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TITLE	"Life Cycle Problems in the Kovno Ghetto During the Holocaust as Reflected in (Selected) Responsa of Rabbi Efrayim Oshry"
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Life Cycle Problems In The Kovno  
Ghetto During The Holocaust As  
Reflected In (Selected) Responses  
Of Rabbi Efrayim Oshry.

Paul David Caplan

Thesis submitted in partial  
fulfillment of the require-  
ments for Ordination.

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## DIGEST

From July 15 to August 15, one month's time, the Nazis uprooted 29,760 Lithuanian Jews from their cities and homes and imprisoned them in the Kovno ghetto in Slobodka (a forsaken suburb of Kovno). They were thrust into what could be called "a world turned upside down" where all previously accepted norms were turned into their opposites by the Nazis. It was a Hell on earth where injustice prevailed over justice, hate over love, and death over life. At this time hope was obscene and insanity reigned supreme. It was under these conditions, suddenly imposed upon Lithuanian Jewry by the Nazis, that this segment of Jewry struggled to survive and to retain some semblance of sane and normal living. For many of the Jews imprisoned in the ghettos and concentration camps normal living meant the maintenance of an ongoing, stable, religious life, even in the face of Nazi demonology. It meant a spiritual resistance which did not allow the environment to have dominion over them. Halakhah and religious equilibrium were ways of asserting that the pre-Holocaust world did not cease to be when confronted with the Holocaust Kingdom. As a medieval Jew once prayed:

My G-d, You have given me over to  
starvation and poverty; Into the  
depth of darkness have you plunged

me; You have taught me Your power  
and strength; But even if they  
burn me with fire, I will love  
You all the more and rejoice in  
you.

In other words, what this Jew as well as others like him were saying was: There is still a G-d and we are His people, which means we must do the mitsvot. Therefore we will not accept the enemies' definition of us, we will define ourselves.

In his five volume work--Mimaamakim--R. Oshry's presents, through the lens of the responsa, the struggles of Lithuanian Jewry to keep alive the sacred in a profane environment. From R. Oshry's work I have chosen eighteen rabbinic responsa dealing with life cycle problems in the Kovno ghetto from birth to death. In the body of the thesis itself they are ordered not according to the chronology of events as they occur in the life cycle, but rather according to the order in which they appear in R. Oshry's volumes. These responsa were translated and annotated with an eye towards R. Oshry's intended purposes in publishing them. And these are: they reflect the spiritual life of many Jews at that time; they represent a link in the chain of halakhic precedents in emergency situations; they contain much historical material; and also so that they may serve as a memorial to those Jews who struggled for holiness and religious normalcy in the Nazi Hell.



The issues treated here cover the gamut of the entire life cycle. Commencing with birth are the problems of circumcision on Shabbat of a child born to a Jewish mother by a gentile under compelling circumstances; and pidyon haben in the absence of the father. Between birth and Bar Mitzvah are the problems of performing the mitsvot, such as donning tefilin prior to thirteen. Then at marriage age the question is raised as to whether a parokhet can be used in emergency circumstances as a huppah. Finally when death comes there is concern over proper burial, desecration of the dead, and retrieval of precious objects from the clothing of the dead. The remainder of the questions deal with saving of a life under questionable circumstances; martyrdom for ones beliefs; and proper observance of customs and rituals under the circumstances.

The responsa included here are a tribute to R. Oshry's rabbinic compassion and leniency for those Lithuanian Jews caught up in the Hell of the Holocaust and imprisoned in the Kovno ghetto.

## DEDICATION

To my parents Robert and Cynthia Caplan,  
for their love, encouragement, and  
support,

and

To Dr. Alexander Guttman my Rabbi,  
teacher, and friend, for the many  
pleasant hours we spent studying and  
sharing experiences together.

# Table of Transliteration

<u>Consonants</u>		<u>Vowels</u>	
κ	disregard; option: apostrophe at the beginning of a syllable inside the word*	ⲕ, ⲕ', ⲕ̣	a
		ⲕ', ⲕ̣, ⲕ̣'	e
β	b	ⲕ', ⲕ̣	e, e or ei
ⲃ	v		
Ⲅ	g	ⲕ̣	e or dis- regard*
ⲅ	d		
Ⲇ	h	ⲕ', ⲕ̣	i
ⲇ	v		
Ⲉ	z	ⲕ̣, ⲕ̣', ⲕ̣̣, ⲕ̣̣'	o
ⲉ	h	ⲕ̣, ⲕ̣'	u
Ⲋ	t		
ⲋ	y		
Ⲍ, ⲍ	k		
Ⲏ, ⲏ	kh		
Ⲑ	l		
ⲑ, Ⲓ	m		
ⲓ, Ⲕ	n		
ⲕ	s		
Ⲗ	same as κ		
ⲗ	p		
Ⲙ, ⲙ	f		
Ⲏ, ⲏ	ts		

Table of Transliteration (cont'd)

<u>Consonants</u>	<u>Vowels</u>
ק k or q	
ר r	
ש sh	
ס s	
ת ,ת t	
* except when all syllables are separated by hypens; for instance, on a song sheet	* depending on the pronunciation intended
** consonantal	** kamats katan

# ABBREVIATIONS

ch.	chapter	Hil.	halakhah
Hil.	hilkot	Oh	Orah Hayyim
Resp.	Responsum	Sh. Ar.	Shulhan Arukh

## Bible

Dan.	Daniel	I Ki.	I King
Deut.	Deuteronomy	II Ki.	II Kings
Ecc.	Ecclesiastes	Lam.	Lamentations
Est.	Esther	Lev.	Leviticus
Ex.	Exodus	Num.	Numbers
Ezek.	Ezekiel	Prov.	Proverbs
Gen.	Genesis	I Sam.	I Samuel
Is.	Isaiah	II Sam.	II Samuel
Jer.	Jeremiah	Zech.	Zechariaiah
Hosh.	Joshua	Zeph.	Zephaniah
Jud.	Judges		

\*\* All biblical quotations are taken from The Jerusalem Bible (Jerusalem: Koren Publishers, 1969).

# TALMUD

M.	Mishna		
Yer.	Yerushalmi		
R.	Rabbi or Rav (before names).		
Arak.	Arakhin	MQ	Moed Katan
Avot	Avot	Ned.	Nedarim
AZ	Avodah Zarah	Oh.	Ohalot
BB	Bava Batra	Pes.	Pesahim
Bek.	Bekhorot	Qid.	Qiddushin
Ber.	Berakhot	Sanh.	Sanhedrin
BM	Bava Metsia	Shab.	Shabbat
BQ	Bava Qamma	Shek.	Shekalim
Eruv.	Eruvin	Sot.	Sotah
Git.	Gittin	Suk.	Sukkah
Hul.	Hullin	Ter.	Terumot
Ker.	Keritot	Yev.	Yevamot
Mak.	Makkot		
Meg.	Megillah		

\*\* All Talmudic quotations are from the Talmud Bavli (Babylonian Talmud) unless otherwise indicated.

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## INTRODUCTION

In the aftermath of World War I, the Vilna Congress elected a national council which proclaimed Lithuania as an independent state with Vilna as its capital. Subsequently the Germans evacuated the area, and in January 1919, it was occupied by the Bolsheviks. A year later the capital city of Vilna was captured by the Poles, and the Lithuanian government set up Kovno (Kaunas) as its temporary capital. As a result of this shift, Kovno became the center of Lithuanian Jewry. In the years following, Jews were granted the right of "national-cultural autonomy" and organized kehillot (legally recognized autonomous communities). Within these kehillot Jewish life reached its apex of development and greatness. According to the census held on Sept. 17, 1923,<sup>1</sup> the Jewish population of Kovno was 25,044-about 27.1% of the total population, and was the largest national minority. These Jews played an important role in the struggle for Lithuanian independence, and in all areas of the Lithuanian economy. Jewish cultural life also flourished during this period of autonomy (from 1919-1922), and Leib Garfunkel wrote concerning it:

The heart of the Jews of Kovno was always alert to all that was transpiring in the Jewish world at large, and the Jewish populace in this city was tightly plugged in to the different forces of world Jewry.

Regularly, renowned people came to Kovno--writers, poets, famous leaders, who would appear before the Jewish community to disseminate their thoughts and stir the community to national action."

In particular Garfunkel notes the visits of N. Sokolov, H. N. Bialik, Z. Jabotinsky, Shalom Ash, S. Dubnov, and many others.

Unfortunately, this golden age of Jewish national autonomy and relatively unhindered cultural development was a short lived experience. Jewish autonomy eroded as reactionary clerical groups such as the "Christian Democrats" gained control of the government and launched a campaign against Jewish interests. Joseph Gar explains: "There were many reasons for this new course taken by the Lithuanians in respect of their Jewish fellow citizens. Once the Lithuanian republic had found its feet, the Lithuanians no longer felt that they needed the help of the Jews either at home or abroad."<sup>5</sup> Finally, by 1924 the autonomous kehilot were dissolved formally by the government and many Jews emigrated. Nevertheless, Jewish national and cultural life continued under the auspices of the central institutions which served an important task in the lives of the Jews of Lithuania, and these were: Ezra (for social aid), Adass Yisroel (for religious needs), and the remnants of the autonomous community including people's banks, the Yiddish press, and the Hebrew-Yiddish school system.

The years of 1939-1941 brought Soviet rule to the area with the signing of the U.S.S.R.-German Pact. On October 10, 1939, the U.S.S.R. and Lithuania concluded an agreement in Moscow "for the transfer of Vilna and the Vilna province to the Lithuanian Republic...." According to Gars: "With the incorporation of Vilna, the Jewish community of Lithuania grew by about 10,000. Previously the 160,000 Lithuanian Jews constituted about 7% of the population, but with the annexed portions they totaled over a million, about 10% of the total population of the enlarged country. The number of Jewish refugees from Poland grew considerably (to about 14,000-15,000) in the following months. About 10,000 stayed in Vilna and the rest in Kovno (Kaunas) and other places."<sup>4</sup>

The nightmare for Lithuanian Jewry began on June 22, 1941, when the army of the third Reich began their war campaign against the Soviets. Within one week, the Nazi armies captured all of Lithuania and the remainder of the Baltic States. The Jews had no time to escape and were trapped in their respective countries by the invading armies. "Immediately Hell opened up for the Jews of Lithuania, and the abyss of perdition opened up its mouth before them."<sup>5</sup> Not only did the Germans wave their banner of Antisemitism and destruction, but also the Lithuanians--who joined them with great zeal in destroying the Jewish population. On the 15th of July, 1941, the

Germans began moving the Jewish population to Slobodka-- to what was to be known as the Kovno ghetto. On August 15th, 1941, the gates of the ghetto were closed on the Jews. According to Leib Garfunkel: "29,760 Jews were crammed into the narrow space of the ghetto, wherein before this time, only about 7,000 (Jews and non-Jews) lived."<sup>6</sup>

It was against this background that Rabbi Efrayim Oshry found himself imprisoned in the Kovno ghetto. As Rabbi, it was his function to tend to the urgent needs of his people in all areas of life, and it was from this ghetto milieu that his responsa emerged. In his own words R. Oshry said by way of introduction to vol. 1 of his Holocaust responsa (Mimaamakim): "...The great Rabbi Avraham Kahana Shapira, Rabbi of the Kovno ghetto, was still alive, however he was already on his death bed. Many would turn to me to request halakhic decisions as to what to do. On account of the terrible troubled times, they directed (halakhic) questions to me which the times caused...Almost every question involved life-threatening circumstances, and demanded that I answer immediately....Thus, these responsa in my possession accumulated on all sorts of questions which characterized these exceptional circumstances. I have since written them down to serve as a memorial and a reminder for these horrendous times, and how the Jewish people made it through

these difficult times in holiness and purity, and fulfilled the dictates of the Torah which was transmitted to them--'with all thy soul, even if He were to take thy soul' (Deut. 6:5, Rashi).

"Behold, now, with the passage of 15 years since I recorded these responsa....I saw that there was much historical material in them. Material which gives us an encompassing picture of the spiritual life of those imprisoned in the ghetto, over and against the daily war. I said in my heart: "This is the Lord's doing" (Ps. 118:23) to cause me to record these responsa and to erect by them a Yad Vashem (memorial) to those upright and innocent (victims) who sanctified themselves, in their lives and in their deaths, for the sake of Heaven, to stand as a memorial and a remnant of Lithuanian Jewry; Judaism which was always rooted in its great Yeshivot, Rabbis, and great people.

"These thirty-one responsa given here are only a small number of those which I was asked, and had since written down in note form. Now I have put them in the right order, and have not added anything to them, except that I enlarged on things a bit here and there..."<sup>7</sup>

Since R. Oshry had written that introduction to Vol. I he has since published four subsequent volumes touching on every aspect of Jewish life. Owing to his in-depth treatment of the problems (and their solutions) which arose in the Kovno ghetto; his data which are on the whole accurate,

even though based on memory; and the fact that his responsa do not merely give halakhic decisions to problems but also reflect life in the ghetto during this time----his volumes are among the most important sources for Jewish life and Jewish suffering. Furthermore, these responsa go far beyond the bounds of Lithuanian Jewry. Readings from other historical documents show that the conditions in the Kovno ghetto were not exceptional or unique, but ought to be considered as pars pro toto (part of the whole), typical of conditions in other ghettos in Eastern Europe.

From R. Oshry's multivolume work--Mimaamakim (Out of The Depths)--I selected only responsa relating to the life cycle of the individual Jew within the confines of his ghetto community, commencing with birth and concluding with death. I view these responsa as especially reflective of life--particularly the spiritual life of the Jewish ghetto prisoners. They also reflect the Jewish outlook of the sacredness of life and its preservation. Although these responsa must be regarded as Horaot Shaah (decisions in emergency which cannot be taken as precedent) they serve as a testimony to R. Oshry's compassion for his fellow Jews in a world of vehement hatred and antisemitism; his belief in the Jewish system of law and order, in the midst of Nazi lawlessness and destructiveness; and most important--his passionate dedication to the preservation of life within a halakhic framework, in a Nazi world of violence and death.



## NOTES

## INTRODUCTION

1. Encyclopedia Judaica (Jerusalem: Keter, 1971),  
vol. 11:374.
2. Leib Garfunkel, The Destruction Of Kovno's  
Jewry (Jerusalem: Yad Vashem, 1959), p. 15.
3. Encyclopedia Judaica, p. 378.
4. Ibid., p. 385.
5. Garfunkel, p. 16.
6. Ibid., p. 52.
7. R. Efrayim Oshry, Teshuvot Mimaamakim (Printed In  
U.S.A., Gross Bros. Printing Company, Inc., 1959),  
Vol. I, Introduction.

## Responsum 1

## Concerning The Law of Circumcision By A Transgressor

Question: There was a (Jewish) family in Kovno which had assimilated amongst the gentiles (to such an extent that) there was no difference at all between them and the non-Jews. They learned their ways and practiced their customs, and moreover, they even violated circumcision (lit. destroyed the seal of holiness, the law of the covenant of Abraham our father), and did not circumcise their son who was born to them. With every effort they strove to cut off every thread, connection, and bond with their nation (lit. rock of their quarry), and therefore denied their people and turned their backs (lit. necks)--their every aim was to resemble their gentile neighbors. However, with the increase of troubles in the year of 5701 (1941),<sup>1</sup> the enemy stretched out his hand to destroy the Jews (lit. the seed of Jacob) and to utterly obliterate them from the earth (lit. from under the heavens of the Lord). When the decree went out from the cruel enemies, that for every single living Jew it was incumbent upon him to leave the city of Kovno and assemble, to be shut up in a ghetto which was assigned for this purpose in the area of the city of Slobodka,<sup>2</sup> thus also the cup of sorrow passed over this family. Their fate was determined to be like the fate of their distressed brethern--also this family was "accounted as

sheep for the slaughter"<sup>3</sup> brought to be killed, to perish, to be as a plague and a disgrace. Their wickedness, assimilation, and denial in the day of the disaster (anger) was of no avail. The head of the family was killed in a cruel manner by the cursed murderers. His wife and his children were forced to be sated with suffering and bitterness inside the walls of the ghetto like the rest of the Jews who were "imprisoned, shut up, and locked up not (being allowed) to come and go."<sup>4</sup>

The fate of this family, which was stricken in a two-fold manner despite their leaving of their people and "contemning of the Holy One of Israel,"<sup>5</sup> was terrible. They asked themselves: "Why are we smitten? Behold we are like all the gentiles." They were unable to understand, that in the eyes of the cursed evildoers "there was only one law for:"<sup>6</sup> anyone who is called by the name "Israel", and anyone whose conception and birth was in holiness from the seed of Israel-- to be destroyed and killed. This fate caused their uncircumcised son to become aware of what was happening (lit. caused his soul to be wrapped around him). Feelings of love and endearment towards his unfortunate people became powerful in his heart, and the desire to be as one of his people became strong inside him. The question arose in his mind: "if in my death I am not separated from my people, and my fate is likely to be similar to the fate of all other Jews, why

should I be separated from them in my lifetime (in life). Why should there not be the sign of the circumcision (lit. the seal of the holy covenant) on my flesh? Why should I be as one of those defiled uncircumcised ones, who devour my people and devastate their dwellings?--that it, the dwellings of Jacob." These thoughts caused the desire to develop in him to be circumcised according to the requirements of the law and to become as one of the people of the House of Israel.

However, since there was no observant (lit. God-fearing)<sup>7</sup> mohel<sup>8</sup> present in the ghetto who was able to circumcise this man who was about twenty-seven years old, but there was a Jewish physician present who profaned the Sabbath in public, therefore I was asked if it was permissible to permit this physician to circumcise the man mentioned above because of circumstances (lit. time), since there was no other mohel and the man forcefully urged that they hasten to circumcise him (lit. make him enter into the covenant of Abraham our father).

Answer: Rambam, Hil. Milah, ch. 2, Hal. 1, wrote: "A gentile should not circumcise (a Jew) at all, but if he did so, it is not necessary to circumcise him a second time."<sup>9</sup> The Bet Yosef decided thusly in YD 264:1: "But a gentile, even if he is circumcised, must not circumcise a Jew at all. If he does circumcise (a Jew) it is not necessary to circumcise him a second time."

It seems from this that there is no need for a hatafat dam brit.<sup>10</sup> However, it is impossible to say that one does not need to cut a second time, since there is no opinion that one should cut the penis so that he would become a eunuch<sup>11</sup>. And likewise Bah wrote that this wording implies that Rambam holds that a hatafat dam brit is not necessary (in this case).

But the Tur and the Sefer Mitsvot Hagadol decided that a hatafat dam brit is necessary. Rama ibid.: "And there are those who say (yesh omrim) they have to perform a hatafat dam brit." This implies that Rama holds that according to the opinion of Rambam a hatafat dam brit is not necessary since he wrote this in the name of yesh omrim (there are some who say) which implies that he does not hold (this opinion) thusly. Shakh in note 3 wrote ibid., that the opinion of Bet Yosef is that Rambam also holds that a hatafat dam brit is necessary.

According to this, we need to understand the intention of the Bet Yosef (Karo) in the Sh. AR. when he wrote: "It is not necessary to circumcise him again." It seems to me that the meaning of this is that Karo, in the Sh. AR., retracted what he wrote as being the intention of Rambam in the Bet Yosef, meaning that a hatafat dam brit is necessary, since he did not write thusly in the Sh. AR. It seems from this that according to the opinion of the Rambam, a hatafat dam brit is

not necessary.

In the book Get Pashut, ch. 123, the author presented the intention of Rambam as being that a hatafat dam brit is necessary. That which the Rambam wrote: "That it is not necessary to circumcise him again," means: one need not cut off a little (piece) again, rather a hatafat dam brit is sufficient, see *ibid.*

From all that has been mentioned above, it is apparent that there is a disagreement as to the intention of the Rambam whether circumcision is proper if performed by a gentile. The opinion of Hagra is in agreement with that of the Tur and the Sefer Mitsvot Hagadol.<sup>12</sup>

As to the law whether a mumar<sup>13</sup> is qualified for circumcision? The Rama in YD ch. 264, note 1, decided: "The law for a mumar who denies the validity of the entire Torah<sup>14</sup> or for a mumar in regards to circumcision<sup>15</sup> is as the law pertaining to a gentile." This is the implied meaning in these sources: Talmud, Ch. 2, p. 77 of AZ; Tur and Bet Yosef. This being so, if a mumar like this one circumcised (a Jew), it is necessary to perform a hatafat dam brit on him. In the book Even Haezer (the author) wrote, and this is his wording: "In OH ch. 189, I explained that a mumar who is circumcised is qualified to circumcise (a Jew), according to the Sh. AR etc." His conclusion is that a mumar is preferable over a (Jewish) woman, see *ibid.*, and in the Pithei Teshuvah. *ibid.*

In the Novellae of Rabbi Akiba Eger on YD ibid., the author goes into length about this and clarifies the words of the Rama that "the law for a mumar who denies the validity of the entire Torah is as the law pertaining to the gentile." He cites the opinion of the Tosafot that he is qualified, and he concludes with the following words: "This being so, anyhow, ex-post facto we should rely on this<sup>16</sup> regarding the mumar." It is possible that also the Rama (agrees that a hatafat dam brit is not necessary), since he did not write first that a mumar who denies the validity of the entire Torah is in respect to the law like a gentile,<sup>17</sup> and afterwards yesh omrim ("there are some who say") that a hatafat dam brit is obligatory.<sup>18</sup> But the Rama did not decide likewise regarding the mumar. And regarding that which he wrote: "The legal status of a mumar is like that of a gentile, this means: whereas regarding a gentile all agree that he is unqualified (to circumcise), concerning the matter of one who transgresses the law prohibiting him to circumcise and circumcises, that is not so;"<sup>19</sup> the matter requires further study. It is apparent from this that there is no question as to a mumar who circumcises that the performance of a hatafat dam brit is not necessary, but in pressing circumstances it is permissible to be circumcised by a mumar a priori. It also seems from the conclusions of a Tosafot, as interpreted by R. Akiba Eger: "The circumcision of a mumar who denies the validity of the entire Torah is proper and a hatafat dam



brit is not necessary."

It is written likewise in the resp. of Hatam Sofer in YD ch. 1, and this is his wording, "It seems to me that a mumar in regard to avodah zarah (idolatry) can well be a godfather (sandaq)<sup>20</sup> because after all, he (the child) is still circumcised. Granted that he (the mumar) is not included in the covenant of the Torah (since he denies Torah), in any case, he is included in the covenant of circumcision and not excluded from the law (of brit milah) "you shall observe my covenant."<sup>21</sup> Therefore, they (mumarim) are included in brit milah and qualified to circumcise. See there in the resp. of Hatam Sofer, HM ch. 134, that he agrees with the opinion of Even Haezer as is mentioned above.<sup>22</sup> And the physician who is mentioned above is not a mumar with respect to circumcision and therefore qualified to circumcise.

However, in the book Orhot Hayyim, ch. 331, note 10, I saw that he disagreed with this, and likewise I saw that the other Ahronim<sup>23</sup> are strict with the matter. Despite this, as to the matter of practical halakhah it is not proper to say: "In this case we will follow a strict (interpretation), and shall consider the opinion of the Ahronim who are strict, because this stringency leads to a leniency."<sup>24</sup> For if we are stringent according to their opinions, a leniency will result and nullify the positive mitsvah of "on the eighth day he shall be circumcised"<sup>25</sup>--



which even supercedes the Sabbath where there is no mohel other than a mumar. Rather it is certain that if there is no other mohel, one should not delay the circumcision and nullify (neglect) the positive mitsvah of circumcision on the eighth day, since according to the opinion of Even Haezer and the great Rabbi Akiba Eger: "A mumar is allowed to circumcise in times of emergency."

In the resp. of Rabbi Akiba Eger, ch. 264, he wrote: "I saw in the book Zihron Brit L'rishonim p. 52, that regarding the matter of whether an expert mohel, who is widely known to profane the Sabbath in public, is qualified to circumcise, he wrote *ibid.*: "In as much as he is widely known to profane the Sabbath in public by keeping his store open and traveling, and in instances where the prohibitions are only rabbinical, he is not a mumar in regard to the entire Torah. Also it is possible that he writes (on Sabbath) and smokes. Anyhow, who says that he does this in the presence of ten pious Jews?--because it seems that in front of ten mumarim this case is not included 'in the public'."<sup>26</sup> He concludes that it is proper for a G-d-fearing Jew (pious Jew) that he should not honor a man like this (by permitting him) to circumcise his son; but to protest that he should not circumcise if there is no other mohel in the city, or concerning some emergency case--no! It is possible that in regard to those who profane the Sabbath publically this is called emergency, lest there be quarreling and quibbling (over this matter). In any event,

it is not obligatory to search and to clarify whether he profanes the Sabbath by work (prohibited in) the Torah in front of ten male Jews, "And the wisdom is with those who are discrete" <sup>27</sup> (and do not investigate).

Behold in the resp. of Mahaneh Hayyim, part II, ch. 20, he wrote to reject the words of Even Haezer and he concludes: "He who profanes the Sabbath in public is disqualified to circumcise," see *ibid.* But says at the end, nonetheless, if it happens that no mohel can be found except a public Sabbath profaner, I will not accept the responsibility to nullify the mitsvah of circumcision. It seems that he did not see the words of the great Rabbi Akiba Eger mentioned above.<sup>28</sup>

What emerges from all this is that certainly, in our case, we must permit the physician to circumcise the young man mentioned above. We do not have a time of greater urgency than this--for behold, daily, hundreds of our brothers from the Children of Israel are taken to be executed by the cursed murderers, may their names be blotted out. This young man weeps bitterly and screams like a crane (bird) that if it is decreed upon him to die by the hands of the cruel ones, he wants to die the death of the pious like the rest of his holy and pure brothers who gave their souls for Kiddush Hashem.<sup>29</sup> He wants to be as one of them who in their lives and deaths are not separated. Therefore, I permitted that this child, who

was a prisoner amongst the gentiles and returned to his people with all his heart, be circumcised by the physician since there is no other mohel (available) at this time of emergency; because everyone knows that had a pious mohel been available it would have been this mohel. And there need not be any fear that others will follow this example (and use an ordinary physician). Moreover, I permitted (him) to cut with a scissors, for it is difficult to cut with a fingernail<sup>30</sup>--and as Binyon Tsion wrote in ch. 88, that in regard to a large penis (an adult penis) whose foreskin is tough, it is permitted to cut with a scissors.

## NOTES

1. Summer of 1941, Himmler gave the order to liquidate the Jews. Ghettoization is stepped up and the ghettos were becoming almost "hermetically sealed" from the outside world. See Gideon Hausner, Justice In Jerusalem, (New York: Holocaust Library, 1966), p. 54.
2. Kovno (Kaunas Lithuania) In mid-August the Jews were inclosed in the Kovno ghetto and by September 15, 1941, the Germans sealed the ghetto off completely from the outside world. According to Rabbi Dr. H. J. Zimmels in The Echo of The Nazi Holocaust In Rabbinic Literature, (New York: Ktav Publishing House, 1977), p. 54; "The (Kovno) ghetto was in the area of Slobodka and consisted of two parts: 'the small ghetto' and the 'big ghetto' connected with each other by a small bridge." Lucy S. Dawidowicz in The War Against The Jews, (New York: Bantam Books, 1975), p. 379 reports: "There were approximately 30,000 Jews in the Kovno Ghetto at this time, and 6,000 to 7,000 had already been murdered by Einsatzgruppe A" (assigned to Army Group North, operated in the Baltic States, *ibid.*, pp. 168-9. See Leib Garfunkel, The Destruction of Kovno's Jewry. (Jerusalem, Yad Vashem, 1959).
3. Ps. 44:23.
4. Josh. 6:1.
5. Is. 1:4.

6. Est. 7:4.
7. Sh. Ar. YD 264:1. "A man should seek to find the best and most pious mohel."
8. Professional circumciser specially trained in the theory and practice of circumcision.
9. AZ, ch. 2:27a. The Talmud raises the question: "Whence could it be derived that circumcision performed by a heathen is invalid?" Two possible answers are given. Daru b. Papa said in the name of Rab: (from the words) "and as for thee, thou shalt keep my covenant" (Gen. 17:9)--spoken by G-d to Abraham when the rite of circumcision was first enacted, which implies that only one bound to keep the rite is qualified to perform it (Soncino, note 2, p. 133 of AZ). R. Yohanan deduces it from Himmol Yimmol (Gen. 17:15) rendered by the Rabbis as "He who is circumcised shall circumcise,"--this excludes the gentile. The halakhah is as R. Yohanan, for the Talmud explains that a circumcised Arab is forbidden to circumcise a Jew, while an uncircumcised Jew may circumcise.
10. Drawing of the blood of the covenant to validate the circumcision. See Tosafot Shab. 15 (16), 9, and also Yeb. 71a.
11. That is to say that a hatafat dam brit is insufficient,

and that a second cutting is required. However, a second cutting allows for the possibility that the mohel will cut too much and make the infant a eunuch. Since there is no opinion that one should cut the penis so that he would become a eunuch, it is not necessary to cut a second time.

12. That a hatafat dam brit is necessary.

13. A mumar is a convert from Judaism, an apostate Jew, or as in this case, an open opponent of Jewish law or non-conformist (Jastrow).

14. Is considered as a rebel against the entire Torah. See Hul. 4b. i.e., one accused of idolatry.

15. Opposed to circumcision on principle. See Hul 4b.

16. That a hatafat dam brit is not necessary.

17-18. Rama did not write that a mumar is on an equal basis with a gentile, and afterwards an opinion that a hatafat dam brit is necessary, because Rama did not decide that a hatafat dam brit is necessary with respect to a mumar. See note following.

19. A priori a mumar and a gentile cannot circumcise--in this respect they are equal. However, with respect to the ex-post facto situation they are not equal. If a

mumar does the circumcision, a hatafat dam brit is not required. If a gentile does the circumcision, a hatafat dam brit is required. However, the matter is not so simple--see the text following where there is leniency with respect to the mumar a priori.

20. Sandaq is the "designation of the godfather who holds the male child upon his knees during the circumcision ceremony...To act as sandaq is considered a great honor and as a meritorious religious act which, according to the Kabbalists, has atoning qualities." (EJ).

21. Gen. 17:9.

22. A Mumar is qualified to circumcise a Jew.

23. The Rishonim are those Rabbinical authorities up to 1500, (before the Sh. Ar.). The Ahronim are those Rabbinical authorities after the Sh. Ar. (after 1500, according to some authorities).

24. That is, if one is strict and does not allow a mumar to circumcise, a leniency results, namely the neglecting of the commandment of circumcision on the eighth day. See further in the text.

25. Lev. 12:3; Gen. 17:12.

26. See Sanh. 74b.

27. Prv. 11:2 The presumption of his innocence is made since the Rabbis, basing themselves on Prv., believed that punctilious investigation can only lead one into trouble.
28. That he may circumcise in emergency cases.
29. Martyrdom (Lit. Sanctification of the Name).
30. See Hil. Milah 2:2, where he explains that the thin layer of skin (mucus membrane) beneath the foreskin is torn with the fingernail.



## Responsum 2

Application Of The Principle: Obtaining A Privilege (Doing Something Advantageous) For A Person In His Absence Regarding Pidyon Haben.

Question: When we were given over to suffering and captivity in the Kovno Ghetto, "where outside the sword caused destruction and inside fright",<sup>1</sup> on the twenty-fifth of Tevet 5702 (Jan. 14, 1942), one of the distinguished and beloved of the city came to me. His soul was bitter in him when he asked a question, being that his only daughter conceived in lewdness (extra-marital relations) and gave birth to a son. The seducer slipped away and his whereabouts were unknown. It is very possible that he was caught and killed by the hands of the wicked and the cursed, may their names be blotted out. Therefore, he wanted to know what to do (according to law) with respect to the mitsvah of Pidyon Haben<sup>2</sup>--whether it is a mitsvah<sup>3</sup> for others to redeem him, or if it (the mitsvah pertaining to to Pidyon Haben) is given, nevertheless, to anyone who so wishes (to perform it), based on the principle: "that a privilege may be obtained for a person in his absence."<sup>4</sup> Even if the father<sup>5</sup> would be present it is possible that he would not redeem his son, because he would be ashamed to make public his great evil doing,<sup>6</sup> and would deny the words of the woman who says that he is the father. Anyhow, it is certainly

pleasing to him that his son should be redeemed in such a manner which would not reveal his disgrace publically, and that it would not become known that he is the father. Therefore, it is certainly pleasing to him that others redeem him. Likewise, it must be clarified in regard to the benediction,<sup>7</sup> whether others who are redeeming him may pronounce the blessing, "Shehehiyanu."<sup>8</sup>

Answer: Karo, in YD 305:15, wrote: "If the father transgresses and does not redeem his son by the time he has grown up, he (the son) is obligated to redeem himself."

The Rama wrote: "And there is someone who wrote that they write for him on a silver plaque that he has not been redeemed, and they hang it on his neck in order that he will know to redeem himself when he grows up." Shakh wrote on this in note 20 that, according to what was written above, the Bet Din can redeem him. He does not need a silver plaque. Also, in the majority of cases, the silver plaque is lost, therefore, it is better that the Bet Din redeems him when he is still a minor.

Behold, the Rama cites in the name of Ribash, that the father may not redeem by an agent. Nevertheless, Shakh wrote in the name of a number of great Poskim who decided that the halakhah is that the father may

redeem him by an agent, or if he (the father) dies before he (the son) is redeemed, the court can redeem him. However, the Turei Zahav wrote *ibid.* that "as long as the father is alive he may appoint an agent to redeem him out of his own money, and in his stead." For this reason the grandfather is like the father, and likewise another (person) may give of his own money instead of the father and redeem the first born in that he is acting as his agent.<sup>9</sup> However, if the father dies, (the son) may not be redeemed until he grows up, and Maharil holds thusly. In the *Nequdot Haqesef*, the author attacks at length the words of the Turei Zahav. In the end he concluded as Shakh wrote: "That if the father dies, the Bet Din can redeem him." Likewise it is written in *Sh'ar Hamelekh*, ch. 5, in the laws of *Ishut*, and he brings proof from the discussion in the first chapter of *Qid.* See well all that is said *ibid.*, and in the novellae of Rabbi Akiba Eger, YD 305, note 10, see *ibid.* how he answers the objection of *Sh'ar Hamelekh*.<sup>10</sup> See also in the marginal notes of Shemuel Adles who rejected this proof. See also what Shakh cites, note 11, in the name of Ran in ch. Kol Sh'ah that "one may redeem by an agent." Likewise in the book *Tseidah La'derekh* the author concluded: "One may redeem by an agent," and see also in *Pithei Teshuvah*. In *Mahaneh Efrayim* law *Eekhiyah U'matneh*, ch. 7, the author wrote that "he who redeems the son of his fellowman--

his redemption is valid. It is like paying a fellowman's debt, so agency is not necessary at all." From all that was said it is clear, that according to the opinion of Shakh, "the Bet Din may redeem him, even if the father did not appoint an agent." According to the opinion of the Turei Zahav, any man may redeem him, and not only the Bet Din, as long as the father is alive. Seemingly, we need a reason: how is it possible to redeem him against the father's will, for behold, we hold that agency needs to be with the consent of the sender.<sup>11</sup> If this is so, how can others redeem him? Perhaps the father does not want that they redeem him; how is it possible to become his agent against his (the father's) will? We must say that since others give their own money for redemption (even though it is possible that the father does not want to redeem him because he does not want to give the redemption money or that he does not want his disgrace to be revealed in public that a single woman became pregnant by him, and gave birth) in any case, they do not publicize (the fact) that the son of this single woman is his son. We say that it is certainly pleasing to him that his son would be redeemed, and it is an advantage for him. Therefore, Shakh properly concluded that: "The Bet Din (Jewish court of law) may redeem him," and the Turei Zahav (wrote): "That even any man may redeem him, for behold, something beneficial may be done for a person

in his absence."

Behold what Shakh concluded: "That only a Bet Din may redeem him, and no other man." In the resp. of Yad Eliyahu, ch. 78, he attacks him and concludes that: "There is no difference, that just as the Bet Din may redeem him, the same applies to others who are not the Bet Din, since the law is that he may be redeemed by an agent. Certainly, the law is that others may also redeem him, for behold, you may do something beneficial for a person in his absence.<sup>12</sup> In this case, Pidyon Haben is similar to the redemption of the first born donkey, since we hold that he who redeems his fellowman's first born donkey--his redemption is valid.<sup>13</sup> From this, Yad Eliyahu wrote that we have to disagree with all those Poskim who hold that the first born may be redeemed by an agent. According to their opinion, why did they not decide explicitly that whoever redeems the son of another man, his redemption is valid?--for the one depends on the other<sup>14</sup> as it says in Ned. 36. For this reason we said: Whoever gives his own terumah on behalf of his fellowman--his terumah is valid. He is like his agent in that he may give terumah by his agency since the owner of the pile (of terumah) made him an agent to give terumah. Likewise he may give terumah from his own grain for the grain which belongs to his fellowman because of the principle, "a privilege may be obtained for a person in

his absence." If this is so, why did all these Poskim decide as is the law in ch. 321, note 7: "That whoever redeems the first born of his fellowman's donkey, his redemption is valid." The Levush wrote *ibid.*, it is not similar to the first born of man since that, "with the first born of the donkey" is not written, (rather) "the first born of your donkey," see *ibid.* Behold, on the contrary, also with respect to the one who redeems the human first born of others, his redemption is valid according to those Poskim who hold that one is able to redeem by an agent. If this is so, it is truly difficult (to understand) why those Poskim spoke in a general way and did not decide explicitly that "Whoever redeems the son of his fellowman his redemption is valid, see well *ibid.* in *Yad Eliyahu*.

