

types realized the gravity, those who intermarried anyhow were stating their denial of Judaism. In more recent times, where it has become more prevalent in many circles, it must be evaluated individually.

In addition, those who violate out of convenience or temptation often repent near death. The question is whether one may make an assumption of repentance, when there is no evidence of it. If at some point there was talk of repentance, many would consider the deceased to have repented. Some include past talk of converting a gentile spouse, or consulting with a Rabbi about some religious matter. Furthermore, in order to decide a *halachic* ruling about someone being considered evil, it is usually necessary to have them brought before a panel. Witnesses will testify about them, in their presence. In many instances, the witnesses will need to show that they warned the perpetrator. While we might not give credibility to one who is suspected of sinning, especially habitually, we may not decide categorically about his evil without due *halachic* process. Accordingly, it is common nowadays to find ways to allow many non-believers the benefit of the doubt.

There is basic consensus to require burial of the body of a sinner, as we know that even those condemned by *Bais Din* are buried. Indeed, the laws of burial are derived from the *mitzvah* to bury those put to death by *Bais Din*. This involves respect for the human body, and respect for or shame of the survivors. However, one does not rend garments or practice the usual mourning period for them. This involves showing them respect, and showing grief at their loss. Since they were sinful, this is inappropriate. Burial also involves *kaparah*, but this might not be a reason to bury these people. Likewise, the poskim debate whether anything should be done in their merit. Do they deserve any *kaparah*, atonement, and should others help this take place? In the Talmud, there is a distinction made between finding a way to atone for an ordinary person who sinned, and one who is known to have been evil. However, this dictum is debated by the poskim. Some say that it was never meant as a *halachic* ruling. Accordingly, some poskim maintain that for certain sinners one should do everything possible to gain credit for the *neshamah*, while others object to this. Reciting *kaddish* and studying *mishna* are part of this discussion. [See Moed Katan 15a Sanhedrin 46b, Poskim. Tur Sh Ar YD 232:12 14 334:3-4 43 (Rema) 340:5 345 362:5 376, end, commentaries. Sdei Chemed, Availus 118-120 127-130. Tzitz Eliezer X:41. Ramat Rachel 42, Even Yaakov 1-4. Moed Kol Chai 15.]

In conclusion, it is appropriate to study *mishna*, at least if the deceased never left instructions objecting to this.

On the Parsha ... *It is not good .. You will be wasted away, also you, also the people with you, you cannot do it alone .. [18:17-18] Including Aharon, Chur and the 70 elders [Rashi].* The question is, if the others were also answering the queries, why was Moshe 'alone'? If they were part of the 'people', why were they singled out separately? Perhaps Yisro's protest was about the attitude. Torah should not be taught or studied with an attitude of 'alone'.

Sponsored Noah Bass and Deborah Rotenstein in memory of her mother, Rachel bas Dovid a"h, whose *yahrzeit* is on the 14th of Shevat. ׀

© Rabbi Shimon Silver, February 2012.
Subscriptions and Sponsorships available. (412) 421-0508. halochoscope@hotmail.com



This week's question:

Is it appropriate to study *mishnayos* in the merit of the soul of a non-believer? Is there any difference between a heretic and one who was never educated properly about Torah? Is there any difference if he left no instructions about this?

The issues:

- A) *Mishna-study for the merit of the deceased*
- B) *Mitzvah lekayem divrei hamais, granting the wishes of the deceased*
- C) *Mumar, anuss, tinok shenishba, how to define an atheist*

A) *Mishna-study for the neshama of the deceased*

The *mitzvah* to study Torah applies at all times. One does not need an excuse for it. Nonetheless, there are secondary benefits from this *mitzvah*. Firstly, it is best performed with others. While it may seem that one is sharing the merit, in fact, each participant's merit increases exponentially. Thus, in both the performance and the merit, Torah study should be shared. There exists a standard procedure for sharing the merit of the study, even with others who do not participate in the study itself. This is modeled, in part, on the way Yisachar and Zevulun shared their work and study. Apart from this, one may always dedicate some of the merit of his study to others, without reducing his own merit.

The concept of the Torah study benefiting the soul of the deceased is mentioned by the Talmud, based on Scripture. When King Chizkiyahu passed away, they made a *yeshiva* t his graveside. Based on this, there is a practice in many circles to visit the grave of a departed scholar on his *yahrzeit*, and to study or recite Psalms there. Scripture uses the words *kavod gadol*, great honor. Some say that the idea was to honor Chizkiyahu, as is apparent from the context of the Talmudic passage. Some say that it recognizes his greatness. Others say that it refers to a benefit to the soul as well.

The concept of studying *mishna* for the soul is cited by many recent sources. It might not be an ancient custom. However, it is well established in all communities. Some connect the word *mishna* with the word *neshama*, as they have the same Hebrew letters. Some recommend specific *mishnayos* that relate to *neshama* or to purity.

In general, the idea is for the children to study the *mishna*. The deceased is now in a place where he is unable to do anything in his own merit. However, the children are able to gain merit for their parents. If there are no children, it is common for the person to designate others to study on his behalf. In many instances he will pay them for this. Thus, they can say that their *mitzvah* is also being supported by the deceased, who then gets a share in it. Some have the practice to pay for *mishnayos*, even if they leave surviving children. One's disciples can also study for the merit of the soul. While we might assume that the scholar was righteous, he can always gain from extra merit.

The question arises whether one can undertake to study for those who left no such instructions, nor had any children. In a house of mourning, when the mourners may not study, it is customary for others to study *mishnayos* for the merit of the deceased. It seems that even others unrelated to the soul may dedicate a *mitzvah* or a *zechus* in their memory and merit. [See Bava Kama 16b-17a, commentaries (Sedei Tzofim). Ar Hash YD 376:13. Moed Kol Chai 4. Even Yaakov 49.]

