**Exhuming the Dead**

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This paper was approved by the C.JLS on March 13, 1996, by a vote of eighteen in favor and one opposed (18-1-0). Voting in favor: Rabbis Kassel Abelson, Ben Zion Bergman, Stephanie Dickstein, Elliot N. Dorff, Jerome M. Epstein, Baruch Friedman-Kohl, Shoshana Gelfand, Myron S. Geller, Arnold M. Goodman, Susan Grossman, Judah Kogen, Vernon H. Kurtz, Aaron L. Mackler, Lionel E. Moses, Paul Plotkin, Mayer Rabinowitz, Gerald Skolnik, and Elie Kaplan Spitz. Voting against: Rabbi Gordon Tucker.

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.

**שאלה**

As the result of an error by a burial society, an individual was interred, not in the grave site owned by him and his wife, but in a plot owned by an abutter. The abutter claims the occupied site and wants the remains removed from it so that the plot will be available for members of his own family, as he intended when the property was purchased. The family of the deceased refuses to allow the removal of the remains and requests that an additional plot owned by the abutter, adjacent to the deceased, be made available for eventual use by his spouse.

1. May the remains be disinterred for relocation? Under what circumstances?
2. If the remains are relocated, may the plot be reused for the burial of the original owner?

**תשובה**

A General Prohibition

The removal of remains from their place of burial is generally forbidden. The Yerushalmi rules:

אינו מביא את המת את המתים ממקבר מקברים, לא מביא לבורות.
ויולא מיביא לבורות, ואינו בריך לאמר ממקבר לבורות.

Corpses or skeletons may not be removed from an honorable grave to an honorable grave, from one unworthy grave to another, from an unworthy grave to one that is honorable and no need to state, from an honorable grave to one that is unworthy.

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1 J. Moed Katan 2:4.
The Bavli makes a similar ruling:

Neither corpses nor skeletons may be removed from an honorable place to an unworthy place, from an ugly place to another ugly place and no need to state, from an honorable place to an unworthy place.

The Tur follows these Talmudic precedents as does the Shulhan Arukh.

Several Reasons for the General Prohibition

(a) The most important reason is cited in the Talmud, in the case of a young man who sold family property shortly before his death. After his burial, the sale was contested by his family, on the grounds that he was a minor. They sought permission to exhume his remains, hoping to show that acceptable marks of puberty could not be found on the body. Rabbi Akiva refused to allow the disinterment because, “you are not permitted to humiliate him.” In subsequent halakhah, concern about humiliation of the dead, remains the strongest bar to exhumation.

(b) Another explanation cited is the confusion the dead would suffer if their remains were disturbed while they were experiencing הרית רוחית, trembling at God’s judgment. The Scriptural proof text that disturbing the dead causes them confusion is found in the response of Samuel to Saul, when he was brought up from the dead by the woman of En Dor.

(c) Rabbenu Asher makes the additional point that it is a source of בוביתין embarrassment to the dead, to be moved from their burial site before their flesh is consumed from the bones, because in that state, their remains are sickening to the living. However, once the flesh is gone or if the remains are contained in a sealed casket, this reservation does not apply.

Exceptions to the General Prohibition

Despite the general prohibition, under certain circumstances the Rabbis permitted or even required exhumation. The Talmud Yerushalmi permits the removal of remains, even from a worthy to an unworthy place, that they may be buried with אבותיו, the ancestors of the deceased. The Taz understands אבותיו to include not only ancestors but בני משפחותיו, one’s family in general.

In his code, Rabbi Joseph Karo adds other circumstances when exhumation may be permitted or is required:

a. It is a mitzvah for children to rebury a parent’s body in Eretz Yisrael, even if the parent expressed objection during his lifetime to having his remains moved there.

b. When a burial site is unprotected from robbers or natural forces, it is

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2 B. Semakhot 13.
3 Tur Yoreh De’ah 363.
4 S.A. Yoreh De’ah 363:1.
5 B. Baba Batra 154a.
6 Beit Yosef, Tur Yoreh De’ah loc. cit.
7 1 Sam. 28:15.
8 Rosh, Moed Katan 1:13.
9 Loc. cit.
10 Yoreh De’ah 363:2.
permissible to remove bodies to locations that are not so compromised.

c. When a stipulation is made at the time of burial about the removal of the body at a later date.

d. When a body is buried in קבר, an available site, but without authorization from its owner, the body may be moved.

