. In such a case we would not permit *chillul* Shabbos and would say that you can allow the *goses* to die.²⁵⁶

Rabbi J. David Bleich in his *sefer BiNesivos Halacha (Chelek 3)* quotes a *teshuva* from **Rav Moshe Feinstein** where he writes that we know that one has to spend up to a fifth of their money to perform a positive *mitzvah*. He writes that a person would spend more than a fifth of their money to remove such *yissurim* and since they are not obligated to spend that much, one is permitted to allow them to die if they are a *goses*.²⁵⁷

In the *sefer Nishmas Avraham (Yoreh Deah, Chelek 2; pg. 245)* he quotes that the contemporary Poskim, like **R’ Moshe Feinstein** and **R’ Shlomo Zalman Auerbach**, felt

²⁵⁵ Rav Simon didn’t think that this is necessarily a *ra’ayah* to this *yesod*, that you are not supposed to prolong someones life at the cost of pain, because maybe this is just saying that you can daven that the Ribono Shel Olam should help the *choleh* and end their pain but that doesn’t absolve you from the *chiyuv* to actively try to prolong their life.

²⁵⁶ **Rav Moshe Feinstein (Igros Moshe, C.M. Chelek 2: Siman 74)** writes similarly, that the Ramah is definitely dealing with a case where the *goses* is in severe pain.

²⁵⁷ Rav Simon mentioned that **Rav Zalman Nechemiah Goldberg** wrote a piece where he uses the *pasuk* from Yonah (4:3), “כִּי טוֹב מוֹתִי מִחַיִּי,” that sometimes it’s better for a person to die than to live (though there was more to his *svara* than just the *pasuk*.) Rav Simon said that he never really understood what the basis for this was. Rav Zalman Nechemiah told Rav Simon that after he wrote this piece he received more mail than he had ever received before.

that there were certain things that a person always has to give a *choleh*. Routine things such as oxygen and food can never be withheld from a *choleh*, no matter what state or condition they may be in, for those natural things are not called “*hatzalah*.” Similarly, if a person is a diabetic, one cannot refrain from giving him the appropriate amount of insulin.²⁵⁸

Rabbi J. David Bleich (Jewish Bioethics, The Quinlan Case; pg. 289) is not a believer of this distinction between natural needs and unnatural needs and he believes that everything must be done to prolong life unless a person is in their final moments. He writes:

Distinctions between natural and artificial means, between ordinary and extraordinary procedures, and between non-heroic and heroic measures recur within the Catholic tradition, but no precisely parallel categories exist within Jewish law. Judaism knows no such distinctions and indeed the very vocabulary employed in drawing such distinction is foreign to rabbinic literature. Rambam in his commentary on the Mishna, *Pesachim* 4:9, draws a cogent parallel between food and medication. G-d created food and water; we are obliged to use them in staving off hunger and thirst. G-d created drugs and medicaments and endowed man with the intelligence necessary to discover their medicinal properties; we are obliged to use them in warding off illness and disease. Similarly, G-d provided the materials and the technology which make possible catheters, intravenous infusions, and respirators; we are obliged to use them in order to prolong life.

Different opinions exist amongst contemporary Poskim as to what are the boundaries of what is natural and what is beyond that. In **Dr. Avraham Steinberg**'s²⁵⁹ essay, “*HaBasis HaHalachti Liha'tzas 'Chok HaCholeh HaNoteh Lamus*” (Asaya, Vol. 18, 3-4; Shevat 5763) he writes that based on the Rambam (Hilchos Rotzeiach 3:10) it seems that it would be *assur* to withhold oxygen from a person who is already receiving air, though he writes that one may not necessarily have to put a person on a respirator to begin with. Of course, this only applies if the doctor knows that he cannot be cured.

Dr. Avraham Steinberg's Encyclopedia of Refuah (entry: Noteh Lamus, pg. 367-368) discusses this topic at greater length.

§

There is no full conclusion presented here. These are issues of life and death, but it is important to be aware of the basic *hagdaros* in dealing with a person who we know is not going to be cured from their illness. You can't kill him *bi'yadayim* because that is *retzicha*, but one should know that under certain circumstances there may not be a *chiyuv hatzalah*.

²⁵⁸ However, there is a *teshuva* of **R' Ovadiah Hadaia** in his *sefer Yaskil Avdi* (Y.D. Chelek 3: Siman 40) where he writes that if a patient has terminal cancer and has tremendous *yissurin*, we can withhold his insulin if he is a diabetic and permit him to die this way. He quotes the Ramah as his source.

²⁵⁹ Author of the Encyclopedia on *Refuah*.

סימן כד: בענין טומאת כהנים

The *pesukim* in **Parshas Emor (21:1-4)** state:

(א) ויאמר יהוה אל-מֹשֶׁה אָמַר אֶל-הַכֹּהֲנִים בְּנֵי אַהֲרֹן וְאָמַרְתָּ אֲלֵהֶם לִגְפֹשׁ לֹא-יִטְמָא בְּעַמְּוֹ: (ב) כִּי אִם-לְשֹׂאֵרֵי הַקָּרֵב אֵלָיו לְאָמּוֹ וּלְאָבִיו וּלְבָנוֹ וּלְבִתּוֹ וּלְאָחִיו: (ג) וּלְאֵחָתוֹ הַבְּתוּלָה הַקְּרוּבָה אֵלָיו אֲשֶׁר לֹא-הָיְתָה לְאִישׁ לָהּ יִטְמָא: (ד) לֹא יִטְמָא בַּעַל בְּעַמְּוֹ לְהַחֲלוֹ: □

And Hashem said to Moshe: Say to the *kohanim*, the sons of Aharon, and you shall say to them: to a dead person he shall not become *tamei* among his people; except for his relative who is closest to him, to his mother and to his father, to his son, to his daughter, and to his brother; and to his *besulah* sister who is close to him, who has not been with a man; for her he shall make himself *tamei*. A husband among his people shall not make himself *tamei* to defile him.

