

# S·E·P·H·A·R·D·I·C HALACHA JOURNAL

Family, Business, & Jewish Life Through the Prism of Halacha



VOLUME 5779 · ISSUE XXVII · PARASHAT TAZRIA-HAHODESH · A PUBLICATION OF THE SEPHARDIC HALACHA

## GRAVE SIN:

### *The Hatching of a Cemetery Plot*

As heard from Rav David Shlomo Englander

#### THE TOMB OF THE UNKNOWN

Four men have been arraigned in Yerushalayim's Magistrates' Court on charges of desecration of graves and fraud. The defendants stand accused of robbing decades-old graves in order to resell the plots to foreigners at prices up to \$25,000.

The shocking allegations present us with an important Halachic question: If the purchaser of a stolen grave has already been buried in it, should his body be disinterred?

Generally, it is strictly forbidden to exhume a *Met*. In certain cases it may be permitted, depending on circumstances. These include:

If the burial location does not conform to the expressed wishes of the deceased.

If the burial site is threatened by flooding, grave robbers, or desecration.

If the grave is among non-Jews.

To move a *Met* to his ancestral plot.

To bring a body from *Hutz La'Aretz* to *Eretz Yisrael*.

If the original burial was performed on this condition.

If the *Niftar* was placed in a plot that didn't belong to him.

Examples of the final category arise even without grave robbery. Sometimes a person is buried in a grave belonging to someone else by mistake. The *Poskim* have addressed such questions throughout the generations.

The *Gemara* (*Sanhedrin* 47b) says that a *Ke'ver HaNimtza*, a newfound grave on private property—where it was placed without the owner's permission—may be removed.

This doesn't apply in the case of a *Met Mitzva*: If someone died and had no one to bury him, it is incumbent upon whoever finds him to do the burial, even a *Kohen Gadol* or a *Nazir*, who may not subject themselves to *Tum'a* even to bury a close relative (*Nazir* 47a). The *Halacha* is that *Met Mitzva Kone Mekomo*—a *Mer Mitzva* acquires his location. He may be buried wherever he is found, even on private property (*Bava Kama* 81a).

R' Yechiel Michel Tukachinsky (*Gesher HaHayim* 2:4:3 s.v. *v'achshav nedaber*; see also 1:27:1:12) rules that once a grave has been emptied, the heirs of the original occupant have the right to sell or give it to the family of the new occupant.

Rav Tukachinsky writes that the cemetery has the right of refusal, too. They approved only the purchaser as a candidate for burial on their grounds, and should the purchaser not need the site—for example, if he dies while overseas and is buried there—his heirs are entitled only to a refund of monies paid, not the opportunity to name a replacement that the cemetery doesn't approve.

In Yerushalayim, Rav Tukachinsky writes, the *Hevra Kadisha* has the *Minhag* to stipulate explicitly in each burial plot sales contract that the tomb is nontransferable and the purchase nonrefundable.

So according to the *Gesher HaHayim*, the new resident may stay only if both the original seller and the original buyer say so.

Although the dead cannot own property, and occupied tombs are owned by the occupants' heirs, Rav Tukachinsky adduces support for a novel idea: that the decedent himself maintains a right to the grave in which he is buried that his heirs cannot undermine by sale or gift.

Would this mean that the original tenant must be brought back, and his heirs have no power to waive his rights? No, says Rav Tukachinsky;

(continued on back)



An Overview of a Shiur by Rav Yosef Greenwald for Parashat Tazria/HaHodesh

### *On the Edge: The International Date Line in Halacha*

החודש הזה לכם ראש חדשים (שמות יב:א)

Where is the Date Line located according to halacha? Three basic approaches are offered.

*Hazon Ish*:

6 hours (90 degrees) ahead of Yerushalayim, which runs through Siberia, part of China, and part of Australia (though continuous land masses are not divided in his opinion).

This is based on the *Baal HaMa'or* (on *Masechet Rosh Hashana*) concerning *Kiddush HaHodesh*.

Accordingly, *Shabbat* in Japan would be observed on Sunday.

*Rav Tukachinsky*:

12 hours (180 degrees) ahead of Yerushalayim, which runs through part of Alaska and the Pacific Ocean to the left of Hawaii.

This is based on the idea that Yerushalayim is the center of the world

Accordingly, *Shabbat* in Hawaii would be observed on Friday.