This last ruling follows the Tosefta which permits the removal of a body from a grave which endangers public safety or which was used without the permission of its owner but bans removal when the owner has granted permission and later changes his mind.12 When the grave is used without the owner's permission, קבר ממקום, the deceased has not gained title to the site, and disinterring the remains is proper, in order to return the plot to its rightful owner. Only a corpse whose family is unknown and responsibility for whose burial devolves on everyone, acquires title without the owners permission and cannot be disinterred. When the grave is cleared, the place is permitted for use.

The Mitzvah of קבר

Among the traditional requirements for Jewish burial is that which obligates each person to acquire and be interred in קבר, his own burial plot, one which is the property of the deceased. The Talmud quotes Josh. 24:33 about the death of Elazar ben Aharon and his interment at a site owned by his son Pinhas. The Gemara is concerned about the basis of Pinhas' title to the property. Abaye rejects R. Papa's suggestion that Pinhas might have purchased it. Such title, terminating at the נחל הבל, the Jubilee Year, would leave קבר ממקום קבר, a saint buried in a grave to which he had not acquired title.

The Talmud understood that a קבר ממקום, a grave to which he had acquired title; later authorities extended this mandate to all Jews:

ואם ככבר בבתא דף ק"א מИН 커 עיר בַּר יְבָר שַמְאַי שֵׁלֶד

לָא דָּרַכְתִּי זְרֵךְ אַלָּא כְּחַמְו צָרֵךְ בֵּית זְרֵךְ בֵּית קִבְרֵיהֶם שָׁמַיָּל.

Although Baba Batra 111b speaks of, “a saint buried in a grave to which he has not acquired title,” this refers not specifically to a saint but rather to every individual who must be buried in a grave to which he has acquired title.

Rabbi Isaac Elkhanan Spector supplies the rationale for the extension in that each Jew enjoys a presumption, as קבר, personal ownership requirement applies. Thus every Jew must be buried in a plot owned in perpetuity by the deceased.

If one is buried in a plot that does not meet this standard but he owns a plot which he has designated for his burial elsewhere, he should be disinterred in order to satisfy the requirement of burial in קבר, a grave to which he has acquired title and in accordance with the wishes of the deceased.

11 S.A. Yoreh De’ah 364:2.
12 B. Sanhedrin 47b. A distinction is made between קבר וממקום, a grave in which the deceased has been buried without the owners consent which may be cleared, and קבר, a grave in which a body was interred with the consent of the owner, which may not be cleared.
13 B. Baba Batra 111b.
14 Yekutiel Greenwald, Kol Bo Al Aveylut, p. 174.
15 Ein Yitzhak no. 34.
16 Maharam Schick, Yoreh De’ah 354.
Justifying Exhumation

When permitting the removal of remains, the Rabbis set aside their concerns about הומת הגר, humiliation of the dead, התurityא תפארת, trembling at God’s judgment, and הביחי, embarrassment of the dead or found that they did not apply. Maharash rules that הומת הגר, humiliation of the dead, does not apply when a body is exhumed and reburied in the same cemetery or even in the same city. After the passage of twelve months from the time of death, there is no concern for התurityא תפארת, trembling at God’s judgment. If the body was buried in a sealed casket, הביחי, embarrassment of the dead, is not considered a deterrent to disinterment of the remains. In any case, this category does not apply once the flesh is gone from the bones. Even when these circumstances do not apply, the Rabbis find that the removal of remains to satisfy a halakhic imperative or for the honor of the deceased, overrides reservations about exhumation and reburial.

