

לוקוטי ופסקי הלכות "חוקי חיים"

ותלמוד
"תקצי תתקצי"
לעשות רצונך
בלבב שלם



שע"י "חדר הוראה" שכונת מנחת יצחק פעה"ק ירושלם תובב"א - בראשות הרב חיים אהרן בלייער שליט"א

Halachos compiled by HaRav Chaim Bleier – Translated from the Hebrew edition by R' Zerachya Shicker

Please do not
read during
davening or
Krias HaTorah

Halachos of Burial Plots

Parshas Chayei Sorah 5785

343

Buying a Burial Plot

Purchase of Me'aras HaMachpeila

1. The Torah speaks at great length about the purchase of Sorah's burial plot and how Avrohom paid a lot of money for her to be buried in a fitting location. We learn from here the importance of having a proper burial location strictly according to halacha so that a person's soul will have true menucha.

Owning One's Plot

2. **Avrohom.** It is ideal for a burial plot to belong to the niftar when he is buried. Thus, people customarily buy a burial plot (מעבר יבוק). This was the case with Avrohom Avinu, as the posuk says (עמ"ר"ח). *"He should give me the Machpeila cave that is his, which is at the edge of his field. For full price he should give it to me in front of you for a burial property ... If only you would listen to me. I am giving money for the field; take it from me and I will bury my meis there."*
3. **Yaakov.** We also find that Yaakov Avinu gave instructions for him to be buried in Me'aras HaMachpeila, as the posuk says (פי ויחי מ"ט, כ"ט). *"Bury me with my forefathers, in the cave which is in the field of Efron HaChiti ... Avrohom bought the field from Efron HaChiti as a burial property ... They buried him in the cave of the Machpeila field, which Avrohom bought as a burial property."*
4. **Yosef.** We also find this regarding Yosef's bones. The posuk says (יהושע כ"ד, ל"ב). *"They buried Yosef's bones, which Bnei Yisroel brought up from Mitrayim, in Shechem, in the portion of the field that Yaakov bought ... with one hundred kesita."*

During or After One's Life?

5. **While alive.** Some are careful to buy a burial plot for themselves in their lifetime. The earliest source for this is from Yaakov Avinu. Yosef told Pharaoh (פי ויחי נ', ה'). *"My father had me vow, saying 'Behold, I am dying. In my kever, which 'כריתי לי' in Eretz Kenaan – bury me there.'"* Rashi first gives a simple explanation, that Yaakov's kever was already labeled and marked off for him [not actually dug (העמק דבר); - based on Rama (סי' של"ט ס"א)]. Rashi gives a second explanation, that Yaakov bought his portion of Me'aras HaMachpeila from Eisav. According to both explanations, Yaakov saw to it in his lifetime that he had a burial plot. The idea behind this is to subdue one's yetzer (מלכיים שם) by reminding himself about the day he will die (ע"א). (גמ' ברכות דף ה' ע"א).
6. **Designating the site while alive.** Early tzaddikim in Eretz Yisroel would buy themselves a kever while alive (כתבי). (הרמב"ן ח"א עמ' שס"ח). They would also daven, say some words of Torah, and give tzedaka there. In doing so, they elevated and sanctified the spot prepared for them (קב הישר פ"ו).
7. **Paying money.** It is proper, even for a very poor person, to give some amount of money for a burial plot. There is a play on words that hints to this: "אי אפשר לפתיחת הקבר בלי דמים." A minhag of our ancestors is Torah: it is important for one to be buried in his own plot, not a borrowed one. Thus, it is customary to pay money to gain ownership of the land (ש"ת חת"ס י"ד סי' של"א).
8. **Segula for long life.** Some mention that buying a burial plot is a segula for long life (תשובות והנהגות ח"א סי' תשי"ג, ח"ב סי' תר"ד, ארחות רבינו). (הקהילות יעקב ח"ד אבילות אות ל"ח). They do not cite a source. Some learn it from the juxtaposition of the pesukim in Chayei Sorah (כ"ג). *"The field and the cave in it went to Avrohom as a burial property from the sons of Cheis. And Avrohom was old, advanced in days, meaning to say that through buying a burial site, he was zocheh to old age (משנה הלכות פ' חיי שרה)."*

