



CCAR RESPONSA

Interment of a Non-Jewish Same-Sex Partner

5752.20

She'elah

Our congregation owns and maintains a Hebrew cemetery. It has been the policy to allow the burial of non-Jewish spouses, as long as the rituals of the interment and the grave stones do not contain non-Jewish symbols. The present case involves a Jewish woman, a widow and herself, her daughter and the daughter's female, non-Jewish partner of 20 years. On what basis ought we to sell or deny her a cemetery plot for the non Jewish significant other?

1. *Halakhic Precedents*

The Talmud provides¹ that Jews are to give charity to the non-Jewish poor together with the Jewish sick, and bury their dead together with the Jewish dead, *mipenei darekhei shalom*. Reacting to the possibility that this observation lends itself to misinterpretation, Rashi hastens to point out that the non-Jewish dead may not be buried among Jews; Jews are only to *assist* in their burial in the event that non-Jewish and Jewish bodies are discovered slain side by side. R. Isaiah of Trani comments that Jews may occupy themselves with the burial of non-Jews, but Jews and non-Jews may not be buried together.

This is codified in the *Tur*,² and in *Shulchan Arukh*.³ In judgmental terms reflecting the age, Caro quotes Rabbenu Nissim to the effect that under no circumstances are Jews and non-Jews to be buried together, because there is a prohibition against burying a wicked person next to a righteous person. Jews are merely to see to it that non-Jewish dead receive burial.

This position is upheld by R. David Hoffmann⁴. He deals with the case of the son of a Jew by his Gentile wife, with whom he could not contract a Jewish marriage. The son, who was neither circumcised nor immersed *leshem gerut*, died. Beyond doubt, Hoffmann insists, the child was a non-Jew, and as such as he could not be buried in a Jewish cemetery. He adds that only the Reformers and those who undermine Judaism hold that it is not sinful to bury a Gentile among Jews. After reviewing the various references on the subject, he concludes that the truly observant Jews in the community must withdraw from the company of these *maddichim* (seducers) and try to establish their own cemetery.

2. *Reform Perspectives*

Our question came to the attention of the Conference repeatedly between 1914 and 1919.⁵ In 1916 R. Kaufmann Kohler wrote, with R. Jacob Z. Lauterbach concurring:

I have always in my practice taken the stand that while mixed marriages should not be sanctioned by a rabbi, the civil law which declares them as valid must be recognized by us to the extent that the non-Jewish wife or husband should be entitled to the right of being buried alongside the Jewish husband or wife in the plot owned by one or the other in the Jewish cemetery.⁶

In 1919 Kohler added:

There is no law forbidding a non-Jew to be buried in a Jewish cemetery. While there are congregations whose constitution expressly prohibits non-Jews, respectively non-Jewish wives or husbands, to be buried in their cemeteries, such restrictions were undoubtedly made with the view of preventing mixed marriage in the congregation. At the same time it cannot be denied that in the case of a Jew, whether a member of the congregation or not, his legally-married wife, though a non-Jewess, has a just claim to be buried alongside of her husband...As Rabbi of Temple Beth El in New York, I have frequently given this decision, and this view has been fully endorsed by my congregation...We have no consecrated ground which would exclude

non- Jews. Each plot is consecrated by the body buried there.⁷

However, in the same *Yearbook*⁸ R. Gotthard Deutsch, responding to a similar question, found no support in traditional law for the burial of non-Jews in a Jewish cemetery, but nonetheless provided a roster of Gentiles who were in fact buried in Orthodox cemeteries. The congregation of Berlin (1883), of Leipzig (1884), and of Dresden (1897) passed resolutions permitting the non-Jewish parties in a mixed marriage to be buried in the Jewish cemetery. Similarly, while the rabbinate of Leghorn ruled against the practice, the congregation refused to accept the decision.

We have thus ample precedent both in Europe and America for the burial of non-Jewish spouses. Can that permission be extended to the

burial of non-Jewish friends who have had an extended relationship with each other?

