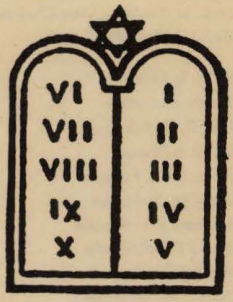
RESPONSA

IN

WAR TIME



Published by

COMMISSION ON JEWISH CHAPLAINCY*

NATIONAL JEWISH WELFARE BOARD

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PREFACE

Several times during the war years the Division of Religious Activities (CANRA) published various brochures dealing with special chaplaincy activities, "beyond the line of duty" brochures, which it was thought would be of interest to the Jewish community of America. This present pamphlet reflects the remarkable agreement which was effected by the Orthodox, Conservative and Reform rabbis on CANRA in reference to the practical problems of Jewish law confronting the Jewish chaplain and his GI congregation.

Although in many aspects of Jewish life in America the achievement of unity of action has been difficult, here harmony was achieved on religious practices, the most controversial of all subjects in Jewish life. The dictum, "*Elu v'elu divrei Elochim chayim*", was used not only to acknowledge respect for the view of others but also to go on from there to a common decision which would be helpful to the men under arms in each particular circumstance of war. It is to the glory of the American rabbinate, that, without the power and approval of an established ecclesiastical hierarchy, it was able to create such a set of responsa. The final decision was always based on "*halacha*", but the interpretation was broad enough to permit the word of God to be truly "*chayim*", "living", and livable even under war conditions.

Our appreciation goes to Dr. Freehof, Dr. Jung and Dr. Steinberg, members of the Responsa Committee, for this task so well done. Our gratitude is expressed especially to Dr. Freehof who as chairman demonstrated qualities of erudition, understanding, and leadership which won for him the respect and the high esteem of both the members of CANRA and the chaplaincy. It is indeed a joy to have a hand in the preparation and distribution of this pamphlet and to make it available to the individuals and organizations designated by the Division of Religious Activities to receive it.

ARYEH LEV
Director

December, 1947

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INTRODUCTION

RESPONSA IN WARTIME

When the Committee of Army and Navy Religious Activities was reconstructed on January 14, 1942, one of the first committees which it appointed was the Committed on Responsa. The committee consisted of Dr. Leo Jung, Dr. Milton Steinberg, and Dr. Solomon B. Freehof, chairman. From the moment of its appointment, which was before America entered into the war, the Responsa Committee had considerable work to do and this work continues now even though the war has ended.

Questions for responsa came to the Committee through various sources. Sometimes the government itself would ask a question of Jewish law, either directly or indirectly, or the officers of CANRA would anticipate that the government, planning a certain policy, would ask certain questions. Sometimes questions would come from soldiers and sailors in service and were asked of us through their chaplains. Sometimes questions came from rabbis in civilian life in relation to the sons and daughters of their members who were in the service, and sometimes questions came from men and women in civilian life, not rabbis, concerning their relationships to the men and women in the service.

A typical question coming from the government (either directly or indirectly) was the one on disinterment and reinterment. During the war the government had already begun to plan the possible transfer back to the United States of the bodies of soldiers buried overseas, and it wanted to know the attitude of Jewish law on disinterment and reinterment. Or the officials of Selective Service would want a decision on the justice of the claim of an inductee that he was a conscientious objector on religious grounds because he was a Cohen, for if he were sent into battle he would come into

contact with dead bodies, which is forbidden by Jewish law for Cohanim, and hence his induction would be in violation of his religious conscience.

A chaplain asked, when should Friday evening services begin in the regions above the Arctic circle where there is often no daily sunset.

A coastguardsman asked how could he say Kaddish on his yahrzeit when he was on lonely patrol service for a week with only one other comrade, a Gentile. Could Kaddish be recited without a quorum of ten worshippers, a minyan? Another soldier asked whether he could have a pidyon ha-ben in absentia. He was in service in Colorado and his wife had given birth to their firstborn son in Brooklyn.

A civilian rabbi asked us to appoint a court, a beth din, to declare officially that soldiers on the casualty lists were dead so that on the basis of our official statement the woman would be permitted by Jewish law to remarry.

A civilian woman asked us whether she might not, according to Jewish law, marry a soldier who was just about to embark for overseas service when she had obtained her Jewish divorce, her *get,* only a month before and not the required ninety days previously, even though her civil divorce had been issued a year before.

Thus the questions that we received came from many different places all over the world wherever American soldiers and sailors and marines were stationed, and they covered a vast variety of subjects.

