

**Shiva When Burial is Delayed**  
**YD 375:2.2015**  
**Rabbi Joshua Heller**

*This teshuvah was approved unanimously on May 12, 2015. Voting in Favor: Rabbis Aaron Alexander, Pamela Barmash, Elliot Dorff, Baruch Frydman-Kohl, Susan Grossman, Reuven Hammer, Joshua Heller, David Hoffman, Jeremy Kalmanofsky, Adam Kligfeld, Gail Labovitz, Amy Levin, Daniel Nevins, Micah Peltz, Paul Plotkin, Avram Reisner, Elie Spitz, Jay Stein.*

**She'elah:**

An increasing number of Jews are wrestling with how to observe *shiva* for relatives whose burial will be significantly delayed, or may not take place at all. Such situations might include cremation, donation of the body for study, or military burial in a national cemetery. This question may be of particular concern to Jews who have non-Jewish loved ones who are not bound by Jewish ritual requirements in making final arrangements. In these situations, mourners also may find themselves travelling far from Jewish resources/community. How may *shiva* be observed when traditional burial does not take place in a timely fashion, if at all?

**Response:**

Timely burial is an important principle in Jewish practice. The classic halakhic sources cite a biblical proof-text. If even an executed criminal must be buried the same day, rather than being left overnight,<sup>1</sup> so how much more so a righteous person should not be left overnight.<sup>2</sup> Burial is also encouraged as uniquely capable of bringing about atonement for the deceased. The same sources provide an exemption where delaying burial would honor the deceased: allowing time for preparation of the necessities for burial, for notification of the community, for transportation of the body for burial or for arrival of mourners coming from a distance. Similarly, post-mortem donation of individual organs, with the goal of saving the lives of specific individuals, is strongly encouraged,<sup>3</sup> even though it may lead to a brief delay in burial. A confluence of Jewish and civil holidays, an autopsy (either required by civil authorities, or permitted by Jewish law because findings may save the life of another) may also cause a delay of a few days, but even these factors will ordinarily still allow burial within a week. *Shiva*, which typically begins at the time of burial, is not only a sign of respect to the deceased, but also an invaluable opportunity to offer comfort and support to the mourners at a vulnerable time, and loses much of its power after a lengthy delay.

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<sup>1</sup> Deut 21:23

<sup>2</sup> Mishnah Sanhedrin 6:5, TB Sanhedrin 46b-47a, Shulhan Arukh YD 357, see discussion in Rabbi Morris Shapiro, "[Cremation in the Jewish Tradition](#)" YD 348.1986, for analysis as to whether burial is a Torahic decree or the verse is a support to a rabbinic enactment.

<sup>3</sup> See Rabbi Joseph Prouser's Chesed or Chivv: The Obligation to Preserve Life and the Question of Post-Mortem Organ Donations YD 336.1995), and Leonard Sharzer, [Organ Donation After Cardiac Death](#), approved on February 2, 2010; YD 370:1.2010

*The Committee on Jewish Law and Standards of the Rabbinical Assembly provides guidance in matters of halakhah for the Conservative movement. The individual rabbi, however, is the authority for the interpretation and application of all matters of halakhah.*

Our movement has sustained the traditional requirement of timely burial in the ground. We have expressed strong opposition to cremation.<sup>4</sup> The permissibility of donating the entire body for scientific study or medical student training is beyond the scope of this paper,<sup>5</sup> but in any case, in such situations, the burial of the remains is still required. The issue of burial in military cemeteries (particularly in the United States), also requires special note. Jews are proud of those who “seek the wellbeing of the city where they dwell” by serving in our armed forces. Some see burial in a military cemetery as one way of recognizing that service and reducing burial costs. However, there are some potential concerns as well: one which is relevant here is that American Military Cemeteries may have a backlog or wait of several days to several months.<sup>6</sup>

We recognize that while the law requires timely burial, we may encounter situations where after the fact (*b'diavad*) timely burial will not take place. In such circumstances, we would still call for burial of remains at the earliest opportunity. In particular, in the case of cremation, we require burial of the cremains.<sup>7</sup> We would encourage mourners and community to do what they feel is in their power to accomplish timely burial of Jewish deceased. There is cause for particular sensitivity when the mourners before us may not have control over the disposition of the remains. The very fact of the cremation, or delay of the burial, may be a source of further distress to them.