9. **Ensuring the plot complies with halacha.** Another reason to buy during one's lifetime that is relevant in Eretz Yisroel is because there are many burial sites in Eretz Yisroel that do not comply with halacha, as will be explained (below, 20 and on). Due to a lack of burial sites, the Chevros Kadisha sometimes offer burial sites that are not according to Torah, and the heirs, due to lack of knowledge or the sensitivity of the topic, are not aware of the halachic problems. When one buys during his lifetime, he can ensure the spot is in strict accordance with halacha.
10. **After one's life.** When one's heirs pay for a burial plot after the life of their loved ones, they also fulfill this concept of the niftar being buried in his own plot, as they buy it on behalf of the niftar and pay money for the burial (ש"ת חת"ס שם).

Advantage of Burial in Eretz Yisroel

Advantages

11. **Like under the Mizbeiach.** Chazal say, *Whoever is buried in Eretz Yisroel is considered as if he is buried under the Mizbeiach* (גמ' (כתובות דף ק"א ע"ב), as all of Eretz Yisroel is fit for the Mizbeiach. If one is buried under the Mizbeiach, it is like he is buried under the Kisei HaKavod, as the posuk says (ירמיהו י"ז, י"ב). *"Bury me with my forefathers, in the cave which is in the field of Efron HaChiti ... Avrohom bought the field from Efron HaChiti as a burial property ... They buried him in the cave of the Machpeila field, which Avrohom bought as a burial property."*
12. **Kapara for sins.** Eretz Yisroel has kedusha and gives kapara for sins, as the posuk says (דברים ל"ב, מג). *"Bury me with my forefathers, in the cave which is in the field of Efron HaChiti ... Avrohom bought the field from Efron HaChiti as a burial property ... They buried him in the cave of the Machpeila field, which Avrohom bought as a burial property."*
13. **Close to the gate to Shomayim.** Eretz Yisroel is close to the gate to Shomayim, so the neshama will not need to be troubled and "roll" (להתגלגל) to reach its source (שם).
14. **Techiyas hameisim.** The dead of Eretz Yisroel will be the first to arise in the times of Moshiach. The dead of Chutz L'Aretz will not live; only the tzaddikim will be zocheh to come to Eretz Yisroel via the painful "rolling through tunnels," and then arise for techiyas hameisim, as explained in the Gemara in Kesubos (דף ק"א ע"א).

Bringing a Meis from Chutz L'Aretz to Eretz Yisroel

15. There are sources indicating it is a problem for a person who did not come to live in Eretz Yisroel in his lifetime to arrive in Eretz Yisroel for burial after his passing, and that with the exception of special tzaddikim, who are allowed to do this (זוה"ק פ' ויחי דף רכ"ז). *"Bury me with my forefathers, in the cave which is in the field of Efron HaChiti ... Avrohom bought the field from Efron HaChiti as a burial property ... They buried him in the cave of the Machpeila field, which Avrohom bought as a burial property."*
16. However, most poskim agree that while this is a problem, Eretz Yisroel's quality of giving a kapara (above, 12) also gives a kapara for this, at least for a niftar who cherished Eretz Yisroel and yearned for it while he was alive (אג"מ י"ד ח"ג קנ"א).
17. **Coming while alive.** For this reason, we find that some people as they age, come to Eretz Yisroel during their lifetime so that when the time comes, their neshama will leave them in Eretz Yisroel and they will be buried in Eretz Yisroel without an issue.
18. **Buying a plot.** However, it should be noted that when buying a plot in Eretz Yisroel, one should look into the type of kever he is buying, as he can easily be offered a burial plot not in accordance with the letter or spirit of the halacha, as will be explained below. Sometimes it is better to buy a plot in Chutz L'Aretz than to buy a plot in Eretz Yisroel of questionable kashrus for burial.