The Torah dictates that though a *kohen* is generally forbidden to become *tamei li'meis*, he is permitted to be *mitamei* himself in order to involve himself with matters relating to the death of his seven closest relatives.

The **Rambam (Hilchos Tumas Meis 1:1)** writes:

A *meis* conveys seven-day *tumah* by contact, by carrying, and *bi'ohel*. *Tumah bi'magah* and *bi'ohel* is explicitly set forth in the Torah, for it is written (Bamidbar 19:11), “הַגִּיעַ בְּמַת, לְכָל נֶפֶשׁ”, and it is written (Bamidbar 19:14), “שְׁבַעַת יָמִים כָּל הַבָּא אֶל הָאֹהֶל וְכָל אֲשֶׁר בָּאֵהֶל, יִטְמָא”.

There are three ways to become *tamei* from a *meis*: 1) Touching the *meis* (*tumas magah*), 2) carrying the *meis* (*tumas masah*), and 3) being in the same “*ohel*”²⁶⁰ as the *meis*.

The Rambam (1:2) continues:

Tumas masah we learn from tradition and it is derived from a *kal vi'chomer*. If *niveilah*, which conveys *tumah* only until nightfall and does not convey *tumah bi'ohel*, conveys *tumah bi'masah*, as the *pasuk* says (Vayikra 11:28) “וְהַנֶּשֶׂא אֶת נְבִלָתָם יִכַּבֵּס בַּגִּידִי, וְיִטְמָא עַד הָעֶרֶב”, how much more so (must a human *meis* convey *tumah bi'masah*.) Therefore, just as a carrying a *niveilah* conveys *tumah* until the evening, so too carrying a *meis* conveys a seven-day *tumah*...

Even though we do not have an explicit *pasuk* that relates that there is a *tumas masah* by a human *meis*, the Rambam writes that we learn it out from a *kal vi'chomer* from *niveilah*.

If a living person and a *meis* are in the same room, we know that the living person becomes *tamei bi'ohel*. If, however, there was a wall dividing the living and the dead, the roof would not be shared and there would be no *tumas ohel*. This is true as long as a connecting door is not opened, or as long as there is no breach the size of one *tefach* by one *tefach* (1x1) which would facilitate a way for the *tumah* to transfer from one room to another through what is called an “*ohel hamshacha*.”

²⁶⁰ “*Ohel*” is usually defined as one of three things. Either: 1) You are hovering over the *meis*, 2) the *meis* is hovering over you, or 3) you and the *meis* share a common ceiling.

Is this *tumas hamshacha* considered to be a *tumah midioraisa* or *midirabanan*?

The **Chasam Sofer (Shu"t Chasam Sofer, Y.D. 340:1)** writes:

Tumah that is drawn forth (lit. *ha'nimsheches*) from one place to another via a *tefach*-wide hole, there is not one Kadmon in the world that would say that that is only *midirabanan*, for it is a *halacha Moshe mi'Sinai*...

Everyone agrees that as long as there is a one *tefach* by one *tefach* airspace, the *tumah* will transfer through *midioraisa*.

There is a third type of *ohel* called "*sof tumah la'tzeis*." If the *meis* is in one room and the living person is in a second room and presently the door is shut, but we know that eventually this dividing door is going to be opened and the *tumah* will leave from the room of the *meis* into the adjacent room, we view it as if the door is already opened and the *tumah* has already entered the room.²⁶¹

Is this concept of "*sof tumah la'tzeis*" a *din midioraisa* or a *din midirabanan*?

R' Betzalel Ronshberg (Hagahos, Meseches Beitzah 10a) notes that there seems to be a *stirah* between two different comments of Rashi in Meseches Beitzah as to whether *sof tumah la'tzeis* is *midioraisa* or *midirabanan*.

Rashi (Meseches Beitzah, 10a d"h kulam tamei'im) first writes:

טלם תמאים:...and even though they are not under the roof that covers the *meis*, the Chachamim decreed that a place is *tamei* if it is near a place from which *tumah* usually exits, for eventually *tumah* will exit from there and we don't know when it will come out. Therefore, they (i.e. anything in the adjacent room) are all *tamei*.

Later, **Rashi (Meseches Beitzah, 38a d"h bi'dioraisa)** writes:

כלאורייהא: And (the law by which we declare all things *tamei* in a room adjacent to a room from) which *tumah* will emit is a halacha Moshe mi'Sinai, as it says in Meseches Sukkah (6a)...

The **Ramah (Y.D. 372:1)** expands on some of these *halachos*:

If a *kohein* is sleeping naked and he is in an *ohel* with a *meis* but doesn't realize, one should not inform him (about the *meis*) but should tell him to leave. (He should be informed in such a fashion) so that he is able to clothe himself first. But if he was already informed (that there is a *meis* in the room,) it is forbidden for him to remain there (and he must leave,) even before clothing himself. This is specifically if he is in an *ohel* with the *meis*, in which case the *tumah* is *midioraisa*. But if he is in a *beis ha'pras* or *eretz ha'amim*, since they are only *tamei midirabanan*, he should clothe himself first, for *kavod ha'berios* takes precedent (to an *issur dirabanan*.)

The **Shach (Y.D. 372, s.k. 2)** writes:

²⁶¹ There is a misconception that some people have, that if a *meis* is somewhere in a building then all the *kohanim* have to leave. The truth is, as long as you are in your room, if you don't open the door then you will be fine.