It is also worth noting that while burial is primarily about preventing disregard for the deceased, *shiva* has role independent of the deceased and his/her choices. It also serves the purpose of *nichum avelim*, comforting the mourners, through visits, prayer, and both formal and informal expressions of consolation.

How are *shiva* and other mourning practices observed when burial is delayed significantly or may not happen at all? There is not a single answer that will address all possible scenarios, but the following pages will offer precedents that might be helpful to the *mara d'atra* in guiding the mourners as to how to proceed.

### **Basic Mourning Practices**

In the normative mourning process, the days following a death constitute two distinctive phases of mourning, divided by the burial itself. *Aninut* is the time between death and burial. During this time, the mourners' primary responsibility is to prepare for the burial, and as a result the mourners are excused from many other Mitzvot, including daily prayer. They also refrain from eating meat and drinking wine. The closing of the grave marks the end of *aninut* and typically begins *shiva*. The practices of the seven days of *shiva*, including remaining in the mourning

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<sup>4</sup> Shapiro, loc cit.

<sup>5</sup> The CJLS has never formally ruled on the topic. “Autopsy” by Rabbi Isaac Klein, 1958 seems to permit. Opinions of the chair from 1962, 1963, and 1966 would prohibit. The Va'ad HaHalakha of the Rabbinical Assembly of Israel unanimously approved Rabbi Gilah Dror's teshuvah “The Donation of Bodies to Medical Schools,” (Volume 5) which permits the practice, but takes for granted certain assumptions regarding the treatment and ultimate disposition of the remains which may be applicable in Israel but not in the United States.

<sup>6</sup> <http://www.arlingtoncemetery.mil/ContactUs/FAQ.aspx>, retrieved June 30, 2014.

<sup>7</sup> See Shapiro, *op cit*. It is worth noting that cremation involves two steps of destruction of the body. First it is burned at a temperature of over 1000 degrees. At the end of this process, bones may remain recognizable, and the remains are swept up. Any metal fillings etc are removed with magnets, and the remains are ground up in a device called a “cremulator” to create a powdery ash, called “cremains.”

home, refraining from bathing, wearing leather shoes, etc, are well established.<sup>8</sup> *Shiva* normally begins no later than the sealing of the grave, with one notable exception being the case of burial that takes place during a festival, in which case *shiva* is observed immediately following the festival. Recitation of *kaddish* begins with burial as well. Mourning continues through *sheloshim*, a total of up to 30 days, (for all relatives) and up to 12 months (for those mourning a parent)<sup>9</sup>. *Sheloshim* and the 12 months are normally counted beginning at burial as well, even if *shiva* is delayed due to *yom tov*.

In the event that the deceased's body is lost, or burial is prevented by forces beyond the control of the mourners, mourning does not begin as long as there is hope that the body might be recovered for burial. If at some point the mourners give up hope of burial, (this situation is called *yeush*) there is no *aninut*, since there is no preparation for burial, and *shiva* begins immediately when the mourners give up.<sup>10</sup> However, there is some question as to how, or indeed, if, *yeush* applies when the body, and the possibility of its timely burial, are in the hands of the mourners. (for example, they are delaying burial to fulfill a request of the deceased, or waiting to bury in one cemetery when another is available immediately).

Of course, in order to address the concept of delayed burial that would affect the timing of *shiva*, one must determine what constitutes an undue delay. The classical sources regard 2 or 3 days as an undue delay for burial barring a pressing reason,<sup>11</sup> but it might have taken days to bring remains for burial in another country, or to retrieve remains being held for ransom by the civil authorities. However, if *shiva* is delayed until long after the death, it may no longer provide the same consolation to the family, and may indeed be seen as a hardship for family and comforters. Furthermore, *aninut* is a limbo period during which the mourner is disconnected from many aspects of Jewish practice, and prolonging it may also create hardship. The circumstances of the death (whether unexpected, or following a lengthy illness) may also impact the subjective impact of *shiva* and its timing.