Behold in the book by Yehudah Aszod, ch. 264, the author cited in the name of the great Rabbi Mordekhai Bennet, that regarding the son of an unmarried woman, the father of the son is not obliged to redeem him, rather the local Bet Din is obligated to redeem him. In ch. 264 he concluded with respect to the law that any three laymen are a Bet Din regarding this matter. Not merely this, but one person is also proper<sup>15</sup>, see *ibid.* Rabbi Moshe Shiq wrote in ch. 304, that: "Even according to the one who says that he may redeem by an agent, nevertheless, he may not redeem him against his will."<sup>16</sup> For certainly it is pleasing to a father to

redeem his son by himself, unless it is a case where others free him from that duty lest he be ashamed publically as in our case.<sup>17</sup> In ch. 309 he wrote that the other one should do the meritorious deed of giving the five Sheqels to the father<sup>18</sup>, then the matter is considered as if the father redeemed him. In this manner, certainly he does something meritorious for the father. But if he does not assign the five Sheqels to the father, and also the father does not appoint him as an agent to redeem his son, the Pidyon (Haben) is of no benefit. However, in the resp. Meishiv Davir, in part II, ch. 87, the author concludes that it is not according to his words, rather his redemption is valid, even if the other gives of his own (money) and redeems without assigning the money to the father.

Regarding the matter of the benediction, I saw in Hatam Sofer, ch. 298, that he wrote that if he redeems his son by an agent, the agent may pronounce the benediction "Shehehiyanu", and likewise it is cited in the name of Hagahat Perishah. However, the Ahronim disagreed with him and wrote that the agent is not able to pronounce the benediction "Shehehiyanu", rather only "Asher Kiddshanu Bemitsvotav Vetsivanu 'al Pidyon Bakhor."<sup>19</sup> In any case, Hatam Sofer concludes *ibid.*, that it is better that the agent takes a new fruit<sup>20</sup> and blesses over it the benediction "Shehehiyanu," and his intentions



should also include the redemption.

Behold in regard to the case of our problem: it is apparent to me, that since the majority of the people who succeeded in escaping from the ghetto (which was completely sealed off by the cursed evildoers), were caught and killed by the murderers, where there is a complete majority, even<sup>21</sup> in monetary cases, we follow it. This is apparent from what is written in the Tosafot, Sanh., p. 5. Thus also with respect to the matter of redemption it is clear that we follow the majority--because if you do not say thusly, we might worry that perhaps he has a serious injury<sup>22</sup> and is exempt from redemption. Rather it is certain that we follow the majority in the matter of redemption,<sup>23</sup> even with respect to the forcible collection of the money from the father of the child. Therefore, everyone is obliged to redeem his son, and we do not suggest that perhaps he is seriously injured (i.e., not a viable child). Since regarding the matter of redemption we follow the majority, it is certain that we must follow the majority and presume that certainly "the son who beats his father will be killed."<sup>24</sup> In a case where the father has died, behold, Shakh has concluded that the Bet Din may redeem him. There is no doubt, that regarding the matter, every sage who is entrusted with the affairs of the community is legally like a court. He can invite two more (persons to have



a court of 3), even laymen, since even three laymen can constitute a Bet Din in this matter, and it is like what our Rabbi and teacher Yehudah Aszod cited above.

Even if we say that he (the father) might be alive, nevertheless, others may redeem him when they give their own personal money of redemption. As we explained here (in this case), it is certainly pleasing to the father that others redeem him. Even if he (the father) were present, certainly he would deny that this is his son and he would not be willing to redeem him, lest his disgrace be revealed in public. He would certainly be ashamed to admit that this is his son.<sup>25</sup> Anyhow, when others redeem him it is certainly pleasing to him that his son be redeemed. Therefore, whatever the situation may be, they can redeem him whether he (his father) is alive or dead. Regarding the matter of the benediction, since in the ghetto it was impossible to acquire a new fruit or new clothing in order to make the "Shehehiyanu" benediction and intend that it also refer to the Pidyon, therefore those who redeem him need to say only the benediction: "Asher Kiddshanu Bemitsvotav Vetsivanu 'al Pidyon Haben," without the blessing "Shehehiyanu". This is in order to consider the opinion of the Ahronim who disagree with Hatam Sofer and hold that where the agent redeems the son, one should not say the benediction "Shehehiyanu."

(Oshry, Vol. 1, resp. 9)

## NOTES

1. Deut. 32:25.

2. Redemption of the first born son. This concept is based on the following biblical verse: "The first issue of the womb of every being, man or beast, that is offered to the Lord shall be yours (the priest's); but you shall have the first born of men redeemed, and you shall also have the firstling of unclean animals redeemed. Take as their redemption price (for the human first-born) from the age of one month up, the equivalent of five sheqels by the sanctuary weight, which is twenty gerahs." (Num. 18:15-16).

"In very ancient times, the first-born son in every Israelite family was vested with special responsibilities. From the day of his birth he was consecrated to the vocation of assisting the priest in the conduct of worship."

"Later, when a Tabernacle was built in the wilderness, this vocation of the first-born was transferred to the Levites, a priestly tribe. The Torah then decreed that every father release his first-born son from the duties incumbent upon all first-born sons by redeeming him from a Kohen. The ancient obligation of the first-born son thus continues to be recalled." This practice, ordained as a recollection of the Exodus from Egypt, serves

to make vivid for us the liberation from bondage of the people Israel..." (Harlow, Rabbis' Manual, p. 14).

3. Religious practices that characterize Jewish life and give it a dimension of holiness.
4. See Yev. 118b; Qid 23a ff; 42a ff; 45b.
5. See Qid, 29a. Mishna and Gemara. "Concerning all obligations of the son upon the father, men are bound but women are exempt." The question is raised, "how do we know Pidyon Haben falls under this category of obligations of the son upon the father?" "Because it is written, 'all the first-born of man among thy sons shalt thou redeem' (Ex. 13:12). And if his father did not redeem him, he is bound to redeem himself, for it is written, (nevertheless the first-born of man) 'thou shalt surely redeem'" (Num. 18).
6. Extra-marital intercourse.
7. See H. E. Goldin, Hamadrikh, The Rabbis Guide, pp. 52-53.
8. "Whenever we experience something new, such as eating fruit for the first time in its season, the advent of a holiday, or a joyous occasion in the family, we recite Shehehiyanu." Isaac Klein, A Guide To Jewish Religious Practice (New York: Ktav Publishing House, 1979), p. 48.

9. See Qid. 42a, "A man's agent is as himself."
10. "In Shar Hamelekh. ch. 6 of Hilkhut Ishut, he is perplexed based on the law in ch. 8: 'if he gives a gift (of five Sheqels) on the condition that it be returned' his son is redeemed. This is a well-constructed halakhic discourse in the first ch. of Qid. If it were true that he cannot redeem his child by an agent, then I should say--even if he did not return the money, the matter (the redemption is effective. Since he cannot accomplish the deed (of redemption) by an agent, this stipulation (i.e., I will give you the money on condition that it is returned; and if the money is not returned, the child is not redeemed) is null and void, but the deed (redemption) is valid. See *ibid.* where he leaves the matter open for further discussion.

Rabbi Akiba Eger continues: "But according to my humble opinion there is no difficulty at all. Certainly, what he thinks about this opinion (that one cannot redeem by an agent)--has a limited value. This opinion (that an agent cannot be used in this case) holds only when the agent does the act of redemption himself by saying to the Kohen: 'by this money the child should be redeemed.' But it is obvious that the father can make the Kohen acquire the money through the agent whom the father says is the Kohen: 'by this money which I make you acquire through the agent, my son is redeemed.' This being so, if he gives the money as a 'gift

on condition that it be returned,' this stipulation does not refer to the redemption (that is: he does not mean to say that if he does not return the money my child should be redeemed), but the stipulation refers to the money which he makes him acquire on the condition that it be returned; and if he does not return the money, he does not acquire the money. In this case, the stipulation stands because one may transfer property by an agent, and the father should say to the Kohen: 'that by this money, which I made you acquire on condition that it be returned, my child should be redeemed.'" See Rabbi Akiba Eger, YD 305, note 10.

11. See Ned. 36b.
12. See note 4.
13. Sh. Ar. YD, 321:7.
14. "A" cannot do something for "B" without the latter's consent, i.e., separate terumah.
15. A Bet Din is not required in this case (i.e., three people), one person is sufficient.
16. See note 11.
17. Seeing that the child was conceived extra-maritally.
18. That is, assigning the ownership of the five sheqels

to the father. See note 7.

19. See note 7.

20. No blessing should be made in vain (See Ber. 33a). Thus, if the agent is wrong in reciting the Shehehiyanu over the Pidyon Haben, this is a blessing in vain. To prevent this from happening, the agent should take a new fruit and pronounce the benediction over it. See note 7.

21. Generally in monetary cases we do not follow the majority. See BQ 27b. In this case, however, the majority principle is followed in money matters because of the unusual circumstances in the ghetto.

22. An injury (blemish) which would cause his death within one year. Such a child is not redeemed.

23. In this case, the majority principle is followed-- that is: that the child is viable (does not have a serious injury) and should be redeemed.

24. See Hul. 11b. In the case where a son beats his alleged father the majority principle is effective and the alleged father is presumed to be the real father.

25. See note 17.

## Responsum 3

Regarding The Law Of Using A Mokh In The Danger Of The Ghetto.

Question: "My eyes fail with tears, my bowels are troubled, my liver is poured upon the earth, for the breach of the daughter of my people,"<sup>1</sup> who are great like the sea. There is no power in my hand, nor strength in my right hand, to describe the total portion of sorrow and suffering which we incurred from the hands of our enemies and those who cause us misfortune--the cursed Germans--may their names be blotted out. Nor (am I able) to put this into writing, in order that it should be told unto the last generation what these impure, wicked people did to us. They made us stay in dark places as the eternal dead, and fenced us in so that we should not go out from the tightly closed walls of the ghetto. Moreover, they decreed new cruel decrees upon us daily, in order to "destroy us as a nation,"<sup>2</sup> and so that the name "Israel" would no longer be remembered.

Behold, on the 20th of Iyyar, 5702 (May 7, 1942), the wicked ones published a decree that if they found a Jewish woman while she was pregnant, they would kill her together with the fetus.<sup>3</sup> I was asked if it is permissible for the women imprisoned in the ghetto to use a mokh<sup>4</sup> in order to prevent their pregnancy, and to be saved by this (measure) from mortal danger?

Answer: In Tractate Yev. 12b we read: "R. Bebai recited before R. Nahman: three (categories of) women must (or may) use a mokh (in marital intercourse): a minor<sup>5</sup>, a pregnant woman, and a nursing mother. The minor, because (otherwise) she might become pregnant and die.<sup>6</sup> A pregnant woman because (otherwise) she might cause her fetus to become a sandal.<sup>7</sup> A nursing woman, because (otherwise) she might have to wean her child prematurely, and he would die.<sup>8</sup> The explanation of Rashi, may his memory be for a blessing, is (that the words) "meshamesh" (using) and "mokh", means "they are permitted to place the mokh in the place of intercourse (the vagina) when they perform the intercourse, lest they become pregnant." The Tosafot, s.v. "Shalosh" wrote: "Rashi explains, it is permitted to use a mokh, but for other women<sup>9</sup> it is forbidden because of the prohibition of hash-hatat zerah,<sup>10</sup> even though the woman is not commanded to fulfill the law of procreation."<sup>11</sup> Rabbenu Tam says, "that before intercourse it is certainly forbidden to place there (into the vagina) a mokh, for this is not the usual manner of intercourse."<sup>12</sup> Therefore, it is as one who spills his seed on "wood and stones" when he spills (his seed) on the mokh. But if she places the mokh (in the vagina) after intercourse, it does not seem to be prohibited because the man performs the intercourse in a natural way.<sup>13</sup> It is similar to the case of a minor (girl) and of a barren woman who are



not able to have children. The woman who places the mokh (in the vagina) after (the intercourse) does not transgress the prohibition of hash-hatat zerah,<sup>14</sup> since she is not commanded to procreate.<sup>15</sup> These words "they use a mokh" which were taught here mean they must use a mokh.<sup>16</sup>

In the Tosafot, Ket. p. 39a, s.v. "Shalosh" they wrote: "For R. Yitshaq it seems to confirm the explanation of Rashi which he gives at the beginning of tractate Nid. (p. 3a).<sup>17</sup> The meaning is: that the mokh is in her vagina all the time and it is as if he would "spill his seed on stones." It is not similar to having relations with a minor or a barren woman. Furthermore, even if she would put the mokh in her vagina after the intercourse, this would also be prohibited, even though she is not commanded to procreate.<sup>18</sup> Anyhow, she is still prohibited from destroying sperm as is the implied meaning in Nid.<sup>19</sup> where we learn: "That every hand that makes frequent examination among women<sup>20</sup> is praiseworthy, and among men, (his hand) should be cut off."<sup>21</sup> The Gemara explains that "women do not get sexually aroused" (when they examine themselves to see if they are menstruating). The implication is that if they would be aroused, then they would be prohibited to examine themselves. He means to say you must reject the idea that the prohibition of self-arousal does not apply to them.<sup>22</sup>

In the Shitah Mequbetsset in Ket. *ibid.*, he cites the

opinion of the Ritba who holds likewise that a woman is forbidden to destroy sperm whether during intercourse or after intercourse. However, if there is danger, she is permitted (to use a mokh), and therefore they permitted it (in the case of) the three women. There are Sages who differ *ibid.* (Ket. 39a) with R. Meir and hold "that the one as well as the other<sup>23</sup> carries on her marital intercourse in the usual manner, and mercy<sup>24</sup> be vouchsafed from heaven, because it is said, 'the Lord preserves the simple;'"<sup>25</sup> that is: they do not need to use the mokh. See further in the Shitah Mequbetset that which is cited in the name of Rosh, Rabbi Yonah, and the students of Rashba, that a woman is forbidden to destroy sperm. Only in cases of danger, for example with these three women, are they permitted to use the mokh. However, there are some who permit her to put the mokh (in the vagina) before intercourse, and some who permit her to use the mokh only after intercourse.

Behold the explanation of Rashi which we cited above clearly implies that he holds that when there is fear of any danger, for example, for those three women, it is permitted to put the mokh in place before intercourse. Similarly, this is the implied meaning in Nid. page 45a. But in Ket. 37a, regarding the matter of lewd intercourse, the meaning is not thusly, see *ibid.*<sup>26</sup> See in the Rosh in Ned. p. 356 where he wrote explicitly, that for these

three women, it is permitted to put the mokh in place a priori, and see also in the Ran, ibid.

See in the Tosafot, the Rosh, in Nid., p. 36. s.v. "meshameshet b'mokh" where he wrote: "even though the text uses the words 'meshameshet b'mokh', they do not place (the mokh in the vagina) from the time of intercourse, because this is certainly forbidden, even in the case of the three women who may use the mokh, because of (the prohibition of) destroying sperm. This is like "spilling seed on wood and stones". However, they may place the mokh there after intercourse in order to absorb the sperm so that she will not become pregnant." From all this, it is clear that many of our Rabbis, the Rishonim,<sup>27</sup> (may their names be for a blessing), disagreed whether these three women are permitted to put the mokh (in the vagina) before intercourse or only after intercourse.

Our Rabbis the Ahronim<sup>28</sup>, (may their memories be for a blessing), also meditated on this problem. The Yam Shel Shelomo in Yev. 1:8, concluded leniently and wrote: "That this is also the usual manner of intercourse, since one body derives pleasure from another."<sup>29</sup> This is similar to the explanation of Rashi "that it is permitted to put the mokh (in the vagina) before intercourse." See in Hatam Sofer, YD ch. 172 where he wrote: "And we need to say according to Rashi that (regarding the use) of the mokh after intercourse, its medical effectiveness is not proven, since there is no

remedy in her hand, for perhaps, she will not wipe (off the sperm) well. For if you do not say thusly, what is the reason that R. Meir permits the mokh during intercourse? which ought to be prohibited because the husband destroys sperm. It ought to be sufficient for her to wipe (off the sperm) after intercourse, see *ibid*.

See in the resp. of Radbaz ch. 1:22 (published 1836) where he wrote: "The three women have intercourse in the usual manner, but if they are afraid that they do not have the merit (that G-d will help them), they are permitted to use the mokh because there is danger to life. See *Pithei Teshavah*, *Even Haezer*, ch. 25, note 2, what the author cited."<sup>30</sup>

However, the Hatam Sofer in YD ch. 172 concluded that: "During intercourse it is forbidden to use a mokh, but after intercourse it is possible that we may permit it (its use) with the consent of the husband." The Bet Meir in ch. 23 concluded to forbid it in any case, whether during intercourse or after intercourse. R. Akiba Eger in his resp. YD ch. 71, is stringent and forbids (it) even after intercourse. See in ch. 72 why he inclined to permit it (the mokh) after intercourse. In the book *Natah Soreiq*, ch. 9, he concluded likewise to forbid (the use of the mokh during or after intercourse).

However, the Hemdat Shelomo in ch. 46 concludes: "Because of danger it is permitted in every way." Also in

the resp. of Maḥaneh Hayyim ch. 53, and in the resp. of O'hal Avraham ch. 90, it is permitted to put the mokh (in the vagina) in cases of danger. Thus is also written in the resp. of Ahi'ezer the Great Rabbi Hayyim Ozar, may his memory be for a blessing, in section Even Haezer, ch. 23, that we must permit it in the case of danger. However, in Maharam Shiq, in section HM ch. 54; and in the book B'nei Tsion, ch. 137; and R. Yehudah Aszod in ch. 222; they incline to be strict.

The opinion of Tsemah Tsedek, Even Haezer, ch. 89, and the Hetev Gittin part I, in ch. 58, is to permit it in cases of danger. It is stated likewise in Divrei Malkhiel ch. 70, and in Eliyahu Lahagaon Bet Din of Lublin, see *ibid.* See in the resp. of Yad Yitshaq, part III, ch. 9; and in the resp. of Bet Yitshaq, Even Haezer, section 1, ch. 91; and in the resp. of P'ri Hasadeh, part II; and in the book Zihron Yehudah, Even Haezer, in ch. 3.

I saw also in the resp. of Maharsham, first series, ch. 58, that he concluded that the halakhah is to permit it even during intercourse in the case of danger. See what is written in the book Imrei Yosher, ch. 21, that it is permitted to place a drop of drug into the vagina to destroy the sperm. It is best to cover the source designated for this (i.e., entrance to the uterus), and certainly in the case of danger we permit it, see *ibid.*

The conclusion is (lit. We return to our law) from all which has been mentioned above, that since there is certain mortal danger in our case, that behold, if it became known to the impure murderers, (may their names be blotted out) that she became pregnant, they would kill her together with the infant. Behold, it is clear from the words of the Rishonim<sup>31</sup> in Ba'al Shitah Mequbetset in Ket. 39a, in the name of the students of Rashba, (may his memory be for a blessing) that Rashi's explanation is not correct, because if you follow the Rabbis who say he can continually have intercourse with her in a normal way (i.e., without contraceptives), and G-d will be merciful, therefore, why should we prohibit these women, since there is no hash-hatat-zerah here. We apply the prohibition of "hash-hatat-zerah" (wasting of seed) only when he is able to cause conception, and this is because it is not in the proper place where he can cause conception that we do not call it hash-hatah-zerah.<sup>32</sup> Rather, they are obligated to perform the intercourse with a mokh means: "because of danger." Therefore, it is clear from this that there is no prohibition of hash-hatat-zerah not only where there is a possibility of conception, but (in a case of) sperm which will not result in a viable child. Moreover, definitely anger will follow in the entire congregation.<sup>33</sup> Therefore, certainly everyone agrees that it is permitted to have intercourse

with a mokh, and to put the mokh in place before intercourse.

(Oshry. Vol. I, resp. 18)

## NOTES

1. Lam. 2:11.
2. Ps. 83:5.
3. According to the testimony of Dr. Aharon Peretz, a gynecologist in Kaunas: "By an order of July 1942, pregnancy in the Kaunas ghetto was punishable with death to the father, the mother and the infant..." See Gideon Hausner, Justice in Jerusalem (New York: Holocaust Library, 1966), p. 213.
4. An absorbant material made from tufts of wool or cotton used to prevent conception--for example--if used during coitus, it would be like a tampon; if the mokh is used afterwards it is a post-coital absorbant. For a complete discussion on the subject of birth control see David M. Feldman's Marital Relations, Birth Control, and Abortion in Jewish Law (New York: Schocken Books, 1975).
5. From the age of eleven years and one day, until the age of twelve years and one day. See Yev. 12b.
6. According to Rabbah Bar Tivai in Yev. 12b, and also Nid. 45a, pregnancy while still a minor is dangerous to both the mother and the fetus. Before this time, conception does not occur; after, conception is hazardous.



7. Sandel lit. 'a flat fish,' i.e., a fetus aborted because it is compressed or flattened due to superfetation (a second conception during pregnancy). See Feldman, *Op. cit.*, pp. 182-3. See also Soncino, *Yev. 12b*, note 12, p. 62.
8. See Feldman, *Op. cit.*, pp. 187-88 where he explains that the normal necessary period is twelve months. He states that contraception during this period was required either because: "a second pregnancy--which is likely--may affect her milk; or, her child will be adversely affected or prematurely weaned because of this change."
9. Other than the three women mentioned in the Baraitah.
10. The "destruction", or "improper" emission of sperm (i.e., sperm not cast in the female. See Ibn Ezra on *Lev. 18:6*). This is an offense condemned in both the Talmudic and extra-Talmudic literature. See Feldman, *Op. cit.*, ch. 6.
11. The command to procreate: "increase and multiply, fill the earth and subdue it" (*Gen. 8:17*) does not include women. This interpretation is based on the word "subdue" where men are seen as the subduers and not women. See *Yev. 65b*.
12. Heb. Biah shello k'darkah. See *Yev. 34b*. According

to the Talmud, this was the "act of Er and Onan," (Gen. 38:9) and was permitted by the Sages. See Sanh. 58b.

13. If the mokh is placed in the vagina after intercourse it does not interfere with normal intercourse, that is: mutual pleasure. See guf neheneh min ha guf, Meg. 13a and Rashi.

14. See note 10.

15. See note 11.

16. As opposed to the possible interpretation namely, "they may use a mokh." See Feldman, Op. cit., p. 195 for a summary of Rashi and Rabbenu Tam's views.

17. The discussion in Nid. 3a centers on the question of when the menses can be considered to begin in cases of irregularity--only with the discovery of blood, or before this time? The question of a woman using a mokh for contraceptive purposes is raised in this regard. Perhaps the mokh absorbed the menstrual blood preventing its earlier detection?

In commenting on the mokh used here, Rashi explains that it is a precoital mokh--remaining in the vagina during and before coitus. Therefore, he concludes that only the three women of the baraitah were given special

- permission to use it and not women in general. See Feldman, *Op. cit.*, pp. 172-3.
18. Both precoital and postcoital use of the mokh are prohibited according to Rashi because of the prohibition of hash-hatat zerah. See note 10.
  19. Nid. 13a.
  20. To see if there is a blood spot which would indicate the onset of the period of Nidah.
  21. Because of masturbation.
  22. If there are exceptional women who get aroused by self-examination, then they are prohibited to examine themselves.
  23. The minor as well as the adult.
  24. To protect them from danger.
  25. Ps. 116:6.
  26. This passage is legally indifferent in reference to use of a precoital or postcoital mokh. See Feldman, *Op. cit.*, pp. 170-71 for further discussion.
  27. See note 23, resp. 1.
  28. See note 23, resp. 1.

29. See note 13.

30. The question of whether a precoital mokh could be used in the case mentioned here of a woman who was told by physicians that if she became pregnant she would die. The conclusion is, in this case, it is permitted to use the mokh because of danger, and not to be considered hash-hatat zerah.

31. See note 27.

32. See Feldman, Op. cit., p. 122. "Hash-hatat zerah is not incurred because the seed goes to waste but because it is not cast according to the 'Creator's decree (which is) in the female of his species...even if she is barren."

33. The congregation would be angry if they were told that they could not use contraceptives.

# Responsum 4

Concerning The Law of Saving The Mother By Medical  
Abortion In The Ghetto.

Question: I was asked on the twenty-seventh of Av, 5702  
(August 9, 1942) if it is permissible to perform a medical  
abortion on a woman who became pregnant in the ghetto to  
terminate the pregnancy? For behold, the impure ones de-  
creed that they would kill any Jewish woman who became  
pregnant, along with the fetus.<sup>1</sup> This being true, there is  
in this (case), mortal danger (to her life).

Answer: In Oh, ch. 7, M. 6, we learn that: "If a woman  
has (life-threatening) difficulty in childbirth, one dis-  
members the embryo within her, and removes it limb by limb,  
because her life takes precedence over its life." The law  
was decided in the Sh. Ar. HM, ch. 425:2, "therefore for  
the pregnant woman who is having difficulty in childbirth,  
it is permissible to dismember the embryo within her,  
whether with drugs or by surgery, since he is like one  
who pursues her (with the intention) to kill her (a Rodef)."<sup>2</sup>  
In Pithei Teshuvah ibid., "it is at first glance per-  
plexing, see in B.H., note 3" ;until anyone (fetus) has  
come into the air (i.e., before the head had emerged  
from the womb) it is not called a nefesh'.<sup>3</sup> In the  
resp. Havot Ya'ir ch. 31, he wrote something to

reconcile this, see *ibid.*<sup>4</sup>

Here in the Tosafot R. Akiba Eger cited in the names of Panim M'irot, part III, ch. 5, that it is permitted in this case to save the woman if it is known that both of them would die. But, he wrote that the matter has to be thoroughly discussed. However, in the long commentary of Tiferet Yisrael in the section, "Boaz," he wrote as a matter of plain fact that in this case, "perhaps your blood is redder (than his),"<sup>5</sup> and that it is permitted in any case to save one Jewish life.<sup>6</sup> Thus it is written in YD, part II, ch. 162, and in the resp. of R. Moshe Shiq, YD, 155, and in the book Mahaneh Hayyim HM, part II, ch. 50, that if both of them will die, it is certain that the matter (of medical abortion) is permitted.

It seems to me that it is not necessary (to say) that according to the opinion of R. Yohanan, that it says in the Tosef. of Ter., ch. 7; and likewise in the Yer., ch. 8 of Ter; and likewise cited in Bet Yitshaq, ch. 157: "A group of people were walking on the road and they met gentiles who said: 'give us one of you and we will kill him, if not we will kill all of you.' Even if everyone would be killed, you should not hand over a single Jewish soul. But if they singled him out like Sheva ben Bikhri<sup>7</sup>, he should be handed over and they should not be killed said R. Shimon ben Laqish, "provided that he is deserving of the death penalty like Sheva ben Bikhri." R. Yohanan

said: "even though he is not deserving of the death penalty as was Sheva ben Bikhri, if they singled out one of them, it is permitted to hand him over to be killed in order to save others.<sup>8</sup> All the more so here,<sup>9</sup> it is permitted to kill the fetus in order to save the woman.<sup>10</sup> But even the Ramban decided according to Resh Laqish in Hil. Yesodei Hatorah, ch. 5:5, that "even if they singled him out, do not hand him over unless he is deserving of the death penalty like Sheva ben Bikhri<sup>11</sup> (and in my book, Divrei Efrayim, in the commentary Emek Habakhah I wrote and explained the words of the Ramban mentioned above, see *ibid*). In any event, in our case where it might be a miscarriage,<sup>12</sup> according to R. Shimon ben Gamliel, we are lenient to save the woman in any case.

According to this, in our case, where also it is a certainty that both of them surely will die, we must permit the performance of a medical abortion in order to save the woman.<sup>13</sup>

## NOTES

1. cf. note 3, resp. 3. Also see Isaiah Trunk, Judenrat p. 159 where he speaks of the prohibition of childbearing and consequent medical abortions.
2. A rodef ("aggressor" or "pursuer"), one who pursues an innocent victim with intent to kill him, may be killed by anyone in order to save the life of the pursued (Rambam Hil. Rotseah 1:7). This principle is extended in this case, to apply also to the fetus. "That is, just as an adult in pursuit may be killed without benefit of "due process" or court procedures, such as hat-ra'ah (the formal "warning" which must have been given and acknowledged prior to a murder or else the court cannot execute), so may a child (fetus) whose actions endanger another." See David M. Feldman, Marital Relations, Birth Control, and Abortion in Jewish Law, (New York: Schocken Books, 1975), p. 275.
3. The import of the B.H. is that the rodef argument does not apply here. The fetus is not a rodef because his actions follow "the natural course of the world." Consequently, the fetus may be dismembered, not because it is a rodef, rather because it is not yet considered a nefesh (a person).



4. "Maimonides does not agree with Rashi that the fetus is not yet a person; yet, since the case in the Mishna happens to deal with a life-and-death matter, Maimonides implicitly limits it to that and makes use of the pursuer idea to justify it. For, although the fetus has no human status, additional justification, such as the saving of a life, is necessary, from Maimonides' standpoint, to make its life forfeit." Feldman, *Op. cit.*, p. 227, also note 2 on p. 252.

5. Perhaps your life takes precedence (is more important than) over someone else's life.

6. Sh. Ar. H.M. ch. 425:2 continues as follows: "once its head (or its greater part) has emerged it may not be touched, for we do not set aside one life for another." The problem raised here is: "how far do we carry the principle of 'not setting aside one life for another?'" Does it include not setting aside one life for two lives when, for example, both mother and baby may die?" See Feldman, *op. cit.*, p. 283. Here, Tiferet Yisrael permits the sacrificing of the life of the child being born when the alternative is the death of both mother and infant.

7. II Sam. 20:1-22 Sheva's revolt: opposition to Davidic rule is spurned by Sheva, whose rallying cry is a return to tribalism. This was to be more effective after Solomon's

death (I Ki. 12:16). The call served temporarily to isolate Israel from Judah. Yoav, commander of the army is sent to put down the rebellion. When the city is attacked, a wise woman intercedes with Yoav with the result that the city is spared upon giving up the head (skull) of the rebel Bikhri.

8. According to R. Yohanan, one can be handed over to be killed if the following is true: he is deserving of the death penalty; or if he was singled out. R. Shimon b. Laqish said that both of these criteria were prerequisites to handing him over to be killed.

9. Where the fetus is not yet considered a nefesh (human person).

10. According to the less stringent criteria of R. Yohanan (see note 8)--even though the fetus was not deserving of death, it was in a sense singled out by the Nazis, and therefore should be aborted to save the mother.

11. Rambam concurs with the more stringent opinion of Shimon b. Laqish that both criteria are needed to hand him over to be killed. See note 8.

12. See Tosef. Oh. 16:12. Regarding the acquisition of burial plots for miscarriages R. Shimon b. Gamliel says that a priori, a miscarriage has no right to a burial plot. However, ex-post facto, we do not exhume the re-

mains. Since R. Gamliel is lenient in this case, we should follow his example and be lenient regarding abortion in our case.

13. Many of the Ahronim mentioned including: R. Akiba Eger, Tiferet Yisrael, the Bet Yitshaq, Moshe Shiq, and the Mahaneh Hayyim agree that the mother's life takes precedence over the life of the fetus.

R. Oshry concludes that if it is certain that the mother and fetus will die if she continues to carry, the fetus should be aborted to save the mother.

# Responsum 5

Concerning The Law Regarding The Use of A Parokhet (Curtain Of The Ark) For The Wedding Of The "Survivors Of The Sword."<sup>1</sup>

Question: On the 13th of the month of Av 5704, (July 2, 1944), the survivors of the people went out from between the walls of the ghetto, after G-d had mercy upon them and brought them out from sorrow to relief.<sup>2</sup> Even though the bitter death had left us, our souls were distressed in seeing that everything holy was trampled down--the synagogues and many houses of study that were in Kovno. Most of them were destroyed right down to the foundation, and those few which remained, were converted into a place where the legs of horses and donkeys trampled, and into stables and stalls. There were no longer available Torah's and holy objects for the communities' needs, aside from my (personal) small Torah--"which I watched carefully,"<sup>3</sup> and everywhere I went it rested in my lap. Behold, with the passing of some weeks since we were freed, the wedding of a couple, "the survivors of the sword and wrath,"<sup>4</sup> was to occur. Since there was no wedding canopy available, I was asked if it is permitted to use the parokhet which we found in the attic of the Bet Hamidrash of Kloiz Hoisman, and to make from it a huppah?

Answer: In OH, ch. 154:3, the Bet Yosef wrote: "Accessories of holiness, such as a case of books, mezzuzot, leather strips, tefilin, the box in which they place a Sefer Torah or Chumash, or the chair upon which they place the Sefer Torah, and the curtain which is hung before the ark--these are holy objects, and need to be stored" (if not usable any longer). The Mishna Berurah 154:11 wrote to explain this: "The curtain which is hung (before the ark) is the parokhet. That is, according to the custom of the Talmud, where oftentimes they would place a Sefer Torah on it or would cover a Sefer Torah with it (it is apparent that this was a common practice in their time, and if this is not so, then it would be an object used only occasionally. To this object the designation "tashmish kiddushah"<sup>5</sup> does not apply). However, nowadays we do not act thusly, and it is only a secondary object of holiness."<sup>6</sup> This is what the Rama said further on in paragraph 6 in a note.<sup>7</sup> The Turei Zahav wrote likewise, and it is likewise apparent from the words of Ran in chapter "B'nei Hair," s.v. "haluhot." In any case, it is certain that it has the holiness of the Bet Haknesset in it, and now it is a lowering of its holiness to make from it a huppah for the use of people, see ibid. Also in the resp. of Bah, ch. 11, the author prohibits the making of a huppah from a parokhet, for it is a lowering of its holiness, see ibid. However, the Magen Avraham,

in ch. 154, note 13, wrote that it is possible that it is permitted because "the heart (spirit) of the Bet Din stipulates concerning them."<sup>8</sup> The Eliyahu Rabbah wrote likewise in note 11, that the custom is to permit (it).

In the Sedei Hemed under the title "Bet Haknesset, ch. 39, I saw that he wrote: "There in the Holy City of Jerusalem, may it be rebuilt and re-established, the great men of the city and the Rabbis take the parokhot which are hung before the holy section in the synagogue on the festival of Sukkot, and spread them out on the walls of their sukkahs. They likewise spread them out on the back of the "chair of Elijah" and the sandak (godfather)<sup>9</sup> sits on it." R. Avraham b. Sofer, may G-d preserve him and redeem him, cited in the book B'nei Binyamin, Hakham, ch. 38, whether it is proper to do thusly that a private person should use holy objects-- and likewise, what they practice there is to spread holy parokhot over the marriage canopy. He discusses the various opinions of the Poskim by making use of far-fetched, indirect sources. This is the halakhah which he brings as the conclusion: "There is absolutely no trace of doubt, because everyone who dedicates something (to the Synagogue), does it in accordance with the thought of the leader of the city; and the spirit of the Bet Din<sup>10</sup> stipulates that they should be allowed to use it for other purposes." The Great Holy Rabbi, may a

blessing be upon him, agrees with him in ch. 59-- according to him and his reasoning."

Therefore, I also permitted in our case, to make a huppah from the parokhet mentioned above, since the hour is an hour of urgency, and because we have no curtain from which to make another huppah. All these Rabbis which I cited who permit the matter, are worthy of reliance. May G-d (Father of Mercy) have mercy over those who are oppressed in misery and sorrow. May He make them faithful, and multiply them and bless them endlessly.

## NOTES

1. Jer. 31:2.
2. The final day of the liquidation of the Kaunas Ghetto by conflagration was July 15, 1944.
3. Nu. 9:23.
4. See note 1.
5. Accessories to the performances of a mitsvah (accessories of holiness). See Meg. 26b. Three levels of holy objects are spoken of *ibid.* The first is the primary level of holiness (in descending order) including such objects as: Sefer Torah, Scrolls of Scriptural books other than the Pentateuch, wrappings for the scrolls, an ark, a synagogue, a town square where religious ceremonies are performed.

The second level of holiness is "Tashmish Kiddushah", or accessories of holiness. Included in this category are: large sacks for keeping scrolls of the scripture in, tefilin and mezuzoth, a mantle for a Sefer Torah, and tefilin straps. These objects are to be stored away when disused.



The third level of holiness is called "Tashmish detashmish," or accessories to accessories of holiness (accessories of religious observance). Included in this category are: a sukkah, a lulav, a shofar, fringes (of a Talit). These articles, when in disuse, may be thrown away.

6. The parokhet is not "tashmish kiddushah" (an accessory of holiness) requiring storage when worn out, rather is considered "tashmish detashmish" (an accessory to an accessory) and may be used. See Meg. 26b and note 5.

7. The parokhet does not have the sanctity of the ark, only the sanctity of the Bet Haknesset. See Meg. 26a and note 5--the Bet Haknesset is a primary type of holiness.

8. Generally, if a stipulation is made, and it is a legitimate stipulation, one can act accordingly, (for example, if the Bet Din stipulates from the outset that when the parokhet is bought, that it may be used as a huppah). If however, as in our case here, this stipulation was not made, one can assume that the Bet Din stipulated this in their heart and it is still valid. See Qid. 19b.