And specifically if he is in the *ohel* with the *meis* etc. It seems that this applies specifically if he is in the *ohel* with the *meis*, but if he is in an adjacent room to where the *meis* is, even though he is still *tamei* (as explained above in Y.D. 371:4), nonetheless, that is only a *tumah midirabanan*...for *min ha'Torah*, an *ohel* that has a whole with a *tefach* (leading outward) is *tahor*.

Some read this Shach to mean that *ohel hamshacha* is only a *din dirabanan*. We saw, however, that the Chasam Sofer wrote that it's impossible that anyone would say such a thing. The Chasam Sofer writes accordingly, if you look carefully in the Shach, you'll see that he is really referring to *sof tumah la'tzeis* and the adjacent rooms are rooms where the doors are closed.

§

We know that a *kohen* is *muzhar* on *tumas ohel*, and included in that is *ohel hamshacha*, but is a *kohen muzhar* on *sof tumah la'tzeis*?²⁶²

In **Meseches Semachos (4:21)** it states:

For any *tumas meis* that a *nazir* would have to shave on account of it, (a *kohen*) receives forty (lashes.) And for a *tumah* that a *nazir* would not have to shave on account of it, (a *kohen*) does not receive forty (lashes.)

If a person takes a *neder nezirus* for a certain amount of days, he is forbidden to become *tamei li'meis* during that period of time. If he does become *tamei li'meis*, he has to shave and begin the whole count of *nezirus* again.

Tosafos in Meseches Berachos (19b, d"h midalgin) quotes Rabbeinu Tam who disagrees:

It was taught in Meseches Semachos (4:21) that any *tumah* that a *nazir* doesn't shave for, a *kohen* is not *muzhar* on...and Rabbeinu Tam was known to say that this *klal* is not true, for it says there that a *nazir* does not shave for a *reviis* of *dam* but a *kohen* is *muzhar* on it.

The classic case found in the Mishnayos of *sof tumah la'tzeis* is walking under an awning. Then, there are different combinations of if there are multiple doors and you don't know which door the *meis* will come out of and so maybe they are all *tamei mi'safek*. But let's say there is a walled city and the city has a *sha'ar ha'ir* which has an *ohel* over it. There is a *meis* inside the city and he will eventually be taken out through that doorway. If a *kohen* would walk under that awning, would he become *tamei*?

At first glance, this seems like a classic case of *sof tumah la'tzeis* and one who would walk under it would certainly become *tamei*. On the other hand, perhaps *sof tumah la'tzeis* only applies when the *ohel* is right next to the room with the *meis*, while in this case there is no continuous *ohel*.²⁶³

²⁶² During Shavuot 5769 at the West Side Institutional Synagogue, Rav Simon had an 'Ask-the-Rabbi session.' One of the questions that someone (Chazzan Meuler) asked was whether a *kohen* was permitted to walk under the awning of a funeral chapel near the shul. Rav Simon answered that 99% of the time the doors are going to be closed, but if sometimes they take the *meis* out through that door then it has a *din* of *sof tumah la'tzeis* and one should be *machmir*.

²⁶³ The standard way (found in the **Mishkan Aharon of R' Aharon Stein** and in the *sefer Pesach HaOhel*) to explain this *chakirah* is as follows: How do you understand '*sof tumah la'tzeis*': Does it mean that even though the door is closed now, we view it as if it is open, or does it mean that we view any place that the *meis* is going to be in the future

The **Terumas HaDeshen (Pesakim uKesavim, Siman 24)** writes:

There were some *kohanim* who were *machmir* not to go out through the *sha'arei chatzeiros* and *sha'arei ha'ir* and the *sha'ar beis ha'kevaros* until the *meis* passed through those *sha'arim* and entranceways, because of *sof tumah la'tzeis*.

Some *kohanim* were *machmir* to avoid the *sha'arim* where a *meis* was destined to pass through because of this concern of *sof tumah la'tzeis*. This is a *chiddush* because in those cases it was not one contiguous *ohel*.

The Terumas HaDeshen continues:

And since this is done with no reason, perhaps one should not add on. And we should say that the *halacha* is *davka* by an entrance (which is connected) to an original *ohel* from which the *meis* will be brought...

Perhaps we should only say *sof tumah la'tzeis* applies when the door is connected to an *ohel* which has *tumas meis*. But if there is a break in between the *ohel* with the *meis* and the *ohel* by the *sha'ar ha'ir*, why should the *ohel* by the *sha'ar ha'ir* fall into the category of *sof tumah la'tzeis*?

The Terumas HaDeshen concludes:

And furthermore, who said that *sof tumah la'tzeis* is a *tumah* for which a *nazir* would have to shave?

The Terumas HaDeshen writes that we don't follow Rabbeinu Tam's opinion and we hold that a *kohen* is only concerned with *tumah* that a *nazir* would have to shave for. We don't know that a *nazir* has to shave for *sof tumah la'tzeis*, so why should a *kohen* be concerned for it either?

Nonetheless, the Terumas HaDeshen concludes that in the end of the day it seems that the *kohanim* are *machmir* on *sof tumah la'tzeis*.

The **Shulchan Aruch (Y.D. 371:4)** rules:

If you have a courtyard that is surrounded by *zizin* and *achsadros* and there is *tumah* in one of the houses (of the courtyard), if all the entrances and windows are open, the *tumah* goes out and remains beneath the *zizin* and *achsadros*.