*Rav Ovadia Yosef/Rav Tzvi Pesach Frank*:

We follow the regular International Date Line. Since the *Gemara* doesn't address directly, we should follow the local custom.

*Practical Halacha Today*:

Most *Poskim* do not take a definitive stand on the issue.

(continued from front pg.)

the *Niftar's* right is retained only so long as he occupies the grave. Once he has been removed, it is relinquished.

There goes the neighborhood

The public has been rightfully scandalized by the news of this scheme. Suppose the affected parties allow the unintentional interlopers to remain in their graves, but the families of the new occupants don't want to be associated with the outrage, and they want to transfer their relatives to a different location. May they unearth the bodies on that basis alone? For that matter, what if the families of others buried in the impacted section, whose graves were not disturbed, likewise fear being tainted, and seek to transfer those remains as well? May everyone just get up and leave?

R' Eliezer Deitsch, Rav of Bonyhad, Hungary a century ago, addresses in a *Teshuva* (Duda'e HaSadeh 2) the case of a wealthy man whose family paid the full price for a burial plot, only to find that the *Hevra Kadisha* had entombed him among children. Thinking that this was

beneath his stature, the family sought to re-bury him elsewhere. One way they suggested this could be allowed was by canceling the sale as a *Mekah Ta'ut* (an erroneous purchase). Because the sale wasn't legitimate, the argument went, the *Niftar* may be disinterred, because the grave didn't belong to him.

Rav Deitsch disagreed. Only the wronged party may claim *Mekah Ta'ut*, not the one that did the wronging. If this man was cheated by the *Hevra Kadisha*, in no way can he be considered to have stolen the grave.

The family presented another argument: The man is in a dishonorable site and must be transferred to an honorable one. Rav Deitsch answered simply that there is no source in *Halacha* for disinterment of a *Met* toward that end.

Similarly, in our own case, disassociating oneself from scandal is not Halachic grounds for disinterment, so those affected by the situation will have to live with it. May we merit to see the *Tehiyat HaMetim* speedily in our day, Amen.

(continued from front pg.)



Therefore, many *Poskim* suggest for *Shabbat* to keep *Shabbat* on the local Saturday and be *Mahmir* for a *Melacha D'Oraita* on the other day.

## EVENTS & HAPPENINGS AT THE BAIS HAVAAD



### PESSAH & MEDICINE MEDICAL SEMINAR

Last Sunday, the Bet HaVaad Medical Halacha Center presented a groundbreaking seminar for physicians & healthcare professionals on medical topics related to Pessah. The seminar featured an initial presentation by Rabbi Daniel B. Roth, MD, a member of the Medical Halacha Center, and author of "Refuas Yisrael". This was followed by a spirited round table discussion by the participants concerning the practical applications of the various 'approved medicine lists' published for Pessah. A follow up seminar is planned for the following Sunday. Stay tuned for a report!

**When your company needs to sell its chametz because they sell it all year.**

YOUR STANDARD MECHIRAS CHAMETZ MAY NOT WORK IN A CORPORATE SETTING

CONTACT THE BUSINESS HALACHA DIVISION 1.888.485.VAAD(8223) EXT. 309  
EMAIL: SERVICE@BAISHAVAAD.ORG



Business Halacha Services



Bet Din & Dispute Resolution



Zichron Gershon Kollel for Dayanut



Medical Halacha Center



Kehilla & Bet Din Primacy Initiative



Halachic Awareness & Education



## S·E·P·H·A·R·D·I·C HALACHA CENTER

105 River Ave, #301, Lakewood, NJ 08701  
732.9300.SHC (742)  
www.theshc.org  
info@theshc.org

MIDWEST DIVISION  
RABBI DOVID ARON GROSS  
A 3718 SHANNON ROAD  
CLEVELAND, OH 44118  
P 216.302.8194  
E MIDWEST@BAISHAVAAD.ORG

BROOKLYN DIVISION  
RABBI DOVID HOUSMAN  
A 2238 85TH STREET  
BROOKLYN, NY 11214  
P 718.285.9535  
E RDHOUSMAN@BAISHAVAAD.ORG

SOUTH FLORIDA DIVISION  
RABBI YOSEF GALIMIDI, MENAHEL  
RABBI MEIR BENGUIGUI, SAFRA D'DAYNA  
A SAFRA SYNAGOGUE  
19275 MYSTIC POINTE DR  
AVENTURA, FL 33180  
E BD@BAISHAVAAD.ORG