The Committee was confronted by many difficulties, not the least of which was the necessity for quick and definite decisions. In civilian life a rabbi frequently will delay the decision of a far-reaching question, especially if the question involves radical interpretation of law, or is

caused by situations which had never been confronted by the great rabbis of earlier generations. When for such reasons a rabbi would hesitate to make a definite decision, he would, nevertheless, go into the question in considerable detail, come to his conclusion on the basis of the facts and precedents and logic, but he sould add that his decision was for the purpose of study but not for definitely and practically deciding the law. He felt justified in avoiding the responsibility of giving a radical decision on the matter, feeling that he had done his duty sufficiently when he illuminated the new theme by his studies. Thus he would carefully say at the end of his responsum that all the foregoing was *l'halacha* (to clarify the law) but not *l'maaseh* (for the purpose of being a directive in actual practice).

We, fortunately or unfortunately, did not have the privilege of using such wise caution. The questions which came to us from the government or from chaplains needed to be decided quickly and definitely. We were compelled always to make clear directives whenever it was at all possible. Inasmuch as many of the questions were far from having been decisively treated in the Jewish legal literature, and many new ones were hardly touched upon at all, our decisions will sometimes seem to have insufficient grounds or not to cover the entire literature; but we did not have the leisure either for completeness or for certainty. We were compelled to get substantially the attitude of Jewish law and make our practical decisions. We did not have the joy of studying merely *l'halacha;* we had to give a definite decision *l'maaseh.*

Another difficulty which confronted us was inherent in the composition of the CANRA itself. The CANRA was organized by and consisted of representatives of Orthodox, Conservative and Reform Jewry, each of whom has a different attitude to Jewish law. How then would it be possible ever to come to a decision on a question of Jewish law that would be satisfactory to all three? Theoretically it would seem that a committee such as our would be unable to function for

a joint Orthodox, Conservative and Reform organization like the CANRA. But in practice almost no difficulty at all was ever experienced in arriving at a decision. The decision was based upon classic Jewish law. Because of the exigencies of wartime, the more lenient authorities were generally chosen, and when even the liberal decision would be contrary to the practice of Reform Jews, their exceptional point of view on the matter was specifically provided for. Sometimes, too, the Orthodox member of the Committee would record his disagreement. On this basis it was possible to come to a decision on virtually every question which confronted us with almost no disagreement either among the members of the Committee or from the complete Committee of the CANRA when these reports were presented to it.

The fact that we had always to decide *l'maaseh*, to give practical directives, as well as the difficulties inherent in writing legal decisions suitable for Orthodox, Conservative and Reform, might have made the task of the Committee impossibly difficult if it were not for the contrary fact that certain elements in the situation made our work easier. We limited ourselves very early as to the type of questions with which we would deal. At first we discussed a number of questions with regard to marriage and divorce, but we very soon decided to stop dealing with such matters. The basis of our decision was that we were concerned primarily with such questions as were involved essentially in a man's or woman's service in the armed forces. While the soldier was profoundly interested in having the status of his marriage or divorce settled, it was clear that this status dealt with his whole life which is overwhelmingly civilian. Even in matters such as kosher and trefah food which were vital to many a soldier's welfare, we confined our decision only to the part of the question which dealt primarily with life in the armed forces, and we avoided general decisions that might be applied to civilian life. Thus we restricted ourselves to

matters that dealt with the war emergency. In this way not only was the subject matter limited, but it was also understood that even on these matters our decisions applied only to the period of emergency. Even in army matters they applied only to wartime and thus were *horaath shaah*.

It is for this reason that CANRA decided to limit the publication of these responsa so as not to create the impression that a new series of religious standards has been set up for Jewry in general.

It may perhaps be that some of our decisions, even though they were meant as "guidance for the hour," may prove to be of assistance in case, heaven forbid, war comes again. At all events, they will be of interest to chaplains and workers in the war effort, and perhaps to many of the soldiers and sailors. It is chiefly as a memento of wartime that these are now published. The very existence of these responsa is an evidence of the eagerness of our government to be scrupulously careful of the religious rights of its citizens. It is also an evidence of how widespread was the desire not only on the part of the chaplains but of the soldiers themselves to maintain the observances of their faith under the strain and danger of a world war.

SOLOMON B. FREEHOF

Chairman, Responsa Committee
Division of Religious Activities
National Jewish Welfare Board

December, 1947

COHEN AND CONSCIENTIOUS OBJECTORS

Question: *May a man who is a Cohen claim conscientious objection to war because he is not permitted to come into contact with dead bodies?*

Answer: The general theory back of the answer is that Cohanim nowadays are presumed by the bulk of rabbinical authority not to be of sure priestly descent. Nevertheless, though they are the first to be called to the Torah, this is out of courtesy, and Jacob Emden believes that because of the doubt they must return the money that is given them for the Pidyon Haben.

However, the old priestly laws that a priest avoid defilement by contact with the dead are still observed. The question is to what extent this customary observance of the law of uncleanliness with regard to the dead is sufficient ground for claiming conscientious objection to war.

A soldier may not necessarily come in contact with the dead at all. He is drafted and therefore must be considered an Anoos, and he certainly cannot refuse to serve upon this basis.