In typical circumstances today, the maximum delay that Jewish practice might require from death to *shiva* would be about 10 days, where a festival intervenes. For example, in the case of a death taking place at the start of Sukkot, and funeral taking place during the intermediate days, *shiva* would not begin until after the end of Simhat Torah.<sup>12</sup> Furthermore 7-10 days is enough time to have completed *shiva*. We would therefore presume that a case where burial is delayed by more than a week to 10 days, pushing off *shiva* beyond that timeframe, would be seen as an "undue" delay, where we would explore other options and precedents for *shiva*, and consider those parameters which would allow for *shiva* before or without burial.

### **Classic Precedents for *Shiva* without Burial**

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<sup>8</sup> For a full explication, see Carl Astor's chapter on the lifecycle in *The Observant Life*, M. Cohen pp. 282-304.

<sup>9</sup> Rabbi Richard Plavin and Rabbi Mayer Rabinowitz, *Saying Kaddish for Twelve Months, A Valid Alternative*, YD 376:4.2008 address the question of how long *d* is to be said.

<sup>10</sup> See Shulhan Arukh YD 341:4. If *yeush* takes place after more than 30 days, *shiva* is abbreviated to one day. I recall a case after 9/11 where one of the widows was counseled to wait until after the 30<sup>th</sup> day to formally express *yeush* so that she would not be obligated to sit the full *shiva*.

<sup>11</sup> See, for example Hatam Sofer YD 338.

<sup>12</sup> Though of course friends and community might well find opportunities to offer comfort even before the beginning of formal *shiva*.

One useful precedent is the situation of a city under siege, where burial is not possible. The body is sealed in a coffin in another building, and put away (above ground) with no immediately anticipated date of burial. It is assumed that the body will eventually be brought to burial at the end of the siege, but there is no guarantee. In the meanwhile, *shiva* begins immediately when the coffin is sealed, since that is as much as the mourners are able to do, and it is as close to burial as can be accomplished.<sup>13</sup> This would seem to be analogous to the situation of a body whose burial has been put off for a lengthy period of time due to the wait for cemetery to be available or where the body has been consigned to cremation or research, with no immediate prospects for burial, but where burial would eventually be the preferred outcome. *Shiva* would begin when the body has been consigned to its fate (for example, when final cremation papers are signed with funeral home, or body is delivered to a research facility), and the *seudat havra'ah* (meal of consolation for the mourners) would be eaten at this time.

Another useful potential precedent is the case where the deceased was to be taken to another city for burial. In the envisioned scenario, before rapid travel and instantaneous communication, it might have been days before burial took place, and indeed, there was no way of knowing for sure when, or indeed if, burial had taken place. In such a situation, if none of the mourners are accompanying the body, *shiva* begins “when they turn their faces from the deceased.”<sup>14</sup> This ruling still applies today, even though instantaneous communication now allows us to know when the burial has taken place. Again, mourning begins because the mourners no longer have any role to play in accomplishing the burial.<sup>15</sup> It does not matter if the actual burial will not take place for a long time, or the time of burial is delayed; once they have begun mourning, they continue on the schedule they have already begun<sup>16</sup>. It is worth noting that this is distinct from *yeush*, in that there is in fact a date set for disposal of the body, which may be only several days off, but mourning begins in advance of this date, because the mourners will have no further involvement.

