HALOCHOSCOPE

Someone has been acting as a *Shomer*, watchman, over a *Mais*, corpse. He was paid for giving up his time for this Mitzvah. He chose to give the money to *Tzedaka*, under the impression that this was meant to be a Mitzvah for which one should not expect to be compensated. However, he now feels that he needs the money for personal use. May he keep future compensation for himself?

The issues:

(A) *Shmiras Hamais*, watching over a corpse

(B) *Chesed Shel Emess*, doing kindness for the deceased

(C) Meritorious practices that constitute a *Neder*, vow

(A) Shmiras Hamais

This Mitzvah is part of the general Mitzvah to bury the dead. The Talmud discusses the meaning the Mitzvah of burial. In cases of the corpse of one executed by *Bais Din*, punished by stoning, the Torah gives a reason. The body is displayed by hanging, and if it is left out, onlookers see the perpetrator of a crime against Hashem. This is an insult to Hashem. Therefore, the body is to be taken down and buried as soon as possible. The Talmud actually says that for this reason the body is only hung at the end of the day for a short time.

However, the Talmud derives from here that the Mitzvah of burying the dead applies to all people as well. Two elements are included in the Mitzvah. First, *Kapara*, it is an atonement for the soul of the deceased to have his body laid to rest in the ground. Second, *Bizayon*, it is undignified for a body to remain unburied. This is partly due to the honor and dignity of his survivors and partly due to the honor of the deceased. Thus, if the deceased left instructions not to bury him, he has a right to say he does not desire a Kapara. However, he has no right to subject his survivors to indignity.

The Poskim seem to conclude that the primary reason is Bizayon. Even if it is not the entire Mitzvah, it is certainly one of its elements, or at the very least, it is a matter to be taken into consideration in its own right. Thus, protecting the *Mais* from Bizayon is either part of the general Mitzvah of *Kevurah* or a Mitzvah to prevent indignity to it or its survivors. This means that the Mais may not be left alone, especially in a place that is open and easily accessible.

In addition, there is always a risk that vermin could ravage the Mais. This is based on the Pesukim the Torah uses in the aftermath of the flood. Noach was told that the fear of humans would be upon all other living creatures. Indeed, if a person is not sinful, he need not fear a wild animal, for it is the animal who is afraid of the human. However, the Pasuk is careful to describe this fear as one that is inspired by living humans. This leads the Talmud to observe that the smallest child, when alive inspires the fear of a lion, but the greatest giant, when dead is prey to mice. This is an additional reason to protect the Mais from Bizayon, for it is most undignified for the body to be attacked by animals and mutilated. The mere presence of the Shomer is enough to protect the body. However, the Shomer may not distract himself or walk about in and out of the presence of the Mais.

This Mitzvah is listed as one of those that excuses the performer from fulfilling other Mitzvos at the same time, including Shema and Tefillah. These Mitzvos require concentration, and could distract the performer from his Mitzvah to watch over the body. In addition, performance of personal Mitzvos in the presence of a corpse is forbidden, unless they are performed for the direct benefit of the soul of the deceased. Mitzvos can only be performed by living people. In the other world it is not possible to fulfill a Mitzvah. Since the deceased soul is present near his body, and he feels the inability to perform Mitzvos, it is considered *Lo'aig Larash*, scoffing at a poor person [like flaunting one's wealth in the presence of the poor.] One should also not indulge in idle chatter or other meaningless activities. One should pray for the soul of the deceased, and recite Tehilim. He is actually forbidden to perform Mitzvos he is exempt from.

Bereavement excuses one from Mitzvos, due to preoccupation with the burial. On Shabbos this reason does not apply. Nonetheless, the Mitzvah to watch over the Mais applies then as well. A Kohain may not ritually contaminate himself by contact with a corpse. However, for close relatives he may and should. Some maintain that this only applies to the needs of the burial. Others, however, maintain that this applies to any need of the Mais, especially including prevention of Bizayon. Thus, even on Shabbos, when burial is not an issue, a Kohain may watch the body, according to this view. [See Parshas Noach 9:2, Emor 21:1-9, Ki Seitzei 21:22-23, commentaries. Brochos 18a, Sanhedrin 45b-47b, Poskim. Tur, Shulchan Aruch Orach Chaim 71:3 Yoreh Deah 341:6 373:5 403:9, commentaries.]