MIKVAH

Question: *The following inquiry by a soldier to his chaplain was transmitted to us. His wife is moving near the camp. There are no Jewish communities in the neighborhood with adequate mikvah facilities.*

Answer: In the absence of a mikvah it is quite permissible to use a river, provided it is not the kind of river which dries up entirely in the summer because it is fed entirely by rain water. (See Yore Deah 201, #2, the note of Isserles.)

Also, the ocean or any lake fed by streams (see m. Mikvoth V,4. Also, commentary of Tosfos Yomtov to m. Parah VIII 8. Also, Sefer Ha-Eshkol 50, #8, the teshuva of Natronai).

In all these cases there must be enough water at the bathing for complete immersion.

To which Dr. Jung adds: The bathing suit worn by the woman must be wide enough to allow the water unimpeded to reach every part of the skin. From every angle visit to a mikvah in a neighboring town is preferable. Also some other woman, or husband in the distance if immersion is covered by sheet, must be present to witness completeness of immersion.

MINYAN AT BRITH

Question: *Should Brith be postponed to evening or next day when it would be possible to have a minyan?*

Answer: As to a minyan at the Brith, the law is clear (Yore Deah 265,6) that if it is not possible to get a minyan, the circumcision may be performed without one. Since it is important to circumcise at the proper time (on the 8th day) under no circumstances should the Brith be postponed in order to obtain a minyan.

PIDYON HABEN

Question: *Is it possible to have a Pidyon Haben in absentia, the child being elsewhere and the father in camp?*

Answer: Beth Joseph to Tur Yore Deah Hilchoth Pidyon B'chor quotes Sefer Mitzvoth Katan as follows:

"Even in another city where the first-born child is not present, the father can redeem him."

The question is referred to also in Isserles' note to Schulchan Aruch, Yore Deah 305, 10. In discussing the questions of the ritual and the formulas to be recited by the father and the priest and the blessings to be recited, Isserles says, "Thus do we do in these provinces if the father is with the son, namely, he brings the son before the priest and tells him he has a first born, etc.; but if the father is not with the son, he redeems him merely by saying to the priest that he has a son and the priest says, "What do you desire more?' etc." The various corroborating references are given there.

It is clear, therefore, that the soldier may have a Pidyon Haben without the child being present.

WEARING A CROSS

Question: *A question was brought to us through a Chaplain with regard to the inquiry of a Jewish nurse as to her wearing a cross with her "dog-tag." The chaplain stated that the question was raised with reference to the possibility of becoming stranded somewhere in the South Pacific area where in many instances the natives had come to recognize the cross as the only sure symbol of friendship.*

Answer: In the discussion in Yore Deah 178,1, where the question is raised about Jews wearing the garments of non-Jews as to when that is prohibited and when permitted, the commentor Sifthe Cohen says that in times of persecution it is certainly permitted for a Jew to disguise himself by wearing non-Jewish clothes. Thus, if, for example, the question were whether Jewish soldiers fighting on the European continent might not be permitted to conceal their Jewish identity by wearing "dog-tags" without the letter "H" so that, if captured by the Nazis they would not be mistreated, the answer would be that this is certainly permitted.

However, such concealing of Jewish identity cannot be permitted in the South Seas where there is no question of persecution of Jews. The question specifically, however, is not one of concealing Jewish identity, but of wearing the cross in order to win the friendship of natives in the South Seas who are accustomed to consider the cross as a symbol of friendship. The law on this matter is quite clear.

Answer:
(Cont'd)

Schulchan Aruch, Yore Deah, 141,1, Joseph Karo, discussing which statues are to be considered idols and which are not, says that the statues in villagesare to be considered idols since they are meant to be bowed down to. Those in great cities are not to be considered idols since they are merely for decoration. To this Moses Isserles comments as follows: "A cross which is meant to be bowed down to is forbidden, but one that is worn around the neck is merely a memento and is not forbidden." Thus, the law is clear:

To use a cross as the nurse intended to is not forbidden by law, but since it is clearly against general Jewish sentiment, the Committee refrains from advising her on this matter. She herself must judge how grave the danger is and how much help the symbol would give her.

DIETARY LAWS — VIOLATION

Question: *How far are men justified in violating the dietary laws under different conditions of camp life?*

Answer: They should try to observe as much as possible.

The chaplain should make known to men desiring to observe the dietary laws that kosher canned meats are available at the Post Exchanges and through the Jewish Welfare Board representatives, and that, while in this country, men may receive packages of kosher food from relatives or friends. If in certain circumstances it is impossible to obtain kosher food, then they are not committing a sin because they are under the compulsion of government military law.