However, some caution is necessary. If a mourner begins observing *shiva* before death, or even before burial, based on an incorrect assumption that death or burial have in fact taken place, then the initial mourning observed does not count, and mourning must be observed when the burial is confirmed.<sup>17</sup> The specific case used by the Shulhan Arukh, based on the language of the Talmud,<sup>18</sup> is the case of someone who was crucified. While someone who had been tortured in this way could generally be considered “as good as dead,” the mourner’s instinct would be to begin mourning immediately. However, in fact, the person could not yet be declared dead, and indeed there was no effective way to determine how long death might be prolonged, let alone whether burial might have taken place. However, in the situations that we normally address, there is no doubt of the death. While we are unsure if and when burial may take place, the

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<sup>13</sup> Shulhan Arukh YD 375:4, and Shach 5. Thanks to Reuven Hammer for reminding me that in cold climates, burial may be delayed by frozen ground, and *shiva* begins immediately even though burial will not take place for weeks, until thaw.

<sup>14</sup> Shulhan Arukh YD 375:2

<sup>15</sup> Igrot Moshe, YD 2:170

<sup>16</sup> Rema on Shulhan Arukh YD 375:7.

<sup>17</sup> Rama on Shulhan Arukh, YD 375:1, Shulhan Arukh YD 375:6.

<sup>18</sup> Gittin 70a

mourners base their observance on the very premise that burial is not imminent, and that there is nothing else that they can do to accomplish it.<sup>19</sup>

The principle of when the mourners turn over the body is also relevant for determining the parameters of *aninut*. *Aninut* applies whenever the mourners have tasks to perform related to the burial. Typically in our experience this begins at the death and ends at the burial, because the mourners are generally occupied with such tasks from the moment of death, even until the funeral. However, *aninut* may be suspended or limited over Shabbat or Yom Tov if the mourner refrains from participating in funeral planning due to observance of the holy day.<sup>20</sup> In the classical texts, *aninut* may end before the burial. So, for example if the burial society has taken complete responsibility for the body, *aninut* ends when the deceased is handed over to them,<sup>21</sup> even though *shiva* will not begin until the burial. While some say this only applies if the burial is taking place in another city,<sup>22</sup> others note that even if the deceased is nearby, if there is an extended time until burial, *aninut* does not apply on the intervening days between death and burial, once all plans have been made<sup>23</sup>

*Kaddish* normally begins with burial, since it is believed that burial begins the process of atonement for the deceased, and the recitation of *kaddish* (or the mourner's serving as leader of a weekday prayer service) serves an important role in easing this process of atonement.<sup>24</sup> However, according to some, *kaddish* may in fact be said before burial, since the dead benefit from our prayers at any time.<sup>25</sup> According to this view, there is a different reason why *kaddish* is not typically said before burial: mourners are in *aninut* during this time and therefore exempt from all prayer. Therefore, in the case where we do not know if or when burial will take place, then recitation of *kaddish* should begin at the conclusion of *aninut*, even if the burial has not yet occurred, whether or not *shiva* has begun.

### **When the Body is Finally Buried**

In the rabbinic period, there was a practice of *likut atzamat*- after approximately a year of burial in a temporary niche, the flesh would have decayed, and the bones of the deceased were gathered and put to their final rest,<sup>26</sup> and a single day of mourning, with all of the same practices and restrictions of *shiva*, would be observed until evening. While there might not be full eulogies, "words of praise" would be recited, and the mourners would join for a meal of consolation.<sup>27</sup> It has become a practice to follow the same approach in the case of other types of re-interment, or where a body was only recovered after a lengthy delay and *yeush*.<sup>28</sup> Mourners whose deceased is

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<sup>19</sup> See Yabea Omer 4 YD:28 for a further analysis of this issue. R. Ovadia Yosef notes that when he received a telegram that his father-in-law had passed away overseas, and the funeral was scheduled for the next day, he told his wife to begin *shiva* right away.

<sup>20</sup> Shulhan Arukh YD 341:1

<sup>21</sup> For example, see Shulhan Arukh YD 341:3, and Shakh 13, which rule that *aninut* ends when the deceased is turned over to the burial society.

<sup>22</sup> Rema, loc cit.

