YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

**TALMUDIC METHODOLOGY**

**By Rav Moshe Taragin**

For easy printing, go to

[www.vbm-torah.org/archive/metho72/21metho.htm](http://www.vbm-torah.org/archive/metho72/21metho.htm)

**Shiur #21: The Exemption of an *Onen* from Mitzva Performance**

The first *mishna* in the third *perek* of *Berakhot* describes the exemption of an *onen* from performing *mitzvot*. The *mishna* lists specifically the *mitzvot* of *shema*, *tefillin*, and *tefilla*, and the Rif indeed limits the exemption to those *mitzvot*. Since the *onen* is psychologically “burdened” by the looming burial, he cannot properly mentally focus upon these three *mitzvot*, which demand *kavana*. Most *Rishonim*, however, maintain that an *onen* is exempt from *mitzvot* in GENERAL; these three are only listed by way of example. What logic would justify a general exemption of *mitzvot* for an *onen*, assuming that one exists?

Rabbenu Yona attributes his exemption to the notion of *osek* *ba*-*mitzva patur min ha-mitzva*. As previous *shiurim* described, a person involved in a prior mitzva is exempt from performing a subsequent one. Since the *onen* is involved in burying his deceased relative, he is defined as *osek be-mitzva* and is excused from all other *mitzvot*.

The problem with this logic stems from a *gemara* in *berakhot* (19a) which exempts an *onen* from *mitzvot* EVEN when he is not DIRECTLY INVOLVED in the burial. The *gemara* contrasts the *onen* with those involved in the eulogy process. The *gemara* exempts the latter group from *mitzvot* when they are actively involved in attending to the deceased, but the *gemara* claims that the *onen* should remain idle (without mitzva performance) EVEN WHEN NOT DIRECTLY involved in burial or eulogy. This extensive allowance may not be consistent with the parameters of *osek ba-mitzva* and may indicate that a different principle exempts the *onen*.

To a certain degree, this question depends upon the scope of *osek* *ba-mitzva* exemption, an issue discussed in [*shiur* 17](http://www.vbm-torah.org/archive/metho72/17metho.htm). According to the Ran, *osek ba-mitzva* DOES afford a very broad exemption, excusing the performance of the second mitzva even when the first mitzva isn’t compromised. However, Tosafot disagreed and severely limited the range of the *osek* exemption. The first mitzva only exempts one from the second if they can not be fulfilled simultaneously. According to Tosafot, an *onen* SHOULD NOT be excused from *mitzvot* during “down time” if the *onen* exemption were based purely upon *osek ba-mitzva*. Evidently, then, a different logic exempts an *onen* from mitzva performance.

The Yerushalmi introduces a completely different reason for the *onen* exemption: mitzva observance would be INSULTING to the honor of the dead person. The Yerushalmi does not elaborate on this reasoning. Perhaps the insult stems from the fact that the dead person can no longer perform *mitzvot*. Subsequent *gemarot* in *Berakhot* demand general sensitivity when visiting cemeteries; in light of the inability of the dead to perform *mitzvot*, *tzizit* should not be conspicuously worn. Alternatively the insult may stem from the *onen’s* nonchalance about the burial. By “diverting” to *mitzvot*, he is offending the dead person. Whatever its reasoning, the Yerushalmi devises a different logic to excuse an *onen*. Independent of his status as *osek* *ba-mitzva*, he cannot “divert” from burying the relative to mitzva performance because it would be discourteous to the dead person.

One obvious distinction between exempting the *onen* because of the legal mitzva of burial and the ensuing status of *osek* as opposed to the unique exemption of *kavod ha-met* would be an instance in which an *onen* chooses not to accept the exemption. If the *onen*'s exemption were based completely upon *osek ba-mitzva*, he may be allowed to forgo the exemption and attempt to "have it all" and perform the mitzva. However, if the exemption were based (in part) upon *kavod* *ha-met*, his “*chumra-*seeking” would be offending the dead person and would be disallowed. In fact, the Yerushalmi, which introduces the additional /novel logic of *kavod ha-met*, addresses the issue of an *onen* who seeks to skip the exemption and claims that the *kavod ha-met* factor would indeed disallow this *chumra* option.

A second interesting issue that the Yerushalmi introduces as a *nafka* *mina* between the two approaches is an instance in which others are attending to the burial (*acherim oskim*). Intuitively, if the exemption were based upon *osek* *ba-mitzva*, the exemption would then be terminated, since he is not actually involved in burial. However, the *kavod ha-met* based exemption would be more complicated to trace. Perhaps the insult to the dead person is unrelated to the diverting away from burial. Perhaps ANY mitzva performance by a close relative between death and burial would constitute an affront to the dead person.

Interestingly, the Bavli does not address this situation, leaving the impression that NO transfer of the dead body whatsoever would discontinue the exemption. The Bavli may be extending the exemption unconditionally until the point of burial, leaning toward a strict *kavod ha-met* logic.