The **Ramah (ibid.)** adds and quotes the Terumas HaDeshen:

And the reason is because since the *tumah* will come out (*sof ha'tumah la'tzeis*) that way, we view it as if it has already left. Accordingly, some are *machmir* that *kohanim* shouldn't go beneath the

travels as if it is there right now? The *nafka minah* obviously being that if you view it as the door being open, the *tumah* will only come out if the *ohel* is continuous from the *meis* until the doorway. Once there is a break, however, the *tumah* will no longer continue.

sha'ar ha'ir from which *tumah* will eventually come out. Some are *machmir*, and those who are *meikil* will not lose out in a place where the *minhag* is not to be *machmir*.²⁶⁴

The Ramah quotes the *chumra* found in the Terumas HaDeshen, that people were *machmir* not only for actual *sof tumah la'tzeis*, but even for that which will become a future *ohel*.

§

Does a non-Jewish *meis* also make a *kohen tamei*?

The **Rambam (Hilchos Tumas Meis 1:12-13)** writes:

(12) No matter whether the *meis* is a Jew or a non-Jew, it conveys *tumah bi'magah* and *bi'masah*.

(13) The *meis* of a non-Jew, however, does not convey *tumah bi'ohel*. And this we learn from traditions, for it says in the account of the battle of Midian (Bamidbar 31:19), “שָׂבַעַת הָנֹוּ מִחֵרִץ לְמִקְהָהּ”, “גְּמִים כֹּל הָרֶג נֶפֶשׁ וְכֹל נִגַע בְּהֶקְלֵל” but it makes no mention there to *tumas ohel*.

The Rambam writes that we have a tradition that a non-Jewish *meis* is not *mitamei bi'ohel*.²⁶⁵

The Rambam derives his opinion from the **Gemara in Meseches Yevamos (60b-61a)**. The Gemara states:

תניא : וכן היה ר"ש בן יוחאי אומר קברי עובדי כוכבים אינן מטמאין באהל שנהא' (יחזקאל לד) "ואתן צאני צאן מרעיתי אדם אתם" אתם קרויין אדם ואין העובדי כוכבים קרויין אדם.

It was taught in a *beraisa*: Likewise, R' Shimon ben Yochai used to say: The graves of idolaters do not transmit *tumah bi'ohel*, for it is stated (Yechezkel 34:31): “Now you my sheep, the sheep of my pasture – you are ‘adam.’” You (Klal Yisrael) are referred to as ‘Adam’ but idolaters are not referred to as ‘Adam.’

R' Shimon bar Yochai held that only a person who is considered an ‘adam’ is *mitamei bi'ohel*, as the *pasuk* states, “כִּי יָמוּת בְּאֶהָלֵךְ”. Since non-Jews do not fall into that category, they are not *mitamei bi'ohel*.

Another opinion found amongst the Tannaim is the view of Rabban Shimon ben Gamliel, that a non-Jewish *meis* is *mitamei bi'ohel*, as well as *bi'magah* and *bi'masah*.

The **Mishna in Meseches Ohalos (18:9)** states:

²⁶⁴ Rav Simon pointed out that this line of “*vi'hamkil lo hifsid*” refers to the Terumas HaDeshen’s extension of *sof tumah la'tzeis*, but for the basic *din* of *sof tumah la'tzeis*, the *minhag* is that everyone is *machmir*.

²⁶⁵ One of the big questions that comes up nowadays is *kohanim* who want to go to medical school. There is nothing wrong with medical school per se, but in the anatomy class they are touching human cadavers. Since *rov* cadavers are *goyim*, and according to the Rambam *goyim* are not *mitamei bi'ohel*, a *kohen* could go to medical school and simply stand at a distance making sure not to touch or move the cadaver. Rav Simon mentioned that he had a *talmid* who did this recently in Einstein and his group was other frum guys and they did all the touching for him. It’s not an ironclad solution, however, because other Rishonim disagree with the Rambam. Also, Rav Simon noted, you might not have a group of *yeshivish* guys who are as accommodating. Rav Tendler used to tell people that if the medical school really wants you to come because you are a great student, then you can bargain to have certain accommodations. Nowadays, Rav Simon thought, most people want the schools more than the schools want the students.

...רבן שמעון בן גמליאל אומר, עיר גויים שחרבה, אין בה משום מדור גויים.

...Rabban Shimon ben Gamliel says: The law of “*ir goyim she'chorvah*” does not apply to a city (that was inhabited by non-Jews) that was destroyed.

If you have a place in Eretz Yisrael that *goyim* used to inhabit but is now empty and inhabited by animals who chew up everything they find, one does not need to be concerned about walking on that land. The implication is that usually we would have to be concerned for *tumas akum*, even *bi'ohel*, but in this case, since the animals have destroyed everything, we no longer need to be concerned.

The **Gemara in Meseches Bava Metziah (114a-114b)** states:

אשכחיה רבה בר אבוה לאליהו דקאי בבית הקברות של עובדי כוכבים. א"ל ימהו שיסדרו בב"ח? אמר ליה 'לאו כהן הוא מר? מאי טעמא קאי מר בבית הקברות? א"ל ילא מתני מר טהרות? דתניא: ר"ש בן יוחי אומר קבריהן של עובדי כוכבים אין מטמאין שנאמר (יחזקאל לד) "ואתן צאני צאן מרעייתי אדם אתם" אתם קרויין אדם ואין עובדי כוכבים קרויין אדם.

Rabbah bar Avuha found Eliyahu HaNavi standing in a cemetery of idolaters. (Rabbah bar Avuha) asked him: What is the law concerning making an assessment in the case of a *ba'al chov*?...He said to (Eliyahu): Is the master not a *kohen*? Why then is the master standing in a cemetery? He said to (Rabbah bar Avuha): Did the master not learn Taharos? For it was taught in a *beraisa* there: R' Shimon ben Yochai says: the graves of idolaters do not transmit *tumah* contamination for it is stated (Yechezkel 34:31): “*Now you my sheep, the sheep of my pasture – you are 'adam.'*” You (Klal Yisrael) are referred to as ‘*Adam*’ but idolaters are not referred to as ‘*Adam*.’”