<sup>23</sup> Gesher Hachayim 18:4:5-7

<sup>24</sup> Rama on Shulhan Arukh YD 376:4

<sup>25</sup> Taz, Shulhan Arukh YD 376:4, and Gesher HaHayim 30:9:1-4, cited by Igrot Moshe YD 3:160

<sup>26</sup> Talmud Bavli, Moed Katan 8a.

<sup>27</sup> Shulhan Arukh, YD 403:1.

<sup>28</sup> Hazon Ish YD 213, though Gesher HaHayim disagrees.

finally brought to burial, but have already sat *shiva*, should therefore observe a single day of mourning on the day of burial.

### The Special case of Cremation

A number of modern *poskim* have declared that *shiva* should not be observed at all following a cremation, but we reject that view. Surprisingly, cremation is barely addressed in halakhic literature until the very end of the 19<sup>th</sup> century.<sup>29</sup> It would seem that this was because cremation was relatively uncommon in Christian Europe and Moslem lands until the end of the 19<sup>th</sup> century<sup>30</sup>, and even then was opposed by the many other religious groups and therefore slow to gain popularity among Jews. As it became a more popular and practical option, an increasing number of *poskim* spoke out stridently against it as a rebellion against Judaism.

For example, David Zvi Hoffman, in an undated teshuvah probably written around 1900,<sup>31</sup> rules that burial of ashes is not required, strictly speaking, but that since one may not derive benefit from human remains, it is good to bury them. However, he feels that they should not be buried in a Jewish cemetery because of the principle that the wicked not be buried with the righteous. He puts one who is cremated into the category of “wicked.” He further wishes to discourage others from thinking that cremation is acceptable. He later wrote to permit creation of a separate section of the cemetery, lest people come to bury these remains in the main section.<sup>32</sup> Later *poskim* develop this idea further. Rabbi Yehiel Ya’akov Weinberg, in a responsum dated December 1930,<sup>33</sup> asserts that those who have asked to be cremated have rejected a core tenet of Judaism, similar to those who violate Shabbat, and bemoans the fact that those responsible for the cemetery are willing to bury these remains with the remains of righteous Jews. Similarly Dr. Isaac Una (d. 1948)<sup>34</sup> writes that one of the primary reasons that *shiva* is not observed because he considers one who asks to be cremated to be an apostate, and one does not sit *shiva* for an apostate.<sup>35</sup>

In a number of situations we encounter today, the concern of apostasy would not apply. One who chooses cremation today, though violating a specific commandment, is not necessarily rejecting Judaism, or the concept of an afterlife. As a general principle, even if a Jew who passed away had violated any number of commandments, we would still mandate burial in a Jewish cemetery and *shiva*, so long as they did not literally affiliate with another faith.<sup>36</sup> The question of whether

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<sup>29</sup> For a halakhic analysis of early sources, see “Does Jewish Law Permit Cremation?” by Rabbi Isaac Klein (written in 1976 and published online by Rabbi David Golinkin, at <http://www.schechter.edu/responsa.aspx?ID=28>). Adam S. Ferziger (2012). Ashes to Outcasts: Cremation, Jewish Law, and Identity in Early Twentieth-Century Germany. *AJS Review*, 36, pp 71-102, provides an analysis of differing views among Germany’s Orthodox Rabbinate in the early 1900’s.

<sup>30</sup> The first crematoria in England and the US were established in the 1870’s.

<sup>31</sup> *Melamed L’hoil*, 2:113

<sup>32</sup> *Ibid*, 2:114

<sup>33</sup> *Seridei Esh* 2:98

<sup>34</sup> *Shoel U’meshiv*, #51

<sup>35</sup> *Shulhan Arukh* YD 345:5, the source that he cites, enumerates a number of types of apostasy, but does not list cremation among them.