Placing Earth from Eretz Yisroel on a Kever

19. There is a minhag to place some earth from Eretz Yisroel on the kever of a niftar in Chutz L'Aretz to fulfill the posuk of (אג"מ י"ד ח"ג קנ"א). *"Bury me with my forefathers, in the cave which is in the field of Efron HaChiti ... Avrohom bought the field from Efron HaChiti as a burial property ... They buried him in the cave of the Machpeila field, which Avrohom bought as a burial property."*

Proper Menucha

Cemetery Burial Plot Crisis

20. Some authorities in Eretz Yisroel claim there is a major crisis with burial plots in cemeteries. In recent years, about 50,000 people passed away annually ל"ע. 250 kevarim fit in one dunam. This means a space with an area of about 450x450 meters is needed to hold everyone who passes away each year.
21. Due to the great crisis [created due to their worry about the number of expected deaths in the coming years and/or the high price of land, upon which high rise apartments can be built instead of designating land for burial], some groups have proposed alternative burial methods. The idea is to save space and maximize use of the space set aside for burial. Just as they use height and depth to solve the housing crisis, they similarly suggest using height and depth for burial methods. Many cemeteries throughout Eretz Yisroel have already adapted various ideas in motion and are changing the form of burial and causing "improper menucha." The problem is that many of them are not accepted according to halacha. Thus, one who fears Hashem's word should be careful not to fall into their trap. One should be certain to only buy plots that fit with our long-standing tradition and that strictly comply with halacha, as we will explain.

In the Ground

22. It is a mitzva d'oraisa to bury a meis in the ground, as the posuk says, "כי קבור תקברנו." One who just puts a meis into a coffin or the like without burying him in the ground disregards the mitzva of kevura and also violates the issur of ירד שם אב (לא תלין שם אב).

"Field Burial" [קבורת שדה]

23. The standard, accepted, widespread form of burial throughout the generations is what is termed "קבורת שדה," meaning that the meis placed under the surface of a field or burial grounds. The kever is dug into the ground and the meis is placed under the ground's surface. Then, the meis is covered with stone blocks, earth, and a top stone, and after some time, a gravestone is placed over the kever. This is the accepted Jewish form of burial.
24. **No coffin.** It is preferable to bury a meis directly into the ground, without any barrier between the body and the dirt (רמב"ן, תורת, שו"ע סי' ש"ג, והאדם עמי ק"י). This is the minhag in Eretz Yisroel, where the body is surrounded and covered with stone blocks.
25. **In a coffin.** In places where the authorities do not permit burial without a coffin, e.g., in Chutz l'Aretz, a meis may be buried inside a coffin if the coffin is buried underground, provided that there is some contact between the meis and the ground, e.g., via holes in the bottom or in a coffin without a bottom panel, each place in accordance with its custom (רמב"ן שם).
26. **Artificial hill.** Sometimes there is a desire to add burial spots on a hill's slope. They build a retaining wall out of concrete and stone at a short distance from the hill. Then, they pour earth in the space created between the wall and the hill, level out the new surface, and prepare it for burial, like any other קבורת שדה area. Since the burial is done in earth that is connected to the sides of the hill, it is considered a standard burial and may be done l'chatchila like any standard burial (שו"ת אג"מ יר"ד ח"ג סי' קמ"ב).

Double Burial

27. **"Couple's burial."** Some prepare in advance a single burial plot intended for a couple, i.e., two meisim in one kever, one over the other. After they put the first meis in, they cover it with stone blocks, as is customary, and pour dirt on top. Then, they place blocks around within the kever and prepare a spot for a second meis. When the time comes, they reopen the gravestone to put the second meis on top.
28. Although we find that burying one meis above another was sometimes allowed in the past if there were six tefachim of dirt between the two bodies (שו"ע סי' ש"ב סי' י"ד), this should be avoided l'chatchila for multiple reasons. Really, it is a departure from the accepted minhag; sometimes they are not careful about the amount of dirt between (עי' פתח"ת שם ס"ק); and there are other reasons (ס' משכן הנפש פכ"א אות ד').
29. **"Above-burial" [קבורת על].** Another type of double burial is when there was kever intended for a single meis, but then they decided to add another meis, so they prepare the site to be able to hold another meis, e.g., a spouse or family member.
30. However, since the kever was not originally dug for two, they usually are not careful about the minimum space between the two. It is also disrespectful to the first meis to dig into the kever when that was not the original intention. They violate the issur of exhuming the dead, ר"ל; this is much worse than a couple's burial that was originally intended to be that way.
31. **Me'aras HaMachpeila.** The Amora Rav holds Me'aras HaMachpeila was called so because there were couples buried there in two chambers, one further in than the other. Shmuel holds the cave itself had two sections, one on top of the other, like a house with an attic on top (עירובין דף נ"ג ע"א). This was not a problem of having one meis above another in one kever, as the two caves were completely separate, and each meis was buried in the ground of its cave. The two were not buried in one kever.