However, a soldier who desires to follow the dietary laws should follow the spirit of Ezekiel Landau's advice, to observe Jewish practice as much as possible. Therefore he should try as much as he can to make a distinction between various degrees of prohibition. He ought to be more reluctant about eating inherently forbidden foods. Less weight can be ascribed to partaking of such meat products as are not inherently forbidden but which are not kosher because they have not been prepared by *Shechitah* or *Melichah,* and still less significance need be given to violations of *Taaruveth* and of such rabbinic ordinances as were established *Mippnei Marath Ayin,* such as those against dairy products together with fowl.

SABBATH OBSERVERS — EXEMPTIONS

It has been called to the attention of the Committee that the Seventh Day Adventists have obtained a ruling from the War Department which asks commanding officers to permit, as far as the exigencies of war allow, all soldiers to observe the day of rest according to their religious conscience. The Committee calls the attention of the chaplains to this ruling so that if any Jewish soldier convinces the chaplain that he is a bona fide Shomer Shabbath, the chaplain may help him obtain release from certain military duties on the Sabbath Day by calling the attention of the commanding officer to the following excerpt from Chief of Chaplains' Circular Letter No. 219, dated March 1, 1941:

SABBATH PRIVILEGES AND CONSCIENTIOUS SCRUPLES

A chaplain is charged by regulations to "serve the moral and religious needs of the entire personnel of the Command to which he is assigned". In carrying out this duty it is desired that, in organizations where there are individuals who were scrupulous observers of the Sabbath before they entered the Army, chaplains consult with local commanding officers with a view to obtaining their cooperation in arriving at a satisfactory solution.

SABBATH IN THE FAR EAST AND ITS RELATIONSHIP TO THE INTERNATIONAL DATE LINE.

Question: *We have received a question from a chaplain based upon inquiries from a number of soldiers as to the hour of the Sabbath in the Far East, and particularly its relationship to the International Date Line.*

Answer: The problem of the changing hours of the Sabbath for changing longitudes is a very complicated one. It has recently become the subject of earnest debate and serious disagreement when the practical question arose as to when the Sabbath should be observed in Kobe, Japan, by the Jews who were exiled to the Far East a number of years ago. There is, first of all, the basic question, whether the law requires the same days be celebrated as Sabbath everywhere in accordance with the verse of Leviticus: 23:3: "*It* is a Sabbath unto the Lord in all your dwellings," or whether Jews should accept the civil conventions of the international date line, or other date line, if any.

Another question concerns travelers. While it may be argued that a Jewish settlement in Shanghai, for example, would accept the international date line and celebrate Sabbath on the day that is called Saturday in the Far East, what about Jewish travelers, or soldiers who come from a place where the day which they observe as Sabbath is called Sunday in the Far East? Which Sabbath should they observe, their own Sabbath or or that of the place they come to?

As to the date line, the subject has already been discussed by Jehudah Halevi in "Cuzari," Book II, Paragraph 18 ff; also by Israel Lifshitz

Answer:
(Cont'd)

(Tifereth Yisrael to Mishnah Berachoth, Chap. I) It was also studied by Chaim Zelig Slonimski in Hatsefirah; see article "Meridian" in Jewish Encyclopedia, and article "Day and Night" in "Otsar Dinim Uminhagim." Jehudah Halevi and Slonimski both are concerned with fixing a date line. Unlike the international date line which is counted from Greenwich, both posit a date line which is counted from Jerusalem (or Marah where the children of Israel were commanded to observe the Sabbath). Jehudah Halevi fixes the date line 270 degrees west of Jerusalem, which would bring it west of the present date line. Slonimski fixes it 180 degrees west of Jerusalem which would bring it east of the present date line.

It is not necessary for our purposes to go into the legal details of this subject. It has been discussed thoroughly by Rabbi Kasher in "Talpioth" and by Rabbi Hankin in "Hapardes," Vol. 18 #11. It is interesting to note that Rabbi Hankin tries to avoid the entire problem of the date line by saying that one should judge the hour of a particular place by the nearest distance to Jerusalem. Thus, instead of counting China as 18 hours earlier than Jerusalem and therefore beginning the Sabbath 18 hours later (which one should do if he travels westward to China), one should simple say what the nearest distance to China would be if one travelled eastward from Jerusalem and the Sabbath in China would therefore be 6 hours earlier than the Sabbath in Jerusalem instead of 18 hours later.

Answer:
(Cont'd)

Thus every place on the glove would observe a Sabbath, half or more of which would coincide with the Sabbath in Jerusalem. Rabbi Kasher, in "Talpioth," objects to this whole line of reasoning on the ground that this would imply that the part of the Sabbath which does not coincide with the Sabbath of Jerusalem would be considered less sacred; which, of course, it is not.

The question of what the traveller should do when he comes to a place where the Sabbath is on a different day from his, was discussed by Hirshovitz in his responsa "Beth Abraham." On his travels from Sidney, Australia to San Francisco, he followed his own reckoning and observed his own Sabbath privately. But he also publicly observed the Sabbath according to the observance of the Jewish settlement in the land to which he came. This is substantially the advice of Rabbi Samuel Mohilever, who said that one should observe one's own Sabbath privately, and publicly observe the Sabbath of the local settlement unless one intended to settle in this new place permanently, in which case one should adopt the Sabbath of the settlement.