The Lesbian Aspect

If the daughter of the woman who wants to purchase a burial plot in the cemetery had been living with a non-Jewish male for twenty years in a common-law relationship, would the

congregation have hesitated to grant permission for the burial of the non-Jew? I know of no congregation that requires proof of marriage before allowing the interment of the partner of a member.

R. Walter Jacob has shown that the sources rarely deal with lesbianism, perhaps because they treated it as a temporary phenomenon rather than as a permanent condition among women. Still, lesbianism was considered obscene, and the later *poskim* demanded punishment (*makkot mardut*) for the offenders.⁹ Similarly, Prof. Israel Ta-Shema¹⁰ holds that, in tradition, lesbianism was considered a form of sexual perversion and was considered included in the prohibition, "You shall not act in the way of the land of Egypt".¹¹

Reform Judaism has abandoned this view and has accepted all homosexuals as persons who are to be accorded full respect and who, therefore, are accepted also as rabbis on an equal basis with heterosexuals.¹² But the same resolution which affirmed this view refrained from according homosexual unions the status of *kiddushin*. It said:

In the Jewish tradition heterosexual, monogamous, procreative marriage is the ideal human relationship for the perpetuation of species, covenantal fulfillment, and the preservation of the Jewish people. While acknowledging that there are other human relationships which possess ethical and spiritual value and that there are some people for whom heterosexual, monogamous, procreative marriage is not a viable option or possibility, the majority of the committee reaffirms unequivocally the centrality of this idea and its special status as *kiddushin*.

The resolution was, in this respect, a compromise: gays and lesbians were accepted as equals in every way as *individuals*, but heterosexual marriages remained the Jewish ideal. Thus, *Reform Judaism has not recognized such unions as religiously analogous to heterosexual marriage*, and special rituals of affirmation conducted by some of our colleagues – designed to give public recognition to a loving and stable relationship which does not have the approval of conventional marriage – do not alter the official position of the movement in this regard.

The bylaws of the congregation provide that a Gentile "spouse" of a Jew may be interred in the cemetery. Promising to bury the "friend" would denote her acceptance as a "spouse" which is not an identity presently agreed to in civil law, in Jewish tradition, or in its Reform development.

This committee which interprets "Reform practice" concludes that the "friend" is by the fiat of our Conference not considered a "spouse", and the congregation would therefore be justified to refuse to sell the lot with the condition that burial would be permitted.

There were three dissenters, one of them wrote: "While we cannot consider women 'married' even if they participate in some ritual of acceptance, still we cannot overlook their long and close connection. The rule allowing non-Jewish women to be buried in the congregational cemetery should be extended in this case to permit the burial of this non-Jewish companion, certainly out of compassion as well as *mipenei darekhei shalom*."¹³

Notes

1. BT. Gittin 61a.
2. Y.D. #367.
3. Y.D. 151:12 and 367:1.
4. Melammed Leho'il, Y.D. #127.
5. Cf. C.C.A.R. Yearbooks, Vol. XXIV, pp 154-155; Vol. XXVI, pp 122-134; Vol. XXVII, p. 88; Vol. XXVIII, pp 117-119; Vol. XXIX, pp 77-78, 80-85.
6. Yearbook, Vol XXVI, pp 133-134.
7. Yearbook, Vol. XXIX, p 78.
8. Pp. 80-85.
9. Contemporary American Reform Responsa #200, pp. 296-297.
10. Encyclopedia Hebraica, ed. Y. Praver, vol. 21, col. 291.
11. See Sifra 18,3.
12. C.C.A.R. Yearbook, Vol. C, 1990, pp 107 ff.
13. A note might also be made of an essay by our colleague R. Moshe Zemer of Tel Aviv, who has discussed some of these questions and has dealt with the treatment of controversial burials midekhat'chilah and bedi'avad (Ha'aretz, 8 Adar Sheni 5744/12 March 1984).

If needed, please consult [Abbreviations used in CCAR Responsa](#).