

Overview

Siman 526 Seif 1 (a):

If there is a body that must be buried, on the first day of Yom Tov (Jews may not bury the deceased even if the body will smell and gentiles will not be able to bury the deceased, rather) **gentiles must bury the deceased, even if the person passed away on that day** (see above *siman* 304) **and this applies even if they could delay the burial until the following day and the body would not smell. The restriction applies to making the casket and shrouds but it is permitted for a Jew to clothe the deceased, heat up water for the *taharah*, transport the body and place it in the grave.** One should be cautious to perform the *taharah* with straw on leather or wood but not upon sheets so that they should not squeeze the water from the sheets.

- ❖ The *mitzvah* to bury does not override the positive command to rest and the prohibition against performing *melacha*. (M.B. 1)
- ❖ This is true even if the first day of Yom Tov falls on Friday so that they will not be able to bury the deceased until Sunday. Even if gentiles do not work on Sunday so that the burial will be delayed until Monday, it is prohibited for a Jew to perform *melacha* to bury the deceased. (M.B. 2)
- ❖ If the first day of Yom Tov falls on Friday and the cemetery is more than a day's journey and the gentiles transporting the body will not reach the cemetery until Shabbos, the deceased should be interred in town by gentiles and after Shabbos they will disinter the body to transport it to the cemetery. Alternatively, the deceased could be placed by a gentile in a casket that is sealed to contain the smell and after Shabbos transport the deceased for burial. (M.B. 3)
- ❖ These are Biblically prohibited activities. *Poskim* write that even if there is a dug out place in which the deceased could be placed until after Yom Tov or a grave that belongs to someone else from which he will have to be removed after Yom Tov, it is permitted to instruct a gentile to dig a grave since it is disrespectful to exhume a body and move it. (M.B. 6)
- ❖ If one could obtain ready-made shrouds that are approximately the correct length, one may not ask a gentile to make new shrouds. (M.B. 7)
- ❖ Even according to the opinion that maintains that *melacha* performed without a need is Biblically prohibited, in this case it is permitted since it constitutes a *mitzvah* somewhat being that it is disrespectful for gentiles to be involved in the *taharah*. Therefore, it is permitted out of respect for the deceased. (M.B. 9)
- ❖ It is prohibited to move the body from the bed to the ground as is the custom unless one places bread or a child on the body as is done on Shabbos since this movement of the body is not necessary for burial. (M.B. 10)
- ❖ Covering the body with dirt is only permitted for a gentile since filling the grave constitutes an act of construction. (M.B. 11)

Halacha Highlight

Having a gentile bury the deceased on Yom Tov

Shulchan Aruch Siman 526 Seif 1 (a)

יתעסקו בו עממין

A gentile should be involved in the burial

Shulchan Aruch addresses the proper approach to taking care of a corpse on Yom Tov. He states that on the first day of Yom Tov the preparations that involve Biblical prohibitions may only be performed by gentiles and it is prohibited for Jews to perform any of those activities. The reason is that the *mitzvah* to bury the deceased does not override the positive command to rest or the prohibition against performing *melacha* on Yom Tov (מ"ב סק"א). The prohibition is in force, explains Rema, even in a circumstance in which gentiles are not available to bury the deceased and the body will begin to smell as a result of being left unburied. Mishnah Berurah (סק"ג) goes so far as to say that even if Yom Tov falls on Friday and the gentiles do not permit work to be done on Sunday so that they burial will be delayed until Monday, nevertheless, it is prohibited for a Jew to perform *melacha* on Yom Tov to bury the deceased.

Rav Elchonon Wasserman (קובץ שעורים ביצה אות כ"ה) notes that when a gentile performs the burial of the deceased he is not acting as an agent of any Jew since *halachah* states that a gentile cannot serve as an agent. This would seemingly mean that the relatives who make arrangements for the burial are not fulfilling the *mitzvah* to bury the deceased. Since he finds this conclusion to be untenable, he suggests that the *mitzvah* to bury the deceased does not involve the physical labor of actually burying the deceased. Instead, the *mitzvah* is to make sure that the deceased is buried. As such, even on Yom Tov when the actual burial is performed by a gentile, the relatives who made arrangements for the burial to take place fulfill the *mitzvah*. He then adds that an extension of this principle is that if the deceased becomes uncovered one would not say that once the *mitzvah* to bury the deceased was fulfilled he does not have to cover the body again. Rather, he is obligated to cover the body again since the *mitzvah* is to assure the proper burial of the deceased.

- ❖ Accompanying the body beyond the *techum* is prohibited. Some authorities argue that since anyways gentiles will have to be involved they should perform all of the activities, even those that are only Rabbinically prohibited. There is no reason to protest against those who follow the lenient opinion since many authorities subscribe to the lenient position. (M.B. 12)
- ❖ Meaning, the *taharah* is performed on leather or wood and the body is cleansed with straw or one's hand but not with a cloth. (M.B. 13)