But we need not attempt to decide this question, since Isaac Elchanan Spector of Kovno refused to settle it for Rabbi Hirshovitz. When Hirshovitz asked what Sabbath he should observe, Isaac Elchanan Spector answered that he was not skilled in astronomy and that although a little on this subject was found in Tifereth Yisrael, there was not enough for a decision (see "Beth Abraham,"

Answer:
(Cont'd)

p. 2) In other words, the whole question is not yet settled in Jewish law. However, under the special circumstances of military life, we must come to some rule of guidance of soldiers.

Inasmuch as soldiers under military orders may even break the laws of the Sabbath when they are so commanded by duly authorized officers, either decision in both moot questions is permissible for them. If we would recommend that soldiers try to determine their own Sabbath, it would involve all sorts of difficulties as to calculations of longitude for whatever part of the globe the soldier was stationed at. Besides, such a recommendation would be based upon the unjustified assumption that some date line other than the International Date Line has been accepted by Jewish law, whereas in fact there has not yet been any definite decision on this matter.

One of the various opinions as to the date line (that of Rabbi Kasher in "Talpioth," p. 406) is that we should all definitely accept the International Date Line. The line is also followed by the Jewish settlement which our soldiers and sailors will come across in the Far East. If the Jewish men in the armed services would accept the International Date Line, it would almost never happen that a Jewish soldier or sailor would miss the Sabbath entirely for date line reasons. Only one who happens to arrive at the date line precisely at sunset Friday, going westward, will lose the Sabbath entirely. But even he need not lose any Sabbath; he should ob-

Answer:
(Cont'd)

serve his own Sabbath that week. Those who arrive at that date line at any other hour will have part of the Sabbath to observe on one side of the line or the other.

We therefore decide that in military circumstances, since all military and naval transportation to the Far East takes cognizance of the International Date Line, soldiers in the service shall accept that decision and take the days of the week according to the current reckoning.

ADVANCING THE HOUR OF FRIDAY EVENING SERVICES

Question: *May Friday evening service be held before dark, when, due to climatic conditions and the geographic location of the camp, it is necessary to conduct the service when the hour set for the service is still in daylight?*

Answer: It is a positive commandment to add "from the profane to the holy," that is, to begin the Friday evening service a little early. The question is, however, how much it is permissible to anticipate the Friday evening service. The matter is fully discussed in the various codes.

Under war time conditions it is permissible to have the Friday evening service within an hour or two close to sunset.

While the principle of adding "from the profane to the holy" does not apply to early evening services during the week, we may also be lenient with regard to beginning them early, as is indeed the Ashkenazic minhag.

FRIDAY EVENING SERVICE IN ARTIC REGIONS

Question: *When should Sabbath Services be held by troops of Jewish faith in the northern latitudes — Iceland, etc.? The problem involves the extent of the period of twilight.*

Answer: Twilight in rabbinic law marks the end of the day and the beginning of night. Hence, the beginning of the Sabbath depends upon the extent of twilight in the various latitudes. However, in the far northern latitudes the normal twilight is extended in the summer months by what is known as the astronomical twilight, which often lasts all night; hence, there is continuous twilight or half-twilight for months in succession. Therefore, it is impossible to know when the Sabbath should begin or end. This problem is referred to by Chaim Mordecai Margolis, Shaarey Teshuva, to Shulchan Aruch Orach Chayyim, No. 344. The Shulchan Aruch there discusses the question of the man who is travelling in the desert and finds he has lost count of the days. Joseph Karo, basing his opinion on the Talmud, says that he must begin counting days from the time that he became aware of his forgetfulness and must celebrate the seventh day as sabbath and mark it with Kiddish and Havdalah. This traveller, not knowing the exact day of the Sabbath, selects a day and observes it as the Sabbath.

Shaarey Teshuvah (ad loc.) applies the same principal of the selection of a time for the Sabbath to those who live in the northern latitudes and do not know the day and the hour of

Answer:

(Cont'd)

Sabbath, just as the man in the desert does not know the day of the Sabbath. The statement of Margolis is as follows: "Those who journey near the North or South Pole where the day lengthens into a month or two months and sometimes even six months, should count six days of twenty-four hours". In other words, the Jew in the Artic latitudes selects a time and an hour-length equivalent to those in the lower latitudes, This is the best that he can do.

Dr. Pool reports that such is actually the practice among communities of northern Norway and Sweden. They follow the hours for the Sabbath independently of their sunset and follow that of Hamburg.

Jewish soldiers in the northern latitudes should pick the hours of the Sabbath as observed in New York or Seattle and fix their Sabbath Service accordingly, regardless of whether twilight (in summer) or darkness (in winter) has yet come.

