

HALOCHOSCOPE



This week's question:

Certain members of a community refuse to pay for a gravestone for their departed relatives. Is there any obligation on the community leadership to provide one? Must it be made of stone, or may a small plastic plaque be used?

The issues:

- A) The requirements of a *matzaivah*, gravestone
- B) Who is obliged to provide the stone
- C) Which materials may be used for a *matzaivah*

A) *Matzaivah*

In context, the word *matzaivah* in the Tanach refers to a monument, usually erected on a spot as an eternal reminder. This could be to memorialize an event or a person. It was often erected to make a permanent monument to a treaty. It can also be a monument erected to honor a deity. It could even be erected to honor Hashem, as was done by the Patriarchs, but this is forbidden Scripturally since the giving of the Torah. The main source for a *matzaivah* on a grave is from Yaakov Avinu. He erected a *matzaivah* on the grave of his wife, Rachel Imainu. Some say that he only did this because she was buried in a roadside grave, away from a town and away from a cemetery. Avshalom erected an elaborate monument for himself while he was still living, because he had no sons to remember him. The Navi tells us of the irony, in that he was ultimately buried somewhere else with a simple pile of stones as his *matzaivah*. The commentators debate whether he was eventually re-interred.

Although this is not a *mitzvah* in its own right, it is an indication of a *minhag*, meritorious custom, that was always a part of the honor of the departed. Accordingly, it is *minhag Yisroel*, an accepted practice in Israel. The question is whether this is an obligation in any way. The poskim discuss this with regard to a person who left a will asking that his children not place a *matzaivah* on his grave. The response is to erect a small monument despite his will. Usually, this involves a violation of the *mitzvah* to fulfill the requests of the departed. In order to override this, there must be a *mitzvah* of some kind. To explain it in this case, the poskim invoke a *kabalistic* reason for the *matzaivah*. It apparently provides a *tikun*, remedy, for the soul. Had this deceased person realized the *tikun* he would miss out on, he would never have made the original request.

Furthermore, the Talmud discusses using money belonging to the deceased or a surplus raised by others for his burial, to build a '*nefesh*'. This is the Talmudic term used for the *matzaivah*. [This might also be an indication to the meaning of the *matzaivah*. In *kabalistic* terms, it is connected to the soul of the departed. The word also denotes the self. This serves as the eternal resting place for the deceased, and it is a personal 'home'. Some

say that by seeing the marker, the memory will be evoked. This will cause a *hazkaras nafsho*, a mention of the person's soul, in this world.] Another major reason for the *matzaivah* is to mark the location of the grave. At the spot where the body is buried, there exists a strong presence of the soul. The righteous are able to effect great things even after they have left this world. One may not pray to a deceased spirit. However, one may pray at the site of his grave, in the hope that his spirit will join in the prayers, and Hashem will listen. [The grave of Moshe was never revealed. When the people would pray at his grave, he would intercede too powerfully, as he did when he was living.] Accordingly, knowing the site of a grave is beneficial. For ordinary people as well, it is important to know where the grave is, to enable descendants to visit it at certain times.

Some add, something is buried to be left forever. No sign is needed for this. However, we believe that there will be a revival of the dead. Therefore, we mark the burial place as a sign of this faith. It is also a sign of the covenant between the living survivors and the deceased. They promise to stand up for each other.

The Talmud also discusses a *nefesh* that could be big enough to house someone (a tomb). Some say this refers to housing a guard to watch over the grave. From the discussion, it is clear that a *nefesh* could have livable space inside it, four cubits by four cubits. Or it could be smaller than this. It could have a roof, and four walls, or it might be open on two (parallel) sides, and/or on the top. The Talmud also mentions that one does not erect a *nefesh* for the righteous. Rather, their words serve as their memory. However, the poskim maintain that this refers to an elaborate *nefesh*. One should always erect a *matzaivah* of some kind. It is always beneficial, as well as giving the survivors a guide when visiting. It also serves to warn *Kohanim* to steer clear. This aspect, known as *tziyun*, is indeed a quasi-Scriptural requirement. However, a simple mark is sufficient. The concept of a stone monument is not part of this requirement.

If it is to watch over the grave, there is no need to engrave anything on the monument. Furthermore, if the monument is elaborate and unique, the names of those interred there will be remembered automatically. The Torah does not mention any wording placed on the *matzaivah* of Rachel Imainu. However, generally, the purpose of the *matzaivah* is to help visitors identify the grave. Therefore, a name is engraved or written on the gravestone. Depending on the meaning of the stone, there are varying *minhagim* on when it is erected. Some wait until after the main mourning period is over. It is there to prevent the forgetting of the memory. This only begins after a year. It is also meant to bring prominence, and is grand. Others maintain that it is part of the burial process. This actually depends on how it is viewed. One may not derive benefit from a grave. The poskim debate whether one may derive benefit from a *matzaivah*. This debate is about the status of the stone, as a part of the grave and burial, or as a monument to the grave. [See Vayishlach 35:20 Vezos Habracha 33:6 Shmuel II:18:18, commentaries. Eruvin 53a 55b Shekalim end Perek 2 Moed Katan 5a-b Sotah, end Perek 1, Ain Yaakov, Poskim. Tur Sh Ar YD 348:2 364:1 376:4 EH 89:1, commentaries. Chaim Uvracha Lemishmeres Shalom 77, refs. Moed Lechol Chai, Tziyun Lenefesh Chaya 1-3.]

B) Who is obliged to provide the matzaivah?