9. See note 20, resp. 1.

10. See note 8.

# Responsa 6

## On The Law Governing The Establishment Of A Holy Memorial For The Destroyed Graves

Question: "I am the man who has seen the affliction under the rod of G-d's anger,"<sup>1</sup> whereby G-d caused grief on the day of his burning anger. "The Lord has swallowed up without pity all the habitations of Jacob: He has thrown down in His wrath the strongholds of the daughter of Judah"<sup>2</sup> in the nations of Europe. He delivered this treasured people, which He chose, into the hand of the enemy so they would kill, destroy, beat, and disgrace them. Secretly, my soul cries for the people of G-d who fell into cruel hands which annihilated about one-third of them without mercy.

Behold, after the G-d of our salvation helped us, after "we were brought very low"<sup>3</sup> and "were overfilled with contempt,"<sup>4</sup> and He brought us out "from sorrow unto joy,"<sup>5</sup> and from darkness to a great light, I went to wander in the destroyed cities of Lithuania, to search out and to seek the remnants of my brothers and sisters who remained "as firebrands plucked from the burning fire."<sup>6</sup> "One (remained) from a town and two (remained) from a family."<sup>7</sup>

Only then was the great extent of the destruction revealed to me, in all its horror, for I saw with my (own) eyes the mass murder and the holocaust which the cursed

evildoers perpetrated throughout the Jewish communities. From the midst of my confused and pained heart burst forth the cry: "Woe unto us for we are destroyed," Is this the country of Lithuania, great with yeshivot and exalted in Torah?" Are these the holy congregations that were noted "for the fame and the glory"<sup>8</sup> in Israel? and now, all of them are filled with graves. It would seem to me then, that I hear "the voice of our brother's blood crying to us from this ground"<sup>9</sup> which was made to be like a valley filled with bones. They call to us to avenge their blood from the hands of the cursed Germans, and their servants the Lithuanians "who perform their bidding,"<sup>10</sup> may their names be blotted out.

I saw then, that the enemy not only murdered without mercy for the young and the old, "and he has burned against Jacob like a flaming fire, which devours round about,"<sup>11</sup> but he also destroyed Israel's cemetery, and (sent forth his hand against) destroyed the cemeteries--the resting places of the Geonim and the righteous from the proceeding generations. In almost every city of Lithuania, "Zion was plowed like a field,"<sup>12</sup> the grave markers were uprooted from their places, and holy stones of the monuments were dumped in all the road crossings. Thusly did the enemy do throughout almost all the cities of Lithuania--he uprooted the gravestones and destroyed the graves to the extent that their whereabouts were not precisely known.

Like in the city of Kupishac, the city of my birth, the resting place of the Gaon R. Alexander Sander, the author of the book Shalmei Nedarim, whose grave was destroyed and his whereabouts is no longer known; and likewise in the rest of the cities like Ponovegz and others.

Behold, Mr. Seigel, one of the survivors (of the sword) who escaped death, came before me with a crucial question, seeing that his parents were fortunate enough to die a dignified death before the days of rage and destruction, and they came to their rest in the communal cemetery of Ponovegz. However, since the unclean evildoers (may their names be blotted out) profaned the sacred, uprooted the gravestones, destroyed the graves--until this day, the exact whereabouts of his parents is not known, and the ledger of the burial society was lost and is nowhere to be found. Therefore he is asking if he is permitted to set up a gravestone in his parents' memory in a cemetery, wherever it may be, in order to establish for them a memorial?--since we do not know the exact location of his parents gravesite on which he could set up the gravestone.

Answer: In tractate MQ 5a, we read: "R. Shimon b. Pazzi said, where do we have an indication in the Torah that the graves should be marked? It is taught in Scripture: 'When anyone sees a human bone, then shall he set up a sign by it...'"<sup>13</sup> See in Nid. p. 57a,<sup>14</sup> and in the

Tosafot s. v. "U'vaneh."<sup>15</sup> In ch. 2 of tractate Sheq, M. 5, we have learned: "The excess<sup>16</sup> for the dead must be used for the (other) dead,<sup>17</sup> but the excess for a<sup>18</sup> dead person must be for his heirs. R. Meir says, the excess for a dead individual must be put away<sup>19</sup> until Elijah comes.<sup>20</sup> R. Natan says, the excess for a (particular) dead person must be for building for him a nefesh (monument) over his grave." See in our R. Ovadya Mibartenura who comments<sup>21</sup> that "they should build a monument for him on his grave." Likewise in Sefer Hasidim, the meaning of the word "nefesh" is "a monument over his grave." However, the reason *ibid.* is because of impurity of the kohanim.<sup>22</sup>

However, in the notes of Ashari, in ch. "Ein M'galhin" the end of ch. 49, he wrote in the names of Yitshaq Or Zarua: "That a monument is for the needs of the dead and to honor the dead." It is likewise in YD, ch. 348:2: "They collect forcibly from his heirs all the necessaries for his burial,<sup>23</sup> and likewise everything that is customary for the members of his family to do--even the stone that they put on the grave."

See also in the resp. of the Rosh, Section 13, where he wrote: "And what he asked concerning the stone that they place on the grave, whether it is among the necessities of the burial, the answer is that the stone is among the necessities of the burial. See likewise in the principles of the Turim, YD, 35, note 19, where the author wrote what they

said: "That they do not make monuments (nefashot) for the righteous, that it, that they do not make a significant structure. But one must erect a simple stone also on the graves of the righteous." In the resp. of Rashba, ch. 56, he wrote that the husband is obligated to make a monument for the grave of his wife, even if it is not the custom of the family to do thusly. In any event, if the members of his family were accustomed to acting thusly, he is obligated to make for her a monument. According to his words, "they do this merely for his honor." See the Rashba, ch. 296, and the resp. of Menahem Ozariah, ch. 56.

In the book Yad Yitshaq, part 3, ch. 38, I saw that the author wrote ibid: "The fact that they keep the custom of erecting a monument in our day, is also done for the sake of the living in order that they may know where the (resting) place of their fathers lies, and that they may prostrate themselves on their graves and pray. This being so, according to this, it (the monument) is made for the living and the dead. It is likewise in the resp. of Ktav Sofer, section YD, ch. 184.

From all that was mentioned above, I decided for the questioner that he may set up a (monument) gravestone for his parents in the cemetery, even though he does not know the exact whereabouts of their burial site. On the gravestone he should write as follows: "In these graves

are buried my father and my fathers...that at the time of the cursed evildoers (may their names be blotted out) the (exact) whereabouts of their gravesite was lost."

Thereby, this gravestone is both for the sake of the living and the dead. The main reason as to why a gravestone is erected for the dead is so the memory of the dead (person) will not be lost from the living. Therefore, it is certain, that there is no difference of opinion in the matter if he erects the gravestone on the gravesite itself or at a distance from it. On the contrary, in this manner he will be remembered more, for all who pass will see this gravestone is different from other gravestones since it does not rest on the (exact) gravesite. About every matter that is different, people talk about it more than if there was no difference. Therefore, it is certain that if he (the questioner) erects this gravestone in the cemetery, he will erect by this (action) a memorial for his parents, and he will make it so that their memories will not depart from the living.

Behold, it is known that in the days of darkness of the middle ages--when our brothers the Children of Israel were oppressed mercilessly (lit. persecuted up to the very neck) and tortured by harsh decrees, and great bitterness was on the kings and princes of the land--then they were sentenced to be exiled from place to place. At that time, our brethern who were exiled, were accustomed to taking with



them into exile the gravestones of their forefathers. Not once would they leave behind them their wealth and possessions because they were not able to carry them together with the tombstone. Our ancestors acted this way at the expulsion from Spain and at the various expulsions in Germany. And this is a proof for that which we concluded.

Also for the living there is benefit in erecting of a tombstone. Since this tombstone will be in the cemetery, they will be able to pray next to the tombstone, even though it is not on the gravesite proper-- because it is possible to pray (for the dead) even though it is not on the gravesite proper. The proof of the matter comes from the words of the Yer. "Sheqalim", ch. 2, where it is written: "You do not need monuments for the righteous, their words are their memorials."

Rambam decided thusly in Hilkhos Evel, ch. 4: "You do not build a memorial for the righteous over their graves because their words are their memorials," see *ibid*. This memorial, (consisting) of the words of Torah, is certainly not over the grave proper, because it is prohibited to study Torah there (over the grave). It appears that the essential thing is to make a memorial for the dead so that his (her) memory will remain alive, even if he does not make the memorial over the gravesite proper, as is the case with the words of the (righteous) dead.



It is likewise also certain that by means of such a tombstone there will be some sort of memorial for the dead that his (her) memory may remain alive.

## NOTES

1. Lam. 3:1.
2. Ibid., 2:2.
3. Ps. 79:8.
4. Ibid., 123:3.
5. Est. 9:22.
6. Zech. 3:2.
7. Jer. 3:14.
8. I Chron. 22:5.
9. Gen. 4:10. Reference to Cain's killing his brother Abel.
10. Ps. 103:20.
11. Lam. 2:5.
12. Jer. 26:18.
13. Ezek. 39:15.
14. Speaks about the fact that Samaritans are believed when giving information on the marking of graves based on the prescription in Ezek. 39:15.

15. The Tosafot give a summary of the material in MQ, p. 5a.
16. Money left over from the burial of many dead, belongs to the dead.
17. A collection for the cemetery.
18. One particular dead person
19. Must not be used.
20. Who will decide what to do with it.
21. On the meaning of the word nefesh.
22. Markers must be placed on graves so that the Kohanim will not accidentally happen upon them, thereby defiling themselves.
23. Coffin, Shrouds, people to accompany the body to the cemetery.

### Responsa 7

Is There A Way To Save The Hamets, If It Cannot Be Sold  
To Gentiles Because of Danger?

Question: It is the Season of the Festival of Freedom (Passover) of 5703 (1942), in the days when Jews study and discuss the laws of Passover,<sup>1</sup> and the children of Israel, from the days of old, are intending to praise His great name and to "thank Him with a new song for our redemption and the redemption of our souls."<sup>2</sup> And I am in the midst of the exiled ones, who were exiled from their original place and imprisoned between the walls of the ghetto, by a "people who did not know the Holy One of Israel (G-d) and did not call upon His name. For they have devoured Jacob, and have made his habitation desolate."<sup>3</sup> They have left your servants' corpses as food for the fowl of heaven, and the flesh of your faithful for the wild beasts. Their blood was shed like water... and there was none to bury them."<sup>4</sup> "He (the enemy) has made the remaining (Jews) to dwell in darkness, as those who have been long dead; he has trodden their life to the ground "<sup>5</sup> "while saying daily to them: 'Where is thy G-d?'"<sup>6</sup>

Behold, in those days, at a time when I blessed the Lord in the assemblies (places of worship) and taught my lessons publically in the house of study of Gafnovich, which was on 15 Vitna Street, I was asked by those who

live in the pitch blackness of the ghetto, how should they act regarding the matter of selling of hamets?<sup>7</sup> (For it was this hamets) which they succeeded, with much effort and at risk of life, to hide from strangers<sup>8</sup> so that they could allay--even if just a little bit--the hunger of their young ones. The content of the question was: first of all, since there were almost no gentiles<sup>9</sup> living within the walls of the ghetto, and seeing that the ghetto was completely enclosed "and no one could exit nor enter,"<sup>10</sup> this being so, it is not clear as to whom to sell this hamets. Even if by chance we should find a gentile in the ghetto, it is still impossible to sell him the hamets because of the danger bound up with it.

For it is almost certain that this gentile would go and tell the matter to the German murderers that the Jews hid storehouses of food. Then, the Germans would swarm over the imprisoned like beasts of prey, and visit upon them their anger and wrath, which burns like a consuming fire, burning until it is completely burned out. And if they do not sell the hamets, is there any permission to use it for eating<sup>11</sup> after Passover, and not to be caught with the prohibition of 'hametz which was kept over Passover?'<sup>12</sup>

Answer: In the Sh. Ar., Ohl ch. 448:3, it is stated: "The hamets of a Jew, which is to be kept over Passover,

is prohibited for any benefit<sup>13</sup> even if it was left unintentionally or by compulsion," see *ibid.* In the *Biur Halakhah* *ibid.*, he wrote: "(the fact) that Karo wrote it in a general way and did not specify that it is prohibited--refers to the case where he did not clean out the hamets and nullify it,<sup>14</sup> due to mistake or compulsion. Therefore, he decided that it was prohibited.<sup>15</sup> However, where he did nullify the hamets, even though he did not search for it either by mistake or because of force, then the hamets is permitted, since anyway he fulfilled the basic law of the Torah.<sup>16</sup> Or even in a case where he nullified the hamets but did not search for it, and abstained from destroying it because of an unintentional error or compulsion, his opinion is likewise that this hamets is prohibited.

We find that our Rabbis, the Ahronim<sup>17</sup>, have a controversy concerning this matter since further in paragraph 5 we decided: "hamets which is found in a Jewish home after Passover is forbidden, even if it had been nullified."<sup>18</sup> Behold, the P'ri Hadash, Eshrei Ravravei, the Nodah B'yehudah, the Hatam Sofer, the Great Rabbi Zalman, and the Maqor Hayyim wrote: even if he had searched as is his custom, and found hamets after Passover, it is also forbidden for benefit, and there is no controversy in this matter. But there are some Ahronim who are lenient where he searched (for hamets) and nullified it,<sup>19</sup> and afterwards found hamets--for what else could he

have done?! Behold, he did what was required of him according to law<sup>20</sup> as stated by: the Hoq Yaakov, Match Yehudah and Magen Elef, and their opinion is: that in any case, it should not be prohibited for benefit, and in the case of "substantial loss"<sup>21</sup> we must rely on them.

See further in the Mishnah Berurah ibid., note 25, regarding someone who was on a ship or on the road and had with him hamets. There were no gentiles with him to whom he could sell the hamets, so he took action and declared it hefker<sup>22</sup> before witnesses. The Ahronim are divided on the matter whether he can reacquire and derive benefit from it after Passover--and many of them (the Ahronim) agreed to prohibit it. At any rate, in a case of "substantial loss" we must permit (it) and rely on those who are lenient. All this is where the hamets was with him. But, if he was on the road and remembered that he had hamets in his house, and he had no one to sell it to on Passover Eve as is proper, and he took action and declared the hamets hefker in his home before witnesses, it seems that one can rely on those who are lenient. (That is) he can reacquire it (the hamets) after Passover and derive benefit from it, since the hamets was not in his possession. And if it was, he could not have sold it nor destroyed it as our Sages ordained.

Behold in our case, even though the hamets is in their

possession and it is within their range of possibilities to destroy it, this is very similar to the case where most of the Ahronim decided to prohibit (it). This is as we cited where the hamets was in his possession, the majority of the Ahronim decide to prohibit (it). However, behold, we cited that even in that case we may rely on those who are lenient in a case of a "substantial loss." This being so, we have a very strong kal v'homer<sup>25</sup> in this case, where because of the wrath of the oppressor and the ordinances of persecution, a piece of bread could not be bought with gold. It is certain that the law of "substantial loss" pertains to this hamets, and even a priori we must rely on this and permit them to declare this hamets hefker before witnesses or a Bet Din.<sup>24</sup> After Passover, they could reacquire it and derive benefit from it, especially since the life of the children of the ghetto depend on them. And who knows whether after Passover they will find bread (with which) to ease their hunger--or whether by destroying this hamets, they would not come, G-d forbid, to the danger of dying of starvation. This being so, we must decide for them, that they can declare the hamets, which is in their possession, hefker before witnesses or before a Bet Din, and after Passover they can repossess (reacquire) it.

Although all this speaks only of the matter of deriving of benefit<sup>25</sup> from the hamets, only in this case



is it so that we say when there is a 'great loss' that one must rely on those who are lenient. But in our case in which the essence of the question is to permit this hamets for eating, from where does it follow for us to permit it? At any rate, it seems that also in this case (for eating) we must permit it; since behold, the Mishnah Berurah in note 9 *ibid.* cites the opinion of the "Bet Meir who decided to permit (it) even for eating, even though Karo decided that 'whether unwittingly or under compelling circumstances it is still prohibited.' Nevertheless, not all compelling circumstances are alike, and regarding compulsion like this, of which he could not have had in mind, we must not forbid it." This being so, again we must say that in our case we must rely on this (reasoning) and permit (it) even for eating. For it is certain that in this case the Sages were not stringent, since the matter touches on life itself as we explained. Certainly, for this, we must rely on the opinion of the Bet Meir and permit them the hamets, even for eating, if they declared it hefker prior to Passover before or a Bet Din, and also nullified it according to law.

See in the S'dei Hemed, part 6, where the author cites all these opinions of those who are stringent and of those who are lenient, and he concludes *ibid.* that according to his opinion: "The words of those who prohibited seem to be more plausible. However, the one who decides to

be lenient has something on which to rely." See in Rabbi Shemuel Mohilever OH ch. 7. It is certain that the S'dei Hemed do not refer to great compulsion like this as in our case, for there is no doubt that in this case even he would incline to be lenient and rely on the opinion of the Bet Meir who permit (it), even for eating, in such a case. Because (in such a case of) compulsion G-d exempts him from punishment.

See in the book of the author Megilat Sefer, section Iavin, number 242, p. 127b, where the author wrote: "The halakhah appears to me that for anyone who has hamets in a sea-going vessel or in another city, he may declare it hefker before three (men)<sup>26</sup> for all the days of Passover; and after Passover immediately he can acquire it, for he declared it hefker only for half<sup>27</sup> of Passover Eve. He does not transgress the prohibition "it must not be seen,"<sup>28</sup> and it is permitted to another person even rabbinically. Certainly he made a complete hefker, and one need not worry a bit", see *ibid.* See also in Berkhei Yosef under the letter "Hey," Ruah Hayyim letter "Bet", who also wrote that it is permitted to do thusly--to declare it hefker.

I saw also in the resp. of R. Shimon Halevi section OH ch. 12, where he cited the law of one who came from overseas by ship with hamets and Passover came upon him, and the ship had not arrived at its destination, as he wrote: "it would seem (that we should) permit (him) to

declare it hefker before a Bet Din, and after Passover he could reacquire it from the hefker and sell it, but not eat it, because this is an infrequent matter.<sup>29</sup> Because of the stringency of the prohibition of hamets, I did not dare to do this deed."<sup>30</sup> But, in Sheyarei Eneset Hagadolah letter 7, he wrote on the words of R. Shimon Halevi which do not disagree with the Yer. (this passage in the Yer., Pes., Hal. 2: A proselyte<sup>31</sup> died, and a Jew plundered his possessions and found amongst them hamets which was kept over Passover, the hamets was permitted, see ibid.) This is only when he died before the time of the prohibition<sup>32</sup> so he did not transgress (the law prohibiting): "You must not see hamets"<sup>33</sup> (in the house of a Jew). But if he died after the time that the hamets is prohibited,<sup>34</sup> the hamets is forbidden since he transgressed (the law prohibiting)"you must not see hamets" (in the house of a Jew). The Yer. says that the reason is in order that "he will not act deceitfully saying that he nullified it even though he did not nullify it, rather he only declared it hefker privately."<sup>35</sup> Rabbi Yehudah considers the possibility that he just acted deceitfully, lest he say that he declared it hefker and (really) did not. But this does not apply (to the case where) he declared it hefker before two witnesses. Therefore, we hold that if he declared it hefker before two witnesses, and all the more so before a Bet Din, behold this hefker is valid and permitted

even for eating, and all the more so for deriving benefit (thereof), see *ibid.*

Based on everything which was cited here, I decided for the questioners, who were imprisoned in the ghetto, that anyone who has hamets in his possession should go to a Bet Din, declare it hefker before them and nullify it as is our custom. Also, during all the days of Passover he should leave the hamets in a hidden place, and after Passover this hamets will be permitted even for eating. According to the opinion of the halakhic authorities whom I cited above, it is certain in such a case that the Sages did not act stringently to prohibit it as I explained.

May G-d close the breach with his people, "and redeem them with a complete redemption in the building of our city, and in the establishment of our Temple, for our happiness; and we will eat there from the sacrifice and from the Passover sacrifices, and we will thank thee with a new song for our (bodily) redemption and for the redemption of our souls."<sup>36</sup> Amen, may it be His will.

## NOTES

1. See Pes. 6:1, Meg. 29b, Sanh. 12b. "Thirty days prior to Passover, one studies and makes inquiry concerning the laws of Passover."
2. Prayer in the Haggadah Shel Pesah in which the second cup of wine is raised. This benediction praises G-d for redeeming the children of Israel from Egyptian bondage.
3. Jer. 10:25.
4. Ps. 79:2.
5. cf. Ibid., 143:3.
6. Ibid., 42:11.
7. "The Bible prohibits the eating of hamets during the festival of Pesah (Ex. 12:15-20). The word hamets is translated as "leavened bread." Basically it refers to food prepared from five species of grain--wheat, barley, oats, spelt and rye--that has been allowed to leaven. To these, Ashkenazic added rice, millet, corn and legumes...  
 "The rule against leaven applies not only to its consumption (akhilah), but also to enjoying any benefit thereof (hanaah) and even to its possession. Nor should one have leaven in his legal possession.

"To satisfy these requirements we must have b'diqat hamets, the search for leaven; bittul hamets, the nullification of leaven; and m'khirat hamets the selling of leaven." Isaac Klein, A Guide to Jewish Religious Practices (New York: Ktav Publishing House, 1979), p. 110ff.

8. Only a meager portion of bread was allotted (every two weeks) to the inhabitants of the ghetto through the Aeltesteurat or "Jewish Council." Observant Jews would try to save this portion of bread until after Passover. However, if these rations were discovered, the Germans could punish the Jews for concealing and hoarding food.

9. With the increasing complexity of the economic situation, disposal or destruction of leaven became impractical. Thus, the Rabbis instituted a legal fiction. The hamets was sold to a gentile on a temporary basis until after Passover, using a legal bill of sale (OH 448:3). Although the hamets may be locked away in one's own home, through this shtar mekhirah (bill of sale), the obligation of not having leaven in one's legal possession during Passover is fulfilled.

10. Josh. 6:1.

11. See note 7, and Pes. 21b and Mishnah, and 28b and Mishna.

12. See Pes. 21b and Mishnah, and 28b and Mishnah.

13. For example, firing an oven or a pot range with it.
14. See note 7. The formula for nullification is recited after the search for hamets (OH 452:3) and the next morning after the burning of the leaven.
15. For deriving benefit thereof due to the prohibition in Ex. 13:7: "no hamets shall be seen with thee."
16. In renouncing by declaration the possession of anything leavened, he fulfills the precept in Ex. 13:7.
17. See resp. 1, note 23.
18. Even though he has fulfilled the command that "no hamets be seen with thee" (Ex. 13:7) by declaring it hefker (ownerless), the Sages feared that deceitful people might not divest themselves of hamets during Passover, and then claim afterwards that they nullified it.
19. Whatever hamets he could not find after the b'diqat hamets (see note 7) he nullified orally.
20. See note 16.
21. This is a flexible concept (in Hebrew: Hefsed Merubeh) depending upon the wealth of the individual as to what constitutes a "substantial loss." The Bet Din decides what is considered "substantial". According to the Encyclopedia

Talmudit (Talmudic Encyclopedia Publ. Ltd., Jerusalem, Israel, 1961), Vol. 10, p. 52 -- this concept of substantial (monetary) loss was a reason for leniencies in Rabbinic prohibitions, or in cases of controversy or doubt.

22. "The Talmudic term hefker (ownerless) refers to property left by a person without heirs, or property unclaimed by an owner, or property confiscated by a court and disposed of by the process of law, in keeping with the rule: hefker Bet Din hefker (Git. 36b)." Philip Birnbaum, A Book of Jewish Concepts (Hebrew Publishing Company, New York, 1964), p. 169.

For Maimonides definition of hefker, see Yad Tekhiah 1:1.

23. This is an a minori argument--that is, an inference from the weaker to the stronger. If the hamets was permitted by the Ahronim in a case of "substantial loss" how much the more so should it be permitted in our case which concerns life and death, and where "bread could not be bought with gold."
24. See note 22 under hefker Bet Din hefker.
25. Only speaking here about "deriving benefit," not "eating." See note 7 under hanaah and akhilah.



26. Three men constitute a legal Bet Din.

27. Strict law states that one can eat hamets only half a day (See Pes., ch. 2, Kol Sha'ah), that is, until 12:00 noon before Erev Pesah (later the Rabbis changed this time to 10:30-11:00). Thus, if one declares hamets hefker before 12:00 noon of Erev Pesah--the hefker is valid and he may reacquire it after Passover. However, if one declares hamets hefker after 12:00 noon of Erev Pesah, the hefker is not valid because of the prohibition in Ex. 13:7.

28. Ex. 13:7.

29. If something occurs frequently, then the usual law does not apply.

In this case, we do not apply the "substantial loss" law because he can sell the hamets.

30. To render a lenient decision permitting this hamets (which was kept over Passover) to be eaten.

31. When a person becomes a proselyte to Judaism he is considered as a "newborn child," thereby nullifying his previous lineage. Thus, when he dies, his possessions do not belong to those who were his relatives previous to conversion, rather they are hefker--free to all comers. See note 22.

32. Died before 12:00 noon of Erev Pesah and did not clean out the hamets.
33. See note 28.
34. After mid-day. Before his death he transgressed the law by not removing the hamets.
35. Rather than before two witnesses or a Bet Din (of three).
36. cf. Haggadic reference in note 2.

### Responsa 8

Whether It Is Permitted To Place Oneself In Danger For  
The Sake Of Torah And Public Prayer?

Question: On the thirteenth of Elul, 5702 (August 26, 1942), the Nazi oppressors--may their names be blotted out--issued an order prohibiting the Jews imprisoned in the ghetto from blessing G-d in public, and from assembling in the synagogues and houses of study for Torah (study) and prayer. They were (also) prohibited from crying out to G-d about their sorrow, and from making supplications before Him that He should help and save them, deliver their souls from oppression, and "redeem them from going down into the pit."<sup>1</sup>

The imprisoned of the ghetto, brokenhearted and depressed, bodily exhausted and with bitter souls after a (full) day of hard forced labor, were accustomed to bearing their burdens by gathering in a synagogue, a temple, or a house of study. There they fixed times for: oral Torah (study) from (their) teachers, benefiting from Talmud and Mishnah study groups, and hearing the words of chastisement and reproof, encouragement and comfort, from the mouths of the Rabbis and preachers who gave pleasant sermons and spoke to the listeners from the sweetness (lit. from the honey) of the pleasant words of the Sages. They poured into (these words) the spirit of hope and trust; faith in, and fear of, the Holy One of Israel--

their Rock and Redeemer--that He will rise up and avenge His enemies and "crush the head of the Nazi viper over many countries,"<sup>2</sup> and tens of thousands of Jews will have the good fortune to see with their (own) eyes "the revenging of the spilled blood of His servants."<sup>3</sup>

Also, I had the good merit to be among those who help the people, who continued--in the midst of the gathering darkness and the pitch blackness of suffering--to disseminate knowledge to the people of G-d. In my house of study, that was well-known by the name "Aba Yehezkel's Kloiz," I continued to give the congregation and the community my regularly scheduled sessions, and also afterwards--when the cursed evildoers took measures against (lit. drew the line on) this house of study, destroyed its glory, and transformed it into a prison--I transferred my seat (moved his lectures) to the "funeral procession hall", to the synagogue which was (located) in the house of Gafinovits on Vitnah Street, and to the synagogue of Hayyim Shapir on Varena Street next to the house of "The Council of Elders" (Aeltestenrat).<sup>4</sup> I especially concentrated on (lit. gave myself to) the daily lessons which I taught in the study group "Tiferet Bahurim."<sup>5</sup> In all these places, with the aid of He-who-dwells-on high, I strengthened the weak and faltering spirits of these young Jews and of the general populace. I made a great effort to teach them wisdom and knowledge, so that they would know and understand that:

"Just as one must say a blessing over the good, he must also say a blessing over the evil,"<sup>6</sup> and that we must "quietly hope for the help of G-d and for His salvation";<sup>7</sup> for "the Lord is good to those who wait for Him,"<sup>8</sup> and those who hope in His steadfast love;"<sup>9</sup> "He is near to those that call upon Him, all who call upon Him in truth;"<sup>10</sup> and it is incumbent upon us to arm ourselves with faith and trust, to bear our burden gladly and willingly, for "there is hope for our future."<sup>11</sup>

Behold the cursed evildoers whose cruel hearts "devise nothing but evil daily"<sup>12</sup> for the Jews (lit. the seed of the Holy Nation), from whose eyes the source of strength, the encouragement that derives from the places of Torah and prayer are not hidden. Since (the Nazis) only aim and desire was to enter into their imprisoned hearts the spirit of despair and perplexity, therefore, they issued, as it were, their decrees which prohibited Jews imprisoned in the ghetto from blessing G-d in the assemblies, in the synagogues, in the houses of study, and from gathering there for prayer and study. "There was only one law for anyone who transgressed this order, namely--to be put to death."<sup>13</sup>

Then, at this time, R. Naphtali Weintraub (may G-d avenge his blood) the Gabai<sup>14</sup> of the synagogue of Gafinovits, came to me and asked whether, according to the law of Torah, he was obliged to place himself in mortal danger by going to pray in the Kloiz (little synagogue) as was his custom in the morning and in the evening? Whether he was obligated

to give his life for Torah and prayer, or not?

Answer: This question branches off in two directions, and it is actually one question which has two aspects:

- 1) Is there an obligation to give one's life for Torah?
- 2) Is there an obligation to give one's life for prayer?

This is what I answered with the help of "He (G-d) who has graciously endowed men with knowledge,"<sup>15</sup> concerning the first question first, and the second question last.

In tractate AZ p. 18a we read: "Our Rabbis taught: When R. Yose b. Kisma fell sick, Rabbi Hanina b. Teradion went to visit him. He said to him, 'Brother Hanina, do you not know that it is Heaven (G-d) that has ordained this (Roman) nation to reign? For though she destroyed His house, burnt His temple, slew His pious ones and caused His best ones to perish, still, she is firmly established! Yet, I have heard about you, that you sit and busy yourself with the Torah, you publically gather assemblies, and keep a Sefer Torah in thy bosom!'<sup>16</sup> He replied, 'Heaven will show mercy.'<sup>17</sup> -- 'I am telling you matters of reason (something logical), and you say "Heaven will show mercy!" It wouldn't surprise me if they didn't burn both you and the Sefer Torah with fire!' He said, 'Rabbi, how do I stand with regard to the world to come?' He said, 'have you done something improper?' He replied, 'I once mistook Purim money<sup>18</sup> for ordinary charity money,

and I distributed (it) to the poor.' 'Well then,' he said 'would that your portion were my portion, and your lot my lot.' It was said that it wasn't but a few days that R. Yose b. Kisma died and all the great men of Rome<sup>19</sup> went to his burial and eulogized him. On their return, they found R. Hanina b. Teradion sitting and busying himself with the Torah, publically gathering assemblies, and keeping a Sefer Torah at his bosom. (Immediately) They took him and wrapped him in a Sefer Torah, placed bundles of branches around him and set them on fire. They then brought tufts of wool, which they had soaked in water, and placed them over his heart, so that he would not die (too) quickly," etc., see *ibid.*

Behold, Rambam in ch. 5:1 of Hil. Yesodei Hatorah decided: "All the members of the house of Israel are commanded to sanctify the great name of G-d,<sup>20</sup> as it is said, "I will be sanctified among the children of Israel." They are furthermore commanded not to profane<sup>21</sup> it, as it is said: "Neither shall you profane my holy name."<sup>22</sup> How (are these precepts to be applied)? "Should an idolator arise and coerce an Israelite to violate any one of the commandments mentioned in the Torah or he would be put to death, he (the Israelite) is to transgress rather than die; for concerning the commandments it is said, "which, if a man do them, he shall live by them."<sup>23</sup> "Live by them, (meaning) and not die by them."<sup>24</sup> And if he was put to

death rather than commit a transgression, he himself is guilty of causing his (own) death." In Hal. 2 *ibid.* he decided: to what do these things apply? To all the commandments, except the prohibition of idolatry, incest, and murder. But with regard to these: if someone says to a Jew: "transgress one of them or else you will be put to death, he should die rather than transgress," see *ibid.*

At first sight, one must be surprised<sup>25</sup> at the words of Rambam in light of that passage in AZ which we cited above. For behold, since R. Yose b. Kisma cautioned R. Hanina b. Teradion on the great danger which lies in Torah study and public gathering of assemblies, and he said to him: "It wouldn't surprise me if they didn't burn both you and the Sefer Torah with fire--being so, how was R. Hanina b. Teradion permitted to endanger his life for the sake of Torah, and to hand himself over for its sake (study of Torah) to be burnt? Behold, he decided here in Hal. 1: "And if he died for any of the mitsvot rather than commit a transgression, he himself is guilty of causing his (own) death." Furthermore, Rambam enlarged on what we said and decided: "That if he gave his life in a situation where there was no obligation to do so, behold, he is as one who spills blood" (a murderer).

However, in Sanh. p. 74 it says: "When R. Dimi came,<sup>26</sup> he said in the name of R. Yohanan: "this was taught only if there is no royal decree<sup>27</sup>, but if there is a royal de-



cree, one must incur martyrdom rather than transgress even a minor percept." When Rabbi came<sup>28</sup>, he said in R. Yohanan's name: "Even without a royal decree, it was permitted<sup>29</sup> only in private; but in public<sup>30</sup> one must be martyred even for a minor percept rather than violate it. What is meant by a "minor percept"? Raba son of R. Issac said in Rab's name: "Even to change one's shoe strap,"<sup>31</sup> look well *ibid.* at the entire passage.

According to this, it is certain that one should not argue against the words of Rambam<sup>32</sup> from the case in AZ. For behold *ibid.*, in times of royal decrees it would happen that the wicked Kingdom (of Rome) would decree that it was prohibited to engage in Torah (study), therefore it was well and good what R. Hanina b. Teradion did--in that he gave his life for the sake of Torah study. Look well *ibid.* in Qesef Mishneh, how the author speaks at length about this to prove that this is in disagreement with the Ran's (opinion). See *ibid.* where our Sages and Ran wrote in (Shab.) ch. B'meh tomim: "It only says to be killed and not to transgress in regard to a negative commandment.<sup>33</sup> But they did not decree to transgress a positive commandment,<sup>34</sup> since it is not done actively. Furthermore, they can make him neglect (the positive commandment) against his will, for they can put a man in prison, and the commandment would be negated automatically." "All this is difficult for me, for behold, R. Hanina b.

Teradion gave his life in order to engage in Torah (study),<sup>35</sup> and likewise Rabbi Yehudah b. Baba in order to ordain Rabbis,<sup>36</sup> and in the Midrash,<sup>37</sup> (it says) "why do you go out to be crucified?--Because I circumcised my son." You cannot say that a quality of "exceptional piety" is taught here, rather the meaning is that they acted thusly according to the law.<sup>38</sup> The case of Elisha, who had wings,<sup>39</sup> is not decisive (no proof) because he had already fulfilled the mitsvah of tefilin that some day, and also he did not say to the military inquisitor that he was fulfilling their decree,"<sup>40</sup> look well *ibid.* in Qesef Mishnah.

See likewise in Sefer Hahinukh, mitsvah 296, where he wrote: "and just as we found deeds for which the original Hasidim<sup>41</sup> were killed, even for the neglect of a mitsvah, this is similar to what the Sages said: "Why are you going out to be stoned?--Because I circumcised my son. Why are you going out to be crucified?--Because I waived the lulav."<sup>42</sup> They did so out of "exceptional piety" and saw that their generation needed this.

From all this, it seems that in our case, at a time when there was an evil and severe decree against Torah study--and so we saw that the cursed evildoers spilled out their anger first and foremost against the Rabbis and masters of Torah, because of the will and intention that the voice of the Torah would be silenced, and that the voice of the Jacob would not be heard in the Temples

of Torah, the Yeshivot, or houses of meeting or study; for this they issued an order to close all the places of Torah and prayer as it was stated above, and they even decreed upon the heders of infants of Jewish schools that they should not teach in them; they took by force all the Sefer Torahs and the rest of the holy books from those imprisoned in the ghetto---At this time, certainly the obligation is upon everyone to give their lives for the sake of study of, and occupation with, the Torah, as was stated in the passage in Sanh. which we cited above that: "If there is a royal decree, one must incur martyrdom rather than transgress even a minor percept;" especially for their decree against Torah study, which is "our lives and the length of our days, and we are commanded to meditate upon them (the mitsvot) day and night."<sup>45</sup>

See also what the Ran wrote in his novellae to tractate Sanh. *ibid.*: "'But if there is a royal decree, one must incur martyrdom rather than transgress even a minor percept,' the meaning is: whether in private or public. The reason for this thing is that when the nations of the world plan to make Israel neglect the Torah, we need to take a strong stand against them in order that their plans will not be realized. It is better that many Jews die rather than one letter of Torah be nullified in a time when they want to eliminate

the Torah from Israel altogether. If one listens to them, even in greatest secrecy, the matter will become public because they will find out that their decrees are effective. Therefore, one should die rather than transgress," see *ibid.*

We have a strong *kal v'chomer*<sup>44</sup> in our case, where the Nazis (may their names be blotted out) wanted to destroy the Jewish people and their Torah both together; to extinguish the light of the world (Torah) by their bitter decree, in which they decreed that it is forbidden to gather assemblies together in order to study the Torah in synagogues and houses of study. Certainly, in order "to make their counsel of no effect and frustrate their designs,"<sup>45</sup> the obligation rests upon those who fear (G-d) and are anxious (to fulfill) the word of the Lord, to give their lives for the sanctity of Torah study. May the portion of Hanina b. Teradion be their portion and the fate of the others who submitted to martyrdom in public--the noblest martyrs who rejoiced daily in fulfilling the commands, those who were murdered by the Roman Empire. May he (R. Hanina b. Teradion) live together with them at the end of days, and they should be ready for life in the hereafter.

