YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**Halakha and Israeli History**

**Rav Aviad Tabory**

***Shiur* #27:**

**5 April 2019**

**Military Funeral of Zechariah Baumel on Mt. Herzl**

This week I would like to skip a few years forward in Jewish history and discuss the historical events that took place these past few weeks.

On the 5 April 2019, the body of Sergeant First Class Zechariah Baumel, who was killed in the First Lebanon War some 37 years ago, was laid to rest in Mt. Herzl Military Cemetery.

Zechariah, a student of Yeshivat Har Etzion, was in his fourth year of studies when the war broke out. Together with other *hesder* students, he was sent up north and participated in Operation Peace for the Galilee. Their mission was to protect the northern towns of Israel, which were targeted by terrorist and rocket attacks.

The operation turned quickly into a full-fledged war. On 6 June 1982, hours before the ceasefire was to about commence, Zechariah’s tank battalion was sent on a mission which turned into one of the most disastrous battles in Israel’s history. Near the Lebanese village of Sultan Yacoub, the Syrian army set a deadly ambush for the Israeli tanks. Over twenty Israeli soldiers were killed, many were injured, two were taken captive and three were declared missing in action: Zechariah Baumel, Yehuda Katz and Tzvi Feldman.

For the next 37 years, the families of all three MIAs and the IDF did everything possible to find out what happened to these soldiers. In early April 2019, the IDF proudly announced that Zechariah’s body had been discovered in Syria. In a joint military operation, Israeli and Russian forces had exhumed the body, examined it, identified it and flown it to Israel. Near the body, other articles had been discovered, amongst them his *tzitzit*.

**Mixed Emotions**

The emotions at the funeral were mixed: sadness and grief on the one hand, relief and even pride on the other. Zechariah’s sister compared her feelings upon hearing the news to those of the Sages when they added *Ha-tov ve-hametiv* to *Birkat Ha-mazon.*

This *berakha* was established after the Romans permitted burial for the victims of the terrible massacre of the city of Beitar. This massacre took place in the year 135, and according to our tradition occurred on Tisha Be-Av.[[1]](#footnote-1) The Gemara mentions that the bodies of the people killed in the massacre were miraculously preserved and did not decay until the burial was permitted; to commemorate this miracle, they composed *Ha-tov Ve-hameitiv*.[[2]](#footnote-2)

This idea is similar to the halakhic situation in which a relative dies and leaves inheritance. The proper conduct is to recite two *berakhot:*  the somber *Dayan Ha-emet* for the death of the relative; and the joyous *She-hecheyanu,* which conveys gratitude to God for receiving the inheritance.

Both these cases prove that in complex emotional situations in which there are conflicting feelings, Halakha recognizes that there is room for expressing contradictory emotions at the same time.

**The Importance of *Kever* *Yisrael***

Over the past *shiurim,* we have discussed many questions that come up during wars and conflicts regarding the mitzva of burial and how much effort must be invested to perform this mitzva. We proved that the Poskim permit violating Shabbat and *yom tov* during the process*,* and even endangering the lives of other soldiers. The *heter* is based on the assumption that the morale of the soldiers, knowing that their country will do all it can to bring them home, is a crucial factor in wartime.

There is no doubt that, in our case, a very important message has been sent to all IDF personnel in the past, present and future. It is difficult to weigh the tremendous value of this dramatic, courageous message of *kiddush ha-shem* on the outcome of future conflicts.

Rav Yaakov Medan mentioned in his *hesped* (eulogy) for Zechariah that in *Tanakh,* we find a similar case in which the people of Israel are dedicated to the cause of bringing the bodies of those killed in battle to *kever Yisrael,* a Jewish grave.

In the battle on Mt. Gilboa, King Shaul and his three sons are killed. The Philistines desecrated their bodies and leave them out in the open. The people of Yavesh Gilad (in the north of the East Bank of the Jordan River), who in the past had been saved by Shaul’s troops, lead a military mission deep into Philistine territory to retrieve the bodies of Shaul and his sons and give them a proper burial.[[3]](#footnote-3)

In a recent shiur regarding the 69 sailors of the *Dakar* submarine, found in the depths of the sea, we argued that according to Jewish law they are considered buried in *kever Yisrael,* and thus removing them from their burial site might be problematic.[[4]](#footnote-4)

According to Jewish law, it is forbidden to remove bodies from a grave, even if they are to be buried elsewhere.[[5]](#footnote-5) The commentaries quote from *Tanakh* to indicate that this is considered harmful for the dead.[[6]](#footnote-6)

However, Rav Yosef Karo mentions numerous scenarios in which it is permitted to relocate graves. One of them is for the purpose of being buried in the Land of Israel[[7]](#footnote-7).