Multi-Level Burial

32. **Many levels.** One of the widespread new methods of saving space entails building several levels for burial [this exists even on Har HaMenuchos]. The burial surface is built over a concrete floor with a large quantity of earth. Each level is supported by columns, and the roof of each level serves as the burial area for the level above. The burial style resembles קבורת שדה (23), only it is made from many concrete floors. [Pictures taken with permission from the end of the wonderful sefer "משכן הנפש"; credit to the mechaber.]
33. All poskim today who fear Hashem's word rule that one should not use these kevarim for many reasons. It is a departure from the customary minhag of kevura, and the main reason is because although there is dirt between each kever, they hold it is not considered in-ground burial; rather, it is like burial on a roof or in a dirt-filled container (ק"ב, הגר"ש"א בקובץ). Even if they make a hole leading to a pipe filled with dirt that goes all the way to ground level, that does not make it like in-ground burial; it is like burial in an עציץ נקוב. Although the contents of an עציץ נקוב are considered connected to the ground regarding מצוות התלויות בארץ, that is because the plant inside gets nourishment from the ground. But for kevura, the idea is not to be connected to the ground, but to be buried in the ground. One posek even ruled that a meis who wanted traditional burial should be removed from a multi-level kever (היכל הוראה ח"א סי' קצ"א).
34. They also found instances of tremendous disgrace to the meisim. After it rained onto the upper level, all sorts of remains of the meisim came out of the drainpipe. These things are usually absorbed into the ground, but when a meis is buried on concrete, not in the ground, there is nowhere for the remains to be absorbed. This is the exact opposite of the purpose for burial.

Burial in Kuchin [Niches]

35. **Kuchin in the ground.** There used to be a method of kevura in kuchin, which are spaces in a cave's wall or in the ground, into which a meis is placed from the side. Then, the opening is sealed. When the kuch is dug into the ground for the purpose of burial, it is considered burial in the ground. This was common a long time ago, as is clear from the Gemara (בב"ב דף ק"ע).
36. **Concrete shelves.** There are burial kuchin made from concrete, or even worse, Styrofoam, sometimes without a bottom, sometimes with. They are divided into rows upon rows of burial cells. Then they are overlaid with wall covering stones. In order for it to involve dirt, they put bags of dirt in the cell opening which, over time, spill over the meis, making it like it is buried in dirt. This method is also considered burial in an עציץ since it is not actually in the ground, as above, and the poskim also oppose this method.

Burial in an Artificial Tunnel

37. **Underground cemeteries.** There are some places where they dug massive tunnels with many stories and entire vestibules [e.g., "Minharot Olam" under Har HaMenuchos] equipped with lighting, elevators, and various amenities to serve the visiting public. They create a whole city of kevarim numbering in the thousands, built with all the various new methods. Some use קבורת שדה on the tunnel floor (23), and on many levels (32). There are some kuchin in the tunnel walls (35), and there are artificial concrete kuchin (36). The common denominator is that most of them are not burial spots that follow our long-standing tradition. Thus, the only kevarim one should use there are the ones classified as קבורת שדה in the ground or in kuchin that are truly in the ground (עי' היכל הוראה ח"ה סי' קל"ו וקל"ז).

"Hashem will swallow up death forever.." (Yeshayahu 28,5)

We should be zoche to Techias Hamesim