(B) Chesed Shel Emess

Acts of kindness are generally called *Gemilus Chasadim*. The Hebrew term *Gomel* is used in Talmudic literature to denote an exchange of kindness. Indeed the world is maintained by the exchange of kindness between one man and his fellow. However, such kindness could be viewed as being done with the prospect of receiving a kindness in return. Kindness done for the deceased, however, can not be motivated in this way. Though one could hope that as he does it for this deceased, others will do so for him when he dies, this is not the same as hoping for some favor in return from the person being helped. This kind of kindness is called *Chesed Shel Emess,* a true kindness. This is derived from the wording of Yaakov Avinu's command to Yosaif as he instructed him about his burial. He used the words *Chesed Ve'emess*, meaning a Chesed of Emess.

Though it is true that the kindness done for the deceased will never be repaid directly, it is a long standing custom to compensate those who preoccupy themselves with caring for the dead. This includes the *Chevra Kadisha*, the council that takes care of burial, in some communities, and those who manufacture the coffin and shrouds. It also included those who were hired to play funeral music and to eulogize. One who gives up his time to act as a Shomer is also often compensated for his time. The Talmud says that while Yaakov could not repay Yosef, Moshe Rabeinu took care of Yosef's bones, and in turn, Hashem took care of Moshe. This is not 'payment', but it shows that reward is fair in these cases as well.

The Talmud, quoting Hashem saying "Just as I help you free of charge, so too should you do so," applies this to the performance of Mitzvos in general. The Poskim discuss various obligations, including burial. The two allowances made for accepting payment in this case are, first, that the obligation really rests on family members. Others who do it their stead have a right to be paid. Second, one is always entitled to compensation for his time. Furthermore, if one preoccupies himself solely with a certain Mitzvah, such as slaughtering animals or acting as a Rabbi, he is not expected to volunteer at the expense of his livelihood.

In addition, our discussion is not so much about the payment for the Mitzvah aspect of the act. It is about the kindness aspect, which is a matter between the Shomer and the deceased. This part will not be paid for. The Shomer need not choose to do this Mitzvah, even for payment. His doing this Mitzvah is indeed a Chesed. Nonetheless, many people feel that if they receive payment for this Mitzvah, they prefer to give it to Tzedaka rather than use it. This is based on the Talmudic dictum that those preoccupied in work for the sake of Heaven who take payment will never see blessing from that money. Furthermore, the Talmud states that if a gentile does a favor it gives the gentiles merit to extend their hold on the Jews in exile, delaying Moshiach's arrival. Therefore, one should always give a gentile

a tip. this way his reward will not add up in the longer, eternal run. In the same way, renouncing any payment for a Mitzvah helps ensure the eternal reward. [See Parshas Vayechi 47:29. Demai 4:6, Bechoros 29a-b, Kesubos 105a-b, Psachim 50b, Poskim. Tur Sh. Ar. O.C. 526:5, 585:5, Y.D. e.g., 246:21, etc. commentaries. Sdei Chemed, Shin 23. Sefer Chasidim 357.]

(C) Neder

Our questioner is concerned that he has established a habit of giving this money to Tzedaka. Before adopting a meritorious practice one should stipulate that it will not become a binding vow. If he did the act without the stipulation, he would be bound to follow it. The Poskim debate whether this applies if he did it once, or only if he did it three times. In our case, it would depend on the person's mindset when he first donated his payment to Tzedaka. If he thought that he should always give money earned this way to the Tzedaka, it could be a binding Neder for future cases. However, this could depend on why he thought so. If he thought that he is obliged to give it, this is not a vow. It is a mistaken undertaking. He did not realize that it was not obligatory. If, however, he knew that it was permissible to keep it, but resolved to always donate it, it is a vow. If his initial intent was to give the particular money earned at the time, but not a resolution to give all money earned this way, even if he continued to do this each time, this does not mean that he adopted a practice. He simply felt generous at the time. Each time he has the choice to decide whether to give the money to Tzedaka or to keep it.

Assuming the vow is binding, it may be annulled. The way to annul it is to find a way to make the undertaking erroneous. Normally, this is done through a *Pesach*, an excuse showing that there was no full awareness of the difficulties that were to be encountered. In our case, this is clear. The Shomer thought he would always be able to afford giving away the money, and did not think he would need the money in the future. [See Nedarim 8a 15a 22a-b, Psachim 50b-51a, Poskim. Tur Sh.Ar. Y.D. 214:1 228:1 etc., commentaries.]

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Rabbi Shimon Silver
1516 KANSAS AVE.
WHITE OAK, PA 15131 (412) 673-6274
e-mail: halochoscope@altavista.com