Rabbah bar Avuha met Eliyahu HaNavi in a non-Jewish cemetery. He asked Eliyahu, “Aren’t you a *kohen*?” Eliyahu responded that R’ Shimon bar Yochai’s opinion is that *goyim* are not *mitamei bi'ohel*.

Tosafos (ibid. d”h mah she'yisadru) writes:

And Eliyahu was pushing aside the question (related to the *ba'al chov*)...and know that this is so for he answered him that *kivrei ovdei kochavim* are not *mitamei bi'ohel* in accordance with R’ Shimon ben Yochai even though we don’t hold of that opinion but hold like R’ Shimon ben Gamliel...

Tosafos explains that whatever Eliyahu HaNavi said in that conversation, he didn’t really mean, both regarding the *halacha* they were discussing and his response about *tumas akum*. We know that this is so because we don’t follow the opinion of R’ Shimon bar Yochai, that non-Jews are not *mitamei bi'ohel*, but rather follow R’ Shimon ben Gamliel from the Mishna in Meseches Ohalos.²⁶⁶

Tosafos rules that non-Jews are *mitamei bi'ohel*, *bi'magah*, and *bi'masah*. Rambam made a *chiluk* saying that they are *mitamei bi'magah* and *bi'masah* but not *bi'ohel*. The **Sefer Yeraim (Amud 7, Issurim She'einam Na'asim Rah Li'berios ki im Li'shamayim; pg**

²⁶⁶ Tosafos explains that the real reason Eliyahu was permitted to be in the cemetery was because even though we follow R’ Shimon ben Gamliel but since *להם פותח טפה* רוב ארונות יש להם פותח טפה the *tumah* does not rise and he could not become *tamei*.

180-181) takes the other extreme and says that not only is a non-Jew not *mitamei bi'ohel*, but it could be that a non-Jew is not even *mitamei bi'magah* and *masah*. He writes:

Regarding *magah* and *masah* for a non-Jewish *meis*, some forbid it based on the Gemara in Meseches Yevamos (61a)...and one could bring a proof to permit it...since we find that a nazir is mutar to meisei ovdei kochavim. Therefore, by a kohen it is also not taught (that he is tamei)...and beracha will come upon one who is machmir but those who are meikil will not lose out.

The Sefer Yeraim writes that based on the *klal* that a *kohen* is only *muzhar* on a *tumah* for which a *nazir* would have to shave, a *kohen* does not have to be concerned *mi'ikar ha'din* with *tumah* of *meisei akum* because a *nazir* is not *muzhar* on them.

In the **Teshuvos HaRosh (Shu"t HaRosh, Klal Sheloshim: Siman 1)** the Rosh writes:

The question was asked whether a *kohen* is able to walk over *kivrei goyim*. It is a *machlokes* amongst the Sages. Some rule like R' Shimon ben Yochai who says that *kivrei ovdei kochavim* are not *mitamei*...and some rule like R' Shimon ben Gamliel who says in the last *perek* of Meseches Ohalos...and I saw that R' Meir (miRutenberg)²⁶⁷ would protest that kohanim should not walk over kivrei goyim. And one who is machmir will be the recipient of beracha.

The **Shulchan Aruch (Y.D. 372:2)** rules:

It is proper (lit. נכון) that a *kohen* should be careful from walking over the graves of non-Jews.

The **Ramah (ibid.)** sides with the Michaber:

And even though there are those who are *meikil*, it is proper to be *machmir*. However, a grave of a *mumar la'avodas kochavim* is *mitamei* like any other Jew.

The Michaber and the Ramah write that it is “נכון” for a *kohen* to be *machmir* and avoid *kivrei akum*, though neither write that it is forbidden *mi'ikar ha'din*.²⁶⁸

The **Boaz on Meseches Ohalos (16:5)** writes that even if you want to say that a non-Jew is *mitamei bi'ohel*, perhaps the *din* of *sof tumah la'tzeis* was never said by non-Jews.²⁶⁹

§

The **Gemara in Meseches Nazir (42b)** states:

איתמר : אמר רבה אמר רב הונא מקרא מלא דבר הכתוב (במדבר ו) "לא יטמא" כשהוא אומר (במדבר ו) "לא יבא" להזירו על הטומאה להזירו על הביאה אבל טומאה וטומאה לא. ורב יוסף אמר האלהים אמר רב הונא אפילו טומאה וטומאה.

It was stated: Rabbah said in the name of Rav Huna: A thorough formulation is used by the Torah when it states: “*He* (i.e. a *nazir*) may not contaminate himself (with his relatives in their death).” When it says, “*he may not come upon*” (that teaches an additional prohibition.) (The first *pasuk* of

²⁶⁷ See **Maharam miRutenberg (Pesakim uMinhagim, Chelek 3: Siman 134)**.

²⁶⁸ Rav Simon mentioned that the *seforim* sale used to take place in the Muss Beis Midrash. Then they moved the *seforim* sale to the basement of Furst Hall and it became a whole discussion of whether *kohanim* could go to the *seforim* sale because R' Tendler has his laboratory down there with some things that are *mitamei*.

²⁶⁹ Rav Simon noted that this is an interesting *kulah* to know about.

“*he may not contaminate*”) warns a *nazir* against *tumah* (from a corpse, regardless of the means by which he contracts it.) (The second *pasuk* of “*he may not come upon*” serves to) warn him against entering (a roofed building that has a corpse.) However, (if a *nazir* contracts) *tumah* (from a corpse by any means) and then contracts *tumah* (again, by some means other than *ohel*), he is not liable for the second act. But Rav Yosef said: I swear by G-d, Rav Huna holds that even (if a *nazir* contracts) *tumah* and then contracts *tumah* (by some means other than *ohel*) he is liable for the second act...