All this is if the decree was that they should not occupy themselves with Torah. However, if gentiles decree on the Jews that they cannot pour out their speech and hearts in congregations to their Father who is in

heaven, and that they cannot gather in public in the synagogues or houses of study to hear the cantor's prayers--if they are obligated to give up their lives for this,<sup>46</sup> behold we find that a decree like this was issued on Daniel, a beloved person. But, he did not yield to this decree, and he gave his life for the sake of prayer, even though he knew that they would throw him in the lion's den for this, as it was stated in Dan. ch. 6.

This is the language of the Hagiographa *ibid.* beginning in verse 7: "Then these presidents and satraps came hurriedly to the king, and thus said to him, King Daryavesh, live forever. All the presidents of the kingdom, the prefects and the satraps, the counsellors, and the governors, have consulted together to establish a royal decree, and to make a firm decree, that whoever makes petition of any G-d or man for thirty days, save of thee, O king, he shall be cast into the lion's den. Now, O king, establish the decree, and sign the writing, that it be not changed, according to the law of Maday and Paras, which is unalterable. Wherefore, king Daryavesh signed the writing and the decree. Now when Daniel came to know that the writing was signed, he went into the house: (now he had windows open in his chambers) towards Jerusalem, and he kneeled upon his knees three times a day and prayed, and gave thanks before his G-d as he did

aforetime).

See in the Talmud Ber. p. 31a: "R. Hiyya b. Abba said: a man should always pray in a house with windows, as it says, 'now his windows were open'".<sup>47</sup> Thus we see that not only did Daniel not heed this decree, which the government promulgated against prayer, but he was careful in his prayers to pray in a house which had windows, and he gave over his life to be killed so that they would throw him in the lion's den, as it says *ibid.* in verse 17: "Then the king commanded, and they brought Daniel, and cast him into the lion's den. Now the king spoke and said to Daniel: Thy G-d whom thou servest continually, He will rescue thee."

See in Malbim where the author raised a difficult question in his commentary on the Book of Daniel saying: "Why did Daniel give himself over to be killed for the sake of prayer?-is it not written: 'he shall live by them'."<sup>48</sup> According to the law, Daniel was not obliged to submit to martyrdom except for (being forced to commit) idolatry, incest and murder, and in particular he was able to pray silently so that no man would notice it-- G-d wants the heart. From the wording of the Scripture, behold, it is clear that he was not careful at all. If he did not know that he risked his life, then what is the meaning of what was written: "as he did aforetime", was he not sinning by risking his life? And particularly

according to the opinion of Nahmonides, prayer is only a Rabbinical institution, and the king did not at all intend to make him transgress his religion. This being so, why did he put himself in this danger?"

See also in the Book Me'ein Hahkhmah about the mitsvot where he raises this objection, having Rambam's opinion in mind, where the law is that he should transgress and not be killed--he is not permitted to suffer martyrdom. This being so, how did Daniel suffer martyrdom for prayer, which is a positive commandment?<sup>49</sup> He answered that their main intention was to make him transgress the law; see in Ritba, Shab. 49.

Also in the resp. of Geonei Mizrah U'maarav, ch. 141, he cites the resp. of Rav Sharira Gaon who discussed this matter and wrote: "This matter was in a time of persecution. Rabbah Bar Rav Yitshaq said: 'Even for a shoe-strap he must submit to martyrdom.'"<sup>50</sup> Thus it is cited likewise in the Book Haminhag Halakhot Maariv, ch. 85. And see in the Book Emeq Sheilah of the Great Rabbi Naphtali Tsvi Yehudah Berlin, may his name be for a blessing, with reference to the Sheilatot, ch. 42, section 2.

However, in the resp. of the Radbaz part 4, ch. 1163, he wrote: "That Daniel saw that his generation was sinful and he wanted to make a fence (around the law) in order that they would know the importance of prayer--and therefore submitted to martyrdom for this; or one may say that



from here there is proof for the opinion of those who hold that because of 'exceptional piety' a man is permitted to submit to martyrdom--and that 'exceptional piety' is taught here in respect to Daniel." Also in Sefer Hasidim of Rav Yehudah Hehasid, ch. 786, he wrote (about) an incident which happened to a hasid who was praying and did not stop for the prince who passed before him "that he may be strict with himself in prayer, even though he endangers his life, he does right, as Daniel did even though the king decreed that he must not pray."

Behold, we see from all this the high level of the rung of prayer, and the value that a man is permitted to endanger himself for prayer and submit to martyrdom in order to fulfill this mitsvah like Daniel did. (If he may do so) even when it is not a time of persecution and (evil) decrees, as we see from the words of the Radbaz and R. Yehudah Hehasid, how much the more so (may he submit to martyrdom) in a time of persecution and (evil) decrees. It is as Sharira Gaon wrote and it is as in the Book Me'ein Hahkhmah.

How much the more so (may he submit to martyrdom) in our case, where the basic intention of the wicked Germans was to decree upon the Jews that they must neglect the mitsvot of prayer, so that by this, the image of G-d would depart from them. The time of decrees and persecution would not only affect the bodies and souls of



those imprisoned in the ghetto, but also their faith and religion. For if their every intention was only directed towards loss of body and soul, why then consequently did they decree to close the houses of study and prayer with their threats that anyone who transgresses this order forfeits his life. Likewise we saw that the cursed evil-doers were precise to heap hard labor upon the Jews, with incensed vigor and exceeding heaviness, only during the days of Shabbat and holidays in order that they would profane the holiness of the seventh day, His (G-d's) holiness, and the holiness of the holidays by doing work--so their faith in their Rock and Creator would be uprooted from their hearts. And is not the uprooting of faith from the heart like idol worship?--and the law concerning this is to be killed and not to transgress.

However, to decide for others as a practical halakhah that they are obligated to submit to martyrdom for Torah and (public) prayer is certainly impossible. From Daniel and his companions, Hananiah, Mishael and Azariah, who delivered themselves for the sanctification of the Divine Name, we can bring no proof. For in truth, concerning them, we need to inquire about the reason, as we find in the Gemara, Pes. p. 53b, see *ibid.* where we read: "Come and hear: This too did Thaddeus<sup>51</sup> of Rome teach: What (reason) did Hananiah, Mishael and Azariah see that they delivered themselves, for the sanctification of the

(Divine) name, to the fiery furnace?" Rashi explains: "what did they see (what was the reason) that they did not interpret 'live by them',<sup>52</sup> means 'not die by them,'" see *ibid.* "They applied a *kal v'chomer*<sup>53</sup> to themselves: if frogs, which are not commanded concerning the sanctification of the (Divine) name, yet it is written of them, "and they shall come up and go in thy house... and into your ovens, and into your kneading troughs:"<sup>54</sup> When are the kneading troughs to be found near the oven? When the oven is hot.<sup>55</sup> We, who are commanded concerning the sanctification of the name, how much the more so."<sup>56</sup> See well *ibid.* in the *Tosafot* s.v. "ma ra'u."<sup>57</sup>

It is clear from the words of Rashi, which we cited, and the *Tosafot*, that from the standpoint of the law, certainly they were not obligated to submit to martyrdom on the strength of the interpretation of: "live by them" meaning, "not die by them." Therefore, the *Gemara* truly asks with reference to them: "what they saw" (what was the reason), to submit to martyrdom.

However, the main reason of Daniel and his companions was that reason which is made clear in the *Bet Yosef*, YD ch. 157, in the name of the *N'mukei Yosef* that: "If he is a great, pious, and a G-d fearing man, he is permitted to sanctify the (Divine) name, even for a minor mitsvah. (This is) so that the people should learn to love the Lord and to fear Him with all their heart. It is like what

Rambam wrote in the "Iggeret Teiman" *ibid.*: "And this is when a man performs one of the mitsvot and does not intermingle with it any other reason except to love and worship G-d (may He be exalted)--behold, he satisfies G-d in public. Likewise when a great man keeps himself from matters which are ugly for mankind, even though they are not ugly in his eyes, he sanctifies the Name." It seems from this, that the main thrust (here) depends upon the intention of the soul. Therefore, if he does not want to transgress one of the mitsvot of G-d, and his intention is to sanctify the Name of Heaven (G-d) with no other intention, behold, he fulfilled by this the sanctification of the (Divine) name. And if his intentions are not pure, behold, he is guilty of death, as Rambam decided in Hil. Yesodei Hatorah 5:1 which we cited above: "If he suffered death rather than commit a transgression, he himself is guilty of death."

Therefore, Rambam truly wrote in the "Iggeret Teiman": "Anyone who is killed so that he does not have to acknowledge the mission of that same man,<sup>58</sup> one only says about him that he did what was upright and good; he has a great reward from G-d, and his greatness is on the highest level; because he delivered himself for the sanctification of the (Divine) name, may his name be blessed. However, he who came to ask us if he should be killed or if he should acknowledge, we tell him that he should acknowledge and not be killed" etc.,

see well ibid his pure wording.

It is clear from what has been stated above that there is no contradiction at all between these words of Rambam in the "Iggeret Teiman", which he raised up on the banner of exalted praise of man: "He who is killed so that he would not acknowledge the mission of that same man", and between what he decided in ch. 5:1 of Hil. Yesodei Hatorah: "That if he suffered death rather than commit a transgression he himself is guilty of death." (This is) since in the "Iggeret Teiman," Rambam speaks in great precision about the man who has pure intentions, and all his thoughts are exclusively directed towards the sanctification of His name (may His name be blessed and may He be exalted), without intermingling with it (this thought) a trace of any other thought. Certainly a man like this is called holy, "since he did what was upright and good. He has a great reward from G-d, and stands on the highest level because he delivered himself for the sanctification of the Name, may His name be blessed." However, he who comes to ask us whether he should be killed or transgress, concerning whom the law says: "live by them" meaning, "that he should not die by them," certainly it is impossible to fully comprehend his thoughts to know whether his intentions are truly pure and clean, and whether he has not intermingled therein a trace of other thoughts. For this (type of man) who comes to ask us

according to law what to do, Rambam wrote in the "Iggeret Teiman" *ibid.*: "that we say to him that he should acknowledge and not be killed. However, if his thoughts are truly not pure and clean as required, and nevertheless dies and does not commit this transgression, a person of this kind, is guilty of death. This is like what Rambam wrote in 5:1 of Yesodei Hatorah where he speaks about such a man; the conclusion is that the words of Rambam, in his halakhot and in the "Iggeret Teiman", are in complete agreement and there is no contradiction at all.

Because of this in our case, I did not dare to decide for this questioner that he should go and endanger himself, and deliver himself for the sanctification of the Name for the sake of Torah and public worship; for who knows whether his thoughts are pure and clean, without suspicion and reservation, until he will be (situated) on a level the height of that of Daniel and his companions Hananiah, Mishael, and Azariah, who delivered themselves for the sanctification of the (Divine) Name even for a matter to which the interpretation "live by them" meaning, "you should not die by them," applies. However, on the other hand, I have not forbidden him to do thusly, because of what Rambam wrote in 5:1 of Hil. Yesodei Hatorah: "That behold, every Jew is holy and has a soul which is hewed from the highest heavens, and from the highest levels;" for from the standpoint of law, we must leave this matter

to individual, personal decision according to the depth of his feelings, the level of his love and fear of (G-d). Certainly G-d, the all-merciful judge, will show him His way--the way of life.

Therefore, certainly, one must give his life for the (continued) existence of Torah and prayer, and to do so as did Daniel, a lovable man, who delivered his soul and his body for the sake of prayer, despite (the fact that) he knew that they would take him and cast him into the lion's den. And this is how they acted, the Holy Seed of the children of the living G-d, who continued to act as was their custom from ancient days, to learn and to pray in public. As Daniel "prayed and gave thanks before his G-d, as he did aforetime," likewise, they also continued to praise G-d in the assemblies, and to fix times for Torah (study) in public.<sup>59</sup>

Also, on Rosh Hashanah of the 5703 (September 12, 1942) the Jews were not afraid that the Germans (may their names be blotted out) would hear the sound of the Shofar which they blew at the time of the prayers, to confound the oppressive and destroying satan in their behalf. Not only did they gather in public to pray in the fixed places of prayer, but they even prayed in public in the ghetto hospital on Rosh Hashanah. Those who initiated this action were mainly the assimilated physicians, who did not heed this decree in their readiness to deliver their souls for

the mitsvah of prayer.<sup>60</sup>

I also continued my daily fixed lessons in public despite this threatening decree. Not only this, but the members of "Tiferet Bahurim" refurbished Mr. Zinger's building on 8 Kaklo Street. They plastered and repaired it; installed electricity in it; and also made a hiding place in order to be saved from the Germans. They did not feel satisfied until they celebrated the hanukat habayit ceremony (Eng. House-warming) at the time when all the work of refurbishing of the building was completed, and they began to study in it their fixed lessons and (listen to) the lectures which I gave them to uplift their spirits and to strengthen and fortify them.

The words of our mouths were favorably received (may His name be for a blessing) that we merited by the good grace of Torah and prayers, to leave the valley of the slaughter in the hour when the enemy "is bowed and fallen, but we are risen and stand upright,"<sup>61</sup> and to go from darkness to light.



## NOTES

1. Job 33:24.
2. Nu. 10:36.
3. Ps. 79:10.
4. "'Council of Elders,' leaders of the Jewish Community appointed by the Nazis to carry out their directives." Irving R. Rosenbaum, The Holocaust & Halakhah (New York: Ktav Publishing House, Inc., 1978), p. 168, note 20. In administering the ghetto, these Nazi appointed officials were required to: publicize German orders and to ensure that they were carried out; to represent the ghetto population; to look out for their welfare; to deliver work details and to provide the Nazis with lists of people for destruction in the gas chambers. See Rabbi Dr. H. Zimmels: The Echo of The Holocaust in Rabbinic Literature (New York: Ktav Publishing House, Inc., 1977), p. 44.
5. Named after the verse in Prv. 20:29, 'tiferet bahurim,' "the glory of young men in their strength."
6. M. Ber. 54a. The Talmud explains the meaning of saying blessings over both good and evil as follows: Over evil a blessing is said etc.--"How is this to be understood?--



For instance, if a freshet flooded his land. Although it is (eventually) a good thing for him, because his land is covered with alluvium and becomes more fertile, nevertheless for the time being it is evil." In other words, some good comes out of all evil.

And Over Good etc.--"How can we understand this?-- If for instance he found something valuable. Although this may (eventually) be bad for him, because if the king hears of it he will take it from him, nevertheless for the time being it is good." Soncino, Ber. 60a, p. 374.

7. cf. Lam. 3:26.
8. Ibid., 3:25.
9. Ps. 147:11.
10. Ibid., 145:18.
11. Jer. 31:17.
12. cf. Prv. 6:14.
13. cf. Est. 4:11.
14. Synagogue attendant.
15. Shaharit Amidah. "Thou endowest man with knowledge, and teachest mortal man understanding."

16. Contrary to the Roman decree prohibiting it.
17. G-d will protect me. Reference to Deut 13:18.
18. See Rashi AZ, 17b. "Which he collected from the members of the community to distribute to the poor for the Purim feast (Seudat Purim)."
19. "The Roman officials in Caesarea where he lived and died." Soncino, AZ 18a, p. 92, note 5.
20. To submit to Kiddush Hashem (lit. sanctification of the (Divine) name, i.e., martyrdom. "Generally applied to situations that call for martyrdom in times of persecutions..." Philip Birnbaum, A Book of Jewish Concepts (New York: Hebrew Publishing Company, 1964), p. 536.
21. Profanation of the divine name. (Heb. Hillul Hashem) "Opposite of Kiddush HaShem, denotes defamation of the divine name through an act performed in defiance of religious or ethical principles." Ibid., p. 214.
22. Lev. 22:32.
23. Ibid. 18:15.
24. See Yoma 85a; Sanh. 74a; AZ 27b and 54b. The negative statement lo sheyamut bahem is derived from the positive v'hai bahem under the principle of miklal hein atah shomeiah lav. This principle states that from a positive statement

one hears (can derive) a negative statement (except in cases of idolatry, incest, murder, and if one is publically made to transgress a law). See Ned. 14a.

25. Since R. Haninah martyred himself for Torah study, which is not included under Rambam's categories of idolatry, incest, and murder, for which one is obligated to submit to Kiddush Hashem.
26. To Babylon from Palestine to transmit the teachings of his Palestinian colleagues there.
27. Causing Jews to transgress their religion.
28. See note 26.
29. To transgress as the compellor instructs him.
30. The continuation of the passage states that ten Jewish men constitute "public."
31. "When religion itself is persecuted even the most insignificant custom or habit must be defended at all costs, having regard to the higher principle at stake. (The shoe latches worn by Jews were white, those worn by heathens were black). Soncino, Sanh. 74b, note 6.
32. Hil. Yesodei Hatorah 5:1. "If he died for any of the mitsvot rather than commit a transgression, he himself

is guilty of causing his (own) death.

33. Heb. Mitsvot lo ta'aseh (Qid. 1:7) A commandment to refrain from a certain action prohibited by the Torah, eg. "Thou shalt not murder" (Ex 20:13). The Sages enumerated 365 negative commandments in total (Mak. 23b).
34. Heb. Mitsvot Aseh (ibid., Qid.). A commandment to perform and fulfill a specific action, eg. "Honor thy father and thy mother (Ex. 20:13). The Sages enumerated 248 positive commandments in total (Ibid., Mak.).
35. Which is a positive commandment. However, Ran argued that one is not obliged to submit to martyrdom for mitsvot aseh, and that the provision of "be killed rather than transgress" does not apply.
36. Sanh. 13b-14a. (See Soncino) Cannot one man alone ordain? Did not Rab Judah say in Rab's name: 'May this man indeed be remembered for blessing--his name is R. Judah b. Baba: were it not for him, the laws of Kenos would have been forgotten in Israel.' Forgotten? Then they could have been learned. But these laws might have been abolished; because once the wicked Government, (as an act of religious persecution), decreed that whoever performed an ordination should be put to death, and whoever received ordination should be put to death, the city in which the

ordination took place demolished, and the boundaries wherein it had been performed, uprooted. What did R. Judah b. Baba do? He went and sat between two great mountains, (that lay) between two large cities; between the Sabbath boundaries of the cities of Usha and Shefaram and there ordained five elders; viz., R. Meir, R. Judah, R. Simeon, R. Jose and R. Eliezer b. Shamua, R. Awia adds also R. Nehemia in the list. As soon as their enemies discovered them he (R.J.b.B) urged them: 'My children, flee.' They said to him, 'What will become of thee, Rabbi?' 'I lie before them like a stone which none (is concerned to) overturn, he replied. It was said that the enemy did not stir from the spot until they had driven three hundred iron spear-heads into his body, making it like a sieve. With R. Judah b. Baba were in fact some others, but in honour to him, they were not mentioned.

37. Mekhilta, Yitro. See also Sefer Hahinukh, 296.
38. It is the view of Qesef Mishneh that Rambam apparently holds that one is obligated to submit to martyrdom in the case of all types of commandments.
39. Shab. 49a; Shab. 130a. "Why is he called the 'man-of-the-wings?' Because the wicked State (Rome) once proclaimed a decree against Israel that whoever donned tefilin should have his brain pierced through, yet Elisha put them

on and went into the streets. A quaestor saw him: he fled before him, he (Elisha) removed them from his head and held them in his hand, 'what is that in your hand?' he demanded. 'The wings of a dove', was his reply. He stretched out his hand and the wings of a dove were found therein. Hence he is called 'Elisha-the-man-of-the-wings.' And why did he tell him the wings of a dove rather than of other birds? Because the congregation of Israel is likened to a dove, as it is said: 'as the wings of a dove covered with silver, and her pinions with yellow gold.' (Ps. 68:14): just as a dove is protected by its wings, so with the Israelites, their precepts protect them." Soncino, Ibid.

40. The verse continues: "not to don tefilin, rather he replied to what they asked him: 'what is in your hand?' - and said: 'the wings of a dove.'" See Qesef Mishneh, Hil. Yesodei Hatorah 5:1.

This is a different case altogether and does not pertain to martyrdom for Elisha just showed wings.

41. M. Ber. 5:1. "The M. mentions ancient Hasidim of the Hasmonean period who observed the divine commandments most meticulously. They are described as forerunners of the Pharisees. During the Maccabean struggle they suffered martyrdom rather than break the Sabbath.

Philip Birnbaum, A Book of Jewish Concepts (New York: Hebrew Publishing Company, 1964), p. 231.

42. See note 37.
43. Ahavat Olam evening prayer for Shabbat and festivals.
44. An a minori argument. If Jews were obliged to suffer martyrdom in former times, as is evidenced by the passages in Sanh. 74b and Rambam's Hil. Yesodei Hatorah, 5:1-4, how much the more so should we suffer martyrdom rather than transgress in this time of Nazi persecution and destruction of Jews.
45. See Elohai N'tsor, the private meditation of Mar, son of Rabina, a famous rabbi of the fourth century.
46. Martyrdom for the sake of prayer.
47. Dan. 6:2.
48. See note 23.
49. See note 34.
50. See note 31.
51. "A man of Rome"; also called "a man of fists" (a powerful man).
52. See note 23.

53. An a minori argument.
54. Ex. 7:28.
55. And nevertheless, since they were commanded by G-d to oppress Egypt they entered into the burning ovens.
56. Should we give our lives for Kiddush Hashem, and even enter, for this principle, into a burning furnace.
57. Hananiah, Mishael, and Azariah were not asked to worship idols, according to the Tosafot. It was simply a matter of honor to Nebuchadnezzar that they had to bow down to his statue. Thus, they were not obliged to sacrifice their lives.
58. Jesus.
59. "Sometimes lives were risked for other purposes."  
 "Once I saw an SS officer approaching our block... He ordered a boy of fourteen down from the shelf and started whipping him... There was nothing unusual about that, but this boy did not shout nor cry nor moan. We counted the lashes. He got twenty, thirty, but did not utter a word. We had never seen anything like it. After forty lashes the SS man turned the boy round and hit him on the face, the legs-- but still he was silent. After fifty lashes the beating was over. We helped the boy



get up and inquired what he had done and why he had been whipped. He said: 'It was all worthwhile; I smuggled out some prayer books to my friends, so they could pray.' Gideon Hausner, Justice in Jerusalem (New York: Schocken Books, Inc., 1968), p. 189.

60. "The reaction of the Jews of Kovno to the Nazi prohibition of prayer is described by Leib Garfunkel, Kovno Hayehudit Behurbanah, p. 133. "To the credit of the religious Jews of the ghetto, it should be noted that but a short time after the decree was issued, they gathered their strength and opened the closed synagogues once again. They prayed publically, studied mishnayot and gemara, paying no heed to the dangers this involved. It is worthwhile mentioning one episode that took place in the ghetto. That year, as in the prior one, various minyot were organized for prayer on the High Holy Days. One of these was in the hospital. On Yom Kipper in the middle of musaf.... word spread that two officers of the German Stadt--Kommissariat had entered the ghetto and were headed in the direction of the hospital. Exactly as in the days of the inquisition in Spain, they obliterated in a matter of moments all the evidence of the 'great crime.' They concealed the ark, extinguished the candles, hid the Mahzorim; the worshippers also hid in one of the hospital rooms. The two Germans walked around the hospital for a short while, and after finding nothing suspicious, left the building. After they

left, everything was put back in place, and they continued the musaf service to its end.'" See Irving Rosenbaum (New York: Ktav Publishing House, Inc., 1976), p. 165, note 11.

61. Ps. 20:9.

## Responsum 9

Whether It Is Permitted To Open The Grave Of The One Who Was Killed In Order To Retrieve Money Of Others Which Was Hidden In His Clothing?

Question: I was asked by my friend R. Mordekhai Yafo, may his blood be avenged, a question which this threatening time caused; it was in connection with the distress of famine,<sup>1</sup> which is impossible to describe, from which those imprisoned in the ghetto suffered. The situation grew worse from day to day. Those imprisoned in the ghetto sold the clothes off their backs and their last remaining belongings, in order to receive in return a portion of bread. Unfortunately, the ghetto was not lacking of sellers, but where were the buyers to be found?!

The ghetto was totally enclosed and no one could enter or exit, and (for) the unfortunate Jews who were found therein, the situation for everyone was equal--everyone of them wanted bread, and there was none. Everyone of them was ready to sell his last remaining possession which was not yet plundered by the cursed evildoers (may their names be blotted out); however, no Jews were to be found who were ready to buy these things, for everyone without exception was impoverished, and down to their last crust of bread. There was almost no contact with the gentiles, because the Germans issued a severe prohibition

upon them forbidding them from entering the ghetto, like they issued on the Jews prohibiting them from leaving it.<sup>2</sup> All who transgressed their order, forfeited his life.<sup>3</sup>

However, there was partial relief for those who wished to sell their belongings, seeing that the Germans were taking out daily a certain number of Jews from the ghetto for forced labor, and at nightfall these workers would return. And there, in their being outside the walls of the ghetto, the forced laborers sometimes succeeded in coming into contact with gentiles in secret, in order that the German eye would not look upon them, and in order that the Jews could have business and barter relations with them (the gentiles).

By means of these forced laborers, a few Jews succeeded in giving over the remainder of their jewelry, which was still left to them, to be sold to the gentiles, for example: gold coins, rings, bracelets, precious stones and pearls; for it was impossible for the forced laborers to bring larger articles out from the ghetto on their way to work, because the Germans would search their clothes on (both) their coming to, and returning from work. It was possible for the forced laborers to bring out in secret only small objects like gold jewelry and precious stones, so that the Germans would not notice, since they were in mortal danger.

Of course, the forced laborers who transferred these

objects also received their portion from the owners of the objects. The exchanged goods (food) served as sustenance for both the Jewish seller (of the jewelry), and the Jewish forced laborer--by whose action as a middle-man the object was sold to the gentiles.

Behold, the incident occurred where a Jew gave one of the forced laborers a precious stone so that he could sell it to a gentile, being that he was outside the ghetto. This forced laborer, in his desire to slip away from his place of work in order to come into contact with the gentiles so that they could buy from him this gem, was compelled to remove the yellow "Star of David"<sup>4</sup> from his sleeve, which the Jews were forced to wear as a sign of disgrace and as a sign of recognition that they were Jews; because in no other way would they be allowed to come in contact with the gentiles, since the Germans would not let a Jew walk alone outside the ghetto walls without the accompaniment of German guards.

And since, according to the German order, it was forbidden for the Jews, in their being outside the walls of the ghetto, to walk on the sidewalk as is the way of free men, rather it was incumbent upon them to walk in the middle of the street with their German guards like prisoners--this forced laborer was also compelled to walk on the sidewalk in order to conceal his identity from the eye of the Germans, so that they would not suspect that

he is a Jew.

While he was walking on the sidewalk, the Germans saw that he was a Jew and killed him by shooting as a punishment for transgressing their order which forbade Jews to leave the ghetto, and (as a punishment) for the final sin: for he made the situation more serious in that he dared to walk on the sidewalk which was designated only for men of rank--the Germans and their flock--the gentiles--who became leaders because they oppressed the Jews; as the sages said: "Whoever oppresses the Jews becomes a leader (of the non-Jews)."<sup>5</sup>

After the murderers killed this Jewish person, they brought him to the ghetto and gave him over to the Jews "to serve as a sign to the rebels,"<sup>6</sup> so that they would listen and see, and not dare to do like this "evil" deed of going out from between the walls of the ghetto, and moreover, (not) to walk on the sidewalk as free men.

The Jews of the ghetto buried this holy one with his clothes,<sup>7</sup> according to the law pertaining to a murdered person. Only afterwards did the matter of the precious stone, which was sown in his clothing, become known. Since the owner of the stone demanded what was his in saying: "by selling this stone he hoped to save his life and the life of his family who were dying from starvation"; I was asked whether it is permitted to open the grave of this murdered person to retrieve from his

clothing this stone, and to give it to its' owner so that he could sustain by it "his children crying out to their father for bread?"<sup>8</sup>

Answer: In tractate BB, p. 154a, we read: "It once happened at Bene-Berak that a person sold his father's estate, and died. The members of the family, thereupon, protested (that) he was a minor at the time of (his) death."<sup>9</sup> They came<sup>10</sup> (to) R. Akiba and asked whether the body might be examined.<sup>11</sup> He replied to them: 'You are not permitted to desecrate him'; and furthermore, (the) signs (of puberty) may undergo a change after death."<sup>12</sup> See ibid. where they conclude concerning this case in Gemara on p.(154b): "Do you think, (replied R. Lakish), that the property was in the possession of the members of the family and that the buyers came to protest? (This was not the case) The property was in the possession of the buyers, and the members of the family came and protested. Logical reasoning also (supports) this (view). Since when he said to them: 'You are not permitted to desecrate him', they remained silent. It is all right if you would say (that) the members of the family protested, for one can well understand why they remained silent;<sup>13</sup> if however, you assume (that) the buyers protested, why (may it be asked) did they remain silent? They should have replied to him: 'We gave him money; let

him be desecrated!'<sup>14</sup> If this is the reason<sup>15</sup> we would not have cited the case; for this is what he (R. Akiba) really said to them:<sup>16</sup> first, because you are not permitted to desecrate the body; and the second reason in case you might say: 'He took (our) money, let him be desecrated': (this argument does not hold because) the signs (of puberty) may change after death.<sup>17</sup>

In the Tosafot *ibid.*, s.v. "zuzei yehavinan linvul v'linvul" they wrote: "But heirs are not permitted to desecrate him for the sake of the inheritance, because they gave nothing (to the man to retrieve), and furthermore, since he is a relative." The implication of this passage according to the interpretation of the Tosafot is that if the matter pertains to others<sup>18</sup> --for instance if we say: "that the property is the presumptive right<sup>19</sup> of the members of the family and that the buyers come and make a claim (to this property)," we may say from the standpoint of the law just the opposite: let him be desecrated, since the buyers gave him money, and if they do not desecrate him by examining him it will cause them monetary loss. Only because we say the signs (of puberty) may change after death, are they not permitted to do thusly.<sup>20</sup>

This being so in our case, where the matter concerns others, certainly at first sight, we must permit the man who gave him the precious stone to open the grave of the



murdered one, since this man -- the owner of the (precious) stone -- could say: "I gave you a precious stone, 'let him be desecrated,' as they said in the Gemara.

Behold in the Sh. Ar., YD 363:7, the author decided: "It is forbidden to open the grave after the lid of the coffin was closed, even if the heirs protest that it be opened in order to examine whether he produced two (pubic) hairs."<sup>21</sup> The implication of the author's words is: that before the lid of the coffin is closed, one is permitted to open the grave, even if only because of the protestation of the heirs, and before the closing of the coffin, there is no desecration. This is the inference in the Bet Hillel<sup>22</sup> which was printed on the margin of YD, see *ibid*. However, he is surprised about this, that it is satisfactory (to open the grave) because of the reason (i.e. prohibition of) 'desecration of the dead'. One can say, that before the coffin is closed--there is no desecration, however, (this is not really so) because of the reason that 'the signs (of puberty) may change after death.'<sup>23</sup> "Generally, there is no time limit to the matter"<sup>24</sup> because the signs (of puberty) may change immediately after death. For were it not so (as you have just said), they would have given their words to different measures,<sup>25</sup> for certainly immediately after death the signs (of puberty) may change," see *ibid*. in Bet Hillel.

Also in the Hakhmat Adam, ch. 158:11, he decided thusly, see *ibid.* where the author wrote: "It is forbidden to open up the grave after it is closed, even if the heirs protest that it be opened, for instance: if he sold or gave away something,<sup>26</sup> and they want to examine (him) whether he had produced two hairs, it is forbidden. In *Sefer Hasidim* ch. 451, and in ch. 730, the author wrote: "When there is a pestilence in the city, it is permitted to open the grave to examine the dead--since perhaps someone swallowed a piece of clothing which causes danger<sup>27</sup>, or his hands and fingers were not properly straightened out;<sup>28</sup> and this is because of (the principle of) 'piquah nefesh'<sup>29</sup> that one can do this (open the grave) to the dead. It seems to me that not only when there is a pestilence, rather if they knew that his hands and fingers were not properly straightened out, it is permitted to open the grave. Furthermore it appears to me that (this is) only from the time when the grave is closed, that is: that soil has already been placed on the lid of the coffin; but as long as soil has not been placed on it, it is permitted to open it, even for other reasons, which is not as it is written in ch. 408."<sup>30</sup>

We find that the Hakhmat Adam truly holds that the halakhah is: that before the closing of the grave, it is permitted to open the grave; before the closing of the grave, there is no desecration. Moreover, the author adds

"That even after they have placed the lid on the coffin (there is no desecration). Nevertheless, as long as they did not place soil on top of the lid (of the coffin), it is permitted open the grave; for closing of the grave is not simply placing the lid on the coffin alone, but the putting of soil on top of the lid. As long as soil has not been placed (on the lid) this is not (considered as) closing of the lid (of the coffin)."

According to his opinion (author of Hakhmat Adam) in which he permits the opening of the grave before the lid is closed, it is apparent that seemingly we have to say that he holds that the signs (of puberty) may change only after closing of the grave, and not immediately after death; this is not like the meaning of the Bet Hillel mentioned above.<sup>31</sup> For if this is not so, it is still difficult, since the Hakhmat Adam should have prohibited the opening of the grave for the reason: that (the) signs (of puberty) may change after death. Likewise, it is really necessary to speak according to the understanding of the wording of the Sh. Ar. in YD, mentioned above. The matter requires further study, for the astonishment (criticism) of the Bet Hillel<sup>32</sup> is very weighty. When, because of some reason the closing of the lid (of the coffin) is delayed for some time, is it really so that in such a case, that (the) signs (of puberty) may

change? Even if we assume that the signs (of puberty) may not change immediately after death, rather some period of time after death, nevertheless, how is this connected to the closing of the lid?--is it not more reasonable to ascribe the matter of 'change of the signs' (of puberty) to some definite period of time which has passed after death?! Since we have no such definite time period, certainly we must not allow different interpretations in respect to varying time periods, rather we must prohibit the opening of the grave, even after death, for this reason: that (the) signs (of puberty) may change immediately after death.

However, where the case is to open the grave not in order to examine whether the deceased was an adult or a minor, as is the case in tractate BB, rather for another reason, for instance those things which were mentioned in Hakhmat Adam,<sup>33</sup> it is possible that the Bet Hillel agree that it is permitted to open the grave before the lid of the coffin is closed, because before the lid is closed, there is no desecration (of the dead).

Behold, in the Yer. MQ ch. 3, Hal. 4,<sup>34</sup> it is stated: "R. Yehoshua of Sikhnin said in the name of R. Levi: all three days (after death) the soul hovers over the body thinking that it will return to the body. However, when it sees that the glow (color of the face) has changed, it leaves the body and goes away, for after three days,

there are cracks on his face," see *ibid.* The clear meaning of the words of the Yer. is that any fear of desecration (of the dead) pertains only after three days, since from then (on) the glow of his face changes; however, there is absolutely nothing to worry about concerning desecrating the grave within these three days of its burial. For during all the three days, behold, the face of the deceased does not change, so what fear of desecrating do we have here?!

I truly saw that the author of the book Leqet Yosher testified in the name of this teacher, author of Terumat Hadeshen, in part 11, p. 87, in the case of a dead person who, for some reason, was buried without being dressed in his talit; he permitted the grave to be opened for him on the day he was buried in order to dress him in his talit. According to the words of the Yer. mentioned above: certainly we must permit it, not just on the day on which he was buried, but during the three days after his burial, because during this period there is no desecration (of the dead).

Also in the resp. of Shav Yaakov, ch. 64, I saw that he responded in the case of a virgin where they forgot to remove from her, before burial, the earrings which were in her ears. See *ibid.*, where they permitted the grave to be opened and (for them) to remove the earrings, even though she was buried the day before this; for in this

manner there is no desecration. Also in consonance with this resp. we have to say that the case was as so--that in the same way, he permitted the opening of the grave within three days of her burial on the authority of the Yer. mentioned above.

According to the words of the Yer., it is necessary to explain that case in BB p. 154, which we cited above, where R. Akiba said to them: "You are not permitted to desecrate him." Certainly he speaks (about a case where) the heirs would want to open his grave after three days of his burial; then truly there is no fear of desecration of the dead, for after three days certainly his face changes, and there is here a case of desecration if they open the grave and see the deceased in his disgrace--when the glow of his face is different from what it was.

According to this, in our case, aside from that which we concluded to permit because 'the matter concerned others'--the owner of the (precious) stone can certainly say: "'let him be desecrated', but return to me the precious stone," as they said *ibid* in BB, and as I wrote above. Behold, we have according to what was said another reason to permit it, for in our case, it is a fact that the owner of the precious stone demanded immediately after the burial that the grave be opened, in order to remove the (precious) stone from his clothes; within three days of his burial, behold there is no fear

of desecration according to the words of the Yer. mentioned above. This being so, certainly we must permit the opening of the grave in our case.