RELIGIOUS SERVICES AND CHRISTMAS DECORATIONS

Question: *Should religious services be held in a chapel in which there is a Christmas tree?*

Answer: The Committee suggests that the chaplain screen off the tree during Jewish services in the chapel.

If a recreation hall is available during the Christmas season, the Jewish chaplain can inform the Christian chaplain that in deference to the elaborate decorations and preparations which have been made, it will be unnecessary to remove so many ecclesiastical objects, and the Jewish services will be held in another place.

HEAD COVERING AND THE NATIONAL ANTHEM

Question: *Should Orthodox men uncover their heads for the singing of the National Anthem and "America" at religious services?*

Answer: This question is indirectly referred to in the section on Military Discipline and Courtesy in the Soldiers' Handbook (FM 21-100), page 12, paragraph K, which states that whenever the national anthem is played the hat is worn by men in uniform and removed by men in civilain clothes. This would imply that even where the service is Reform, the heads would have to be covered for the playing or singing of the National Anthem.

USE OF THE SEFER TORAH

What use may be made of the Sefer Torah in a camp chapel if it cannot be used at Sabbath Services?

Question: *(a) May the Torah be read at any time other than the Sabbath services?*

Answer: Yes. According to Jewish tradition the Torah is read not only on Saturday morning, but on Saturday afternoon, on Monday and Thursday mornings, on New Moons, on fast-days, on the festivals and even on the half-holidays of the festivals.

Question: (b) *May part of the weekly portion be read at any time other than at the Saturday services?*

Answer: Generally yes. Part of the weekly portion is read on Sabbath afternoon and on Monday and Thursday. The reading on Monday and Thursday was made for the convenience of the people who came in to town on those two days, which were market days. This custom of reading the regular portion or part of it on Monday and Thursday at a time convenient for the people is so ancient that it is even ascribed to Ezra.

Question: *(c) May the Torah be read on Friday night?*

Answer: There is a partial precedent for the reading of the Torah on the evening of Simchath Torah, and while the Union Prayerbook (Newly Revised) has made provision for the voluntary reading of the Torah on Friday evening, nevertheless, Orthodox and Conservative Jews would not consider this a precedent. However, if in the armed forces it

Answer:

(Cont'd.)

is impossible to read the Torah at any other time during the week, we may as a *Horaath Shaah* say that such reading of the Torah may be conducted. It should be announced as such at every Friday evening service. Moreover, whether the Torah is read or not, it should still be kept in the Ark for its symbolic significance at all services.

HAFTARAH ON FRIDAY NIGHT

Question: *May the Haftarah be read on Friday night?*

Answer: There can be no objection to reading from the Prophets, since we permit as a temporary war custom the reading of the Torah on Friday night.

MARRIAGE

Question: *The question is asked by a JWB worker as to whether he may arrange for a Christian chaplain or for a Justice of the Peace to officiate at the wedding of a Jewish couple when no Jewish chaplain or civilian rabbi is available.*

Answer: In Jewish law and tradition marriage is a Kidushin or sacrament. While the civil validity of a civil or non-denominational marriage ceremony is necessarily recognized, such a wedding is not regarded as satisfying religious or Jewish requirements. Therefore, when a Jewish uniformed man presents himself with the request that arrangements be made for his marriage, it is not Jewishly admissible to arrange for a civil ceremony to be performed by a Justice of the Peace or a non-Jewish chaplain or minister.

If no Jewish chaplain or rabbi is readily available, a rabbi or some other Jewish communal functionary authorized by the state to perform marriages, must be brought in, even if it be from some distance or at some inconvenience. Otherwise the Jewish Welfare Board representative will be in the position of arranging for these two Jews to live together in a relationship which is not sanctioned as marriage under Jewish tradition.

CONVERSIONS

Question: *Should a chaplain accept candidates for conversion?*

Answer: A. Dr. Pool a year ago sent a statement to the chaplains recommending that they refrain from participating in conversions, but that whenever someone applies for conversion to Judaism the chaplain refer the applicant to a rabbi in a civilian community nearby. This statement by Dr. Pool covers our general attitude towards the performing of conversions by the chaplain, but it is a general attitude which cannot apply to all cases.

B. There may be certain cases, for example, when there is no nearby civilian rabbi available, the camp being isolated, or other cases arising from the special circumstances in the life of the couple concerned, where the chaplain may feel that he should convert the non-Jewish party of the proposed marriage. In these circumstances the chaplain should follow the conversion methods which are laid down by the group of which he is a member, giving special consid-sideration to the background of the Jewish party in the proposed marriage. It is understood, of course, that these circumstances will be exceptional and rare. In general we follow the principle laid down in Dr. Pool's statement that conversions be referred to civilian rabbis.