Further on, the Gemara concludes:

לא קשיא כאן בחיבורין כאן שלא בחיבורין.

There is no question. Here the reference is to one who was still in contact (with the first corpse when he touched the second), and here the reference is to one who was not in contact (with the first corpse when he touched the second.)

R' Yosef holds that if a *kohen* is touching a dead body, he has violated a *lav midioraisa*. Now, if they bring him another dead body and he touches that, the Gemara learns that on the second dead body he is not *chayav*. That, however, is only if he touches the second *meis* “בהיבורין,” meaning that the *kohen* is still touching the first *meis* at the time of the second contact. Rabbah, on the other hand, disagrees and says that a *kohen* can touch another dead body and still won't be *chayav* even after having let go of the original *meis*.

The **Rambam (Hilchos Eivel 3:7)** rules like R' Yosef:

When (the Kohen Gadol) became *tamei* beforehand, and then entered an *ohel* (where another *meis* was located), if he is warned, he should receive *malkos* even for this entry.

The Rambam rules that if a *kohen* was *tamei meis* earlier in the day, and then walks into another *ohel* with a *meis*, he receives *malkos* for the second contamination since it was not בהיבורין.

The **Ra'avad (ibid.)** disagrees and writes:

...the *rav* is not a *posek* here...for the *sugya* follows Rabbah, that even *tumah* not בהיבורין is not *Michayev*, and how much more so when it is בהיבורין ...

The Ra'avad disagrees with the Rambam and rules like Rabbah. If מגע שלא בחיבורין is not further *mitamei* an already *tamei kohen*, certainly a *tumas ohel* is not going to be *Michayev* a *kohen* who is already *tamei* from an earlier *tumah*.²⁷⁰

The **Rambam (Hilchos Nezirus 5:16-17)** writes:

(16) When a *nazir* becomes *tamei* through contact with a human corpse many times, even though in G-d's eyes, he is liable for lashes each time, the *beis din* holds him liable for only one set of lashes. If he was given a warning concerning each time, and he, nevertheless, became *tamei*, he is liable for lashes for every time (he became *tamei*.)

²⁷⁰ Other Rishonim, like Rabbeinu Tam, were of the opinion that you at least need the multiple *tumah*-contact to be on the same day because if it was a different day you will affect the count of the *haza'ah shelishi vi'shevii*.

(17) When does the above apply? When he became *tamei* and then returned and touched, carried, or stood over (the corpse). If, however, he was touching a corpse and while the corpse was still in his hand, he touched another corpse, he is liable only once even though he was warned for each time he touched it, for his (state of purity) has already been desecrated.

The Rambam rules *li'shitaso*, that if the contact with the *meis* is בהיבורין then the *kohen* is not *chayav* for the second *tumah*.

The Ra'avad (**ibid.**) writes:

And since we hold that in the *machlokes* between Rabbah and Rav Yosef the *halacha* is like Rabbah, then if a *kohen* becomes *tamei*, even if he separates himself (from that first *tumah*), if he returns and touches (some other *tumah*) he is *patur*. And nowadays, *kohanim* are all *tamei meis* and so there is no longer a *chiyuv tumah* on them...

The Ra'avad holds that we *pasken* like Rabbah and that even without היבורין there is no additional *tumah* upon further contact. Accordingly, a *tamei kohen* will not have a *chiyuv* to remain *tahor* until he becomes *tahor* from that original *tumah*. Since nowadays every *kohen* was *nitmah* at one point and we don't have a way to be *mitaher tumas meis*, a *kohen* can continue to be *mosif tumah al tumaso* with no further concern.²⁷¹

There is still a discussion as to what the Ra'avad means. Does he mean that we don't give *malkos* to a *kohen* for such a violation, or is it that there is truly no additional *issur*?

R' Akiva Eiger (Shu"t R' Akiva Eiger, Mehedura Tinyana; Siman 18) addresses this comment of the Ra'avad:

...and certainly he is not talking about the *chiyuv malkos bi'zman ha'zeh* (because we don't give *malkos* nowadays.) Rather, his intent must have been to say that there is no *chiyuv issur* of becoming *tamei* at all...

The **Dagel Mirvavah (Y.D. 372:2)** disagrees:

(Originally,) I was drawn after the words of the Mishna LaMelech who was of the opinion that the Ra'avad held that there was no *issur* at all for a *kohen* who was already *tamei* to (further) be *mitamei* himself. But now, I feel that perhaps the Ra'avad was only speaking regarding the *chiyuv malkos*, but as far as an *issur*, it might be an *issur midioraisa*.

The **Chasam Sofer (Shu"t Chasam Sofer, Y.D. Siman 338)** relates a story that occurred between his rebbi, R' Nossan Adler, and the Nodeh BiYehuda. He writes:

...when I was a young boy, drinking from the waters of my teachear, the *chassid*, R' Nosson Adler *z"l*, in the year 5543 we were on a trip and passed through Prague. We met the *gaon*, the Nodeh BiYehuda *z"l* and (R' Nosson Adler and the Nodeh BiYehuda) were discussing and exchanging thoughts on the words of the Ra'avad...

²⁷¹ Rav Simon noted that this Ra'avad would be the *kulah* of the century because it implies that *kohanim* can do whatever they want once they are *nitmah* that first time. They can go to funerals, medical school, etc.

The Chasam Sofer writes that in the end, the Nodeh BiYehuda retracted his opinion, that the Ra'avad was saying that no *issur* exists *bi'zman ha'zeh*, and wrote this statement that we have in his Dagei Mirvavah.