**Burial in the Land of Israel**

There are sources in the Gemara that speak highly of the value of being buried in the Land of Israel. In the eyes of our Sages, burial in the Land of Israel has the power to atone for past sins.[[8]](#footnote-8)

The Gemara quotes a disagreement amongst the Sages regarding the question of whether it is permitted to bring a body to Israel for burial;[[9]](#footnote-9) the Poskim agree with the opinion that it is allowed.

The Rambam quotes the Gemara:

One who is buried there receives atonement as if the place in which he is buried is an altar of atonement, as it is stated (*[Devarim](https://www.chabad.org/9996" \l "v43)* [32:43](https://www.chabad.org/9996" \l "v43)): “His land will atone for His people.” For retribution, it is stated (*Amos* 7:17): “You shall die in an impure land.”

However, the Rambam points out:

There is no comparison between the merit of a person who lives in the Land of Israel and ultimately is buried there and one whose body is brought there after his death. Nevertheless, great sages would bring their dead there. Take, for an example, our Patriarch Ya’akov and Yosef the Righteous.[[10]](#footnote-10)

The great philosopher and poet Rav Yehuda Ha-Levi, who loved the Land of Israel dearly, condemns the practice of those who choose to live outside of Israel and return there once they are deceased.[[11]](#footnote-11) He supports his claim by quoting the above *gemara* and the verse:

And I brought you to a forest land to eat of its produce and its goodness, and you came and contaminated My land, and made My heritage an abomination.[[12]](#footnote-12)

Well-known leaders of the Zionist movement like Binyamin Ze’ev Herzl and Ze’ev Jabotinsky, who passed away in the Diaspora, were laid to rest in Israel.

In 1960, Sephardic Chief Rabbi Yitzchak Nissim arranged for bringing the body of one the greatest Sephardic Poskim of all time, Rav Chayim Yosef David Azulai (Chida, 1724–1806), to be buried in Israel.

Sir Moses Montefiore (1784–1885), the great Jewish philanthropist,was buried at his estate in Ramsgate, England. Since Sir Moses was a great lover of Israel and was very active in Zionist causes, the question came up regarding moving his body to Israel.

Rav Moshe Feinstein disapproved. His main reason, he writes, is the precedent that would be set by performing such an act.[[13]](#footnote-13) Rav Moshe argues: “Why only him? There are many *gedolim*, saints and righteous people that deserve to be brought to Israel.”

On the other hand, two Sephardic Chief Rabbis, Rav Ovadya Yosef and Rav Mordekhai Eliyahu, approve the suggestion.[[14]](#footnote-14)

Rav Tzvi Pesach Frank (1873–1960), [Chief Rabbi of Jerusalem](https://en.wikipedia.org/wiki/Chief_Rabbi_of_Jerusalem), was asked for his opinion regarding bringing the body of the Karliner Rebbe**,** Rav Yochanan Perlow (1900-1956), who passed away in the US, to Israel. Rav Frank disregards the opinions who object to the idea and rules that it is clear to him that the body should be brought to Israel.[[15]](#footnote-15)

**Military Funeral**

Zechariah was laid to rest in a military cemetery. Families of fallen soldiers have the option of having a full or partial military funeral.

The custom of many armies is to bury soldiers in a military funeral which involves several military features including [guards of honor](https://en.wikipedia.org/wiki/Guard_of_honour), the firing of [volley shots](https://en.wikipedia.org/wiki/3-volley_salute) as a salute and a national [flag](https://en.wikipedia.org/wiki/Flag) draping over the [coffin](https://en.wikipedia.org/wiki/Coffin).

Rav Betzalel Zolty (1920-1982), Chief Rabbi of Jerusalem, came out against military funerals.[[16]](#footnote-16) His main argument is that these customs are prohibited due to the Torah’s prohibition of following *chukot ha-goyim* (non-Jewish practices).[[17]](#footnote-17)

In the ancient world, there was a practice among both Jews and non-Jews to burn the king’s belongings after his death. The Talmud refers in two separate places to this custom, but why does it not fall under the prohibition of *chukot ha-goyim*?