In addition to these two reasons which permit it we can add a third reason to permit this, for behold according to the words of the Hakhmat Adam which we cited above who wrote: "That when there is a pestilence in the city, it is permitted to open the grave to examine the dead, since perhaps someone swallowed a piece of clothing which causes danger, or, his hands and fingers were not properly straightened out; for every matter which involves 'piquah nefesh', one can do this<sup>55</sup> to the dead. This being so, in our case, according to this it is permitted to open the grave, for there is no 'piquah nefesh' more important than this--because this (precious) stone is something with which its owner can sustain the life of his family, who are starving for bread and wrapped in pangs of hunger in a time of distress like this; and they have nothing with which to keep their souls alive. For this (reason), certainly it is permitted to open the grave and to remove this stone from the clothes of the deceased, so that it (the stone) will serve them as sustenance and keep them alive.

Also in the Arukh Hashulhan, ch. 363, note 8, I saw that he decided: "To sum up, (for) anything done for the fulfillment of a mitsvah<sup>56</sup> or (to prevent) a monetary



loss to others, there is no fear of opening the grave, see *ibid.*

Also in the resp. of Maharsham, part II, ch. 112, I saw that he wrote: "There was an incident where six people were killed and embalmed by order of the government, and buried without their clothes which were on them at the time of the killing; for at the time of embalming, their clothes were stripped from them, and they forgot to bury the clothes with them. I was asked whether it is permitted to open their graves the day afterwards, in order to place their clothes with them. See *ibid.* where he answered as a matter of course; it is permitted to open their graves since the matter was done for 'the honor of the dead.'

In our case behold, there is also honor to the dead in the opening of the graves, because there is no greater honor than this for the dead that this stone be returned to its owner, so that it should not be said about him (the dead person) that he took the money of others to his grave.

The result is that by opening the grave in our case, he bestowed lovingkindness on the living and the dead, for by means of opening the grave and removing the stone from the clothes of the deceased, they fulfill the mitsvah of 'piquah nefesh,' and also cause pleasure and honor to the deceased. The opening of the grave is for the 'ful-



fillment of a mitsvah,<sup>4</sup> and for the 'needs of the dead' at the same time. This being so, certainly it is permitted to open the grave. For behold, in the Arukh Hahsulhan it is permitted to open the grave either for the 'needs of the dead' or the 'fulfillment of a mitsvah', and it is as we cited his words above. This being so, all the more so (in a case where these) two (reasons) come together--for the 'needs of the dead', and also for the 'fulfillment of a mitsvah'--that it is permitted to open the grave.

However, at first sight all this seems to be insufficient; for there is an additional reason because of which we should prohibit the opening of the grave, and it is from the reason of "trembling because of the judgement;"<sup>57</sup> like we find with Samuel who said to Saul the king: "Why has thou disturbed me, to bring me up?--see in I Sam., ch. 28:15. The saying of the sages is well-known; that Samuel the prophet was afraid of 'trembling because of the judgement' when Saul the king brought him up by a witch, because he thought that they were bringing him up to take him to the Heavenly Court. This being so, should we not forbid the opening of the grave, apart from the reason of 'desecrating the dead,' rather also because of the reason of 'trembling because of the judgement'?--for the deceased will think that they are going to bring him to court.

Likewise, I saw in the book Avnei Zikharon, ch. 93, where he was asked concerning the matter of an eighteen month old infant--where they forget to pour nine kabin of water over him<sup>38</sup> in order to purify him--whether it was necessary to open the grave to purify him? See ibid. where he replied: "That so long as he is not buried, the (principle of) 'trembling because of the judgement' does not apply; certainly if they forgot to purify him according to the law, he must be purified a second time. However, after he has been buried, the grave must not be opened because of this."<sup>39</sup> In the resp. of Bet David it is written likewise in ch. 196: "Seeing that the custom of nine kabin is not mentioned in the Sh. Ar., even though this custom was widespread throughout all of Israel, the grave must not be opened because this would disgrace the dead."

See also in the Pithei Teshuvah YD ch. 363, note 7, where the author wrote: 'It is forbidden to open the grave': "see at the end of the resp. of Havot Yair who quotes the resp. of the great R. David Oppenheim, p. 247, where he wrote in the name of our rabbi and teacher Gershon from Mets concerning two dead people who were buried, and they forgot to put on each of them one piece of clothing that is customary as part of the shrouds;<sup>40</sup> one of the dead was already older than twenty, and the other was less than twenty, and he (R. Gershon of Mets)

ordered the opening of the grave of the younger one in order to wrap him in what was missing from the shrouds, because with respect to a younger person (minor) (the principle of) "trembling before the judgement" does not apply. However, for the older one (adult)--one must not open his grave because fear of "trembling before the judgement" applies, as Sammu<sup>el</sup> said: "Why has thou disturbed me?" He (R. Oppenheim), may his name be for a blessing, raised an objection against him (R. Gershon from Mets) from the Talmud, BB, p. 155, see *ibid.*; see in the resp. of Hakham Tsvi, question 47; and see in the resp. of Knesset Yehezkel, question 44, what the author wrote concerning this: "That our rabbi and teacher Gershon (from Mets), may his memory be for a blessing, decided properly without any doubt," see *ibid.* Behold, we have it explicitly that the opening of the grave (of an adult) must be prohibited because of the reason of fear of "trembling because of the judgement."

However, immediately afterwards, the Pithei Teshuvah add an answer writing: "See in the resp. of Shivat Tsion, chs. 64, 65 and 66, concerning a slain person who was found, and the shape of his face was unrecognizable; amongst the clothes and letters, it became apparent that he had a wife when he left home--already half a year ago. He was buried, and afterwards the wife came and said that her husband had clear marks

(of identification) on his body, (and asked) whether it was permitted to open the grave to see the marks in order to release her from the chains of being an agunah.<sup>41</sup> The opinions of the great R. Eliezer Flekeless was to permit it; for behold, even buyers are able to say: "we gave him money, let him be disgraced," unless (one accepts the) reason that '(the) signs (of puberty) may change', as explained in Tractate BB, p. 154. This being so, this woman, so she will not be an agunah all the days of her life, could say: "What do I care whether he is disgraced?--these marks (which I know about) never change!" And especially: "that this is also for his honor, since his sons could mourn and say Kaddish."<sup>42</sup>

The rabbi, the author (of Shivat Tsion), may G-d preserve and redeem him, disagrees with him (Flekeless), and concludes that it is forbidden. R. Flekeless retracted his view<sup>43</sup> and agrees with his (author of Shivat Tsion) words from the reason that there,<sup>44</sup> (the identity of) the slain person is known for certain, rather they had doubts whether he was a minor; however in our case<sup>45</sup>--perhaps he is someone else and the disgrace is for no compelling reason--certainly we must not permit it, see *ibid*. Again I saw in the resp. of Knesset Yehezkel, section Even Haezer, question 46, s.v. "Omnam", from there he wrote: "That it is definitely permitted to open the grave to see him in order to release his wife, and

it should not be forbidden (to exhume the body) for the reason of: "Why hast thou disturbed me?" Since it is permitted to open the grave (to remove the body, in order to) bury a person in his own cemetery plot, how much to more so is it permitted to release his wife, see *ibid.* However, his proof is not convincing," this is the wording of the *Pithei Teshuvah*.

What can be concluded from the words of the *Pithei Teshuvah* is, that according to the opinion of the *Knesset Yehezkel*, it should not be forbidden to open the grave from the reason of "trembling before the judgement" where the grave is opened in order to release his wife even though it is possible that he is 'someone else' and that the disgracing was done for no acceptable reason. According to the reason of the *Knesset Yehezkel*, it is necessary to say that the author holds that since eventually it is possible that, by opening of the grave, the matter concerning whether he is her husband or not will be clarified; the matter is considered as being necessary for (the fulfillment of) a mitsvah, for which it is permitted to open the grave because of this, and as it was decided in the *Arukh Hashulhan* which I cited above<sup>46</sup>,

Nevertheless, according to what we concluded above<sup>47</sup>, that where the matter concerns "loss of others," those others can say: "let him be desecrated," as it was stated in BB, p. 154. The same holds true: for the "fulfillment

of a mitsvah," "honoring the dead," and likewise where it is for "piquah nefesh" that it is permitted to open the grave, and there is no fear of desecrating the dead. This being so, the same applies that one should not fear: "why am I causing 'trembling before judgement'" here in our case where these reasons are present. It is like our great rabbi and teacher Eliezer Flekeless cited as it was stated in the Pithei Teshuvah which we cited. Even though he retracted his permission, this was for other reasons, i.e.: because in his case, behold one must worry lest he is 'someone else' and the desecration was in vain, as is explained in the Pithei Teshuvah *ibid*. But in our case, where there is no doubt that perhaps he is 'another dead person', certainly we must decide to permit it. (In a case) like this, certainly our great rabbi and teacher Eliezer Flekeless would not retract his permission, and especially since the opinion of the great Baal Knesset Yehezkel is to permit it, even (in a case) where there is fear lest he is 'another dead person;' according to what we cited from the words of the Pithei Teshuvah, this being so, how much the more so in our case.

In the Birkhei Yosef, ch. 363, I also saw that the author wrote concerning the case of an incident where the gentiles dug up the bodies of the dead of Israel (dead Jews) and stripped them naked; see *ibid*. where he permits

the opening of the graves of the dead who died within a months' time (in order) to dress them and to bury them as is proper. I also saw in the book *Shevut Yaakov*, part II, ch. 103, where the author concluded that the essence of the prohibition of opening the grave is because of 'desecration of the dead'; the reason of 'trembling because of fear of the judgement' is nothing other than a sub-question of the prohibition of opening the grave. Nevertheless, he permits the opening of the graves of Jews to see whether there are shrouds on the deceased.

Behold the truth in the book *Arbah Turei Even*, ch. 8, where he disagrees with the *Shevut Yaakov* and holds that no grave is to be opened, see *ibid.* Likewise in *B'ar Hetev*, ch. 352, note 1, it is cited *ibid.*: "That if they forget to dress (the dead in) any particular article of his clothing (e.g. the shrouds), they should put it (this article of clothing) on the coffin." The meaning of his words is that the grave should not be opened for this (purpose). See in the resp. *Hakham Tsvi*, ch. 47, and likewise in the book *Havalim Bene'i'mim*, part II, ch. 72, see *ibid.* where the author wrote that in ch. 363 there is no permission for that, to open the grave because of "the wearing of the shrouds." See also in the book *Agudat Azov*, ch. 26; in the book *Kneset Yehezkel*, section *Even Haezer*, ch. 46; in the book *Shivat Tzion*,



chs. 64 and 65; in Shoal U'mashiv, part I, ch. 231; and in the resp. of Ktav Sofer, YD, ch. 174, see *ibid.*

At any rate, in our case, according to my humble opinion, we have a matter with certain "piquah nefesh", and it is permitted to open the grave for all the different reasons permitting it which I cited above. All these great rabbis which we cited and are lenient, are authoritative in a time of great need as in our case.

And what I saw in the book Binyan Tsion Hahadashot, ch. 17, which discussed the case of a dead person who was buried with his clothes. After the burial it became known that there was money in his clothes, and the children of the deceased were poor; whether it is permitted to open the grave in order to remove the money for the sake of sustaining the souls of his poor children? See *ibid.* where his opinion is to prohibit it based on that same passage in BB which we cited above, p. 154, and from what the Tosafot wrote *ibid.*: "But heirs are not permitted to desecrate him for the sake of the inheritance because they gave nothing, furthermore he is their relative," as we cited above. This is also only in his case, where the matter of this money found in the clothes of the deceased pertains only to the heirs; but in our case, where the precious stone found in the clothes of the deceased belongs to others, certainly also the author of the book Binyan Tsion Hahadashot, would not forbid the grave to



be opened. For behold, others do not care if he is desecrated and they say: "as for us, our stone was with him, 'let him be desecrated,'" as is stated in the case in BB, and the matter is obvious.

Likewise I decided the practical halakhah that they should open the grave, remove the (precious) stone from the clothes of the deceased, and return it to its owner. May our good Lord grant us atonement, and render the recompense of vengeance on our persecutors, enemies, and those who ostracize us. May He gather the congregation of Yeshurun from amongst the nations, and "restore to it its judges as at the first, and its counselors as at the beginning,"<sup>48</sup> speedily in our day, amen.

## NOTES

1. Lucy S. Dawidowicz in her book: The War Against The Jews (New York: Bantam Books, 4th Printing, Sept., 1978), pp. 282ff, explains that it was deliberate German policy to starve the Jews, and on November 4, 1941, the German occupation authorities ordered that Jews were to receive half the weekly maximum food rations.

Leib Garfunkel in The Destruction Of Kovno's Jewry (Israel: Yad Vashem, 1959), pp. 101ff. details the starvation conditions which existed in the Kovno Ghetto at the time. The prisoners of the ghetto, he relates, received only one-third the minimum number of calories required for normal survival, and this was decreased to much less during the period of the "aktions" beginning in November, 1941.

2. See *ibid.*, and also Paliukov, Harvest of Hate, pp. 38, 40, 87.

3. Garfunkel *ibid.*, pp. 101-2, relates an incident which took place on Rosh Hashanah of September 22, 1941. At this time two Jews were shot for buying a bag of potatoes at the market, even though they had entreated

the guards, accompanying them from their place of work to the ghetto, to let them stop a few minutes at the market.

4. See H.J. Zimmels, The Echo of The Holocaust In Rabbinic Literature (New York: Ktav Publishing House, Inc., 1977), pp. 124-5, note 348. See also, Raul Hilberg, Documents of Destruction (W.H. Allen, Essex Street, London, 1972), p. 19 (top) where he explains that the Yellow Star of David (or Judenstern) had to be worn by Jews after September 14, 1941.

5. See Git. 56b.

6. Nu. 17:25.

7. Rama, YD 264:4; see Shakh ibid., note 11. "Where the deceased died instantaneously through violence or accident and his body and garments are completely spattered with blood, no washing or taharah (purification) is performed. The body is placed in the casket without the clothes being removed. Only a sheet is wrapped around it, over the clothes. The blood is part of the body and may not be separated from it." See in Maurice Lamm, The Jewish Way In Death & Mourning (New York: Jonathan & David Publishers, 1969), p. 244.

8. Lam. 4:4.

9. "A minor under twenty years of age is not eligible to sell any of his father's estate. Hence, the property he sold should belong to the surviving members of the family. See Soncino Talmud, BB 154a, note 2. See also Rashi, BB 154a, S.V. Amdu alav bene mishpahah.
10. The buyers.
11. "To exhume him, so as to ascertain his age by a post-mortem." Ibid., note 4.
12. And this change could make the minor appear as an adult. Rabenu Tam explains (see Iosefot ibid, s.v. ve'od), that during his lifetime his hairs were white, and were moles (and no sign of puberty). Now, they have turned black after death and look like signs of puberty." Thus, the examination is not permitted since it could produce no reliable evidence as to whether the deceased was a minor or an adult.
13. They did not want to see their relatives desecrated.
14. "We (the buyers) do not worry about his disgrace for he is not our relative and we have suffered a substantial loss (hefsed merubeh)." Rashi, ibid., s.v. linvul.
15. "It is our money, so let him be desecrated."

16. The buyers.
17. See note 12. This desecration would not help the buyers to retrieve their money since the signs of puberty may change.
18. Non-relatives (the buyers).
19. We presume that according to law the property is a family possession.
20. That is: desecrate the body.
21. Whether he was of age (an adult). See note 9.
22. Hillel ben Naftali.
23. See notes 12 and 32.
- 24-25. It is impossible to determine and set a precise time at which the signs of puberty change. Thus we say that they change immediately, as not to allow for different interpretations and calculations of this matter.
26. See note 9. A minor (person less than 20 years old) is not eligible to make major business transactions, only those which are inconsequential. Therefore, if he made such illegal transactions, they are invalid (if one can prove he was a minor).

27. See *Lehem Hapanim*, ch. 351. This text should be amended to read "it is worn", and the author means to say: He was buried in worn shrouds (instead of "swallowed a piece of clothing").
28. See *Kitsur Shulhan Arukh* by Rabbi Solomon Gancfried and translated by Hyman E. Goldin (New York: Hebrew Publishing Company, 1961), vol. 4, p. 99, Hal. 5, where the author states: "Care should be taken not to allow the fingers of the dead to remain closed." The following midrashic reason for opening the hand and straightening the fingers is taught in a Baraitah in the name of R. Meir: When man enters this world, his hands are clenched, as if saying, the whole world is mine, I shall adopt it. When he departs this world, his hands are straight, as if saying, I adopted nothing from this world. For thus said Solomon (Ecc. 5:14): "As he came forth from his mother's womb, naked shall he return to go as he came, and shall take nothing for his labor, which he may carry away in his hand." (*Kohelet Rabbah* 5:21).
29. "The duty of saving an endangered life (piquah nefesh) suspends the operation of all the commandments in the Torah, with the exception of three prohibitions: no man is to save his life at the price of murder, adultery, or idolatry. The sages of the Talmud interpret the words:

"he shall live by them" (vehai bahem), in Lev. 18:5, to mean that the mitsvot, the divine commandments, are to be a means of life and not death. Specifically, the duty of saving a life supercedes the Sabbath laws (piquah nefesh doheh et hashabbat)..." In Philip Birnbaum, A Book of Jewish Concepts (New York: Hebrew Publishing Company, 1964), p. 512. See also Ket. 5a; Yoma 85b; Yad, Shabbat 2:2-3.

30. Here, the relatives take precedence over others. Therefore the body cannot be desecrated for the sake of others.

31. Who said the signs of puberty change immediately after death.

31. He is astonished that it is satisfactory according to the Sh. Ar. YD 363:7, to open the grave before the lid of the coffin is closed, because of the prohibition of 'desecration of the dead.' The Bet Hillel contend that the signs of puberty change immediately after death, therefore it is impossible to examine the dead, even before the lid of the coffin is closed, because this would constitute 'desecration of the dead.'

32. "When there is a pestilence in the city, it is permitted to open the grave--since perhaps the shrouds

were worn, or, his hands and fingers were not properly straightened out; and this is because of piquah nefesh that one can open the grave to examine the dead.

34. Read Hal. 4 and not Hal. 3.
35. Open the grave.
36. Heb. tsorekh mitsvah. Whenever the opening of the grave serves the purpose of fulfilling a mitsvah (e.g. piquah nefesh) it is permitted.
37. Heb. hareidat ha-din. According to this concept, the deceased thinks that because he is moved, he is being taken up before G-d for judgement. See Sh. Ar. YD 363:1 in the Shakh; and in I Sam. 28:15.
38. See Kitsur Shulhan Arukh *ibid.*, Vol. 4, pp. 98-99, Hal. 2-3.
39. 'Trembling before the judgement' (hareidat ha-din)
40. The shrouds consist of the following seven garments:
  - a) mitsnefet, a headdress; b) mikhnasayim, trousers;
  - c) K'tonet, a chemise; d) Kittel, an upper garment; e) avnet, a belt; f) talit, a prayer shawl; g) sovev, a linen sheet. For further information concerning the shrouds (takhrikhim) see *ibid.*, Maurice Lamm, pp. 246-7.



41. "A wife separated from her husband who has not been heard from for some time is prevented from re-marrying unless she can provide evidence of his death. If she has no proof of her husband's death, or if she has not obtained a Jewish bill of divorce (get) from her husband who has deserted her and disappeared, her status as a wife remains unchanged and she is legally barred from re-marriage. She is referred to as an agunah, a term deriving from the verb meaning to be shut off, restrained (Ruth 1:13)." Philip Birnbaum, *ibid.*, p. 457ff.
42. Mourner's prayer.
43. That it is permitted to open the grave.
44. The case in BB, p. 154, *ibid.*
45. The case mentioned in Shivat Tsion, chs. 64, 65, and 66 *ibid.*, where the wife wanted to be released from being an agunah by examining this man who was found, whose face was unrecognizable.
46. "For anything done for the 'fulfillment of a mitsvah', (or to prevent a monetary loss to others), there is no fear of opening the grave."
47. See note 46.
48. Is. 1:26.

## Responsum 10

Whether It Is Permitted To Eat In The Presence Of The Dead?

Question: In the days of evil and wrath, a time when outside the sword of the cursed German murderers devoured, and in the rooms of those imprisoned in the ghetto fear prevailed; and man asked his fellow: what will the day bring? Then, the wicked ones (may their names be blotted out) began to confine our steps,<sup>1</sup> and periodically to reduce the ghetto territory. On top of this, they began to expel the prisoners from their places and to transfer them from street to street, until in the end, the ghetto which was formerly in Slobodka<sup>2</sup> was moved outside the city--a place where Jews never lived. In this place, there was insufficient housing for those imprisoned in the ghetto, and therefore each house was crammed with more people than it could hold. Because of this pressure the situation of those imprisoned (in the ghetto) worsened seven-fold, since they were compelled to live in crowded conditions without being able to turn left or right.<sup>3</sup>

Then, at this time, a friend of the honorable R. Efrayim Mordekhai Yaffe, may G-d avenge his blood, came to me and asked me the following question: seeing that in one of the houses a Jew died at night and the time of his funeral was set for the next day, and until the time

of the funeral the deceased remained in the room; and seeing that other families lived in this room with us, and it was incumbent upon them to report daily for forced labor duty; and they were required to wake up early, before the crack of dawn, and to prepare themselves in order that they would be ready to present themselves at the place of their work at the time designated for them by the Germans--for otherwise, severe punishment was imminent for them (the Jews) at their (the Nazi's) hands; therefore he asked whether it is permitted for them to eat, after they have awakened from their sleep, in this same room in which the dead was lying?--for because of the great cold which prevailed outside, it was totally impossible to eat their meal there. Likewise, it was impossible for them to go to work without eating their meager meal because of their weakness and feebleness from forced labor--which breaks the body and devours the soul together.

Answer: In tractate Ber., p. 17b we read: "He<sup>4</sup> whose dead lies before him,<sup>5</sup> eats in another house. If he has no other house, he eats in his fellow's house. If he has no fellow to whose house he can go, he makes a partition and eats (behind it). If he has nothing with which to make a partition, he turns his face away and eats. He may not eat reclining, nor may he eat meat nor

drink wine; he does not say a blessing (over food),<sup>6</sup> nor grace after meals,<sup>7</sup> nor do others say a blessing for him<sup>8</sup> nor is he invited to join in the grace.<sup>9</sup> He is exempt from reciting the Shema', and from saying the tefilah, from putting on tefilin and from all the precepts laid down in the Torah,<sup>10</sup> see *ibid.* It is stated likewise in MQ p. 23b, and in tractate Semahot ch. 10, see *ibid.*

See in the Rashba *ibid* in Ber.: "He does not say a blessing nor grace after meals;" this means that it is forbidden (for him) to say a blessing and to say grace, and if he wants to be strict on himself he is not permitted, etc. We read in the Yer.: "If he wants to be strict on himself<sup>11</sup> we do not listen to him."<sup>12</sup> They (the *benei yeshiva*) asked a question: what is the reason there (that one cannot be strict)--is it because of 'honoring the dead' or because he has no one to carry his burden (of burying a dead relative)? What is the practical difference between them (in accepting one reason over the other)? There is a practical difference in case he has someone else to take care of the corpse of his relative. If you say that it is because of 'honoring the dead'--it is still prohibited.<sup>13</sup> But if you say the reason (why the close relative cannot do the mitsvah) is because he has no one to take from him the duty (of burying a dead relative), it is permitted<sup>14</sup>, etc. In any case, it appears<sup>15</sup> (that the true reason for not performing the

mitsvot is) in accordance with those who say the prohibition is because of 'honoring the dead; it is taught explicitly in tractate Semahot that it is forbidden because of 'honoring the dead'. However, concerning the eating of meat and the drinking of wine, it seems that if he has someone to take from him the duty (of burying a dead relative), that he is permitted; this is only lest he indulge excessively in eating and drinking, and not occupy himself with the burial of his dead. It was likewise reported about Rabbenu Tam when his sister died they proclaimed it in another city that he ate meat and drank wine, for he said: since she has a husband who is obligated concerning her burial, he was not prohibited from (eating) meat and (drinking) wine."

See *ibid.* in *Ber.* in the *Tosafot*, s.v. ve'eino where they also cited the case of Rabbenu Tam at the end of their words. See *ibid.* where they concluded: "It is possible that Rabbenu Tam, had he been in the city himself, would also be lenient for the same reason."<sup>16</sup> Thus, Mordekhai (ben Hillel) in *Ber.* concluded likewise, see *ibid.* However, Rabbenu Yonah wrote *ibid.* in *Ber.*: "It is possible that if he was not in another city and he was with her, that he would not have done thusly."

Furthermore, one can say and make a distinction, that only in regard to his married sister--who is not (included among the seven relatives from which a Kohen becomes

impure)<sup>17</sup> --is he lenient from the Torah.<sup>18</sup>

See in Rashi, Ber. ibid, where he explains pertaining to the passage: "He whose dead lies before him eats in another house,<sup>1</sup> for it would seem to be lo'eg la'rosh 'mocking the poor'"<sup>19</sup> (i.e. dead), see ibid. However in Nemuqei Yosef the author wrote: "That they only permitted those things in the presence of the dead which are necessary for his benefit, and eating is a need of the living. It is obvious that not only are the mourners forbidden to eat in the presence of the dead, rather all men are forbidden. For behold, according to the reason which Rashi wrote: "that it is (forbidden) because of 'mocking the poor'" (i.e. dead), it is obvious that one must not differentiate between the mourner and any other person, for this reason applies to everyone. The law is the same according to the reason of the Nemuqei Yosef-- not to differentiate, and this is obvious.

From what was stated in the Gemara: "He whose dead lies before him," this seemingly means only (when) concerning "his dead" is he prohibited from eating in his presence. But another person, (for whom) the deceased is not "his dead", is permitted. Likewise what was decided in the Sh. Ar., YD ch 341:1,: "(Regarding) someone who has a deceased relative for whom he is obligated to mourn, before burial he eats in another house, etc. See ibid., for the meaning is: this law pertains only to he who is

obligated to mourn over his dead, and does not pertain to any other man. One can say that the Lah Mibiah ("not necessary") reasoning<sup>20</sup> applies: it is not necessary to say that someone else who is not an onen<sup>21</sup> be forbidden to eat in the presence of the dead, for behold it is forbidden to bless (grace) in the presence of the dead. However, of the onen himself, who does not bless (the motsi and grace), I might say that it is permitted to eat. Therefore, we are informed that the prohibition is not because of the blessing, rather because of the eating itself; for concerning eating itself the prohibition of 'mocking the poor' (i.e.: dead) applies. The same applies to the reason of the Nemuqei Yosef; the matter is perfectly clear. I might say that the very reason is because of 'mocking the poor' (i.e.: dead); therefore, another person is forbidden to eat in the presence of the dead because of the blessing bound up with it, because of 'mocking of the poor' (i.e.: dead). However, of an onen who does not bless, I might say that it is permitted for him to eat in the presence of the deceased. Therefore he informs us that the very reason is because he is only permitted to do those things in the presence of the dead which are for his (the dead's) benefit, and eating is for the benefit of the living and not the dead. According to the words of the Nemuqei Yosef, one can say according to this explanation concerning eat-



ing itself, it is not prohibited because of 'mocking the poor'<sup>22</sup> (i.e. dead), and give further thought to it.

See in the Hidushim and in the Bei'urim l'halakhah, onen ch. 21, where the author wrote: "Those<sup>23</sup> spend the night there with the dead to guard him<sup>24</sup>. If they want to eat there, they should be rebuked; even a casual meal or tasting of fruit or drinking water is forbidden." The Sedei Hemed wrote likewise, aveilut 116, in the name of the great authorities "that it is forbidden to eat and drink in the presence of the dead, and in particular for the guards (who watch over the body). Even smoking is prohibited. There is no differentiation between relatives and others (categories 30-143), and in almost all the cities of our land, the burial society declared a prohibition on this." Likewise in Shakh, ch. 341, as the poskim understood his words. See in the Pithei Teshuvah *ibid*, in the Tiferet l'Moshe, in the Shalomei Tsibor, and in the notes of Hagra *ibid*.

On the basis of all that has been stated, it is obvious that in the room where the deceased lies it is forbidden to eat. It is not merely prohibited to the relatives who have to mourn for him, but even others are forbidden (to eat in that room). However, in Hakhamat Adam, section 153:1, the author wrote: "Only the mourners, but another man who is not a mourner is permitted to eat in a room containing a dead person



(Turei Zahav, note 46). See *ibid.* where the author wrote to differentiate between studying in the presence of the dead, and between eating in the presence of the dead, which is not similar (in the case of) one who does a mitsvah in the presence of the dead--for instance, studying or putting on Tefilin or Talit; for concerning these the prohibition of 'mocking the poor' (i.e. dead) applies (to the deceased) who is unable to fulfill the mitsvah. But here, when he is eating, it seems only that the deceased is unimportant in his eyes, see *ibid.* See in the Arukh Hashulhan, YD ch. 346, where the author wrote: "That for a non-relative the prohibition of 'mocking the poor' (i.e. dead) does not apply, see *ibid.*"

Therefore, it seems to me, that in the case of our question, it was impossible for these unfortunate ones to eat their meager meal anywhere but in the room where the deceased was lying. Certainly the Hakhmat Adam is worthy (as an authority) because the prohibition of lo'eg la'rosh applies only to doing a mitsvah in the presence of the dead--something which does not pertain to eating.

To this prohibition, one can add also the opinion of the Gaon Baal Arukh Hashulhan who holds the prohibition of "mocking the dead" does not pertain to another person (i.e. non-relative). Therefore I decided for my honored friend R. Mordekhai Yaffe (may G-d avenge

his blood) that if it was impossible for these unfortunate ones to erect a partition between them and the deceased, that it is permitted for them to eat in his presence; because otherwise (the fate of) their weak and feeble souls would be determined (for death). If they do not eat and sustain their hungry souls, then they (G-d forbid) will reach the grave and perish before their time.

May the Compassionate One (G-d) make great the redemption of His people and do acts of kindness for His anointed one; hasten the redemption to the "prisoners of hope"<sup>25</sup> and cause us to merit the coming of the Messiah--the time the eternal dead will wake and those who sleep in the dust will arise to eternal life, and will stand up for their happy fate until the end of days. And all the wicked of the earth will prostrate and bow down, and for the honor of His name they will give appreciation; all of them will take upon themselves, and accept the yolk of His kingdom, and they will say to Zion--"your G-d is King."<sup>26</sup> Amen--may it be His will.

## NOTES

1. Leib Garfunkel in The Destruction Of Kovno's Jewry (Israel: Yad VaShem, 1959), p. 51ff reports: "On the 15th of August 1941, the gates of the ghetto were closed), and from that day on it was already forbidden for Jews to live or to spend the night in the city, or to appear in the city without being guarded or without "special permission."
2. See note 1, resp. 1. Also see Garfunkel ibid, pp. 52-53, where he writes: Slobodka was always a backward and forsaken suburb of Kovno."
3. (As was already stated, p. 52, top):The crowding in the ghetto was terrible already from day one. An average of five or six people, and sometimes more, lived in one room, and no larger (than that). In the first days about 700 families were roaming the streets... the crowding in the ghetto grew worse" (as they sealed up the ghetto). See Garfunkel ibid., pp. 54-55.
4. The onen, that is: one who has lost a close relative (father, mother, brother, sister, son, daughter, spouse), and whose duty it is to see that the burial rites are carried out.
5. Has not yet been buried.

6. The blessing over bread -- Heb. hamotsi.
7. Heb. birkhat hamazon.
8. Others do not say the hamotsi for him.
9. "He may not join with three people to recite the birkhat hamazon." Rashi, Ber. 17b.
10. Until the deceased, for whom he is mourning, is buried. The second half of this verse regarding Toraitic percepts is absent from many texts.
11. Even though the mourner is exempt from certain mitsvot, nevertheless, he wants to fulfill them anyway.
12. Because he cannot have the proper kavanah (intention) to perform these mitsvot; and because the mourner should concentrate all his effort on the preparations for burial. See Sh. Ar., YD Hil. Avilut 341:1.
13. If it is true that the reason he must be strict on himself is because he should 'honor the dead' by concentrating on the deceased, he cannot pray even if others can do the work of burial.
14. If however, the true reason the relative cannot do the mitsvot is because he is required to concentrate on the physical preparation of burial (shrouds, etc.), then

if he has someone to take care of this duty for him, he would be able to pray.

15. "It appears"--since the idea of "preparation" is not subsequently mentioned.

16. That she had someone to care for her dead, thus he (Rabbenu Tam) was not obligated.

17. The Kohen (priest) is vested with a special level of sanctity because of his role in maintaining the holiness of the Jerusalem Temple. This sanctity is easily blemished, and thus the Kohen is subject to a number of restrictions. He had to be particularly careful about defilement by the dead, as it is stated in Lev. 21:1: 'There shall none defile himself for the dead among his people.'

"While the Kohen may not compromise the sanctity of his priesthood by contact with the dead, the Bible specifically commands him to prepare, handle, and concern himself with the bodies of his seven nearest relatives: wife, father, mother, son, daughter, brother (but not if he is a brother only from his mother's side), and un-married sister. The Bible does not give mere permission to defile in these cases, it commands him to do so."

See in Maurice Lamm, The Jewish Way In Death & Mourning (New York: Jonathan & David Publishers, 1969), p. 213. See also: YD 371:1, 5; YD 373:3; and Lev. 21:2.

18. Lev. 21:2.
19. Prv. 17:5. The dead will be envious if you perform a mitsvah (or some say, engage in pleasurable activities in his presence), because he is no longer able to join you. Therefore one must refrain from such activities lest it appear as if you were 'mocking the dead' for his inability to participate.
20. "The author of the Mishna states here a case of 'not only'; not only as to... but even... i.e., the Mishna adds here to that which is unquestionable (plain and obvious) that which is more unexpected." Moses Mielziner, Introduction To The Talmud (New York: Block Publishing Company, 1968), p. 196.
21. See note 4.
22. Eating itself is not a mitsvah and therefore technically not included in the prohibition of 'mocking the dead.'
23. The shomrim or people who watch over the body.
24. "The body must be watched at all times even during the day or on the Sabbath. The body is never left alone. The individual who serves as a watcher, or Shomer, is exempt from all prayers and other religious duties at that time--he is engaged in the performance of a mitsvah

and therefore exempt from performing other mitsvot."

See Maurice Lamm *ibid.*, p. 242.

25. Zech. 9:11.

26. cf. 'al kein neqaveh prayer in the Daily Prayer Book by Dr. Joseph Hertz (New York: Block Publishing Company, 1971), p. 299.

# Responsum 11

Whether It Is Permitted For A Jewish Woman, Who Gave Birth To A Child By A Gentile, To Circumcise Him On The Sabbath?

Question: In the days of darkenss, gloom, persecution and destruction in which the People of Israel found themselves, in the years of evil and wrath when Israel served them--"G-d chose them for His peculiar possession"<sup>1</sup> and they were handed over into the hand of the cruel enemy who knew no mercy, who killed and had no compassion on the young and old, men and women, infants and children--from whose mouths the Creator of the Universe (G-d) established strength for His people. Then, in these days of calamity, wild human beasts were seen, impure uncircumcised ones "whose issue was like that of horses."<sup>2</sup> It was an opportune time for them to fulfill their licentious desires, which burned in them like a kindled flame, to spill their filth (i.e., sperm) upon the proper Daughters of Israel--they who were from time immemorial more pleasing to them than their (non-Jewish) wives, because they were Jews. They exploited the affliction of Jacob (the Jews) and from it went out, so to speak, 'to save and to rescue', as if their 'mercy' was kindled towards these unfortunates, for whom mortal danger was imminent. Moreover, as to the truth of the matter, the reason for the 'feelings of mercy' which they claimed, were anchored in this--that they say how good were the Daughters of Israel. On the pretext of reason,



they took for themselves women from whomever they chose, and brought them to gentile homes, in places where they (Jewish women) were placed in their hands--for beating or for mercy. And out of this (situation) they succeeded in perpetrating their (evil) scheme to defile the pure Daughters of Israel with the filth of their impurity. Many of them gave birth to sons from their 'benefactors' and (these) 'compassionate people,' so to speak.

Behold, immediately after the liberation, when the power of the wicked ones was smashed, and freedom was given to those who were "bound in affliction and iron"<sup>3</sup>--the prisoners of the ghetto--I was informed from the hospital, that a Jewish woman layed down to give birth and bore a son. Nonetheless, she was determined to speak with me and to reveal to me this secret matter, "you, who cannot reveal this to others." I hastened, of course, to the hospital, entered the delivery room, and found her as she was bursting with tears. Immediately when she saw me, she said to the members of the hospital staff: "send everyone away from my presence, because I have a secret matter (to discuss) with the Rabbi.

Then she told me, in her crying, that the son whom she bore was the son of a gentile who rescued her from death, and kept her the entire time in hiding. However, it was her desire that the child who was born to her remain Jewish and be educated in the religion of her

ancestors; for this (reason), she requested from me that I try to arrange a brit milah (circumcision) for the child, according to Jewish law, and to enter him into the covenant of Abraham our father.<sup>4</sup>

I promised her, of course, that I would arrange everything in the best possible manner. I spoke kindly to her, and comforted her with (pleasant) words. I uplifted her broken spirit with somber words; she promised me (that she would) conduct herself like a Daughter of Israel (a proper Jewess) in all her doings, and also to educate the son which was born to her in the spirit of the Jewish people (and the) tradition of her ancestors. However, when I began to search for the day on which she bore a son in order to determine the time of the eighth day after his birth,<sup>5</sup> it became clear to me that the time fell on the Sabbath day.<sup>6</sup> Then, the question came to my mind, what is the law concerning a child born from a gentile?--is it permitted to circumcise him on the Sabbath as is the law of a son born to a Jew?