The Chasam Sofer concludes that after thirty years he saw that the **Ra'avad** himself writes this conclusion of the Dagei Mirvavah in the **Tamim Dei'im (Meseches Makkos, end of Siman 236)**. The Ra'avad writes there:

Even though we don't give *malkos* to multiple *tumah's* when they are *bi'chiburin*, there is still certainly an *issur*.

The Ra'avad writes explicitly like that which the Dagei Mirvavah extrapolated after his conversation with R' Nosson Adler, that a *kohen* who is *mosif tumah* upon himself would not warrant additional *malkos* but would certainly be violating an *issur*.^{272, 273}

§

The *pasuk* in **Parshas Chukas (19:16)** states:

(יט:טז) וְכָל אֲשֶׁר-יָגַע עַל-פְּנֵי הַשּׁוֹדֵה בַחֲלָל־תֶּרֶב אֹו בְמַת אֹו בְנַעֲצִים אָדָם אֹו בְהֶקֶר יִטְמָא שִׁבְעַת יָמִים:

Anyone who touches on the open field one slain by the sword, or one that died, or a human bone, or a grave, shall be *tamei* for a seven-day period.

The **Gemara in Meseches Nazir (53b)** makes the following *derasha*:

דתניא : (במדבר יט) "וכל אשר יגע על פני השדה בחלל חרב או במת" : "על פני השדה" זה המאהיל על פני המת, "בחלל" זה אבר מן החי ויש לו להעלות ארוכה, "חרב" ה"ז כחלל...

For we have learned in a *beraisa*: "And whoever touches, in the open field, the body of someone felled by a sword, or a corpse..." "In the open field:" This alludes to someone who interposes himself over a corpse. "The body of someone felled:" This alludes to a limb severed from a living person with enough flesh on it to regenerate (had it not been severed.) "Sword:" It is like the body...

There is a *halacha* relevant to these discussions based on a *derasha* Chazal make in Meseches Nazir. If a metal sword was used to kill someone, one would think that since the sword came in contact with the *meis*, which is considered an אבי אבות הטומאה, then the sword would be one step lower, an אב הטומאה. Nonetheless, Chazal learned that a metal sword that comes in contact with a *meis* has the same status as the *meis* itself, an אבי אבות הטומאה.

²⁷² Rav Simon noted that everyone likes to quote the Ra'avad in the Tamim Dei'im and say that accordingly R' Akiva Eiger can't be right. **R' Moshe Tuchman**, however, pointed out that seemingly this is no *ra'ayah* because the Ra'avad is saying *pshat* there in the opinion of R' Yosef, that there is a *din* בהיבורין. There is no way that one can say that this *svara* certainly carries over to what Rabbah would hold. Perhaps Rabbah's *shita* would be that it would be *mutar li'gamrei*.

²⁷³ This discussion in the Ra'avad is often thrown around when discussing *shailos* like *kohanim* going to medical school. The **Mishna LaMelech (Hilchos Eivel 3:1)** even discusses the possibility (though he ultimately rejects it) that perhaps the combination of the *shita* of the Ra'avad and the Sefer Yeraim should be enough to create a *sfeik sefeikah* by *meisei akum*.

Is a *kohen muzhar* on a חרב הרי הוא כחלל?

Tosafos in Meseches Nazir (44b, d"v tah shema) quotes Rabbeinu Tam who claims that a *kohen* is *muzhar* on חרב הרי הוא כחלל. Tosafos quotes Rabbeinu Chaim Cohen who disagrees:

And Rabbeinu Chaim Cohen sent back to him (Yeshaya 66:1): “Where is the house they will build me?” for a *nazir* does not shave on account of it and the same should apply to a *kohen*. And (if you say otherwise) you will not have a single house that has no adorning *kli* that has been in an *ohel* with a *meis*...

We know that we have a *klal* that whatever *tumah* a *nazir* would have to shave for, a *kohen* would become *tamei* from it as well. We saw, however, that Rabbeinu Tam doesn't hold of this *klal* and accordingly assumes that a *kohen* is *muzhar* on חרב הרי הוא כחלל even though a *nazir* would not shave on account of it. Rabbeinu Chaim Cohen disagrees and writes that nearly every house is going to be a חרב הרי הוא כחלל and a *kohen* would never be able to enter.²⁷⁴

The **Ramah (Y.D. 369:1)** writes:

Some say that *kohanim* are forbidden to become *tamei* to a sword that was made *tamei* by a *meis* and some are *meikil*. And the *minhag* is to be *meikil* and not be concerned for this.

The Ramah writes that *kohanim* can be *meikil* on חרב הרי הוא כחלל.

Based on this, **Rav Shlomo Goren** has a *teshuva* in his *sefer Toras HaRefuah* (pg. 242) written to Rav Larry Wachsmann²⁷⁵ of Yeshivas Rabbeinu Yitzchak Elchonon regarding whether students who were *kohanim* can study anatomy. He writes the following *chiddush* based on this discussion: A *kohen* could get a חרב הרי הוא כחלל (i.e. a ring or glasses that touched a *meis*) and could put it on since the Ramah writes that a *kohen* is not *muzhar* on it. Afterwards, he could come in contact with a *meis* because it would be בחיבורין since he is constantly connected to the other *tumas meis* which he was permitted to do *bi'heter*.^{276, 277}

²⁷⁴ Rav Simon gave the example of if you have one person who goes to a *levaya* wearing metal eyeglasses and then goes home, a *kohen* wouldn't be able to come to the house. This is all related to the discussion which can be found in the **Encyclopedia Talmudis** and in **Rav Genack's sefer Gan Shoshanim** of how one obtains a status of חרב הרי הוא כחלל. While it doesn't have to be the actual sword that killed, it still might need a *magah bi'meis* and an *ohel* is questionable. Rabbi Genack writes that if you *davka* need *magah* then there aren't so many חרב הרי הוא כחלל around. If it applies by an *ohel*, then it would be a much more frequent question.