Both references agree the custom is permitted but give different reasons. While one explains that this act serves as a symbol of importance (*chashivuta*),[[18]](#footnote-18) the other argues that it is only permitted because there is a source in *Tanakh* for this custom, thus proving it was a Jewish custom before it became a non-Jewish one.[[19]](#footnote-19)

Tosafot question what seems to be a contradiction between these sources.[[20]](#footnote-20) In their answer, they reach the conclusion that the prohibition includes two separate types of customs: one constitutes idol-worship, the other does not. In the latter case, if the custom is mentioned in Jewish sources, proving that there is a Jewish precedent for the act, then it is permitted.

Other Rishonim, such as Rav Yosef Colon of Italy (Maharic, c. 1420–1480), explain that practices that are initiated by non-Jews for logical reasons and are not acts of *peritzut* (immodesty) are not considered *chukot ha-goyim,* and they are therefore permitted.

Many Poskim agree with the Maharic’s conclusion,[[21]](#footnote-21) but the Gra rules strictly: even customs that serve a reason and purpose are prohibited unless they are mentioned in the Torah.[[22]](#footnote-22)

Rav Zolty explains that according to the common *pesak*, military funerals should be permitted, as there is no element of idol-worship involved. Furthermore, they serve a purpose, as they give honor and respect to the fallen soldiers. However, due to the *psak* of the Gra, he finds it difficult to be lenient; therefore, he forbids this practice.

Rav Yechiel Ya’akov Weinberg (1884-1966) disagrees with Rav Zolty.[[23]](#footnote-23) In his *responsum*, which discusses the modern practice of celebrating a girl’s becoming a bat mitzva, he defines the halakhic parameters of *chukot ha-goyim.* He argues that even the Gra only prohibits in a case in which the reason of the custom is to follow the ways of the non-Jews; but in a case in which there is good reason for the custom (as in the case of a military funeral), it is permitted to follow the ways of the non-Jews.

**In Closing**

May this act of *kiddush ha-shem* bring his family and the Jewish people comfort!

We will end with the prophecy of *Yechezkel*[[24]](#footnote-24) which Rav Medan read out in his *hesped*:

O dry bones, hear the word of the Lord. So says the Lord God to these bones; Behold, I will cause spirit to enter into you, and you shall live. And I will lay sinews upon you, and I will make flesh grow over you and cover you with skin and put breath into you, and you will live, and you will then know that I am the Lord.

1. 1 Mishna, *Ta’anit* 4:6. [↑](#footnote-ref-1)
2. BT *Taanit* 31a. [↑](#footnote-ref-2)
3. I *Shemuel* 31:11-13. [↑](#footnote-ref-3)
4. <https://www.etzion.org.il/en/shiur-07-25-january-1968-raising-dead-loss-ins-dakar> [↑](#footnote-ref-4)
5. *Shulchan Arukh, YD* 363:1. [↑](#footnote-ref-5)
6. See the Shakh ad loc. 1. [↑](#footnote-ref-6)
7. *Shulchan Aruch* YD 363 :1 [↑](#footnote-ref-7)
8. BT *Ketubot* 111a. [↑](#footnote-ref-8)
9. JT *Kilayim* 9:3. [↑](#footnote-ref-9)
10. *Hilkhot Melakhim* 5:11. [↑](#footnote-ref-10)
11. *Sefer Ha-Kuzari* 2:23. [↑](#footnote-ref-11)
12. *Yirmeyahu* 2:7. [↑](#footnote-ref-12)
13. *Iggerot Moshe, YD* 153. [↑](#footnote-ref-13)
14. See *Yechaveh Da’at* 4:57. Rav Eliyahu’s responsum is quoted by Rav Pinchas Toledano of London in his article in *Techumin,* Vol. 8, p. 387. [↑](#footnote-ref-14)
15. *Har Tzevi, YD* 274. [↑](#footnote-ref-15)
16. *Noam*, Vol. 2, p. 161. [↑](#footnote-ref-16)
17. *Vayikra* 18:3. [↑](#footnote-ref-17)
18. BT *Avoda Zara* 11a. [↑](#footnote-ref-18)
19. BT *Sanhedrin* 52b. [↑](#footnote-ref-19)
20. In both *Avoda Zara* and in *Sanhedrin.* [↑](#footnote-ref-20)
21. See Rema (*YD* 178:1), as well as Rav Ovadya Yosef (*Yabia Omer* III, *YD* 24). [↑](#footnote-ref-21)
22. In his commentary to *YD* 178:7. [↑](#footnote-ref-22)
23. *Seridei Eish* 2:39. [↑](#footnote-ref-23)
24. 37:4-6. [↑](#footnote-ref-24)