Answer: In the Sh. Ar., YD ch. 266:12, Karo wrote: "(In a case where) a Jew converts, and has a son from a Jewish woman--we circumcise him on the Sabbath. In the novellae of R. Akiba Eger *ibid*, he wrote: "apparently, also concerning a gentile who has a child by a Jewish woman--we circumcise him on the Sabbath. However, from what

our Great Rabbi and teacher Maharsha wrote in Qid. (p. 75b) in the Tosafet *ibid*, he holds concerning a gentile who has sexual intercourse with a Jewish woman: "That the child is a gentile and requires conversion," this being so, we do not circumcise him on the Sabbath; see in the book Atsei Arazim in Even Haezer (ch. 4, note 4)."

However, in the book Tiferet L'Moshe in ch. 266, and this is cited in the Pithei Teshuvah *ibid*., the author wrote: "(In the case where) a Jewish woman gives birth to a child from a gentile--we circumcise him on the Sabbath because the child is proper,<sup>7</sup> since (in a case where) a gentile or slave has sexual intercourse with a Jewish woman the child is proper. It is likewise explained in the Teshuvat Brit Avraham, ch. 2 under the letter 'Bet', and in ch. 6 under the letter 'Zion', see *ibid*. See also in the resp. of Mishqenot Yaakov, Even Haezer, ch. 2; and in the book Hazakhut, ch. 7, section haholets, see *ibid*."

In the Derishah, beginning of ch. 66:5, the author wrote: "A widow gave birth to a son on the Sabbath and said, 'I was impregnated by a Jew.' R. Moshe doubted: 'perhaps she became pregnant by a gentile,' and instructed not to circumcise him on the Sabbath." I say that there is permission concerning the matter of circumcising him on the Sabbath from what is taught in ch. 'R. Eliezer (in Tractate Shabbat 135b): 'There is someone born in his house,' etc. Until now, this is from the resp. of

R. Menahem Klauz. Thusly, R. Elizer wrote to permit it (i.e. circumcision on the Sabbath), even if it is known that she became pregnant by a gentile and she is a gentile, as it is stated in ch. 'R. Eliezer': 'If she converts prior to giving birth--we circumcise him on the eighth day (on the Sabbath).' R. Yitshaq of Belts wrote to permit it."

See also in the resp. of Nahalat Binyamin, in his section on circumcision, where he also cites the opinion of R. Moshe which we cited in the Derishah, where the author decided that he should not be circumcised on the Sabbath; he explains there his reason, see *ibid*, and concludes that in our case we must wait and circumcise him after the Sabbath.

However, in the resp. of Binyan Tsion, ch. 21, the author disagrees with the Nahalat Binyamin and concludes that there is nothing to worry about, because by law, he is entirely Jewish according to the general opinion of all the halakhic authorities and according to the custom of Israel. He does not even need tevilah (immersion)<sup>8</sup> according to the law. The reason for his immersion is that we might consider the doubt expressed by the Tosafot.<sup>9</sup> Therefore the author wrote *ibid*: "That it is permitted to circumcise him on the Sabbath according to the general decision of Karo." However, in the resp. of our Great Rabbi Moshe Shiq in section Even Haezer, ch. 100, I saw

that he wrote: "Even though the opinion of the majority of the halakhic authorities holds that (in a case where) a gentile or slave have sexual intercourse with a Jewish woman, the child does not need conversion--nevertheless, he should not be circumcised on the Sabbath. The resp. of Bet Yitshaq, section Even Haezer, ch. 29, part II, agrees with his opinion that in this matter one must consider the opinion of those halakhic authorities who hold that the child requires conversion; even the son of a male or female apostate must not be circumcised on the Sabbath according to the opinion of many halakhic authorities.<sup>10</sup> Therefore, it is better to wait and to circumcise him after the Sabbath. However, on a weekday, he must be circumcised on the correct day. Also in the resp. of Avnei Tsedek, Even Haezer, ch. 2, he prohibits him to be circumcised on the Sabbath, see *ibid*.

See in ch. 25 where I speak at length about the opinion of the halakhic authorities in the case of a gentile or slave who have sexual intercourse with a Jewish woman. I cited *ibid*. that the opinion of the majority of halakhic authorities holds that the child is, in all respects, like a complete Jew.

Therefore, on the basis of all that has been said, it seems that in our case we must decide to permit it, and to rely on all those great Rabbis who hold that it is permitted to circumcise him on the Sabbath and on

the opinion of the majority of halakhic authorities who hold that he does not need conversion. Since according to their words he is a Jew like any other proper Jew, how can we be strict with him to prohibit circumcision on the Sabbath. Therefore, I made a factual decision in accordance with the decision of Karo and the majority of halakhic authorities who permit him to be circumcised on the Sabbath a priori; (and I decided) not to neglect the mitsvah of circumcision on the eighth day, particularly in pressing times and times of emergency as in our case, where we must hasten to enter this child into the covenant of Abraham our father so that one more Jewish soul will be saved.

## NOTES

1. Ps. 135:4.
2. Ezek. 23:20.
3. Ps. 107:10.
4. Brit Milah is first mentioned in Gen. 17:9-12 when G-d said to Abraham: "You shall keep my covenant, you and your descendants after you throughout their generations... Every male among you shall be circumcised... and it shall be a sign of the covenant between Me and you. He that is eight days old among you shall be circumcised."
5. See note 4. See also Lev. 12:3; and Sh. Ar., YD 262:1.
6. If the eighth day falls on a Sabbath or Festival, even though there is a prohibition against 'work' (Ex. 20:9-10; Shabbat 7:2) at these times, the circumcision must not be postponed (ibid. YD 266:2), unless it is not performed at the prescribed time (i.e. the eighth day) (YD ibid.).
7. The child is a Jew in all respects, because the lineage, in this case, follows the status of the mother. See Qid. 76ff.

8. Ritual immersion prescribed for: married women following menstruation or after childbirth, as well as for proselytes on being accepted for conversion.
9. Some believe that this child is a Safeq mamzer (doubtful Jew). Thus this immersion makes the child a full Jew.
10. See resp. 1.



## Responsum 12

Having Been The Case That In The Ghetto His Family Lived With Another Family In One House, And The Entire Family Was Selected To Be Slaughtered In The "Aktion,"<sup>1</sup> Whether It Is Permitted To Take The Belongings Of The Family Mentioned Above, To Sustain His Life And The Lives Of His Starving Children?

Question: On the 10th of Marḥesvan 5702 (October 31, 1941), after G-d poured out His wrath on the Kovno Ghetto;<sup>2</sup> when our eyes saw, and failed with longing, how the cursed evildoers, the Germans, may their names be blotted out, took out about 10,000 people from the ghetto--women, children, infants, elders, and young, all of them were carried away like "sheep for the slaughter."<sup>3</sup> Then in this time, when it seemed to all the inhabitants of the ghetto that all hope had fled, and the fate of everyone was determined: to perish and to be killed, everyone sat waiting in fear for the next day. Everyone thought: perhaps this is the last day that he will be alive, for already the enemy had waived his destroying hand against him to annihilate him and to wipe him off the face of the earth. Then in this insane time, a head of a household, from amongst the distinguished people of the city, came to me to tell me about the bitterness of his spirit and the misery of his soul; for all the members

of his household were literally dying of hunger, and they had nothing with which to restore their lives. He could no longer stand to see the suffering which visited his small children begging for bread, and there was none. Therefore he came to ask: seeing that in the ghetto his family lived with another family in one house; and at this time, after this entire family was selected to be slaughtered in the last massive killing, they left no consanguineous relatives in the ghetto; therefore he asked whether he was permitted to take the small number of belongings of this family, which remained in their apartment, and sell them in order to buy in exchange, food for himself and for his tender children--feeble from hunger, and by this, to sustain their souls?

Answer: In tractate BQ 114a we learn: "If one rescued (articles) from a river, from gentiles, or from robbers, if the owners have given up hope of recovering them behold, they will belong to him. So also regarding swarms of bees, if the owners have given up hope of recovering them, they would belong to him." Rashi explains *ibid.*: "'Behold, they will belong to him' because the owners have generally abandoned all hope of recovery, the other one acquires it by virtue of its abandonment and change in location of the property (possession), see *ibid.* See in the Gilyon Hashas in the Talmud, the

reference: "further scrutiny of Rashi is necessary."<sup>4</sup>

Also in Rambam, ch. 6 of Hil. Gezeilah, Hal. 6, he decided likewise; see *ibid* where he wrote: "If one rescued (articles) from a river, from the bottom of the sea, or when they are being swept away from a flooding river, or from a gentile, etc., behold, these (articles) become his." He decided likewise *ibid.* in ch. 11, Hal. 1, see *ibid.* Also in the Sh. Ar., HM ch. 259:7, the author decided likewise: "One who rescues (articles) from a lion, a bear, from the bottom of a river, when they are being swept away by a river, or from a gentile, behold, these (articles) become his, even if the owner stands there and screams ('it is mine')."

According to the above, the law in our case is obvious, i.e.: even if this holy family (slain by the Nazis) has a relative or blood avenger (close relative) somewhere, who according to the law of the Torah,<sup>5</sup> is entitled to inherit the property of these holy people, this being so, according to the law, they would inherit these articles. Nevertheless, at this time, after the slaughtering and the plundering which these cursed evil-doers did in regard to the inhabitants, certainly these inheritors abandoned hope of even receiving these articles; for they knew that the Germans, after killing and butchering, would plunder and rob everything of any value that belonged to the slain ones. The rest, which

was not worth taking in their eyes, they would leave as hefker<sup>6</sup> (abandoned property) for all (to take). This being so, certainly the questioner may acquire these few meager articles that were left in the apartment of these holy ones, as one acquires from hefker (abandoned property). Certainly it is more pleasing to these holy ones that the remainder of their articles remain with Jews, so that they may sustain their souls with them, and so the murderers will not take them (the articles).

Behold after the liberation, when G-d brought us out with His great mercy, from darkness to light, and from slavery to redemption, I saw in the resp. of Hut Hameshulash (from the Great R. Shelomoh Tsrer) a question which was cited *ibid.*: "One of the Jews bought Rifs<sup>7</sup> and other books from the captors and (subsequently) their owners claimed them. The buyer claimed that he did not have to return them because he bought them from the captors. Moreover, if he would not have bought (these books), they would have burnt them the way in which they burnt the other books."<sup>8</sup> He concludes *ibid.* in his opinion mentioned above: "Nevertheless, it appears to me that we need to distinguish between books and other articles. For the gentile did not know the value of the books, and to him they were simply worth (only) the value of the paper (on which they were written). This being so, he only intended to buy (the books) because of the (worth of) the

paper, and did not intend to acquire the value of the book itself over and above the simple value of the paper.

Therefore, the buyer (from the gentile) definitely has to return them (the books) to the original Jewish owners, if they (the original owners) pay him as much as this buyer paid the gentile captors," see *ibid.*

It seems from this that he differentiates between books and other objects, and he decided thusly concerning books only. But concerning other objects, even if their owners claim the objects from him afterwards, he is not required to return them. In our case, where the owners of the articles were killed by the hands of the murderers, (may their names be blotted out and be no more), and also we did not hear that they had left any (surviving) relatives or kinsman legally entitled to inherit--certainly at this time, the asker is permitted to take these articles in order to sustain his life by them, and the lives of his small children. Even if at some later time a relative will come and claim these articles, he is not obligated to compensate the relative for them; as we cited from the decisions of Rambam and Sh. Ar., "He is like one who rescues (an article) from the bottom of the sea, or when they are being swept away by a flooding river." Even in the resp. mentioned above<sup>9</sup>, he is obligated to pay only for the worth of the books for the reason given above, but concerning (other) objects (i.e., not books), even he

(this strict author) agrees that he is not obligated to pay anything to the owners.

## NOTES

1. Aktion (denoting deportation and mass murder). On the twenty-seventh of October the following notice was posted in the Kovno ghetto:

All the inhabitants of the ghetto, without any exceptions, including children and the sick are obligated to leave their apartments on the 28th of October, 1941, no later than six o'clock in the morning. It is incumbent upon them to assemble in the square between the large blocks and Democrato Street, and to organize themselves there according to the orders which they received from the police. It is incumbent upon the inhabitants of the ghetto to organize in the square family by family, with the heads of the family in front.

It is required to leave the apartments, the closets, the cupboards and the like open. After six o'clock in the morning it is forbidden to remain in the houses.

Those who remain in the houses  
after six o'clock in the morning will  
be shot on the spot. (Leib Garfunkel,  
The Destruction of Kovno's Jewry,  
(Israel, Yad Vashem, 1959), p. 73).

Machine guns were set up in the square and German soldiers and Lithuanian partisans amassed there. At exactly 8:00 A.M. they began the selections--who for life and who for death.

"That morning 26,400 went forth from their homes, and by dusk, only 17,400 returned." (See Garfunkel, *ibid.*, pp. 74-76).

2. See note 1.
3. Is. 53:7.
4. The Gilyon Hashas says that further scrutiny of Rashi is necessary because he finds in the Gemara thing which is seemingly faulty.
5. See Nu. 27:8-11.
6. See note 22, resp. 7.
7. Books of Yatshaq Al-Fasi (1013-1103).
8. Books were burnt for their "subversive influence on German thought and home," so to speak. See Gideon Hausner,



Justice In Jerusalem (New York: Holocaust Library, 1966), p. 21. See also, William L. Shirer, Rise & Fall Of The Third Reich (New York: Simon & Schuster, 1960), p. 241.

9. Hut Hameshulash.

### Responsum 13

Concerning The Law Of One Who Rescues A Child From The Wicked Ones (May Their Names Be Blotted Out), And Has No Child (Of His Own), So He Adopts Him As A Son--Whether It Is Permitted To Call The Child By His (Adopted Father's) Name At The Time When He Goes Up To The Torah For An Aliyah?

Question: And it came to pass in the days when evil prevailed on the earth. The incidents of slaughter and persecution, which the Germans perpetrated (may their names be blotted out) increased in the conquered countries under their power, and their evil became very great and their sins (weighed) heavy. (It was) time when the cry of infants and sucklings was heard--tender children who were stolen from their mother's bosom "and carried away like sheep to the slaughter."<sup>1</sup> They were taken to camps of destruction and slaughter. There, they were murdered by strangulation, burning, and by all sorts of unusual deaths. The mass murder of Jewish children, which was known by the name of Kinderaktion<sup>2</sup>, cast upon fellow Jews a spirit of despair, depression, horror, and shock, and all of them questioned themselves: "Is it true that G-d has hidden His face from us and 'delivered us into the hands of those against whom we are not able to rise up.'"<sup>3</sup>

Also, this evil did not pass over those imprisoned in the Kovno Ghetto. Also there, the Germans carried out

the mass murder of Jewish children<sup>4</sup> on the third and fourth days of Tishrei of the year 5704 (2nd and 3rd of October, 1943).<sup>5</sup> In these two days of madness, the Germans annihilated about 1,200 children, who were cast by the Germans into the furnace, and condemned to slaughter.

Behold, a (Jewish) man succeeded in saving one of the children from the hands of the murderers; he sustained the child and he was raised in his home. The child ate from his bread and drank from his cup, he layed at his bosom, and was like a son to him. This man, together with this child whom he adopted as his son, were saved by the mercy of G-d, and remained alive. Since this man had no other sons, he wanted that this boy would be considered as his son in every way. He came to me with his question: Whether it is permitted to call this child for an ayliah<sup>6</sup> to the Torah by his (adopted father's) name, as if he were his natural father, as is the custom in the diaspora where they call he who goes up to the Torah by the name of his father proclaiming: "Come up (to the bimah) so and so the son of so and so. It was known that the boy was from a family of Kohanim<sup>7</sup> and his natural father was a Kohen.<sup>8</sup>

Answer: It seems that it is prohibited to cause this child to forget the name of his natural father by calling him up to the Torah, not by the name of his natural father,

rather by the name of the man who adopted him as son. For behold the law is: "Out of honor in life, or in death." This is certainly one of the honors with which this son can honor his father after his death--by calling him up for an aliyah by the name of his (natural) father. This being so, if he is called to the Torah by the name of the man who adopted him as a son, not only by this do we prevent the child from honoring his natural father, but also included thereby is the prohibition of "disgracing one's father" by not mentioning (at the time of his aliyah to the Torah), the matter of his relation to his father. Behold the sages were anxious concerning matters of insult (blemish) and disgrace of this sort; as we read in Git. p. 59b: "A Kohen is not called after another Kohen because it might discredit the first Kohen;<sup>9</sup> a Levi is not called after another Levi because it might discredit both of them."<sup>10</sup> This being so, even if his natural father was not a Kohen but a Yisrael, the matter of insult (based on a blemish) is not involved if he is not called (at the time of his aliyah to the Torah), by his father's name. However, certainly there is no prohibition concerning this (matter) because of "disgrace" or "slander".<sup>11</sup>

How much the more so<sup>12</sup> in our case where his natural father was a Kohen, and this being so, behold, the boy is also a Kohen. If he is called ( at the time of his aliyah

to the Torah) by the name of his second father (that is, the man who adopted him as a son), behold, great calamity will result from this. For behold, in the many days (ahead) he will forget that he is a Kohen, and he might, in the course of time, transgress strict prohibitions,<sup>13</sup> for instance: the marrying of a divorced woman,<sup>14</sup> or the impurity of the dead;<sup>15</sup> in addition to (the fact that) he will not fulfill the active mitsvot imposed on the Kohanim like blessing the congregation,<sup>16</sup> and reading (from the Torah) first, etc.<sup>17</sup> Therefore, certainly it seems proper in our case to decide to prohibit; that is to say that he must not be called to the Torah by the name of the man who adopted him as a son, rather by the name of his natural father.

However, behold, I saw in the resp. of Hatam Sofer, Even Haezer, ch. 76, that in a case like this the author gave a lenient decision and permitted the step to be called to the Torah by the name of his stepfather, since he raised and brought up an orphan called his son, see *ibid.*<sup>18</sup> However, in the notes of Bosem Mordekhai, towards the end of the book, truly he is surprised about Hatam Sofer in that he was not anxious about 'disgrace to his natural father' in this case, so that he would be called up to the Torah by the name of his stepfather. See in the resp. of Emek She'eilah (of the Great Rabbi Motele, may his memory be for a blessing), in section Even Haezer,

where he also doubts the words of the Hatam Sofer; see ibid where he goes into long discussion concerning this (matter).

Based on all this, I decided for this man that it is prohibited to call his adopted son (when he has an aliyah to the Torah) by his (adopted father's) name. I talked to him at length using serious words<sup>19</sup> that his reward would be great also without this. For in addition to saving this boy from death, regarding which it is said: "He who saves one Jewish soul, it is accounted to him as if he saved the whole world",<sup>20</sup> behold he also reared him and educated him to walk in the good and upright path, and led him in the integrity of uprightness to pursue justice and righteousness. Certainly The Holy One blessed be He (G-d), will requite him according to his good deeds, and bestow upon him an abundance of good and blessing. May He who hears the cry of the poor, hear our cry: to hasten our freedom and the redemption of our souls; to requite the wicked ones according to their evil deeds; and let those who do good shine brightly like stars forever.

## NOTES

1. Is. 53:7.

2. Rabbi Dr. H.J. Zimmels in his book, The Echo Of The Nazi Holocaust in Rabbinic Literature (New York: Ktav Publishing House, Inc., 1977), p. 288ff explains that Kinderaktion was a term first used in W.W.I in a very positive sense. It denoted the saving of both Jewish and non-Jewish children by sending them from war-torn countries (after the war) to Holland, where they were raised and nurtured by their receiving families. Before W.W.II, again the Kinderaktion and also the Kindertransport, were positive forces in rescuing Jewish children from Nazi occupied lands.

However, during W.W.II, the Nazis took the term Kinderaktion as a label for their policy of extermination of children. Also, see note 4.

3. Lam. 1:14.

4. Dr. Aharon Peretz in Gideon Hausner's book, Justice In Jerusalem (New York, Holocaust Library, 1966), p. 330, describes the kinderaktion of the Kovno ghetto.

"The climax of horrors was 'the children's operation.' It came at a relatively tranquil period. Suddenly automobiles entered the ghetto... The Germans entered the

courtyards in the ghetto and tore away every child they encountered. They tossed them into trucks..."

Leib Garfunkel in his book, The Destruction Of Kovno's Jewry (Israel Yad VaShem, 1959), pp. 176-83 reports on this incident in a similar fashion. He explains that in an unannounced move against the Jews of the Kovno ghetto, on March 27th and 28th, 1944, Nazis swept into the ghetto bringing with them empty buses whose windows were plastered over. Each bus was then filled with children and aged, and left the ghetto towards the city. Soon these buses returned, but they returned empty and only to pick up more children for the slaughter.

Garfunkel *ibid.*, p. 182, adds the following heart-wrenching words regarding these unfortunate children:

"What loveliness, blended with sadness and sorrow, veiled their innocent faces. What sanctity was reflected in their pure eyes. How clever they were during the prolonged period under the terrible yolk of ghetto life; and how they helped their mothers and fathers, sisters and brothers... These children went to the slaughter as true heroes--without any exaggeration."



5. See Zimmels ibid., p. 353, note 1, where he explains that the kinderaktion referred to here, took place on the 27th and 28th of March, 1944, as was reported by Garfunkel ibid., p. 176ff (see note 4). Rabbi Zimmels also notes that R. Oshry himself stated in Mimaamakim, I, no. 16, that the kinderaktion took place on the 3rd and 4th of Nisan 704 (27th and 28th March, 1944).
6. A Hebrew term denoting the honor extended to a worshipper to ascend the bimah (elevated platform) in the synagogue to take part in the Torah reading during the service. The aliyot are in rank order: the first, is given to one of priestly descent (Kohen), the second, to a descendant of the tribe of Levi; the third to a Yisrael. See Sh. Ar., O.H. 135:3; and Git. 59a.
7. Descendants of the Temple Priests. See Ezra 2:62.
8. See note 6.
9. By making it appear as if he were not a legitimate priest, for perhaps the father (of the second priest) married a divorced woman or a halutsah and disqualified his offspring.
10. Because people will say that one (or the other) of them is not a Levite, for perhaps the father married a mamzer (bastard) or a netinah (Gibeonite) and disqualified

his offspring.

11. If the son was adopted by a Yisrael, and called to the Torah not by the name of his natural father (who is a Kohen), this is a disgrace for his natural father as cited above in the text. However, if his natural father was not a Kohen--this is also a disgrace, because people will talk that the adopted father is the natural father and had an adulterous wife.
12. Should we not call this boy up to the Torah by his adopted father's name.
13. By virtue of the Kohen's special position as priest and ensuing sanctity, he is subject to a number of restrictions.
14. It is forbidden for a Kohen to marry a divorcee or a proselyte. See Sh. Ar., Even Haezer, 6:1.
15. He must not come into physical proximity with a dead body (aside from the seven close relatives for whom a Kohen must sit shivah). See Lev. 21:1; Sh. Ar., YD 371:1,5. See also Sh. Ar., YD 373:3 and Lev. 21:2.
16. Birkhat kohanim -- Three biblical verses taken from Nu. 6:24-26 and found at the end of the Amidah prayer. These verses are chanted by the Kohanim after their ascent to the dukhan (platform).

17. See note 6. The Talmud comments in Git. 59a, that this order is "mipnei darkhei Shalom"-- "for the sake of peace."
18. "Love and affection" (Heb. hibah v'ahavah) is the controlling principle here.
19. Since the adopted father was obviously angry that this child would not be called to the Torah by his name.
20. Sanh. 37 in the Mishna.

# Responsum 14

A Jew Who Was A Sabbath Profaner Came To The Ghetto And Said: "Now, If I Die Will I, At The Least, Be Buried Among Jews Without Any Discrimination?" Then He Died In The Kovno Ghetto. Is It Permitted To Bury Him Among Those Who Keep The Sabbath?

Question: In the mad days of evil and wrath, when the earth was given over unto a wicked hand; the German Asmodeus<sup>1</sup> heavily oppressed the general Jewish populace (with the intent) to destroy and kill them by all sorts of unusual deaths, until it seemed as if He-who-inclines-His-ear (G-d) was not listening (G-d forbid) to the fervent prayers of His people Israel (the Jewish people) who are crying to Him from out of (their) distress and calling out to Him: "Answer us 'O Lord, answer us.'" It seemed as if He-who-created-the-eye (G-d) was not looking (G-d forbid) from heaven to see how His children have become as a "scorn and derision among the nations"<sup>2</sup> to be "considered as sheep led to the slaughter,"<sup>3</sup> where wrath and devastation, death and destruction prevail upon them.

Then, in these dark days, the German murderers (may their names be blotted out) punished, not merely the living, but also the dead, and issued an order stating: It is incumbent upon the Jews of the Kovno Ghetto to look after their dead and to bury them only

in the cemetery which they assigned--a place which from time immemorial served as a municipal garbage dump. In addition to this, they (the Jews) were forbidden to set up gravestones on the gravesite, (they were allowed) only to designate special numbers to each of the dead, as if they were nameless people and similar to dogs. Only afterwards, with the passage of time, did they change this matter, and gave the Jews permission to set up grave markers of wood on the gravesites.

Nevertheless, in spite of this contemptible burial (lit. "burial of asses")<sup>4</sup> by which the Jews of the ghetto were compelled by the Germans to bury their dead, they comforted themselves by the fact that the Germans at least permitted the burial of all the Jews in one place. Being depressed in spirit because of the great misery and sorrow, they wished to die. They prayed in their hearts that they would merit to go to a Jewish grave, even though they knew that this Jewish grave would be contemptible, in its being in a garbage heap. However, despite this, still he will be buried among the graves of other Jews.

The day came to pass when a man from amongst those imprisoned in the ghetto died from a malignant disease--the disease of cancer, out of great and hard suffering; for the wicked Germans did not let the ghetto doctor give tranquilizing injections to the sick of the ghetto in

order to ease their pain, even to dangerous illnesses according to what Dr. Zacharin told me.

This man was also known as a free-thinker and a public Sabbath profaner in his keeping of his store open on Sabbaths and Yom Tovs. He was not among those attending the synagogue in order to pray, (even) until the very day that he was imprisoned in the ghetto together with all the (rest of the) Jews. Only this was known, that at the time when he was brought to the ghetto he said: "Now, if I die, will I, at the least, be buried with Jews without any discrimination?" For he knew that if he would die in Kovno before the Germans erected the ghetto, the congregation would not give him a burial lot amongst religious, Sabbath-keeping Jews.

Nevertheless, not a thing was known about his behavior from the time he came to the ghetto--whether he continued his evil ways in which he was used to acting always. For also in the ghetto he was not accustomed to coming to pray in the synagogue. Or perhaps from the time when he was imprisoned in the ghetto he returned (to G-d) in repentance and privately changed his ways for the good, to act as a proper Jew in all his affairs--as his words testify when he said at the time he was brought to the ghetto, that his soul yearned and pined to be similar to his brothers (the Jews) in all (respects), and not to be separated from them, at the least, in his

death. All these words indicated (allowed the conclusion) (lit. were recognizable) that he regreted his previous deeds, and also repented for his estrangement from the traditional religion of his fathers.

I was asked how to act towards him at the time of his burial. Should I act towards him as one acts in the burial of a proper Jew who keeps the *lorah* and religion?-- because he returned in full repentance as his words testify at the time he was brought to the ghetto. Or perhaps these words were merely empty talk (false promises), for in truth he did not return in repentance and continued to walk in the manner of a fool--after the wickedness of his evil heart--as he was accustomed to doing before he was brought to the ghetto.

Answer: Behold the source of the laws of burial and its *mitsvah*, and the procedure which is customary among the Jews--the unequivocal source comes from the discussion in *Sanh.* (45b): in the *Mishna* and in the *Gemara*. See *ibid* in our *Mishna* where it is taught: "All those executed by stoning are (afterwards) hanged. It is stated about it in the *Gemara* (45b): The Rabbis taught (The Torah states) v'humat v'talitah--"And if he be put to death, then thou shalt hang him (on a tree)" etc.<sup>5</sup>

Moreover, it states *ibid.* in our *Mishna* (46a): "How is he hanged"<sup>6</sup> etc., (for if the body remained suspended

overnight) a negative command would have been transgressed thereby, as it is said: "His body shall not remain all night upon the tree, but thou shalt surely bury him"<sup>7</sup> etc. And not only of this one (a criminal) did they (the sages) say it,<sup>8</sup> but whosoever lets his dead ("any dead"--Rashi) lie over night transgresses a negative command.<sup>9</sup> If he kept him overnight for the sake of his honor, to procure for him a coffin or a shroud, he does not transgress thereby. And they used not to bury him<sup>10</sup> in the burying-places of his ancestors ("because (the body of) a wicked person is not buried next to (that of) a righteous one"--Rashi) etc. When the flesh was completely decomposed ("he has already been atoned for by his death"--Rashi), the bones were gathered and buried in their proper place ("in the burial places of his ancestors"--Rashi) etc. And they observed no mourning rites<sup>11</sup> ("over them in order that their disgrace would serve as expiation for them"--Rashi), but only grieved (for them)<sup>12</sup> ("and their expiation is not withheld thereby"--Rashi), for grief is borne in the heart alone."<sup>13</sup>

In the Gemara ibid (46) we read: "R. Yohanan said on the authority of R. Simeon b. Yohai: Whence is it inferred that whoever keeps his dead (unburied) overnight transgresses thereby a negative command?--From this verse "Thou shalt surely bury him;"<sup>14</sup> whence we learn that he who keeps his dead (unburied) over night transgresses a negative command. (Others state:) R. Yohanan said on the



authority of R. Simeon b. Yohai: whence do we know that burial is Toraitic?--In the verse, 'Thou shalt surely bury him': (here we find an allusion to burial in the Torah)."

Furthermore it says *ibid* (47a): 'And they used not to bury him'<sup>15</sup> etc. And why such a severity?<sup>16</sup> Because a wicked person may not be buried beside a righteous one. For R. Aha b. Hanina said: What is the Biblical source for the reasoning that a wicked person may not be buried beside a righteous one?--From the verse: 'And it came to pass as they were burying a man'<sup>17</sup> etc. See well *ibid.*, the entire discourse.

Behold it is clear from this discourse that we derive the true basis of the mitsvah of burial, which is practiced among the Jews, from those executed by the Bet Din, as it is stated concerning them: "Thou shalt surely bury them." However, there is a difference between these,<sup>18</sup> and all the other dead. For all (other) dead are buried in the cemeteries of their ancestors, and those executed by the Bet Din are not buried in the cemeteries of their ancestors because: "one does not bury a wicked person next to a righteous one, rather they are buried in their assigned places."<sup>19</sup> However, after their death has atoned for them, that is: "When the flesh has completely decomposed, the bones are gathered and buried in their proper place."<sup>20</sup> Furthermore, all (other) dead are mourned, but those executed by the Bet Din are not mourned. However, con-

cerning the heart of the law of the mitsvah of burial there is no differentiation between righteous and wicked, for the Scriptural verse: "Thou shalt surely bury him", is stated regarding everyone.<sup>21</sup> On the contrary, the very essence of the Scriptural verse refers to those executed by the Bet Din--who are wicked ones.

See well *ibid.* in *Sanh.* (46b) where we read: "The question was raised: 'Is burial'<sup>22</sup> (intended to avert) disgrace, or a means of atonement?'" See in the *Tosafot* *ibid.* s.v. "Kevura" where they wrote: "Should you object there would be a better atonement were he not buried than if he were buried, as we learnt in a Baraitah (47a): 'It is a good sign for the deceased that he is being punished after death--he died and was not buried.' The answer is: he does not mean to say that he should not be buried at all, rather he means to say he must not be buried for the sake of his honor"<sup>23</sup> etc., see *ibid.*

We see that the *Tosafot* established for us foundation (hard and fast rules), that the mitsvah of burial is required regarding all dead. See also *Sefer Hamitsvot* of Rambam, mitsvah 231 where he wrote: "He who commanded us to bury those executed by the Bet Din on the day which they were killed, He said (may His name be blessed) 'for thou shalt surely bury him on that self-same day.'"<sup>24</sup> In the words of the *Sifrei*: "'For thou shalt surely bury him', is a positive command; and this is the

law regarding the remainder of the dead<sup>25</sup>, that is: that you must bury the deceased among the Jews on the day of their death."

Rambam decided likewise in ch. 12 of Hil Evel, Hal. 1: "The eulogy is for the honor of the dead, etc. But if the deceased charged (in his will) not to eulogize him, he is not eulogized. If however, he charged (in his will) not to bury him, his wish is not heeded since burial is a mitsvah (religious duty), as it is written: "Thou shalt surely bury him."<sup>26</sup>

However, one must be surprised at what Rambam decided in ch. 14 of Hil Evel, Hal. 1: "The following positive commands were ordained by the Rabbis: visiting the sick; comforting the mourners, etc. To busy oneself with all the necessities of burial; acting as pallbearer; going before the bear; making lamentation (for the dead); digging a grave and burying the body, etc. These constitute deeds of loving kindness performed in person and for which no fixed measure is prescribed. Although all these commands are only on rabbinical authority, they are implied in the precept: "And thou shalt love thy neighbor as thyself" (Lev. 19:18) etc, see *ibid*. It is likewise in Sefer Hamitsvot of Rambam, root II, that burial is because of (the principle): "Thou shalt love thy neighbor as thyself." Anyway, it is explained here explicitly in his words, that the mitsvah of burial in a positive command of

rabbinical authority; whereas from what he wrote in ch. 12 of Hil. Evel which we cited, the implied meaning is that his opinion is that this mitsvah is Toraitic and we learn it from what was stated: "For thou shalt surely bury him."

Perhaps we need to say that this mitsvah is obligatory, according to the Torah, only on the sons. And as to the persons executed by order of the Bet Din (the commandment of burial) rests, according to the Torah, on the Court.<sup>27</sup> However, regarding the remainder of the dead, who have no sons,<sup>28</sup> behold, they are as met mitsvah<sup>29</sup> where it is incumbent upon every Jew<sup>30</sup> to bury them.

Behold in ch. 334 the Bet Yosef wrote in the name of the Rasba: "(For) one who has been excommunicated because he is a transgressor and separates himself from the way of the community, and died in excommunication,<sup>31</sup> a stone<sup>32</sup> is placed on his grave" etc. In any event, Jews must busy themselves with his burial.

In the Sh. Ar. YD, ch. 345:5 Karo wrote: "All who separate themselves from the ways of the community: and these are people who break off the yolk of the commandments from their necks and are not included in klal Yisrael by their deeds, nor by honoring the festivals, nor by their participation in the synagogues and houses of study, rather behold, they are like free men unto themselves like the rest of the nations. Thus, all these are apostates and in-

formers, and we do not mourn (before burial) nor mourn (after burial) for them, rather their brothers and the rest of their relatives wear white and wrap themselves in white<sup>33</sup> and drink and make merry.<sup>34</sup>

The Hatam Sofer wrote on this in YD, ch. 341: "That all these things are said only regarding the matter of mourning and grieving, however we are obligated to bury them. Proof for the matter comes from those executed by the Bet Din, and among them: idolators, Sabbath profaners, and people of a town condemned for idolatry. For we see that although their relatives did not mourn for them, nevertheless, they were obligated concerning their burial, since behold, the very basis of the positive commandments of burial originates with them, as it is written in respect to them: "For thou shalt surely bury him." However, they are not to be buried amongst good Jews," see *ibid*.

In *Sedei Hemed*, ch. 125, the author cites Rabbis who discuss extensively the words of the Hatam Sofer mentioned above. But as to the law, they decided as the Hatam Sofer--Jews (must) occupy themselves with his burial and they (must) bury him in a Jewish cemetery far from proper Jews.

See in *Bayit Hadash*, ch. 362, where the author cites the Or Zaruah who forbid the engaging in the burial of a wicked person who has not repented. The *Bayit Hadash* wrote concerning him *ibid*.: "It is perplexing, because

of this: "that a wicked person is not buried beside a righteous one."<sup>35</sup> This passage proves clearly that one should busy himself with the burial of a wicked person, however he is not to be buried beside a righteous person. And from this passage "that a completely wicked person is not to be buried beside a moderately wicked one",<sup>36</sup> we learn that we busy ourselves even with a completely wicked person. It is possible to differentiate between simple burial and occupying oneself<sup>37</sup> with the burial. Certainly he must be buried, however one must not busy himself with his burial to find for him shrouds and burial necessities as with the rest of the dead, but he is placed in a grave as he is, without shrouds," see *ibid.*

See further in the *Hatam Sofer*, ch. 195 where he wrote: "Even though commerce on Shabbat is only a Rabbinical prohibition, nevertheless, this is only where one does it occasionally. However, one who opens his store regularly on the Sabbath, behold, he is profaning the Sabbath in public and transgresses the positive commandment of resting on Shabbat, which is Toraitic."<sup>38</sup> See *ibid.* where he cites thusly in the name of Ramban in the portion Emor.<sup>39</sup> Perhaps one can say that this is only where he himself works regularly in his store--then he transgresses the positive commandment of resting on Shabbat. However, where he himself does not work in his store, rather a gentile works there, then he does not transgress the

positive command of resting on Shabbat even though he is also present in his store (seeing that all the work of the store is being done by a gentile and he is not doing anything).