²⁷⁵ A math teacher at M.T.A for many years. He was also a big Morasha person. He ultimately made *aliyah*. Rav Simon pointed out that if you read the *teshuva* quickly one might think that he wrote it to Rav Ari Wachsmann of Yeshivas Sha'alvim fame but that is not the case.

²⁷⁶ Rav Simon noted that Rabbi Bleich pointed out that the weak spot in this *svara* is that maybe בחיבורין is only in a case where he got the *issur* and now he is merely continuing his defiled state. But perhaps if a *kohen* is *mitamei* himself in a way that was not a *chilul* of his *kehunah*, he would not be able to extend that to a situation which normally would be *michalel* his *kehunah*.

²⁷⁷ See also **Rav Moshe Feinstein (Igros Moshe, Y.D. Chelek 3: Siman 155)** who has strong words against *kohanim* studying medicine. Rav Simon mentioned that **Rav Soloveitchik**, like Rav Moshe, was not a fan of *kohanim* studying medicine.

§

A common *shaila* that people ask is if their wives are expecting a child and the husband is a *kohen*, can the wife go to a *levaya*?²⁷⁸

The **Rokeach (Hilchos Aveilus, pg. 192)** is one of the earliest sources to address this question. He writes:

The wife of a *kohen* who is pregnant is permitted to enter an *ohel ha'meis* for it is a *sfeik sefeika*, for perhaps the child is a *neifel* and perhaps it is a girl.

The **Magen Avraham (O.C. 343, s.k. 2)** quotes this Rokeach and asks:

And *tzarich iyun*, for even without the *sfeik sefeika* it should be *mutar* because a *makom baluah* is not *mitamei*.²⁷⁹

Why do you need the *sfeik sefeika* of the Rokeach if we know that something which is *baluah* is not *mitamei*? Even if we took an ultrasound and knew for certain that it was a boy, the woman could still be in an *ohel ha'meis* with no concern of being *mitamei* the child. He concludes, however, that it is *tzarich iyun*.

Rav Hershel Schachter in his *sefer Bi'Ikvei HaTzon (Siman 35:2)* discusses these topics in a piece entitled “בגדר האיסור דטומאת כהנים.”²⁸⁰ He writes based on a *yesod* of R' Chaim Ozer, that *tumas kohanim* is not necessarily an *issur* of *kohanim* becoming *tamei* per se, but is an *issur* of *kereivah li'meis*. If a *kohen* is in the same *ohel* as a *meis*, yet for some technical reason they would not become *tamei*, still, there is an *issur* of *kereivah li'meis*. Based on this *yesod*, he explains that this is why the Rokeach had to use a *sfeik sefeikah*, because the fact that the fetus is *baluah* would not be enough to remove it from the *issur* of *kereivah li'meis*.²⁸¹

²⁷⁸ Sometimes people who are not married to *kohanim* ask Rav Simon this question also. Rav Simon thought that there is no *halachik* question if the husband is not a *kohen*, but perhaps there is an *inyan al pi kabbala*. **Rav Gavriel Zinner (Nittei Gavriel, Perek 84:4)** quotes that the idea of not going into a cemetery when one is pregnant is something said amongst the women but there is no real source for it. Still he quotes the **Shevet Mussar (Perek 24:16)** of R' **Eliyahu HaKohen** who writes that one should be careful not to enter a place of *tumah* when pregnant. He also quotes the **Minchas Yitzchak (Chelek 10:2)** who discusses this as well.

²⁷⁹ Rav Simon gave the example of if you swallow a marble, go into the *ohel ha'meis*, and then exit and vomit out the marble, the marble is not *nitmah* because it was *baluah*.

²⁸⁰ Rav Simon said that this piece was first said over more than twenty years ago at the dedication of the Marcus and Adina Katz Kollel. Rav Simon was in college then but he remembers that it was a very exciting day because very *chashuv* rabbonim came. **Marcus Katz** himself came in from Mexico. **R' Mordechai Hirschberg z"l**, the chief rabbi of Mexico (*ba'al Machsheves HaKodesh* which has a *haskama* from R' Velvel), also came. **R' Moshe Dovid Shteinherzel**, the Bobover Rosh Yeshiva, was also in attendance. Then, all the Y.U. *roshei yeshiva*, R' Schachter, R' Dovid Lifschitz, R' Nissan Alpert, were all there. They wanted all the *shiurim* to be about *inyanei kehuna* and so R' Sacks, who was in the *kollel* at the time, gave a *shiur* and then all the *roshei yeshiva* gave *shiurim* about *kehuna* related topics. “I *mamash* didn't go to college that day (in order) to listen to all the *shiurim* on *kehuna*. It was very exciting,” said Rav Simon.

²⁸¹ Rav Schachter uses this *yesod* to explain various *dinim*. He quotes from the *sefer Pesach HaOhel*, that like the Boaz, we assume that there is no *sof tumah la'tzeis* by non-Jews. This could be because even if we are going to *machmir* on the *issur tumah* and the *kereivah* of *meisei akum*, we won't extend it to *sof tumah la'tzeis*. Years later, Rav Simon saw in the *sefer Shomer Mitzvah (Siman 45)* by R' **Shemaryahu Shulman** from Kew Gardens Hills, that he wrote a letter to Rav Schachter with *ha'aros* and comments on this particular piece. He writes that he thinks that it's hard to say that even though the *pasuk* says “לֹא יִטְמָא,” the *issur* would not be one of *tumah*.