In the event that an individual is buried in the wrong place because of error or oversight, the remains may be moved at a later time to a family plot and halakhic restrictions on exhumation and the reasons for those restrictions are not applicable.

Reuse of the Empty Grave

A structure built above ground for the burial of the deceased as well as any stones, monuments, markers, articles of clothing or other objects specifically designated for burial with the dead, may not be reused by others. However, the soil of the grave, or the grave, in the event that the site was used without the permission of the owner so that the deceased did not, except in the case of a מות מקדש, a corpse whose family is unknown and responsibility for whose burial devolves on everyone, acquire his place, is permitted to be reused. Rambam takes a stricter view because of his concern for the dignity of the dead but is not followed by most rulings. Greenwald cites the generally accepted view that מות לאובר מות מקדש, it is permissible to bury an individual in a grave from which remains have been disinterred. However, if the grave was prepared for a family member, even if it is permitted to others, it is barred to relatives.

Summary

From the perspective of halakhah, the removal of remains from a grave is generally barred because of concern for the dignity of the dead. Under certain circumstances, remains may be transferred:

a. to move the remains to a family burial plot;
b. to move the remains to Eretz Yisrael;
c. for the security of the remains against vandalism or natural catastrophe;
d. for public need;
e. if the remains were buried in a plot belonging to someone else.

17 Greenwald, op. cit., p. 234.
18 Ibid., p. 238.
19 B. Sanhedrin 47b; S.A. Yoreh De’ah 364.
20 Ibid., p. 242.
21 B. Sanhedrin 48a. The burial of another family member in place of the relative for whom the grave was intended is considered a dishonor to the latter.
22 Public need may include public safety, construction of railroads or highways and other projects involving land taken by governmental authorities. Greenwald argues that property taken by eminent domain is no longer
The grave site from which the body is removed may be used for burial by another person but not by a relative of the person originally interred at the plot.

This considers only the implications of Jewish law and does not reflect in any way on civil statutes which may override the conclusions stated here. Rabbis should consult with appropriate legal counsel when questions related to exhumation of graves and reburial so require.

**Conclusion**

The deceased, in our case, had expected to be buried in his own plot, amongst the members of his family. As the result of an error, he was buried in a grave belonging to another person, to which he had no claim and over which he can acquire no title because he is not a corpse whose family is unknown and responsibility for whose burial devolves on everyone. Removing his remains to his own plot, would comply with the intention of the deceased when he observed the mitzvah of קבר שלח, acquiring title to his own grave and would bring him to the final resting place he had expected in his family’s burial plot. The continued occupation of the grave by the deceased raises an embarrassing question of unlawful acquisition, from which his family should want to spare him.

There is no question of רוח הרוחית, humiliation of the dead, TREI, trembling at God’s judgment, or ברית, embarrassment of the dead. The body would be moved only within the confines of the cemetery, a very short distance, in a casket, more than twelve months after the death occurred.

The reuse or the sale of the plot by the original owners is permitted as long as it is not used by a family member of the individual who was buried there in error.

The leniency of the halakhah to exhume a body under these circumstances in no way compromises the obligation to maintain קבר מת, the dignity of the deceased, which should be punctiliously respected during disinterment and reburial. There is no need for a ceremony when disinterment and reburial take place, although some words in memory of the deceased may be spoken. The family of the deceased should perform קריעה, the rending of a garment, and observe אבלות, a period of mourning, until evening.

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23 After this paper was completed, I learned from Rabbi Mayer Rabinowitz that a ruling of Maharam Schick requiring large-scale disinterment of remains over a sizable area from land taken by the government for the construction of a railroad line. He makes no distinction between the disinterment of individual remains and the relocation of an entire cemetery. Greenwald, op. cit., p. 240.

24 J. Moed Katan, 1.5, states: ליקוטה עטמות אין אמסים עליה בדורות אחדים אלא הפרטアクセסיה נתונה לפיו. See also Division of Religious Activities, National Jewish Welfare Board, *Responsa in War Time*, pp. 61-62.