Thus is the implied meaning of the Bet Meir in Even Haezer, ch. 5. See *ibid.* where the author<sup>40</sup> explains away the objection of the Penei Yehoshua who objected to the opinion of those who hold that a gentile may be an agent in a restrictive way.<sup>41</sup> This being so, we say that 'telling a gentile' (to work for you) is a shevut.<sup>42</sup> Behold, he must be held guilty by reason of agency, for the gentile is his agent. Wherever<sup>43</sup> the agent is not to be held accountable, behold the (Jewish) sender is guilty. The Bet Meir answer<sup>44</sup>: "That the matter of 'agency' does not apply to Shabbat, for 'work' itself is not prohibited, for the Torah was strict only concerning bodily rest (of the Jew). This being so, even though the gentile does work, nevertheless, behold--the body itself (of the Jew) rests," see *ibid.* It is written likewise in the resp. of the Hatam Sofer, ch. 84 see *ibid.*: "However, in the store, apart from the work of commerce, there is also other work which is Toraitically prohibited<sup>45</sup> for instance, writing and the like. If he is not careful in refraining from them, still he must be seen as a transgressor of Toraitic prohibitions."

The implication of all that was said, and the legal



conclusion in our case is that (regarding) the man in this case (despite the fact that he had already 'passed beyond the gates of death' (Fig. suffered very much) in that he was "bound in affliction and iron"<sup>46</sup> in the temporary prison of the ghetto), it is possible to find something that speaks for him in order to tell of his uprightness and to redeem him, by this, from "going down into the pit"<sup>47</sup> as one of the foolish ones who dies by way of their sinfulness. First of all, one can say in his favor that even though he keeps his store open on Shabbat, nevertheless, who will say to us that he personally engages in trade and commerce?! Behold, his store was large and there were a great many gentile employees who worked there. Although he was present in his store continually, nevertheless, he should not be considered, because of this, as one who profanes the Sabbath in public who transgresses the positive commandment of resting on Shabbat. For it is possible that his body was resting, and behold, the Torah is strict concerning bodily rest, and it is like what the Bet Meir wrote which I cited.<sup>48</sup> What can you say?--behold there is still other Toraitic 'work' which is customary in the store which perhaps he did, to which we called attention above. However, about this one can say: "The secret things belong to the Lord our G-d;"<sup>49</sup> (Furthermore) perhaps he would have refrained from doing work like this (which he actually did), for he did not



know that he profaned the Sabbath by work in his store,<sup>50</sup> rather he only knew that he kept his store open and no more. It is obvious that nothing can be proved from the fact that he was not counted among those who came to the synagogue or house of study to pray, since it is quite probable that he was accustomed to praying in his home for some reason.

However, although we have no proof that we should view him (because he kept his store open on Shabbat) as a certain Toraitic transgressor as it was stated, however, certainly we should view him as one who separates himself from the community; and as a person who breaks off the yolk of the commandments from off his neck; and he is included in what Karo wrote in the Sh. Ar. YD, ch. 345:5, which I quoted above.<sup>51</sup> Since behold, he was certainly a transgressor of the mitsvot of Rabbinical authority<sup>52</sup> in spite of everything we can say on his behalf, and this is obvious.

However, that only concerns the matter of busying oneself with him as with the rest of the dead, and the matter of mourning. However, concerning the matter of burial proper, certainly he must be buried in a Jewish grave. It is as we have explained--that this mitsvah applies to all the Jewish dead, even if they died in their wickedness, for example, those executed by the Bet Din, because it is stated: "Thou shalt surely bury him."<sup>53</sup>

However, in truth it seems that in our case, not only must we busy ourselves with him and bury him in a Jewish grave, but (also) his grave must not be distanced from the rest of the graves. (This is so) even though (it is the case that) before the cursed evildoers (may their names be blotted out) brought him to the ghetto prison just like other Jews, he was included with them that Karo lists in the Sh. Ar., YD, ch. 345:5, which I cited above. However, at this time: after they brought him to the ghetto; after they stole his money from him and all he had; killed all the members of his family and he remained solitary and alone, certainly he returned in full repentance concerning all that he did before--as his words testify which he said at the time when he was brought to the ghetto, as was stated above.

It is likewise supported from the words of the Great Rabbi Samuel Engil in part 6, ch. 3 of his resp. See *ibid.* where he is asked: "Why are light sinners buried next to people who have been dead for a long time?--since they have already been expiated and considered as righteous. Behold, 'a wicked person is not buried beside a righteous one.'" See *ibid.* where he answers: "We should not fear, for if it was not thusly, we would need to set aside a special cemetery for every dead person, or at least, a special row, for behold even a 'totally wicked person cannot be buried beside a light sinner,' as is supported

by our Mishna in Sanh. (46). As we have learnt in this Mishna: "Two places<sup>54</sup> for burial were maintained in readiness by the court, one for those who were beheaded or strangled<sup>55</sup> and the other for those who were stoned or burned,<sup>56</sup> see ibid. However, we presume that also these light sinners died in repentance, and moreover behold, death and burial atone. Therefore we must not be strict concerning this, see ibid.

This being so,<sup>57</sup> how much the more so<sup>58</sup> in our case where there is a basis for the matter that he repented, according to the simple meaning of his words which he uttered at the time when he was brought to the ghetto. Certainly his grave must not be distanced from the graves of his brothers, the people of his nation. It is certainly incumbent upon us to fulfill his will where he expressed his opinion that he wants to be buried amongst Jews without any discrimination. For without doubt, although it is possible that in his life (before he was brought to the ghetto) he wanted to be like the rest of the gentiles and to walk in their ways, nevertheless, at this time (after he saw the evil done to him, and his family, and every Jew, by the cursed Germans together with the Lithuanians--who did violence; robbed; killed; slaughtered; murdered; and annihilated; men, women, children and infants) certainly the nations revealed themselves before him with their true faces--a face of murderers and robbers, a face of a wild

beast, inhabitants of the forest and wilderness.

Without doubt, at the time when he saw how the impure murderers killed his son and his son-in-law before his eyes, at that same time he repented completely. For at this time, he understood and realized the (true) nature and character of the gentiles, with whom he continuously tried to associate and to believe that they were good and respectable people. At this same time, he realized that he had received no comfort from all his love for the gentiles. Not one of them hastened to come to his aid, to rescue him and his family. All his gentile neighbors betrayed him and were like his enemies in giving their assistance to the German criminals.

Thusly I heard from many people who were free-thinkers who highly praised the ways of the gentiles and wanted to imitate them in all respects, that at this time (after everything which had happened to them) they knew and understood what is a 'gentile'. They were sorry that they did not listen previously to the voice of their teachers and admonishers, who aroused their ears to morality, and who tried to convince them that Jews "are a people that shall dwell alone, and shall not be reckoned (among the nations)."<sup>59</sup> From the bottom of their hearts, feelings of repentance and regret were aroused in them, and the desire to return to the bosom of their people and to behave in the traditional spirit of their

ancestors.

Therefore, I decided that one must busy himself with this deceased person similar to the rest of the deceased in the ghetto: to give him shrouds, and to bury him in the most honorable fashion possible, as is customary, in the same row with all the Jews.

Therefore, after my decision was carried out, it became clear beyond a shadow of a doubt, that this deceased person returned in full repentance. For they testified about him afterwards, that in his home he wrapped himself in a Talit and donned Tefilin daily during his prayers. He was conscientious, concerning the mitsvah of tsitsit (fringes), to wear the Talit Katan on his body, and after his burial they found all this in his home.

## NOTES

1. King of demons.
2. cf. Ps. 44:14; 79:4.
3. Is. 53:7.
4. Jer. 22:19.
5. Deut. 21:22-3.
6. After being stoned.
7. See Deut. *ibid.* The text continues: "For he that is hanged is accursed of G-d", meaning: he that is hanged is a reproach unto G-d.
8. That the body must not be left hanging over night.
9. See Deut. ibid.
10. The executed person.
11. E.g., the seven and thirty days, and the twelve.  
See Philip Birnbaum, Maimonides Mishna Torah (New York: Hebrew Publishing Company, 1967), section Mourning, p. 319, note.
12. Before burial. "Which is not (considered as) honoring the dead." See Rashi, M. Sanh. 46b, S.V. v'lo

hayu mitablin aleihen.

13. See tractate Semahot 82 (7).
14. See Deut. ibid.
15. The M. (46a) continues: (The executed person) in his ancestral tomb, but two burial places were prepared by the Bet Din, one for those who were decapitated or strangled, and the other for those who were stoned or buried.
16. Of two separate burial grounds.
17. II Ki 13:21. The entire verse reads: "And it came to pass as they were burying a man, that behold, they spied a raiding party; and they fast the man into the tomb of Elisha: and as the man came there, he touched the bones of Elisha, he revived, and stood up on his feet." See Soncino, Sanh. 47a, note 9, p. 311 where he informs us that: "According to tradition, the man buried was the old prophet of Beth-El (I Ki 13:1)." Hence it is seen that G-d performed this miracle to show that it is not His will that this man, who was not righteous, be buried next to Elisha. See also Hullin 7B.
18. Those executed by the Bet Din.

19. In a special part of the cemetery (sometimes located at the fence or border of the cemetery, or at least six feet from the surrounding graves).
20. Where other family members are buried.
21. "The infinitive indicates that the command concerns all dead, not only those executed by the Court." See Soncino, Sanh. 46b, note 5, p. 307.
22. Of criminals.
23. In a nice place.
24. Deut. *ibid.*
25. Those not executed by the Bet Din.
26. Deut. *ibid.*
- 27-28. There is difficulty with Rambam's proof for burial. In ch. 12 Hil. Evel, Hal 1 we find that burial is Toraitic and can be derived from Deut. 21:22 "Thou shalt surely bury him." However, in Hil. Evel ch. 14, Hal. 1, and in Sefer Hamitsvot, Rambam says burial is founded on rabbinic authority only, although it is derived from the verse "thou shalt love thy neighbor as thyself," in Lev. 19:18. In this paragraph the difficulty is resolved in the following way: Toraitic burial from the verse "Thou shalt surely bury him" applies to the case where (only) the son is



obligated to bury his parents, and also in the case where (only) the Bet Din is obligated to bury a person executed by order of the Court. However, burial is only on rabbinic authority, based on the verse "Thou shalt love thy neighbor as thyself," concerning the remainder of the dead who have no sons to bury them and are as met mitsvah.

29. Lit. "One who cries for help and no one comes. Fig. An abandoned corpse. "The corpse of a person whose relatives are unknown and whose burial is obligatory upon the first Jew who finds it. Even the high priest in ancient times, who was ordinarily not permitted to come into close proximity with a corpse, was under full obligation to attend to and properly bury a met mitsvah. See Meg. 28b.

30. Who finds a met mitsvah.

31-32. See Eduyot 5:6. This mishna explains that his coffin was stoned, and not only this, but a stone was placed on his coffin as a sign that his friends were separated from him (see R. Ovadia Mibartinura s.v. soqlin et arono).

33. Festival garments.

34. "Because they lost one abhorred by G-d, as it is

written: 'But when the wicked perish there is jubilation'" (Prv. 11:10). See Shakh note 9.

35-36. Sh. Ar., YD, 362:5.

37. In a more elaborate way.

38. Toraitic authority is generally weightier than rabbinical authority especially in cases of doubt. Decision based on Scriptural authority follows this maxim: "Sefeqa' deoratia' lehumra'" -- "if doubt concerns scriptural authority, one must render a strict decision." See Betsa, 3b. However a decision based on Rabbinic authority follows this maxim: "Sefeqa' derabanan lequlah'" -- "if doubt concerns rabbinical authority one must render a lenient decision." See Shabbat 34a.

39. Lev. 21-24.

40. The Bet Meir distinguish between two types of agency with respect to a gentile. The first case is where a crime is involved and the Jewish sender is guilty. In this instance, the principle of 'yesh shaliah ledevar aveirah'' -- "there is agency for an illegal act" (See BQ 79a) applies, i.e., the responsibility is shifted to the employer. The second case involves applying the same principle mentioned above but concerns a deed which is not in itself prohibited and the agency is not a serious matter i.e., a shevut

(minor sin on the part of a Jew). The Bet Meir conclude that the above principle of 'yesh shaliah' etc. does not apply here in a strict sense since there is no real crime, only a shevut (i.e. telling a gentile to work for you on Shabbat). See Shab. 150a. Thus we have no major transgression in this case because the gentile is doing the work and the body of the Jew is resting.

41. That is: 'yesh shaliah ledevar aveirah.' See note 40; and also BQ 79a.

42. A Shevut denotes an occupation, on Sabbath and Festivals, forbidden by the Rabbis as being out of harmony with the celebration of the day. Philip Birnbaum explains in his work, A Book of Jewish Concepts (New York: Hebrew Publishing Company, 1964), pp. 576-7: "We are told that by the command 'you shall rest' (Ex. 23:12), the Torah 'implies that one must refrain also from doing things which are not actual work. Such activities, prohibited by the sages on the ground that they conflict with the spirit of Sabbath rest are many, some being forbidden because of their resemblance to prohibited kinds of work, others being forbidden as a preventive measure, lest they should lead to the doing of work prohibited under the penalty of stoning.'" (See Yad, Shabbat 21:1). See case 2, note 40.

43. If one says that the concept: 'yesh shaliah ledevar aveirah' (See BQ 79a.) applies. Some say: 'ein shaliah ledevar aveirah'--"there is no agency for wrong doing" (See Kid. 42b) and therefore (See also BQ 79a) the responsibility for an illegal act cannot be shifted to the employer because the concept of agency does not apply.
44. See note 40.
45. See Shabbat 7:2 where the Mishna outlines the main thirty-nine categories of work forbidden on the Sabbath.
46. Ps. 107:10.
47. Job 33:24.
48. See note 40.
49. Deut. 29:28.
50. He was ignorant of the Sabbath laws.
51. "All these are apostates and informers, and we do not mourn (before burial) nor mourn (after burial) for them, rather their brothers and the rest of their relatives wear white and wrap themselves in white and drink and make merry."
52. See note 58.
53. See note 5.

54. The Gemara (47a) explains that the reason for two burial places and not more is: "It is the tradition given to Moses on Sinai." These people are buried in different places because of the reason: "that a totally wicked sinner is not buried beside a light sinner."
55. These are totally wicked sinners.
56. These are light sinners.
57. That we presume that these light sinners died in repentance (see text above) and therefore we should not be strict concerning this.
58. Should we not be strict by burying this Jew in a separate place in the cemetery.
59. Nu. 23:9.

## Responsum 15

Concerning The Law: Whether It Is Permitted To Say A  
Mi Shebeirakh On Behalf Of A Gentile Who Is Ill?

Question: It was after we had the good fortune that G-d showed mercy on the refuge of Israel: "to bring out the prisoners from the prison, and them that sit in darkness out of the prison house."<sup>1</sup> Everyone who was inscribed for life saw a great light--the light of lovingkindness of the salvation of G-d, giving them prospect and hope. Amongst them was a boy (named) Yedudah, whom a gentile (woman) brought to her community in Kovno, since his parents (may their blood be avenged) hid him with this gentile. In her hand was a letter written by them (the boy's parents) and on it was the address of their relatives in America. She (this gentile woman) requested that they help, with all their ability, to return this child to the bosom of his people. Truly, her community tried in this matter, to find the relatives of this child--who accepted him with open arms, and bestowed upon him love and mercy, to rear him in the spirit of his ancestors. Indeed (this boy) (is the same) Rabbi Yehoshua who lives today in New York.

Behold, after the passage of time, this gentile woman came before me and made a request with her own mouth. Seeing that she was very ill, and since she heard that the Jews were accustomed to praying for the

sick, therefore she requested that they pray for her. She was certain that by the merit of her saving the boy, her prayer would be accepted and she would be healed. The question is: Whether it is permitted for us to pray on behalf of gentiles and say for them a Mi Shebeirakh?<sup>2</sup>

Answer: In Git. (Gla.) we read: "Our Rabbis have taught (in a Baraitah): 'that we are bound to support the gentile poor just as (lit. together with) the Jewish poor, and visit the sick of the gentiles just as the sick of the Jews, and bury the dead of the gentiles just as the dead of the Jews,'<sup>3</sup> in the interests of peace.'"

In the Sh. Ar., YD 151:12 it was likewise decided: "It is permitted to support their poor, visit their sick and bury their dead, eulogize them and comfort their mourners, in the interests of peace."

In the resp. of Hayyim Bir, ch. 51, he wrote concerning a gentile with whom he did business and from whom he profited: "It is permitted for a Jew to pray that he will live, and also to give charity so that he will be healed. For in this case (the prohibition based on): 'Do not be gracious unto them',<sup>4</sup> does not apply," see *ibid.*

Also in *Sefer Hasidim* the author cites that it is permitted to pray for a gentile whom one has sent far

away (on business), that he will return in peace and that he should not wish for him any harm. See *ibid.* in *Sefer Hasidim*, ch. 256 and 746 where it says *ibid.*: "I heard (of a case where) gentiles came to the righteous of the generation to ask for their blessing and they (these righteous Jews) prayed for them (for the gentiles)."

Therefore, it seems to me that in our case, certainly it is permitted to pray on behalf of this gentile woman. The prohibition: "Do not be gracious unto them,"<sup>5</sup> does not apply here--seeing that she did a great loving deed as this: to save a Jewish life from death by rescuing him from the impure hands of the cursed Germans. Therefore, it is permitted to pray on her behalf and to say a Mi Shebeirakh. I decided that it should be done thusly.



## NOTES

1. Is. 42:7.
2. Lit. "May He who blessed." This is the title and also the opening line of the prayer for the Jewish sick. See Harlow's Rabbinic Manual, pp. 89-90.
3. "If there is no one else to bury them, but not in a Jewish cemetery." See Soncino, Git. 61a, note 1; and also Rashi, ibid, s.v. 'im metei Yisrael.'
4. In other words: do not do a favor for them. See Deut. 7:2, and AZ 20a. These sources apply this verse only to the wicked amongst the nations (i.e.: idolators) who: "Will turn away thy son from following Me (G-d), that they may serve other gods.." (See Deut. ibid.)
5. See note 4.

## Responsum 16

Concerning The Law of Sustaining One's Life On The Flesh  
Of The Dead In The Ghetto And Concentration Camp.

Question: I was asked by Mr. A. Goldstein, (may his light shine), (a question) in connection with the terrible incident which occurred in the nation of Chile where an airplane crashed in a wind storm in the Andes mountains.<sup>1</sup> Most of the passengers perished in this accident and only a few of them survived in a surprising manner. They lived there among the mountains and high rocks at a range of 12,000 feet more than ten weeks, for they were not able to descend from there. In order to sustain their lives, so that they would not die of starvation, they ate the flesh of the others who died in the accident. I was asked by the person mentioned above, in that same era pregnant with troubles--in the years of the German conquest when numerous Jews were imprisoned in concentration camps in which hunger and famine prevailed--whether an incident occurred then, where our imprisoned brethren ate the flesh of their fellow Jews (who died from poverty and want) in order to sustain their lives like the passengers of the airplane did above? And likewise: whether it is truly permitted, from the standpoint of the law, for a Jew to sustain his life on the flesh of a person, in a situation of piquah nefesh (saving of a life)<sup>2</sup> like this?

Answer: Behold in Ket. (60a) it says: "Our Rabbis taught<sup>3</sup>: 'A child must be breast fed for twenty-four months. From that age onwards he is regarded as one who sucks an abominable thing'; these are the words of R. Eliezer. R. Joshua said: (He may be breast fed) even for four or five years. If, however, he ceased after the twenty-four months and started again he is to be regarded as sucking an abominable thing. It was said (by a sage): 'From that age onwards he is to be regarded as one who sucks an abominable thing.' But I could point out a contradiction: As it might have been presumed that milk from those who walk on two (legs) ('milk of a woman who walks on two legs'--Rashi), is unclean ("forbidden"--Rashi) since such (prohibition may be deduced from the following) logical argument (we have a kal v'homer)<sup>4</sup>: If in the case of (an unclean) animal, where one is lenient when touching them ("which do not cause defilement while alive"--Rashi) (the use of) its milk has nevertheless been prohibited ("as is stated in Ber. (p. 6): 'Camel', 'Camel' is stated twice,<sup>5</sup> one is to prohibit its milk"--Rashi), how much the more so should one prohibit the milk of a human since touching it ("a menstruating woman"--Rashi) is prohibited; therefore the Torah says: "the camel, although it chews its cud (..it is unclean unto you.)"<sup>6</sup>, only 'it'<sup>7</sup> (Heb. 'hu') is unclean; human milk (lit. milk from those who walk on two (legs)) however, is not unclean but clean

excluded<sup>13</sup> because (the flesh prohibition) applies to every creature, for even concerning a clean beast there is a prohibition against eating "the flesh of a living animal;"<sup>14</sup> therefore the Torah says: "This is unclean" (Heb. "zeh tamei")<sup>15</sup> meaning--the Biblical prohibition of flesh refers to animals and not to human beings." Ri said: "According to our texts where the word "it" (Heb "hu") is interpreted to permit milk and blood, as well as according to the Torat Kohanim (Sifra) where the interpretation is taken from the word "these" (Heb. "zeh"), it follows properly that they could have excluded milk, flesh, and blood, by one verse,<sup>16</sup> as we find in many places that we exclude by one verse many things," see ibid. in the Tosafot.

Behold, Rambam in ch. 2 of Hil. Maakhalot Asurot, Hal. 1 writes: "From the principle which states: 'whatever parts the hoof, and is clovenfooted, and chews the cud,'"<sup>17</sup> I might presume that every (beast) which does not chew its cud and is not clovenfooted is forbidden--for 'a prohibition derived from a positive formulation of the law, has the characteristics of a positive law.'<sup>18</sup> Concerning a camel, a pig, a hare, and a rabbit the Torah states: "You shall not eat from that which chews the cud, and from that which parts the hoof," etc.<sup>19</sup> Behold, you learn<sup>20</sup> that these (animals) are prohibited by a negative command, etc.

In Hal. 2 *ibid.* he wrote: "Therefore anyone who eats as much as an olives' measure<sup>21</sup> of flesh from an unclean beast or animal receives stripes<sup>22</sup> according to the Torah, whether he ate from the flesh or whether he drank from the milk; the Torah did not differentiate, with respect to unclean species, between their milk and their meat."

In Hal. 3 *ibid.* he wrote: "Even though it is written concerning man: 'And man became a living being' (lit. animal),<sup>23</sup> he is not included in the species of animals which part the hoof.<sup>24</sup> Therefore, he is not prohibited by a negative command, and he who eats human flesh or (drinks) their milk, whether from the living or the dead, is not given stripes;<sup>25</sup> but it is prohibited by a positive command because the Torah enumerated seven species of animals and states concerning them: "There are the beasts which you shall eat."<sup>26</sup> Surely, everything apart from these you shall not eat--for 'a prohibition derived from a positive formulation of the law, has the characteristics of a positive law,'" etc.<sup>27</sup>

In the Beior Shetat Harambam the Magid Mishneh wrote: "Even though it is written concerning a man, etc. It is explained in the Torat Kohanim that 'human flesh' is not prohibited by a negative command rather by a positive command, since behold 'Scripture enumerated seven' (Kosher species),<sup>28</sup> etc. This follows from Rambam

from what he wrote *ibid*: I might think that even the eating of human flesh and the drinking of human milk are prohibited by a negative command, therefore the Torah says: 'These are the beasts which you shall not eat' (Lev. 11:2); this means, these are prohibited for eating by a negative command, however the flesh of humans is not prohibited for eating by a negative command. Rambam holds, had it been permitted, they would not have said so, rather certainly there is no negative command (prohibiting the eating of human flesh) but it is prohibited by a positive command. The Torah had to exclude him (man) because of the verse: 'And man became a living being,'<sup>29</sup> even though the blood and the milk are completely permitted Scripturally, as it is explained in Ket., ch. Af Al Pi (p. 60), etc. This Baraitah,<sup>30</sup> according to its obvious meaning, supports the words of Rambam--that if the flesh of humans was completely permitted Scripturally, what was the purpose of informing us of 'his blood and his milk'?--and how can he be clean (kosher to eat), and that which comes forth from him (blood and milk) unclean, etc.? The following is the opinion of Nachmonides (Ramban), (may his name be for a blessing), and the Rashba, (may his name be for a blessing), that there is no Scriptural prohibition at all concerning human flesh (severed from a person while still alive). However, Nachmonides (may his name be for a blessing) wrote: "The

flesh of a dead Jew is forbidden Scripturally, even for deriving benefit (thereof). The prohibition of deriving benefit from the dead has already been explained in the words of the Rambam, etc." R. Aaron Halevi agrees with the opinion of he who says that the precise text of this is in the Sifrei: "You might think that blood of humans is prohibited by a negative command, and the words of Rambam appear to be correct (lit. basic)." These are the words of the Magid Mishneh, see *ibid*.

Behold, we have three opinions concerning human flesh: 1) The opinion of the Tosafot, Nachmonides, and Rashba: that milk, flesh, and blood are equally permitted Scripturally; 2) The opinion of Rambam: that only milk and blood are permitted, but flesh is prohibited by a positive command; 3) The opinion of Aaron Halevi: that the flesh and the milk are prohibited by a negative command.

In the Sh. Ar., YD 79:1, Rama wrote: "The eating of human flesh is prohibited Scripturally (Ran, ch. Af Al Pi; and Rambam, ch. 2 of Maakhalot Asurot, Din 3; and Harav Hamagid; and Korban Aaron, ch. 8, p. 64, column 4; who do not agree with the meaning in the Tosafot ch. Af Al Pi; and Rosh (says): "Human flesh is not prohibited Scripturally", see Bah).

See in Shakh, note 3, where he wrote: "Surely Rama wrote that human flesh is prohibited for eating



Scripturally--this refers to flesh which is separated from a person while he is still alive; but flesh from the dead is prohibited even for deriving benefit (thereof), according to the Torah in everyones opinion.<sup>31</sup> This is like what Nachmonides wrote when he cited the Magid Mishneh which we cited above.

The Turei Zahav ibid., note 3, cite what Rosh wrote in ch. Af Al Pi: "That human flesh, even though it is only prohibited Rabbinically, in any case, when separated (from a living body) it is permitted," see ibid.

See in the resp. of Zerah Emet, part II, ch. 48, in the case whether it is permitted for a sick person, who is not in (mortal) danger, to be cured by means of medicines which contain mixed in them crushed and burnt human skull bones. And (see) likewise in the book Mahazik Berakhah, YD ch. 79, note 2 of Hayyim Yosef David Azulai (may his memory be for a blessing); and in the resp. of Emek Hamelekh, ch. 75.

In the resp. of Radbaz, cn. 548, in the case whether it is permitted to eat the flesh of a mumified corpse, which became dry, for healing purposes--he wrote to permit it, even for a sick person who is in no danger, because it has become so dry that it is not worthy to be dog food.<sup>32</sup>

See also in the resp. of R. Shelomoh b. Shimone (son of Shimone b. Tsemah Duran), ch. 518, where he wrote



about a case where the woman was accustomed to swallowing the foreskin of infants who had been circumcised, in order to give birth to male children.<sup>53</sup> According to the opinion of the Tosafot in Ket., p. 60, it is permitted. It is stated likewise in the Shulhan Ge'vohah ibid., note 4, see there.

Also regarding the prohibition of deriving benefit from the dead (see) what I cited above--the words of Nachmonides and Shakh.<sup>54</sup> Behold, it is the opinion of many of the early Poskim that there is only a Rabbinical prohibition. See in the resp. of Yavets, part 1, ch. 41; and likewise in the Sedei Hemed, in the section called Devrei Hakhamim, ch. 51; specifically concerning the death of a gentile, the opinion of the Tosafot in BQ, p. 10, s.v. "Shehashor", where they say that it is permitted for deriving benefit (thereof).<sup>55</sup> It is likewise the opinion of Nachmonides; the Rokeah; the Yerim; the Mishneh Lemelekh; and the Pri Hadash. See further in the resp. of the Hatam Sofer, section YD ch. 336; and see further in Migdal Oz of the Great Rabbi Yavets, (may his name be for a blessing), in Hil. Isurei Akhilah at the end of ch. 1.

On the basis of all this, it seems to me that it is permitted to eat the flesh of the (human) dead in order to sustain one's life. Especially, as it is stated in Tractate Yoma, p. 82a: "That there is nothing that stands

in the way of saving a life except: idol worship" etc.; and it is decided thusly in the Sh. Ar., YD ch. 157. Even in a case of doubt it is stated: "As it is written, 'that you shalt live by them'",<sup>36</sup> etc.; in particular (sustaining oneself) on human flesh. For even according to the opinion of those who hold that it is prohibited Scripturally, nevertheless, he does not receive stripes because he did not transgress a negative command, rather a positive command as Rambam wrote in ch. 2 of Hil. Maakhalot Asurot, Hal. 3. How much the less so<sup>37</sup> according to the opinion of those Poskim who hold that concerning human flesh, there is not even a Rabbinical prohibition.

Nevertheless, it never happened in the Kovno Ghetto nor in the surrounding camps, that human flesh was eaten. Only this was known to us, that next to the place where the Jewish forced laborers worked was a camp of captive Russian soldiers. Jews told me that they saw how these captive soldiers roasted, over campfires which they made, the flesh of a dead soldier and ate it.

Also my friend, the rabbi mentioned above who was in the camp Theresienstadt, told me that he had not seen nor heard of Jews who ate human flesh.

"And it is the pride<sup>38</sup> of the Jewish people,"<sup>39</sup> and rightly so. For behold, there is no estimating nor describing the great hunger which prevailed in the Jewish

concentration camps--and hunger is worse than any other form of suffering. Nevertheless, the Jews did not descend from their holiness--the holiness of man--and did not eat ever, human flesh. We know what is stated in the Torah: "You shall be a holy people unto Me;"<sup>40</sup> and Rashi comments: "If you (will be) holy and seperated from the loathsomeness of carrion (forbidden animals), and tereifa, then you (shall be) mine." Therefore, those imprisoned in the camps want to be G-d's (people), and to give their lives in holiness and purity in the sanctification of the Divine Name (martyrdom). They chose to die the death of the upright, and not to defile themselves by eating human flesh, which is loathsome, and tastes like the flesh of swine <sup>41</sup> (even though its taste is excellent). As it is written in the resp. of Yavets in the name of ancient physicians.

May the good Lord watch over the remnant of His people, and redeem them from slavery unto freedom, from darkness to great light. May we merit (Fig. have the good fortune) to go up to Zion in joy, and to Jerusalem--House of His holiness--in eternal happiness, speedily in our day, Amen.

Behold, regarding this question I spoke with my friend the great well-known Rabbi Avraham Meir Izrael, may he live long and happily, Amen. He cited this question in my name in the periodical Hama'or, in the

month of Kislev-Tevet, year 25, note 2.

See *ibid.* in Hama'or where the opinion of the Rashba is cited that human flesh is not prohibited Scripturally, however the mitsvah of perushah (seperation)<sup>42</sup> applies there. The opinion of the Rabad and Nachmonides is that not even the mitsvah of perushah applies. Also the Pri Hadash wrote that not even the mitsvah of perushah is applicable there.

## NOTES

1. See, Piers Paul Read Alive: The Story of The Andes Survivors, (Lippincott, 1974).
2. See note 29 of resp. 9.
3. In a Baraitah. See Tosefta Nid. II.
4. This is an a minori argument comparing a woman with a camel.
5. Once in Lev. 11:4 and again in Deut. 14:7. Since there are no superfluous words in the Torah, the repetition of the word 'camel' is interpreted in this way: one to forbid the camel itself and the other is to prohibit its milk.
6. Lev. 11:4. This Scriptural verse reflects the kal v'homer because a woman does not chew the cud and is therefore in a different category from that of a camel.
7. The second 'it' ('hu') in Lev. 11:4.
8. cf. Ker. 22a.
9. "I.e., human milk is not only Pentateuchally but also Rabbinically permitted. How then is this ruling to be harmonized with the previous Baraitah from Nid. which

regards human milk as an abominable thing?" See Soncino, Ket. 60a, note 3, p. 357.

10. The last mentioned Baraitah (which begins with Amar mar) which permits the consumption of human milk. See Soncino ibid., note 3.
11. No word in the Torah is superfluous. Even a seemingly superfluous word is either inclusive or exclusive, or serves as a connecting link especially for a gezerah shavah. In this case, "zeh" is exclusive meaning "these" and none else.
- 12-13. From the restriction of consuming it.
14. Lev. 13:15.
15. Ibid. 11:4
16. Why use two verses, i.e., "zeh" and "hu" when one would have been sufficient.
17. Nu. 14:6.
18. (See Yev. 56b.) It only carries the consequences of transgressing a positive law, which is not as serious as transgressing a negative law. (As a rule, there is no punishment for transgressing a positive law with two exceptions, namely: brit milah and korban pesah which carry with them the punishment of kareit).

19. Lev. 11:4.
20. By their being specifically mentioned among the prohibition, that we do not want to derive them from the positive law (which tells which animals are allowed to be eaten) by using the principle of: 'a prohibition derived from a positive formulation of the law has the character of a positive law.'
21. See Sh. Ar., OH 486.
22. See Yoma 80a, s.v. 'kol hashiurim kulan bikhziat.'
23. Gen. 2:7.
24. Of which the Torah wrote (Lev. 11:4): "Nevertheless, these you shall not eat of them etc., of them that part the hoof.
25. And also he is not guilty of transgressing the prohibition of 'eating the flesh of a living animal', since this prohibition applies only to domesticated animals, wild beasts, and clean birds. See Gen. 9:4; Sh. Ar., YD 62:1.
26. Lev. 11:2.
27. This principle applies to the consumption of human flesh.

28. And man was not included among them. Thus, for instance, eating human flesh is a lighter prohibition than eating pork according to the Torah.
29. See note 23.
30. Ket. 60a. S.V. Amar mar.
31. See Hul 128b. where it states: 'What difference is there between a limb torn from a living animal and a limb torn from a dead animal?--The difference is where some flesh is severed from the limb; for flesh severed from the limb torn from a living animal is not rendered unclean, but (flesh severed) from the limb torn from a dead animal is rendered unclean.'
32. In tractate Toh. 8:6 it states: "A general rule has been laid down concerning clean foodstuffs: whatever is designated as food for human consumption is susceptible to uncleanness unless it is rendered unfit to be food for a dog..." See Ker. 21a. See also Nid. 55a where it says: "The flesh of a corpse that was crumbled (owing to its extreme dryness) is clean."
33. See Joshua Trachtenberg's Jewish Magic & Superstition (New York: A Temple Book, Atheneum, 1975), pp. 188-9, where he lists other theories concerning the factors that determine the sex of the child.



34. The prohibition of deriving benefit from the dead is Toraitic, according to these two poskim, being derived from Nu. 20:1: "And Miriam died there and was buried there." See Sh. Ar., YD 349:1; and see Shakh ibid, note 1.
35. From the corpse of a gentile.
36. Meaning 'not die by them.' See Lev. 18:5 and Yoma 85b.
37. Are there any negative consequences for eating human flesh.
38. Shows the excellence of the Jewish people.
39. Ps. 68:35.
40. Lev. 19:2.
41. Which is forbidden for consumption by the Torah.
42. See Lev. 19:2 in the Sifra where it explains that the meaning of 'kedosh tihiyu' (Thou shalt be holy) is 'perushim tihiyu' (You shalt be seperated), that is:seperated from prohibited things which are abominable.

## Responsum 17

Concerning The Law In The Ghetto Hospital, Where There Were Sick People Who Wanted To Fast On Yom Kippur. The Physicians Said If They Fast, There Is Fear That They Will Aggravate Their Illnesses And Will Endanger Themselves. Are They Allowed, According To Law, To Be Strict With Themselves?

Question: On the eve of Yom Kippur of the year 1942, Dr. Epp said to me that Dr. Zacharin, the Director of the ghetto hospital, wanted to speak with me in connection with a very pressing matter, and requested that I come to him immediately to the hospital.

When I came to him he said to me that there are, at the hospital, a noticeable number of sick individuals for whom danger to their lives is imminent if they fast<sup>1</sup> on Yom Kippur. Behold despite the fact he said to them that because of their serious condition it is forbidden to fast, nevertheless, they still agreed that on this holy day they wanted to join themselves to Klal Yisrael, to fast and to pray that the Holy One Blessed Be He would take pity and have mercy on His people, and hasten for them redemption and salvation from the hand of the German enemy--who devours Jacob (the Jewish people) with hearty appetite.

His words impressed them when he explained the great danger which would threaten them if they fasted. In spite

of the severe condition of their health, is the fact that the fast would certainly harm them. Behold, the (portions of) food at the hospital were very meager,<sup>2</sup> and there was not enough there in order to sustain even healthy people and to restore their souls (and strengthen them) after the fast--and especially sick individuals like them, for whom the condition of a number of them was serious due to their illnesses. If they fast on Yom Kippur, behold, on the night following Yom Kippur--the 200 grams of bread and the tiny bit of black soup (made) from horse bones which would be given them, would not be sufficient to break their hunger after the fast, and their illnesses would grow progressively worse.

Nevertheless, they strongly adhered to their opinion in saying that they are absolutely certain that the Holy One Blessed Be He would help them to withstand the fast of Yom Kippur. Whatever they are given will not be sufficient (food) to break their hunger after the fast, and I explained that it is forbidden for them to fast in their condition from the standpoint of the halakhah. By the way, the one who asked the question told me not only Orthodox sick (who all their days were strict with G-d's matters) held fast to their opinions and insisted on fasting on Yom Kippur, but even such people who all their lives observed neither religion nor mitsvah. Now, also they joined the rest of the sick, and they too insisted

on fasting on Yom Kippur together with everyone, and not to be an exception to the (fasting) community in this hard hour for Jews.