<sup>36</sup> Rabbi Paul Plotkin, “Burial of Jews Practicing Christianity”, YD 345:5:1994

cremains should be permitted to be buried in the main section of the Jewish cemetery, or whether they must be buried outside of it, is beyond the scope of this paper.<sup>37</sup>

In the case of a Jew mourning a non-Jewish relative, the concern of apostasy does not apply. Cremation is not forbidden since a non-Jew is not obligated to observe Jewish practice, and the restrictions on apostates are stricter than those on non-Jews. Of course, some voices in the tradition feel that no *shiva* is warranted for a non-Jewish relative in any case.<sup>38</sup> The CJLS has ruled<sup>39</sup> that the community should support a Jew in observing full Jewish mourning rites, including *shiva*, for a non-Jewish relative, but the CJLS left leeway for the *mara d'atra* to work with mourners to assess the application of this ruling based on the situation at hand.

Many rabbis would, at least under some circumstances, encourage a mourner whose deceased had been cremated to observe *shiva*. We recognize that *shiva* offers much spiritual benefit to the mourners as they receive the community's support, and from a practical and emotional perspective it is usually preferable that *shiva* take place relatively soon after the death. Many of the enactments restricting *shiva* in the case of cremation were enacted in order to form a "fence" around the practice of in-ground burial. In our communities today, it is the observance of *shiva* and *sheloshim* that are in need of further support, as families may seek to scale back their observance of *shiva* from what is traditionally mandated. We therefore want to act in a way that reinforces and encourages full observance of these rituals.

### **Other Concerns Specific to Cremation**

Because the CJLS-approved approach does require burial of the cremains, we would seek interment of the cremains as quickly as possible, and it would be preferred to observe *shiva* following interment. However, there is typically a delay of several days before a cremation may take place,<sup>40</sup> and more time may be required for the remains to be returned to the family. In circumstances where there may be a substantial delay in the burial of the remains, or where, despite the best efforts of the mourners, the remains will not be brought to burial at all, the mourners should follow the precedents above, and begin mourning when the body is handed over for cremation, even if the cremation has not yet taken place. For example, the body is placed in a special combustible coffin for cremation, and placement in this box might play the same role.

In assessing the case of cremation, there is a further potential precedent, whose application is not generally recommended. The classical sources indicate that if the body was consumed by fire (by accident or as a result of force, not as an intentional cremation), *shiva* begins as soon as the body is consumed. The assumption is that burial, and the accompanying return of the body to the earth, is normally a benefit to the soul of the deceased, but those benefits no longer apply once

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<sup>37</sup> See Klein, 1976 for a number of permissive views, including that of Rabbis Nathan Marcus Adler, and Herman Adler, father and son who each served as chief Rabbi of England in the late 19<sup>th</sup> century.

<sup>38</sup> See Shulhan Arukh YD 374:5

<sup>39</sup> Joel Rembaum, "Converts Mourning the Death of Close Relatives" YD 374:5.1998

<sup>40</sup> Many jurisdictions require additional paperwork for cremation beyond that required for a burial, and mandate a 24-48 hour waiting period. In addition, time may be required to transport the remains to the nearest facility, which may only operate certain days, or may impose delays due to limited capacity.

the body has been consumed by fire. Instead, we bury to avoid possible misuse or desecration of the remains.<sup>41</sup>

One might follow this course of reasoning to conclude that cremation can take the place of burial, and that *shiva* begins as soon as the cremation takes place. However, we are hesitant to apply that ruling to cremation as practiced today. Presumably, in the ancient world, when a body was truly consumed by accidental fire, burial was rarely an option. Those who had burned the body would be unlikely to be careful to return the remains, and in the case of an accidental fire, it would have been difficult to sift through the ash and debris to separate out the actual remains in sufficient quantity to merit burial. At the conclusion of a modern cremation, there are 4-6 pounds of “cremains” which can generally be assumed to consist primarily of the ground up bones of the deceased.

In any case, the CJLS has ruled that the cremation is not sufficient to effect respectful disposal of the body, and that burial of the cremated remains is still required. Therefore one cannot automatically assume that *shiva* (which starts when nothing remains to be done to dispose of the body) would begin with cremation when burial still remains to be done. Also, timing *shiva* based on the time of cremation adds a layer of complexity, because we may not receive notification of the date and time of the actual cremation until after the fact. The mourners might not know until after the fact when to begin *shiva*, or might begin prematurely.