C. This opinion represents the opinion of two of the three members of the Responsa Committee. The full committee of the CANRA decided to send the following statement of Rabbi Jung:

Answer:
(Cont'd)

D. "I should not like any chaplain associated in any manner with conversion. The matter is far too complex and too dangerous for any general decision even for exceptional circumstances."

The CANRA received a letter from Hawaii with regard to two cases of inter-marriage. In the first case, the girl is of Hawaiian-Portuguese-French extraction and has two children brought up in a Catholic school. In the second case the girl is white and Protestant. The Jewish Welfare Board representative asks what is to be done and what answer is to be given the women, both of whom desire instruction to prepare them for becoming proselytes.

The answer of the Committee is that the racial situation makes no difference, and that the general principles govern all conversions and inter-marriage. Therefore, we refer to the above answer on this matter.

PERFORMANCE OF MARRIAGE OF PROTESTANT GIRL TO JEWISH LIEUTENANT—CONVERSION

Question: *A lieutenant returnee from the Aleutians intends to marry a Protestant girl in the next month or so. The girl is very anxious to accept the Jewish faith, a desire which has not been influenced by the wishes of the lieutenant. The lieutenant wants the chaplain to perform the marriage ceremony and would like to know whether he will convert her. There is no civilian rabbi within a radius of 250 miles. As the chaplain sized up the situation it is a question of keeping a Jew in the fold (he has a Reform background) by converting the women whom he definitely will marry, or have a Justice of the Peace marry them and losing both.*

Answer: The general practice recommended by CANRA with regard to the conversion of proselytes is that the chaplain refrain from such conversion, referring all such cases to a nearby civilian rabbi. The reasons for our decision are, first the general disinclination of Judaism to encourage proselytism, especially cases connected with marriage, and, second, the fact that the military conditions where the chaplain is often in charge of men of different faiths (Catholic, Protestant or Jewish) lead us to the wish to discourage any kind of proselytism which might involve the conversion of soldiers. However, it is clear that there are certain special cases under which the chaplain must make his own decision guiding himself by his own conscience and by the specific religious background of the families involved. In the case mentioned by the

Answer:

(Cont'd.)

chaplain there is no civilian rabbi within 250 miles. Secondly, the young lady is sincerely desirous of accepting Judaism, and according to principle of Rav (J. Kidushin 65b) such proselytes must be received in friendliness, for we may assume that they are converting out of sincere motives. Thirdly, the young man is of Reform Jewish background and according to the Reform Jewish practice such proselytes are accepted after instruction without ritual requirements. In these circumstances, the chaplain may use his own initiative and judgment as to the conversion.

FORMS OF THE MARRIAGE CEREMONY

Question: *To what extent should a chaplain modify the form of marriage ceremony which he is accustomed to use if the couple to be married asks for one form of Jewish service or another?*

Answer: The decision of the Committee is that while the chaplain should follow as musch as possible his own religious practice, he should be careful to ascertain the specific Jewish religious background of the couple to be married and adjust his service in conformity therewith.

MARRIAGE CEREMONY FRIDAY NIGHT

Question: *May a chaplain officiate at a marriage on Friday night?*

Answer: The CANRA again calls attention of the chaplains to the decision of the Responsa Committee accepted by the CANRA on November 16, 1942, that "marriages under special conditions of wartime in camps may take place on certain days hitherto prohibited by Minhag as, for example, the period of the Omer, but may not take place on days prohibited by Din, as for example, The Sabbath."

Answer: The Committee does not approve of marriage by radio-telephone.

MARRIAGE WITHOUT PREVIOUS DIVORCE (GET)

Question: *May a chaplain officiate at marriages where one of the parties, previously married, has no "get", and is unable or unwilling to arrange for a "get", and where the alternative is a Christian or civil ceremony?*

Answer: The CANRA is well aware of the fact that it cannot compel all chaplains to follow the practices of Reform, Orthodoxy or of Conservatism. It tries to achieve a balance of opinion and to avoid violating the conscience of any one of the groups.

There are certain compulsory military situations because of which we ask all chaplains to relax certain of their customary religious observances such as in connection with riding on the Sabbath or carrying a burden on the Sabbath. But these matters are such as are directly due to military necessity and are the consequency of direct military command.

However, matters of marriage and divorce are not directly connected with military duty. A soldier may have no choice as to whether to carry a burden on the Sabbath, but he has a choice as to whether he should be married now or after the war. The fact that the proposed marriage takes place at the embarkation point has little to do with the principles involved. In matters of marriage our committee has previously come to a principal which takes account of the various types of chaplains we have and the various types of soldiers. This principle applies here:—

Answer:
(Cont'd.)

"The decision of the Committee is that while the chaplain should follow as much as possible his own religious practice, he should be careful to ascertain the specific Jewish religious background of the couple to be married and adjust his service in conformity therewith."