In hearing these words Dr. Zacharin told me, I was stunned from the great amazement. I said in my heart: "Master of the Universe, look (down) from the heavens, and see and observe from your holy habitation your people Israel, for whom even in the hour of their lowly condition, travail, and oppression, "the spirit of the Lord continues to move them;"<sup>5</sup> and they believe with perfect faith that "the Glory (Eternal) of Israel will not fail,"<sup>4</sup> and the lamp of Israel will not be extinguished."<sup>5</sup> Even in the face of bitter death they are ready to give their lives for the sanctification of the (Divine) Name (in martyrdom),<sup>6</sup> and they strive to donate their portion to the continued existence of the People of Israel by means of observance (with all their soul and might) of His ordinances, His mitsvot and statutes, as commanded in His Torah.

I said to Dr. Zacharin, that after I clarify whether there is no obstacle from the standpoint of halakhah to render the fast forbidden for them, certainly I will do his bidding and fulfill his request to persuade the sick and influence them not to fast on this Yom Kippur, so that they will not endanger their lives.

Answer: In tractate Yoma (85) we read: "R. Ishmael, R. Akiba and R. Eleazar b. Azariah were once on a journey, with Levi ha-Saddar and R. Ishmael son of R. Eleazar b. Azariah following them. Then this question was asked of them: Whence do we know that in the case of danger to human life the laws of the Sabbath are suspended? R. Ishmael answered and said, etc. Rab Yehudah said in the name of Samuel: If I had been there, I would have told them something better than what they said: "He shall live by them,"<sup>7</sup> but he shall not die because of them."<sup>8</sup> Raba said: (The exposition) of all of them could be refuted, except that of Samuel, which cannot be refuted," see *ibid*.

Rambam in ch. 2 of Hil. Shabbat, Hal. I, II, etc. wrote: "The (commandment of) Shabbat, like all other commandments, may be set aside if human life is in danger."<sup>9</sup> Accordingly, if a person is dangerously ill, whatever a skilled local physician considers necessary may be done for him on Shabbat. If it is uncertain whether the Shabbat needs to be violated or not etc., the Shabbat must be violated, for the mere possibility of danger to human life overrides the Shabbat." "The general rule of the matter of Shabbat concerning a person who is dangerously ill is: Behold, he is like a sick individual concerning all the things that he requires. When such things have to be done, they should not be performed by gentiles, minors, slaves or woman, lest the Sabbath

(observance) becomes trivial in their eyes; instead, scholars and sages of Israel are to carry them out. One must not put off the desecration of the Sabbath in treating the dangerously ill patient, as it is written: "Which if a person do, he shall live by them,"<sup>10</sup> but he must not die by them. From this you may infer that the laws of the Torah are not to wreak vengeance upon the world, but to bestow on it mercy, lovingkindness, and peace. It is of secterians who say that this is a desecration of the Sabbath and therefore prohibited. Concerning them Scripture says: 'Wherefore I gave them statutes that were not good, and ordinances whereby they should not live by them.'"<sup>11</sup>

The R. Magid wrote about the verse "it is forbidden to put off" etc., *ibid.*, it is explained *ibid* in the Yer.: "He who is diligent, behold is praiseworthy; and he who asks, behold is as one who sheds blood (a murderer),"<sup>12</sup> see *ibid.*

See Nachmonides in his book Milhamot Hashem, in ch. Ben Sorar U'moreh in Sanh. s.v. v'ode amar Abayee, where he also wrote: "We have not learned of an act of piety for a dangerously ill person where he cannot desecrate the Shabbat, rather he who is diligent<sup>13</sup> is praiseworthy, and he who restrains himself<sup>14</sup> is guilty of death," see *ibid.*

See also in Ran, in ch. Yom Hakippurim in Yoma, where

he wrote: "And for a dangerously ill person to whom experts said: 'to desecrate the Shabbat is an act of piety'--if he refrains from doing it, he is nothing but a murderer. He who is diligent, behold, he is praiseworthy; he who is asked<sup>15</sup> in reprehensive; the asker is a murderer; and all the more so he who restrains himself is guilty of murder." See also in the Torat Haadam, p. 11b; and in the M'irei Hibur Hateshuvah, p. 471, where the author wrote: "Any one who tries to be exceptionally pious concerning this, and who risks his life because of this, behold, he is in the category of murderers."

In the Sh. Ar., OH ch. 618:1 the author wrote: "A sick person who needs to eat--if there is an expert doctor (even if he is a gentile) who says: 'If he is not fed it is possible that the illness will become more serious and he will endanger himself'--is fed orally, and it is not necessary to say: 'lest he die.'<sup>16</sup> Even if the sick individual says that he does not need (to eat), we heed the physician,<sup>17</sup> see ibid.

Yet in connection with the fast of Yom Kippur I saw in the resp. of Haelef L'kha Shelomoh, section OH ch. 351, where the author wrote: "In a situation where there is fear of danger, it is permitted for a person to be strict with himself to fast on Yom Kippur, since the fast of Yom Kippur is Toraitic.<sup>18</sup> If he is an important man, it

is proper that he be strict with himself.<sup>19</sup> However, on Tisha B'av, which is Rabbinical, it is forbidden to be strict with oneself.<sup>20</sup>

However, in the resp. of the Radbaz, part 3, ch. 444, he wrote: "Heaven forbid for the sick person who is strict with himself by fasting on Yom Kippur if the physicians fear that he will possibly endanger himself by this. He who is strict with himself is guilty of death as it is written: "And surely your blood of your lives will I require,"<sup>21</sup> see *ibid.*

I saw in the resp. of Avnei Nezer, section HM ch. 193, where the author cites the words of R. Avraham b. (Ibn) Ezra concerning his commentary on the Torah in ch. Mishpatim where he wrote: "Permission is only given to the physician to heal for external wounds. However, for those whose sickness is internal, it is in the power of C-d to heal him and not in the hands of the physicians. For such is the opinion of Nachmonides in ch. Behuqotai<sup>22</sup> where he wrote: "But when a man's ways please the Lord<sup>23</sup>, he need have no concern with physicians...<sup>24</sup> The righteous did thusly in the time of prophecy, for they did not seek the physicians, but rather the prophets. This was the sin of Asa as it is stated regarding him: 'Yet in his disease he did not seek the Lord, but the physicians.'" He<sup>25</sup> concluded *ibid.*, that the sick person has a right not to heed the physicians when they order him



to eat a forbidden food<sup>26</sup> to heal him. Even if the sick person is not regarded (Lit. did not have the presumption of being) as a righteous individual,<sup>27</sup> he is allowed to be strict with himself not to eat a forbidden food and to trust in the Lord that He will heal him, even though he may be in danger. However, the matter is surprising. Now that all revelation has ceased and prophecy has been discontinued from Israel, certainly we are obligated to act according to the advice of the physicians, as it is stated in Yoma 83: "If the physician says that the sick person says that he does not (need to eat)--we heed the physician and feed him." Nachmonides wrote likewise in Torat Haadam p. 7d; and Rambam decided thusly in ch. 2 of Hil Shevitat Asur, Hal. 8. From the words of the Sh. Ar., OH. ch. 618:1 the meaning is: "That even if the sick person has an internal illness, we listen to the words of the physician and profane the Shabbat and Yom Kippur."-- And (see) in particular what Tashbats wrote in his resp., part I, ch. 51: "That one must rely on the words of R. Avraham Ibn Ezra in contrast to the opinion of the Poskim. See the Rambam in his commentary on Hamishnayot, the end of ch. 4 of Pes.: "If the sick person does not act according to the ways of healing based on the laws of nature, then ultimately he will die of that (same) illness, which was not decreed for him at the time when he fell sick. It is similar (to the case of) entering a blazing fire--

for certainly the fire will devour him and he will die before his time. And the result is, he himself is guilty of (causing his own) death. These are clear things which only crooked and twisted people (idiots) deny."

Behold in Pes. (25a.) it states: "For when Rabin came, R. Yohanan said: one may be healed by anything except for idolatry, incest, and murder," see *ibid*.

In Sanh. (74a.) we read: "R Yohanan said in the name of R. Shimone b. Yehotsdak, they noted and passed a law in the upper chamber<sup>28</sup> of Nitsah in Lod: If it is said to a man "transgress or you will be killed," he may transgress every law in the Torah excluding idolatry, incest and murder."

Rambam in ch. 5 of Hil Yesodei Hatorah, Hal. I and II wrote: "Should an idolater arise and coerce a Jew to violate anyone of the commandments mentioned in the Torah under the threat that otherwise he would put him to death, the Jew is to commit the transgression rather than suffer death; for concerning the commandments it is said, "Which if a man do them, he shall live by them"<sup>29</sup>: "live by them, and not die by them." And if he suffered death rather than commit a transgression, he himself is guilty of (causing his own) death." To what does this rule apply?--To all the commandments, except the prohibitions of idolatry, incest and murder. With regard to these; if a Jew should be told: "Trans-

gress one of them or else you will be put to death," he should suffer death rather than transgress."

Behold, with regard to the decision of the Rambam, that concerning the rest of the mitsvot stated in the Torah if someone suffers death and does not transgress-- behold, he himself is guilty of (causing his own) death. The Tosafot in AZ (27b) do not hold thusly.

See *ibid.* in the Tosafot s.v. "yakhol", where they wrote at the end of their words: "If he wants to be strict with himself regarding the rest of the mitsvot, he is permitted--like R. Aba bar Zimra the Jerusalemite who was beside a gentile who said to him: 'Eat carrion'<sup>50</sup> or I will kill you.' R. Zimra said to him: 'If you want to kill me, kill.' And he was strict with himself because this was done in private," see *ibid.*

See in the Rosh, AZ 82, at the end of ch. 9, where he holds concerning this like the opinion of the Tosafot. See *ibid.* where he wrote: "If a person wants to be strict with himself to suffer death for the rest of the transgression in private<sup>51</sup>, he is permitted, and we do not call it self-inflicted injury, as it is stated in the Yer.: 'R. Aba bar Zimra was a tailor for a gentile, and the gentile said to him: 'Eat carrion, and if (you do) so I will not kill you.' R. Zimra said to him: 'If you want to kill me, kill--for I will not eat it!'" We have to assume this was in private in the house of the gentile--

but he wanted to be strict with himself.

I saw in the resp. of the Radbaz, part 4, ch. 67, where he concluded: "That even the Tosafot and the Rosh--who disagree with the Rambam and hold that: the one to whom the law applies that he should transgress and not suffer death, and he was killed and did not transgress, behold, he is praiseworthy--nevertheless (they) agree concerning a dangerously ill person who refuses to profane the Shabbat and Yom Kippur (because of it) that he is a pious fool and G-d will demand the blood from his hand,<sup>32</sup> as the Torah states: "Live by them", meaning that he should not die by them." Only concerning the matter of sanctification of the (Divine) Name is he permitted to submit to death so they will not make him transgress his religion, (may his name be blessed), see *ibid*.

See in the book Shevet Yehudah, ch. 336, where the author decided: "The obligation is incumbent upon the sick person and his relatives to search for the most expert physician, and the best medicines which would be most beneficial in healing that sick person. And (for) he who procrastinates concerning this matter and says that G-d will send His word and heal him--his opinion regarding this is the opinion of fools, and he is destined to suffer the consequences. Behold, the halakhah is saturated (with examples) where Shabbat and Yom Kippur

are profaned for the sake of 'saving a life' (Heb. piquah nefesh)<sup>33</sup>--grinding and cooking of drugs (medicines) for the dangerously ill--even though they are complete (forms of) work<sup>34</sup> for which a transgressor makes himself guilty of kareit<sup>35</sup> or seqilla.<sup>36</sup>

See also in the Hatam Sofer, section OH. ch. 177; and in Birkei Yosef, ch. 315, where they conclude that the sick person is obligated to act according to the laws of nature, to obey the instructions of the physician, and it is forbidden for him to rely on miracles. Nevertheless, he must trust in the Lord that He will send His word and heal him by means of the physician and medicines," see *ibid.* See likewise in the resp. of Divrei Malkhiel, section 5, ch. 58; and in the resp. of Or Gadol, ch. 1.

We conclude from all that has been cited, that in our case--since according to the opinion of the physicians, if the patients insist on fasting on Yom Kippur they are endangering, by this, their lives--certainly the law is that far be it from them to be strict with themselves and fast. This is as the Radbaz decided in section 3, ch. 444, which I cited above: "That far be it from the patient to be strict with himself by fasting on Yom Kippur if the physicians fear that he may possibly endanger himself by this." In our case, behold, the physicians are certain, and not in doubt, that the patients will definitely en-

danger themselves by this.

It is not necessary (to say) that according to the opinion of the Rambam and those who follow him--who hold that if a person is forced to transgress one of the mitsvot mentioned in the Torah to which the law applies: 'that they should transgress and not be killed'--that if he suffers death and does not transgress, behold, he is guilty of (causing his own) death. However, even according to the opinion of the Tosafot and the Rosh concerning idolatry, which I cited above, they hold that if a person wants to be strict with himself and to be killed, even for the rest of the mitsvot written in the Torah, he is permitted. Did not the Radbaz in section 4, ch. 67, which I cited above, conclude: "That even the Tosafot and the Rosh agree concerning a dangerously ill person, who refrains from profaning the Shabbat and Yom Kippur (because of it)--he is a pious fool and G-d will demand his blood from his hand. This being so, certainly also the Tosafot and the Rosh agree concerning the matter of fasting on Yom Kippur, that it is forbidden for a person to be strict with himself against the opinion of the physicians, and to fast on Yom Kippur--as the Radbaz decided in part 3, ch. 444: "That he who is strict with himself is guilty of death, as it is written: "And surely your blood of your lives I will require.'"<sup>37</sup>

I already cited the words of Nachmonides, and Ran, and

there is no need to repeat these things. In the Sh. Ar., OH ch. 618, which I cited above, behold, the author explicitly decided that if the physician says that it is necessary to feed the sick person on Yom Kippur, we heed him, even if the physician is a gentile.

Even concerning what Haelef L'kha Shelomoh wrote in the resp. which I cited above--"that in a situation of doubtful danger it is permitted for a person to be strict with himself and fast on Yom Kippur, since the fast is Toraitic"<sup>38</sup>--it appears that it is proper to say that in (a case of) certain danger Haelef L'kha Shelomoh also agree that it is prohibited for a person to be strict with himself even concerning the fast on Yom Kippur, which is Toraitic. For behold, he himself wrote his words only "in a situation of doubtful danger." In our case, behold, we are talking about a case where there is certain danger, since the physicians made a definite diagnosis that if the patients fast they will be in certain danger, and their illnesses will grow worse and become more severe.

Although R. Avraham Ibn Ezra holds that permission is only given to the physician to heal external wounds, but (for) an internally ill person it is in the power of G-d to heal him and not in the hands of physicians--this being so, according to his opinion, he who is internally ill must not hearken to the words of the physicians who say to him to fast on Yom Kippur. I already cited above



the words of the Avnei Nezer who wrote concerning it: "That the matter is surprising. And especially now that all revelation has ceased and prophecy has been discontinued from Israel, certainly we are obligated to act according to the advice of the physicians." See what I wrote in my book Teshuvot Mimaamakim, part I.

Because of this, I complied with the request of Dr. Zacharin and I spoke with the sick people of the great danger (imminent for them) if they fast on Yom Kippur. I explained to them the severity of the prohibition concerning this if they are strict with themselves at this time. Not only is there no 'quality of piety' concerning this, but on the contrary, it is a very serious transgression to transgress the words of the Torah when it says: "Live by them," meaning, "you shall not die by them."

If at this time, when even for the healthy there is no food to revive their souls, (for) sick people, whose bodies are weak because of illness, how much the more so if they completely withhold from themselves (all) food and fast on Yom Kippur, will they endanger themselves by this. If they will do thusly, behold, they are like murderers, and concerning this it is said: "And surely your blood of your lives will I require."

My words, which were said out of a pained and worried heart, entered the hearts of the sick patients, for they



assured me that they would heed the words of the physicians who are saying to them not to fast on Yom Kippur.

However, only one sick individual--who was known from time immemorial as a free-thinker--was stubborn and firmly adhered to his opinion to fast on Yom Kippur, and he did not accept any of my reasoning which I strove to explain; that at this time, the great obligation is incumbent upon everyone to fortify the body and soul, and to strive to do everything so that the Germans will not succeed in their evil plot to annihilate the House of Israel (i.e., all the Jews).

To my great sorrow and deep grief, the man died immediately that night after Yom Kippur, because his body was not able to summon the strength to endure the fast. And as the sick patients told me, this man prayed the prayers of this holy day with great weeping, which was certainly in confession. This day he confessed all his deeds in the days of his lifetime, and died in complete repentance.

## NOTES

1. The Rabbis derived fasting from the biblical precept to afflict oneself (Lev. 23:27). See OH 511:1; Yoma 11a. See also Isaac Klein, A Guide To Jewish Religious Practice (New York: Ktav Publishing House, 1979), pp. 209-10 s.v. Rituals of Abstinence.
2. Leib Garfunkel in his book, The Destruction Of Kovno's Jewry (Jerusalem: Yad Vashem, 1959), p. 101, explains: "The food problem was one of the most serious problems in the ghetto. There was no possibility of existing on the daily portions which the Germans gave to the ghetto inhabitants... The portions provided only one-third of the minimum requirement for normal existence." See note 1, resp. 9.
3. Jud. 13:25.
4. I Sam. 15:29.
5. II Sam. 21:17.
6. See note 20, resp. 8.
7. Lev. 18:5. The complete verse reads: "You shall therefore keep my statutes, and my judgements: which if a

person do, he shall live by them: I am the Lord."

8. See note 24, resp. 8; see also note 29, resp. 9.
9. See resp. 9 *ibid.*
10. See note 7.
11. Ezek. 20:25.
12. Because while he is asking the question of whether such and such is permitted or forbidden the sick person could die.
13. Quick to desecrate the Shabbat for the sake of the sick.
14. From desecration of the Shabbat for the sake of the sick.
15. Whoever listens to such a question.
16. Feeding the sick person is not conditional on the probability that he might die if not fed, rather on the fact that he is ill and needs to nourishment.
17. The text continues: Why? Stupor seized him (so that he does not feel the lack of food). See Soncino, Yoma 83a, note 1.
18. And therefore more stringent than if it was only

Rabbinical. See safeqah deoraitah lehumrah (Betsah 3b)

"If there is doubt concerning Toraitic authority one must render a strict decision; however regarding Rabbinic authority safeqah derabbanan lekulah (Shah. 34a)--"When there is doubt concerning Rabbinical authority, one must render a lenient decision. Furthermore, there is no death penalty for transgression of Rabbinic commandments, only for Toraitic commandments.

19. Because he acts as a model to the community.
20. And one must not fast if he is ill.
21. Gen. 9:5. The meaning of this verse is: G-d will hold him guilty for his actions.
22. Lev. 26:11 end of comment.
23. Prv. 16:7.
24. Nachmonides does qualify this statement by saying that if the person is accustomed to going to physicians for help, it is permitted based on the verse: "And He shall cause him to be thoroughly healed." (Ex. 21:19).
25. Avnei Nezer.
26. An unkosher food.
27. See Bet Yosef, YD ch. 157 in the name of the Nemukei

Yosef: "If he is a great, pious, and G-d fearing man, he is permitted to sanctify the Divine Name even for a minor mitsvah. See also Rambam's Iggeret Teiman.

28. Attic.

29. See note 7.

30. See Lev. 5:2 for the prohibition of eating (or touching) carrion.

31. See Sanh. 74a,b. One does not have to be strict with himself in private. But in public one must submit to martyrdom even for a shoe strap. See note 31, resp. 7.

32. In other words, G-d will hold him guilty for his actions.

33. See note 29, resp. 9.

34. Normally prohibited by the Torah on Shabbat and Yom Kippur.

35. Excommunication, extermination; (in Talmudic law) divine punishment through premature or sudden death. (Jastrow) This punishment is reserved for a transgressor who was not seen by witnesses, or the witness did not warn him not to transgress as prescribed in Sanh.

36. Stoning; execution by stoning. This punishment is if the transgression was done in the presence of two kosher Jews who warned him.

37. See note 21.

38. See note 1 and 18.

# Responsum 18

Is It Permitted For A Boy From Those Imprisoned In The Ghetto, To Don Tefilin Prior To Age Thirteen?

Question: When we were in the "vale of tears"<sup>1</sup> "in the valley of slaughter,"<sup>2</sup> we realized that the fundamental intention of the cursed Germans (may their names be blotted out) was to erase from our midst the image of G-d; and to show before the entire world that the Jews are not included in the human species,<sup>3</sup> and they are similar to animals--for whoever sheds their (the Jews) blood will be exonerated and have no sin upon him. In order to make the work of annihilation and destruction easier on them, they strove to enter into the hearts of those imprisoned in the ghetto--"such as sat in darkness and in the shadow of death"<sup>4</sup>--a spirit of dizziness and despair, and to crush in these prisoners every feeling of hope of rescue,<sup>5</sup> in order that they would be "like sheep led to the slaughter."<sup>6</sup>

For this (reason) I took it upon myself (lit.) to gird my loins like a man (fig. to make a great effort), to strengthen the spirit of the crushed and broken ones; to uplift and to encourage them; and to breathe into them a spark of confidence that Adoshem, G-d of Israel, will turn back from his anger, hear our voice, be gracious,

and not abandon us in the hand of our enemy to blot out our names. And from the heavens He will look and see and show lovingkindness to us; and He will not delay our salvation and the redemption of our souls.

I organized for this reason 'Tiferet Bahurim',<sup>6</sup> and gathered fine young men--old and young--in order to teach them understanding, the knowledge of Torah, and pure reverence for G-d; to plant within them eternal life, and to place in their hearts love and fear of G-d to do His will and to serve Him with a perfect heart.

Among these students of 'Tiferet Bahurim,' one boy, from the family of Sharashevsky in Kovno, excelled--since he devoted himself, with all his strength and all his soul, to the learning of Torah. Despite the fact that he had not reached the age when he could accept (upon himself the obligation of) the mitsvot,<sup>7</sup> nevertheless, he was full of love and fear (of G-d) like an aged man, and was accustomed to being meticulous with the mitsvot as an adult who has reached a ripe old age.

Behold, then I was asked by this dear boy, whether he may anticipate the performance of the mitsvah of donning tefilin,<sup>8</sup> even though he had not reached the age of 13.<sup>9</sup> For behold, who knows what the day will bring when renewed sorrows come upon us daily;--(for) do not the cruel Germans (in whose hands we are placed), from time to time as is known, pour out all their anger



and wrath--especially upon the Jewish children!<sup>10</sup> This being so, who knows if this child will be fortunate enough to reach the age of 13, and to fulfill this great mitsvah of donning tefilin. For perhaps it will be decreed for him that he perish in the "kinderaktion"<sup>11</sup> which the cursed Germans (may their names be blotted out) often carry out. And for this reason, he was strong-willed to anticipate the performance of this great mitsvah as long as he was still alive, despite the fact that he still had not reached the age of 13.

When I heard from this dear child the matter of his question, tears flowed from my eyes and I said in my heart the words of lamentation which Jeremiah the prophet lamented in his time: "Oh, that my head were waters, and my eyes a fountain of tears, that I might weep day and night for the slain of the daughter of my people!"<sup>12</sup> "For death is come up into our windows, and is entered into our places, to cut off the children from the streets and the young men from the broad places."<sup>13</sup>

Answer: In Suk. (42a) we read: "A minor who knows how to shake (the lulav) is subject to the obligation of the lulav; (if he knows how) to wrap himself (with the talit) he is subject to the obligation of tsitsit; (if he knows how) to guard the tefilin ("not to take them into the bathroom"--Rashi), his father must acquire

tefilin for him; if he is able to speak, his father must teach him Torah and the reading of the Shema, etc. If (the minor) knows how to take care of his body, we may eat food that has been prepared in ritual purity though his body (touched it);<sup>14</sup> if he knows how to take care of his hands, we may eat food that has been prepared in ritual purity even though his hands (touched it), etc. (If he knows how) to spread out his hands (in priestly benediction) terumah may be shared out to him in the threshing-floors ("And he who knows how to spread out his hands, and spreads them out in public--everyone knows that he has produced two hairs;<sup>15</sup> for a minor must not spread out his hands, as it states in Meg. (p. 26a): "Therefore, terumah may be shared out to him"). If he knows how to slaughter (animals ritually) we may eat from (the meat of the animals) which he has slaughtered," etc., see *ibid.*

In the Tur, OH ch. 37, the author decided: "(For) a minor who knows how to guard the tefilin, his father must acquire tefilin for him and educate him (in their use).

The Bet Yosef wrote on this: "There is a Baraitah at the end of the ch. 'Lulav hagazul'<sup>16</sup> (42a.), and Rashi explains the words 'to guard the tefilin'--that they must not be taken into the bathroom. In Sefer Haterumah the author wrote: "That is, he must have a

pure (body) to guard them like Elisha-the-man-of-wings;<sup>17</sup> which means: that one must not sleep in them, nor desecrate the tefilin by passing wind (while wearing them)." And thus wrote Sefer Mitsvot Katan. The Itur wrote: "That it is plausible that this minor is (actually) an adult of 13 years and one day;" and he brings proof for his words. "It is improper", he said, "to change the obvious meaning of the Baraitah whose meaning is that it speaks about a minor proper."<sup>18</sup> And this is the opinion of all the halakhic authorities who wrote about a minor proper, meaning that it speaks precisely of a minor.

See *ibid.* in the Darkhei Moshe, note 2, where the author corrects the text. And the custom is in accordance with the words of Baal Hatur: "That a minor must not don tefilin until he is Bar Mitzvah, that is, he is 13 years and one day old.

Thus the text is also corrected in the Sh. Ar. See *ibid.* in the Sh. Ar. 37:3, where Karo decided: "(For) a minor who knows how to guard the tefilin in purity--so he will not sleep in them, and not pass wind (while wearing them) (Rama: "That he will not take them into the bathroom")(Rashi, ch. Lulav Hagazul)--his father must acquire tefilin for him and educate him (in their use) (Rama: "Some say that this minor is precisely 13 years and one day old (Baal Hatur). This is the custom and one

must not change it" (this is his own opinion).

In the Magan Avraham *ibid.*, note 4, the author wrote on these words of Rama: "Some say 'precisely'," (and before this (age) tefilin are not donned--R. Meir of Rothenburg). Now they are accustomed to donning tefilin two or three months prior to the time.

See *ibid.* in the Bah who wrote: "(For) a minor who knows how to guard the tefilin, his father must acquire tefilin for him and educate him (in their use)." See the Baraitah at the end of ch. "Lulav Hagazul": "A minor who knows how to shake the lulav, is subject to the obligation of the lulav, etc." Rashi explains: "He is obligated Rabbinically, concerning the lulav, to educate him." And he explained thusly with respect to the lulav because we have at the beginning (of the Baraitah): "the same applies to tsitsit and tefilin, for which he is only obligated Rabbinically to educate him." And it is likewise written in Mordekhai, the end of Hal. K'tanot, etc., and the unequivocal meaning is it certainly talks about a minor proper, similar to lulav and tsitsit. Nonetheless, since he knows how to guard the tefilin--not to take them into the bathroom, not to sleep in them, and not to pass wind while wearing them--his father is obligated to educate him and acquire tefilin for him. The meaning is, certainly also Scripturally he is exempted from tefilin, even if he

knows how to guard the tefilin, etc. However, if he is 13 years and one day old, he is obligated to acquire tefilin for himself, just as he is obligated to fulfill all the positive commands in the Torah,"<sup>19</sup>--this is the wording of the Bet Yosef. Hatur wrote: "That it is evident to us that the minor is an adult who is 13 years and one day old; and brings proof for his words. It is not proper to change the obvious meaning of a Baraitah, which is that it talks about a minor proper." The Tosafot hold likewise as a matter of fact in ch. 'Mi Shemeito' (p. 25) s.v. "veketanim". The passage talks about a minor proper who has reached (the age to be educated), and thus we understand concerning a minor who studies Talmud: even if he is 13 years old, and knows how to guard the tefilin--his father must acquire tefilin for him; and this has been the custom. But in a note of the Sh. Ar., Rama attacks the Bet Yosef and says: "This has been the custom according to the Itur and it should not be changed. It is perplexing that he (Rama) decided according to the Itur in an instance where all the halakhic authorities disagree with him. And (concerning) what he wrote: "That this has been the custom"--it is possible that thusly acted most of the people who do not know how to guard themselves not to pass wind while wearing them, because for these it is certainly forbidden even if one is 13 years old. Rather it is impossible

to repair (remedy) this breach (impropriety). But concerning a minor who studies Talmud, who knows how to guard himself that he does not pass wind while wearing them, all the more so that he knows not to sleep in them and not to take them into the bathroom. Yet concerning such a minor, his father is obligated Rabbinically to acquire tefilin for him and educate him; and it is not according to the Rama in his note who prohibits it. Thus it appears according to my humble opinion,"--Bah. See well *ibid.*, all his words.

Behold what Bah wrote there in ch. "Mi Shemeito" (p. 25) s.v. Ketanim: "Certainly it is a printers mistake and it should be (p. 20a.)." See also in the *Tosafot* *ibid.* (in Suk. 42a.) s.v. "Hayodeah" what is written there.

See in the book *Shulhan Gevohah* in ch. 37, note 5, where the author wrote: "In a great city of sages and scribes--Saloniki--where the great rabbis of the world dwelt such as: R. Yosef b. David Leib, R. Shemuel de Modeina, Shakh, and the like, generation after generation practiced according to the opinion of the Bet Yosef to educate their children a year or two prior to reaching the age of 13. They did not heed the opinion of the Baal Hatur and Rama--for who would listen to them against the opinion of all of the (other) halakhic authorities.

I saw in the resp. of Yad Yitshaq, part I, ch. 171, what he responded to one question: "Even though the reason for the pious ones, who refrain from educating (their children) prior to age 13, is because of the high level of holiness of tefilin (lest one sleep in them, etc.)--nevertheless, we can rely on the Bah and his followers that one should not neglect the mitsvah of education, especially since the majority of our youngsters learn the laws of tefilin and know how to behave while wearing them. Therefore your honor (i.e., the questioner) must not change the custom of the Bah; in particular since I was assured that his son occupies himself with Talmud, and is educated in the ways of fear (of G-d), and he (the father) supervises him with open eyes--certainly he will be careful as much as necessary," *ibid.*

What follows for us from all that has been cited is that in our case, we depend on great halakhic authorities, even though Baal HaItur holds that minors cannot don tefilin until Bar Mitsvah, that is: until 13 years and one day old. Also Rama adheres to his opinion and writes: "That one must not change this." Nevertheless, behold the Bet Yosef and the Bah do not hold thusly. And if they object that even though it is Toraitic that a minor is exempt from tefilin, it (our case) is analogous to all the positive commandments in the Torah wherein minors are exempt from them. Nonetheless, from the standpoint of



law of education, certainly they must be educated concerning this. If they know how to guard themselves to act in holiness with the tefilin, not to sleep in them, etc., we must accustom them to donning tefilin because of the reason of education.

This being so, in the case of our question of this fine boy--whose soul yearns to be able to fulfill the great mitsvah of donning tefilin, because he fears that perhaps he will not be fortunate (to live long) enough to fulfill it; for perhaps his fate will be determined (for death) together with the thousands of Jewish children<sup>20</sup> who will be condemned to be slaughtered by the oppressive German enemy (may his name be blotted out);-- certainly we must permit him to don tefilin, and to rely on the opinion of the Bet Yosef and the Bah--who permit the donning of tefilin by minors before they have reached the age of Bar Mitsvah. This dear boy, in his being G-d-fearing and Orthodox with his Talmud in his hand, will certainly be cautious when he dons the tefilin, to be in holiness and purity according to the law. Moreover, in another three months he will be thirteen years old. Certainly we must act concerning this according to that which the Magan Avraham wrote which I cited above: "That now they are accustomed to donning tefilin two or three months prior to the (actual) time." It is also stated thusly in Eliyahu Rabbah.



Thus, I made a practical halakhah where I decided for him that it is permitted for him to don tefilin even though he is still a minor. However, I cautioned him that in a place where there would be no minyon<sup>21</sup> without him, that he must inform them that he is still a minor and he must not be a part of that minyon, despite the fact that he dons tefilin.

Yet the heart of this child prophesied<sup>22</sup> to him when he came to ask his question of me that he wanted to fulfill the mitsvah of tefilin--for he feared that perhaps he would not have the good fortune (G-d's grace) to fulfill it because he would not reach the age of 13. And so it was truly in great pain and distress, that on the 3rd day of Nissan in the year 5704 (1944), at the time when the cursed Germans (may their names be blotted out) were carrying out "kinderaktion"<sup>23</sup>--he was also taken with the masses of Jewish children to be killed.

"For these things I weep; my eye, my eye runs down with water, because the Comforter that should relieve my soul is far from me: my children are desolate, because the enemy has prevailed."<sup>24</sup>

Then I layed supplication and prayer before the Father of mercy who dwells on high, "that all the evil of the German oppressors should come before Him; and that He should do to them as they have done to us"<sup>25</sup> and our children "who are comparable to fine gold"<sup>26</sup>--to kill,

to make perish, to be beaten, and to be as a disgrace.  
"Render to them a recompense, O Lord, according to the  
work of their hands.... Pursue them in anger and de-  
stroy them from under the heavens of the Lord."<sup>27</sup>

## NOTES

1. Ps. 84:7.
2. Jer. 7:32; 9:6.
3. The Jew in Nazi ideology was presented as subhuman (untermench), a parasite (vermin, lice), and a phenomenon of decay (faeulnisercheinung). See the German periodical Der Stuermer published from 1920 on; Yehuda Bauer, The Holocaust In Historical Perspective (U.S.: The University of Washington Press, 1978), p. 9; Lucy Dawidowicz, The War Against The Jews 1933-1945 (New York, Bantam Books, 1975), pp. 24-28; 54. Nora Levin, The Holocaust: The Destruction of European Jewry 1933-1945 (New York: Schocken Books, 1973), pp. 39-40. From a psychological perspective one must note that it is easier to kill someone believed to be subhuman or even insect-like than someone believed to be of your own species. See Terrence Des Pres, The Survivor (New York: Oxford University Press, 1976) for the process of dehumanization to which the Nazis subjected the Jews.
4. Ps. 107:10.
5. The Nazis initiated a step by step process of demoralization and degradation which was designed to sap

the strength of the Jews and diminish their resistance. See Lucy Dawidowicz, A Holocaust Reader (New York: Behrman House, Inc., 1976) for details of this step by step process leading to the annihilation of the Jews. See also Yehuda Bauer, "When Did They Know?" in Midstream, April 1968.

It must be noted that despite the Nazi attempts at wearing down Jewish resistance, there are numerous instances of Jewish rebellion and resistance (be it spiritual resistance, as in these responsum, or physical). See Jewish Resistance During The Holocaust (Printed in Israel: Haomarim Press, Jerusalem, 1972); and Yuri Suhl, They Fought Back (New York: Schocken, 1967).

6. Is. 53:7.

7. Thirteen years and one day old. See Avot 5:24 where Rabbi Yehudah b. Tema of the second century expressed the maxim: "On each boy of thirteen falls the responsibility of fulfilling the commandments."

8. Phylacteries.

9. See note 7. See Isaac Klein: A Guide To Jewish Religious Practice (New York: Ktav Publishing House, Inc., 1979), p. 7, #6.

- 10-11. See notes 2,4,5--resp. 15, regarding "Kinderaktion."
12. Jer. 8:23.
13. Jer. 9:20.
14. See Sencino, Suk. 42a, note 11; and Rashi.
15. Signs of puberty. See note 12, resp. 9.
16. Suk.
17. See notes 39 and 40 of resp. 8.
18. And not an adult.
19. See note 7.
20. See notes 10 and 11.
21. Ten Jews above the ages of thirteen which is required for public worship. See M. Meg. 4:3.
22. Fortold this child that he might not reach the age of thirteen.
23. See notes 10 and 11.
24. Lam. 1:16.
25. c.f. *ibid.* 1:22.
26. *Ibid.* 4:2.
27. *Ibid.* 3:64-66.

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Tsiyyun Lemenahem	Memahem Mendel Kirschbaum 1895-1942
Tsiyyun Lenefesh Hayyah	Yehezkel Landau 1713-1793
Tur	Yaaqov b. Asher 1269?-1340?
Turei Even	Eleazar b. Shemuel Rokeah 1665-1741
Turei Zahav	David ben Shemuel Halevi 1586?-1667
Tuv Taam Vedaat	Shelomoh Kluger 1783-1869
Yad Avraham	Avraham Maskil Leitan
Yad David	David Luria 1798-1855
Yad Eleazar	Eleazar Halevi Ish Hurwitz 1803-1868
Yad Eliyahu	Eliyahu b. Yaaqov Rogoler 1794-1849
Yam Shel Shelomoh	Shelomoh Luria 1510?-1573
Yavets	Yaaqov Emden ben Tsevi 1697-1776
Yosef Omets	Yosef Hahn 1570?-1637

Zakhor Leavraham	Avraham Shemuel Alkalai 1750?-1811
Zekher Yehosef	Yosef Zekhariah b. Natan Stern 1831-1903
Zeqan Aharon	Aharon Walkin 1865-1942
Zikhron Yehudah	Yehudah Gruenwald 1849-1920

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\*\* The spelling of the names cited here may vary from that in the text as a result of the different systems of transliteration used by Robert Kirshner and this author.

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