### **Mourners on Different Schedules**

Another factor that may be problematic in many families, and presents specific challenges in the case of delayed burial, occurs when there are mourners with different plans or priorities, and not all involved are bound by or respectful of Jewish religious practice. One example would be a case where other Jews in the family do not intend to sit *shiva*, but will be holding a memorial service in another city at a much later date, and possibly scattering remains after that. Another case would be where majority of the mourners are non-Jews who begin observing a wake within a few days of the death, in advance of a burial and memorial service more than a week later. How does the observant Jewish mourner adapt to these circumstances?

We saw above that according to the classical sources, those who accompany the body to burial would begin *shiva* at the time of burial, and those who do not travel with the body begin *shiva* when they turn away from it. This might lead to different mourners observing *shiva* on radically different schedules, and indeed, this is sometimes the most appropriate approach. There is an exception to this practice- if the “*gadol hamishpacha*”- the head of the family, is travelling with the body, all follow his or her timing, even though they are not accompanying the deceased.<sup>42</sup> In many of the circumstances that we are addressing, this concept of *gadol hamishpacha* would not apply in the narrowest sense. After all, one would not try to align one’s own timing of *shiva* with the actions of someone who is not sitting *shiva* at all. However, this concept is still helpful because it reflects an understanding that mourning is a family process, often involving not only a child’s obligations to parents, but also potentially complex interrelationships among siblings and

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<sup>41</sup> Gesher HaHayyim, 16:8:5, and see also the analysis in Shapiro’s “Cremation in the Jewish Tradition” (at note 2 above).

<sup>42</sup> Shulhan Arukh YD 375:2 . The “*gadol hamishpacha*” would typically be someone upon whom the rest of the family relied economically.



step-relatives. We should therefore be cognizant of the dynamics of the extended family of mourners in considering the appropriate time for *shiva*.

In some situations, even though a Jewish mourner has already experienced *yeush*, and given up on the possibility of burial, he/she might find it helpful to wait to begin *shiva* until the head of the family (the “*gadol hamishpacha*”) or the rest of the mourners, have taken leave of the deceased. This leave-taking might take place at a memorial service, or actual interment, (whichever comes first). *Shiva* would therefore begin more than a few days after the death, but the mourner would have the opportunity to return to his or her home Jewish community and the resources available there.

A Jewish mourner might also read the principle of “*gadol hamishpacha*” much more narrowly, and not apply it to other family members who are not sitting *shiva*. In such a case, the mourner would begin *shiva* closer to the time of death, rather than waiting for an interment that might occur quite far off in the future, if indeed at all. So, for example, a mourner might begin observing *shiva* almost immediately, completing it in time to join a family funeral and burial. If *shiva* overlaps with a wake or other observance in the deceased’s faith tradition, careful attention must be given as to whether these observances are compatible with Jewish belief and observance. What challenges might the mourner face balancing the competing demands of *shiva* with the expectations of the mourning rites and practices of another faith or culture?

It might also happen that a family memorial service might be scheduled during the time that might otherwise be observed as *shiva*. While *shiva* lasts for seven days, the first three days are the most restrictive, and according to some views, on the third day or later, the mourner is permitted to leave the *shiva* home in order to pay respects to other mourners,<sup>43</sup> and indeed if the mourner is unfortunate enough to suffer another loss, he or she may leave the *shiva* home to attend that funeral<sup>44</sup> Presumably, the same permission would apply to leaving the *shiva* home to attend a service for the same deceased! This tradition is also often used as permission to change the location of *shiva* during the course the *shiva* week. So, to take a hypothetical example, a mourner might begin *shiva* at home for the first three or four days, travel to a city where a memorial service is taking place, and then remain there for the remainder of *shiva*.