While there is clearly a *minhag Yisroel* to make a *matzaivah*, it is unclear whether

this can be enforced. What is clear is that if the family has an established practice to erect a monument, each member of the family must be accorded that honor. The basic obligation to pay for any of the burial expenses lies with the deceased himself. Money is taken from his estate to pay for all the usual expenses. These include the customary *matzaivah* for his family. A married man must pay for the *matzaivah* of his wife, as part of the commitment in his *kesubah*. This is often cited as the source of the obligation to pay for it. In this case, too, it should be the customary *matzaivah*.

If a person dies and has no money for his burial, the community collects money for it. The Talmud debates whether the surplus should be used for the *matzaivah*, thus going to the deceased himself, or for his heirs. If his heirs have means, some poskim maintain that they are obliged to pay for his burial expenses. Some cite a ruling where they are only compelled to pay if they inherit his money. However, this refers to a special case. The deceased had left a will saying that he did not want his own money used for his burial expenses. In such a case, the heirs, who inherited that money, are compelled to pay. If they did not inherit his money, they are not compelled to pay from their pockets. However, his money is used to pay for it. If he gave away his money right before he died, to take effect with his death, known as *matnas shchiv mera*, there is some question as to whether the recipient of the gift is required to pay for the burial. *Halachically*, this kind of gift works similarly to an inheritance. If he left no money, the children would have a *mitzvah* to honor their parents, and to provide burial. If they do not have the means, they would be exempt. In this case, a public collection would be made. This is because if there is no one to bury a person, it becomes the obligation of the entire people.

Accordingly, the hierarchy of obligation is: the estate of the deceased; the husband of a woman; the children; the community. In modern times, it is usually difficult to compel someone to pay for anything ritual. There is no clear claimant, and even if a Rabbinical tribunal would try to compel, the defendant might not listen. Other forms of pressure and penalties can sometimes force one to comply with a community standard. Sometimes a threat of future consequences can have an effect. However, it sometimes happens that a child, whether an heir or a person of personal means, will have left the fold. The children might not even approve of a burial. In some unfortunate circumstances, there was strife between the deceased and family members, sometimes over religious issues.

In such instances, the issue is whether public money should be used, and how much of it? The question is twofold: it could set a precedent wherein the entire concept of a family or estate paying for the burial costs could be upset; it could also use up resources that the community needs for other pressing needs. On the other hand, if it is indeed considered a communal requirement, this must be fulfilled, regardless of what it could lead to down the road. It would appear that the community should provide the minimum standard needs. The grave should not be left unmarked. It could be forgotten, and might be used by mistake for another person later. A *kohain* must be warned about its presence. There might be others who wish to visit it. There may be people who wish to be buried nearby, or who wish not to be buried there. It could also disturb others buried there or their family members. If it provides a *tikun*, why should the deceased be deprived of this due to his family's issues? This case could be considered a *mais mitzvah*, an unclaimed

body. However, since the true obligation lies with the family members, especially if they inherited his estate, a record of the claim against them should be made for possible future collection. In addition, some of the arrangements need not be made permanently. They will be made temporarily, until the family members pay for permanent things. If one wishes to change a *matzaivah*, there are questions on the status of the original. The issue is that one may not derive benefit from a grave. The poskim debate whether the *matzaivah* has this status. Therefore, when making the temporary *matzaivah*, one should stipulate that it will not be permanent. Then, if there is a permanent *matzaivah*, the temporary one can be used again or discarded. [See Tur Sh Ar YD 348:2 EH 89:1 CM 253:31, commentaries. Refs to section A.]

C) Materials for a matzaivah

Assuming that a temporary *matzaivah* is sufficient, does it need to be made of stone? The question is really whether any *matzaivah* must be stone. While the concept of *matzaivah* is a permanent monument, which would be made of stone, here we are discussing a temporary version of it. Eventually, there will be a permanent one. This temporary one might actually be left for a very long time, or indefinitely.

Since *matzaivah* is not a *mitzvah per se*, there is no requirement on the materials. However, it must be something that will remain in place. Thus, stone is the preferred choice. Some say that this has become the *minhag Yisroel*. Nonetheless, there is a record that a cemetery in one community had only wooden *matzaivos*. [It is possible that this was later discouraged for a totally unrelated reason. The gentiles might have used wooden crosses. To differentiate between our graves and theirs, wood was not used.] Apparently, some had the practice to use a wooden *matzaivah* as a temporary measure until the permanent *matzaivah* was ready. Others used wood because they could not afford the stone. They also stipulated to be able to replace it when they would have the money. In addition, the Talmud cites a practice to mark a grave with lime (cement) or chalk.

A brass plaque is not mentioned. However, there is mention of the type of lettering on the *matzaivah*. It should be engraved, rather than embossed. On a brass plaque the lettering is usually embossed. Plastic is a man made material, but is derived from minerals that are heated. In this way it could be compared to metal or baked earthenware. On the other hand, they are quite permanent, and would be a lasting monument. Plastic can be broken down by the elements. [See Levushei Mordechai II:140. Nitei Gavriel Availus II:66:1, notes. Tziyun Lenefesh Chaya 6 7 9 (note) 10 12.]

In conclusion, a small plastic plaque should be placed there, provisionally.

On the parsha .. *Do not erect a matzaivah, that Hashem, your Lord, hates. [16:22].* The word 'hated' used here specifically, because it became hated as a result of its becoming an idolatrous custom [Sifri, Rashi]. Perhaps this is also a reason why certain types of *matzaivah*, such as wooden or overly ornamental ones, are no longer used for gravestones [see above].

**Sponsored by Noah Bass and Debby Rotenstein in memory of Zissel bas Chaim a”h, who
passed away on the 15th of Av. ׀**

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