The Yerushalmi DOES speak of a situation in which the relative is not involved in burial and must perform *mitzvot*. The Yerushalmi raises a scenario in which the dead body was actually delivered to the team of people assigned to bury (*le-katafim*). In this instance, the Yerushalmi discontinues the exemption and obligates the *onen* in *mitzvot*. That in this instance the *onen* must perform *mitzvot* would be coherent regardless of whether a general *onen* is exempt because of *osek ba-mitzva* or because of *kavod ha-met*. Either way, the relative has ATTENDED to the burial, since yielding to the *chevra kadisha* is the standard burial procedure. The dead person has been properly honored since his burial has been properly executed.

There are two intriguing positions in the *Rishonim* that discuss intermediate situations, in which the dead body has not been delivered to the *chevra* *kadisha* but the relative/*onen* has been ACTIVELY "sidelined." The Ramban in his *Sefer Torat Ha-Adam* discusses a situation in which the *onen* was imprisoned and was unable to attend to the burial. The Ramban obligates him in *mitzvot* since he is not ABLE to be involved in burial. Does this indicate that the Ramban viewed the exemption as *osek ba-mitzva* based? If *kavod ha-met* is the source of the exemption, perhaps it applies to EVERY *onen* unless the body has been delivered to the *chevra kadisha*.

Similarly, Rabbenu Tam was involved in a personal situation in which his sister died in a different town and her husband attended to the burial arrangements. Rabbenu Tam determined that he was not an *onen* and he actually ate meat and drank wine. This situation is even more radical than the Ramban scenario, since Rabbenu Tam was legally capable of attending to the burial; he was simply separated by distance. Does this indicate that Rabbenu Tam also rendered the exemption as *osek ba-mitzva* based and therefore did not apply it to anyone who is not directly involved in burial?

This issue presents complex questions, particularly in the modern context in which dead bodies are transported to facilitate proper burial. At what point does the exemption begin for a person who is not proximate to the dead person or involved in burial arrangements? Similarly, at what point does the exemption expire once the dead body has been delivered to the next stage of transportation? The *Shulchan Arukh* (*Orach Chayim* 71:1 and *Yoreh De'ah* 341:1) discusses these scenarios, and the Vilna Goan (cited by the *Bi'ur Halakha* in OC) clearly assumes that a *kavod ha-met* model of exemption would be more broadly applied.

Tosafot in *Berakhot* (17b) raise an additional issue regarding the status of *mitzvot* for an *onen* on Shabbat. On the one hand, he is legally forbidden from any preparations and cannot be deemed an *osek ba-mitzva*. However, toward the end of Shabbat, a person is allowed to walk toward the limits of a *techum* *Shabbat* in order to expedite burial immediately after Shabbat. Hence, Shabbat is not entirely severed from burial related experiences. Tosafot cites an apparent contradiction between the Yerushalmi, which extends the *onen* status to Shabbat, and the Bavli, which discontinues that status on Shabbat.

Tosafot suggest different approaches toward solving this contradiction, but it seems as if the *Tanna’im* themselves disputed the question of whether “end of *Shabbat*” interest and involvement in slight expedition of the burial should mandate *onen* status for the entire Shabbat. As Tosafot themselves articulate, this issue would seem to revolve around the nature of the exemption. If an *onen* is excused based upon *osek ba-mitzva*, Shabbat would probably NOT “enjoy” the exemption, since an *onen* is not directly involved or even marginally involved most of the day. In contrast, if the *onen* exemption were based upon *kavod ha-met*, ANY connection to the burial MAY BE SUFFICIENT to excuse the *onen*. The fact that, at the tail end of Shabbat, burial can be expedited, should render any mitzva observance a violation of *kavod ha-met*.

Having established the logic of *kavod ha-met* as a potential model for the exemption of an *onen* from *mitzvot,* it is possible that an extreme position stated by an *amora* may be based upon this model. As mentioned above, the general trend is to extend the exemption more broadly if its logic stems from *kavod ha-met*. It would apply even to people “marginally” involved in burial (an imprisoned *onen*, or even on Shabbat). However, R. Pappa may have employed this same *kavod ha-met* logic to SEVERELY RESTRICT the scope of the exemption. To answer a contradiction, he claimed (*Berakhot* 18a) that the exemption only applies if the *onen* is in the very same room as the dead person. Theoretically, an *onen* may be MORE involved in actual burial when he leaves the room, and yet according to R. Pappa, the exemption is discontinued! Evidently, R. Pappa assumed that the exemption was based solely upon *kavod ha-met* and a very strict interpretation of *kavod ha-met* may apply only to spatial or visual contact between the *onen* and the dead person.

Ultimately, R. Ashi disagrees and extends the *onen* exemption even to situations in which the *onen* has departed to another room. Does this mean that he abandons the *kavod ha-met* logic and implements the *osek* logic (which would apply to all cases of involvement, even when the *onen* is not present)? Or does R. Ashi also adopt the *kavod ha-met* logic but claim that the potential insult to the dead person may occur even if the *onen* performs the mitzva outside the “view” of the dead person?