Of course, if actual burial were scheduled to take place within the week following death, or shortly thereafter, we would be loathe to apply the principle of *yeush*, and *shiva* should not start before the actual burial. Take the example of mourners awaiting burial of a loved one at a national military cemetery. If the burial is taking place 6 days after the death, then it would be incongruous for the mourners to stop *shiva* in order to attend the funeral.<sup>45</sup> If the burial is to be in another city, without the mourners in attendance, then the mourners could start *shiva* “when they turn from the body.” the actual burial is not relevant to their mourning process. If they are attending the burial, however, they should wait until after the burial to begin *shiva*. If the burial

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<sup>43</sup> Shulhan Arukh YD 393, though the Rama objects. In practice, there are scenarios where the mourners may change locations even during the first days of *shiva*. For example, they might sleep in one home and “sit” in another, leave home to attend a synagogue service when there is not a *minyan* at home, or return to their home community following a burial. In any case, the letter and spirit of the law are that one “sit” *shiva* and try to minimize travel during that time.

<sup>44</sup> See Responsa of Hatam Sofer, II, YD 325.

<sup>45</sup> In fact, we might consider this to be like the case of those who started mourning immediately following a crucifixion, who must begin *shiva* again after the burial.

is scheduled for two weeks after the death, the mourners might choose to sit *shiva* immediately upon turning over the body, and then would observe one additional day of mourning on the day of the burial.

While mourners and community should always be encouraged to do whatever is in their power to fulfill the Mitzvah of timely burial of the deceased, there are any number of circumstances where it may not be in their power to do so, and the principles above serve as a useful guide in navigating these situations.

### **P'sak and Practical Suggestions:**

1. Timely burial of the dead is a mitzvah, and burial should not be postponed any longer than is necessary for notification of the community, arrival of mourners, and preparation for the funeral. The period between death and burial is called *aninut*, and has specific obligations and restrictions. *Shiva, sheloshim*, and recitation of *kaddish* normally begin with the filling of the grave, but *shiva* is postponed to the first non-yom-tov day if the burial takes place during a festival.
2. We affirm the previous policies of the CJLS that oppose cremation as an alternative to burial for Jewish deceased.
3. We note that in the cases of mourning a non-Jewish relative, or a relative (Jewish or non) who has been cremated, some traditional sources question the level of obligation to observe *shiva*. In such cases, a rabbi might choose to allow additional leeway in scheduling based on the spiritual and practical needs of the mourners before us.
4. Even if a Jew is to be cremated, burial of the cremains should take place if at all possible, and *shiva* should begin no later than that burial, but may begin sooner.
5. In situations where the prospects for burial within 7-10 days of the death are uncertain:
  - a. *Aninut* ends when the mourners turn away from their deceased and have nothing further to do towards burial in the immediate term. In practical terms, this might occur when the body is turned over for cremation or medical study, or handed over for storage pending military burial.
  - b. *Kaddish* begins as soon as *aninut* ends, but no later than the burial.
  - c. *Shiva, sheloshim*,<sup>46</sup> and the 12 months would begin when the body is handed over, or might be held off for a short time if the mourners have not yet declared *yeush*, or are waiting to “take leave” of the deceased at a memorial service. Mourners may leave the *shiva* home to attend a memorial service taking place after the first three days of *shiva*.
  - d. The transition from *aninut* to *shiva* may also be timed to match the time of cremation, but this is not a preferred option.
  - e. If the burial takes place after the conclusion of *shiva*, the mourners observe a single, additional day of mourning on the day of burial.
6. In situations where the rest of the family is gathering together to receive condolences at a specific time, consideration should be given as to whether any part of the family is to be considered the “primary mourners.” Depending on the circumstances, the *mara d'atra* might encourage the mourner to do one or more of the following:
  - a. “Turn from the body” and begin *shiva* at an early date, even though burial has not taken place, so as to be observing *shiva* at a time when other mourners will also be mourning, and be ready to participate in a family memorial service following *shiva*, or at least during the second half of *shiva*.
  - b. Wait until after a delayed burial or memorial service (when the “primary mourners” take leave of the body) so that *shiva* can be observed in a time and place where appropriate resources will be available.

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<sup>46</sup> In the case where a festival intervenes, a rabbi should be consulted.