B) *Mitzvah lekayem divrei hamais*

In our case, the question is whether this conforms to the wishes of the deceased. If the deceased never believed in the afterlife, it is a simple ethical question for the survivors and friends. Is there a concept of memorializing if there is no afterlife. By his own definition, he should not care one way or the other after he is gone. Perhaps, he believed that there was an after-effect, that his actions should leave an impact later.

There is also an ethical question from the survivors' perspective. Assuming that they believe in the after-life, do they also believe that their own vision of it is the only way to view it? If so, they maintain that in the deceased current situation, his soul would not object to their actions. If, however, they believe that it exists, or probably exists, but that no-one really knows enough about it, they should not impose their actions on the soul of the deceased, against his wishes.

In Judaism, we believe in the after-life. We have some traditions about it, that have been handed down and are undisputed. They are considered essential truths. There is debate about many of the details, and there is much that we can never know. We also believe in an obligation on the survivors to respect the wishes of the departed. This comes into play when the departed left a will that affects *halahic* practice. Specifically, the poskim discuss one who forbade his children from reciting *kaddish*. One of the ideas raised is that he did this because he was unaware of the value of this *zechus*. Now that he is in the world of truth, he most certainly no longer objects. The other poskim disagree in the case mentioned, when he actually forbade *kaddish*. If he did not voice his opposition, but was known to have an opinion about it, one may speculate that all would agree to permit it. By this reasoning, a freethinker in his lifetime might have scoffed at the value of *mishnayos* for the soul. After his death, he would certainly appreciate the *zechus*. [See Brochos 18b Moed Katan 25a Kesubos 70a Gitin 40a Sanhedrin 46b-47a Makos 23b, Poskim. Tur Sh Ar YD 344:10, commentaries. Even Yaakov 47.]

C) *Defining a freethinker*

Under normal circumstances, any Jew is *muchzak beakashrus*, considered an observant Jew, and is qualified to perform on behalf others or to testify as a kosher witness. However, when a Jew openly violates *mitzvos*, he could lose this status. There are various levels of this new status of *abaryan* or *mumar*, a known habitual violator. One who violates *mitzvos* can lose his *chezkas kashrus* for other purposes. Violations can be *shogaig*, unintentional, *maizid*, intentional but not necessarily habitual, or a *mumar*, literally, exchanged – having exchanged his religion.

A *mumar* can also be categorized in different levels of brazenness. *Mumar lechol hatorah*, violator of the entire Torah, *leavoda zara*, idolater, *lechalel shabbos befarhesia*, public desecration of *Shabbos*, or one who professes not to believe in the words of the

sages, is equated with a gentile regarding certain *halachos*. *Mumar ledavar echad*, one who brazenly violates one *mitzvah*, (other than those listed), is usually still given a degree of credibility as a believer. Within this category, there is *mumar letaiavon*, one who gives in to temptation. His level of sin has advantages, in that it means that he is not openly rebellious. However, he is suspect for other *mitzvos*, since he might succumb to temptation with regard to them as well. *Mumar lehachis*, sins to spite. He is rebellious, but might profess his opposition to one particular *mitzvah*.

In the case of a freethinker or a non-believer, the person is assumed to have thought through his philosophy. He is thus ideologically against the Torah. He might believe that it is primitive and superstitious, or he might concede that it is a careful and thoughtful philosophy, but that it is academically or ethically wrong. The latter is probably considered more heretical than the former. He will have developed a belief system to counter the Torah. The former will have dismissed it out of ignorance, and would be open to accept it were he given the opportunity. Both have declared their opposition to the Torah. A modern-day atheist could be included in either category. They might accept some Torah values, because they 'agree' with them. This does not mean that they accept Torah in any meaningful way. Therefore, they are considered *mumar lechol hatorah*.

Many of our uneducated brethren nowadays are considered *tinokos shenishbu*, captive from childhood, rather than *mumar*. Their violations are considered *shogaig*. Public *chilul Shabbos* is also not necessarily considered total rejection nowadays. It was once considered the worst violation. It meant that the perpetrator was inevitably involved in violating everything else. Nowadays, unfortunately, it is the first thing people violate.

There is also a category called *anuss*. Usually, this refers to one who is guilty of a particular transgression. Rather than *maizid* or *shogaig*, this perpetrator was forced or compelled to commit his sin. He is not held liable. With regard to many sins, it is better to transgress than to risk one's life. In some cases the force is not life-threatening. If the goal of the one forcing is to challenge the Torah, or if he is compelling the violation of the three cardinal sins, one may not surrender. If, however, one did so, he is still considered *anuss*. In the case of forced conversions, or forced eradication of Judaism, the victims are *anussim*. Youth raised in this environment are probably *tinokos shenishbu*, since they had no practical exposure to real Judaism. They are also *anussim*. They might not have been threatened about their religion, because they were never observant. Nonetheless, they were forced to avoid it, and to profess their denial of its validity. [See Shabbos 68b Eruvin 69a-b Sanhedrin 27a Chulin 5a, Poskim. Tur Sh Ar OC 189, MA 1. 385. YD 2 119 124 159 251, EH 123:2 141:33, commentaries. Divrei Binyomin #5. Tzitz Eliezer VIII:17-20. Igros Moshe OC I:33 II:40.]

There is much discussion on the grief and mourning requirements over those who depart from the ways of the community. This includes those who refuse to participate in communal efforts and most categories of *mumar*. In former times, the signs of abandoning Judaism were those mentioned. In more recent times, intermarriage is considered as serious. However, in an environment where the gravity of this move is not even explained to the sinner, let alone understood properly, there might be room to consider him or her a *shogaig*, even in something like this. Thus, earlier generations, when Jews of all