This would mean that if it is an Orthodox young man or a man of Orthodox parents who would strongly object to his marrying without a "get" a chaplain should not officiate. If it is a son of Reform parents who are accustomed to the practice of Reform Judaism to accept the civil divorce as sufficient the chaplain should not hesitate to marry the couple, provided the chaplain himself has no objection to marrying a divorced person who has no "get".

The general attitude of the CANRA is therefore expressed in the statement which has already been issued by the CANRA and stated above, namely, "The decision of the Committee is that while the chaplain . . . . . etc."

Dr. Jung adds that the above statement should refer exclusively to the chaplain and under no circumstances to any JWB worker.

EMERGENCY MIXED MARRIAGE

Question: *May a chaplain officiate, when requested, at a marriage at a port of embarkation, where the woman is not Jewish, and where there is no opportunity for proper conversion.....*

Answer: (See the previous responsum.)

DIVORCE

Question: *A woman was divorced in the civil courts about a year ago. She has recently obtained a "get". She wants to remarry, and the soldier she is to marry is about to go overseas. However, the prescribed three month interval between the Jewish divorce and intended re-marriage has not yet elapsed. Should we under war-time conditions waive this required period of waiting?*

Answer: The purpose of the law requiring the three months interval between a divorce and marriage to another man is to establish the paternity of a child so that there should be no doubt whether a child born seven months after a second marriage is a seven month child of the second husband or a none month child by the first husband. (See the discussion b. Yevomoth 42a.) If we consider merely the question of fulfilling the purpose of law, then we could decide that inasmuch as she has been civilly divorced and therefore separated from her first husband for a period of much longer than three months, the purpose of the law is fulfilled. If we so decide we would be taking the same stand as Rabbi Judah in the Tosefta Yevamoth VI, 6 where the discussion concerns a woman who was driven out of husband's home and had gone home to her father's house, etc. Rabbi Judah decides that she may be married at once to another man i.e., if she has been separated from her hysband for a period longer than three months, she may be married at once after her divorce. Somewhat the same reasoning is back of the decision by Joseph Karo in the Shulchan Aruch Even Ha-ezer 13, I, when he

decides that the three months must be counted from the day that the divorce is written even though the woman may not get the divorce for a considerable time afterwards, and the reason he gives for this decision is that they had not lived together after the divorce was written.

However, although in the case referred to our Committee the woman has been separated from her husband for a period longer than three months and has thus fulfilled the basic purpose of the law of waiting, she may not be remarried until three months have passed since the get, for the law is not according to Rabbi Judah who would permit her immediate marriage, but according to Rabbi Meir who forbids it. (See the Tosefta passage just quoted and b. Yevamoth 42b.) See also Be'er Hagolah to Shulchan Aruch Even Haezer 13,I.) In order to prevent carelessness with regard to the law in the case of a woman the paternity of whose child might be open to doubt if she married before the three month period, the rabbis have made a gezerah forbidding the second marriage before the three month interval, even for such women who would not have been physically intimate with their husbands during the period involved.

In guiding our chaplains with regard to such marriages, we should follow the same principle which we have followed in a number of analogous decisions in the past, and ask the chaplain to consider the family background of the parties involved. If, for example, they are from a family belonging to a Reform synagogue which accepts the validity of civil divorce, they may be married. If they belong to a family of stricter observance which does not accept the

validity of civil divorce, then the rabbinical law of divorce must be followed, including the requirement of a three month period of waiting for all women, no matter what their individual circumstances may be.

In the specific case brought before the Committee, the fact that the woman received a "get" after having had a civil divorce is indication enough that either she or her former husband or the man that she is about to marry is Orthodox and, therefore, she should not be married until the full three month period has elapsed.

REMARRIAGE AND JEWISH DIVORCE

Question: *A soldier intends to return home to marry his financee in the near future. This man was divorced by the State Government several years back and he gave his wife a "get". He has no written evidence to show that he delivered a "get" to his wife. He does not even remember the name of the rabbi, nor the names of any of the witnesses. His estranged wife's family furnished the rabbi and they will not give him any information. The soldier's attorney was present at the time and he happens to know the date on which the "get" was written. This is the only information that the soldier has.*

Will an orthodox rabbi perform the wedding ceremony if the soldier cannot produce any written evidence that he gave a "get" to his first wife?

(This responsum is not given as a decision by the CANRA but as information to the chaplains. In such a matter it is recommended that the chaplain consult a competent Orthodox authority.)

Answer: The Talmud in b. Baba Bathra 34b and 35a discusses the question of whether a man is believed if he says he divorced his wife and no other evidence is adduced. The conclusion which the Talmud comes to is that he is not believed with regard to her past status (l'mafraya) but is believed with regard to her present and future status (l'haba). That is to day, she cannot, merely on the basis of his statement, be considered to have been divorced from the date that he declared he gave her the divorce, but she can be considered divorced from now on;

Answer:
(Cont'd)

for if he wishes he could divorce her now. Therefore there is no reason to disbelieve his statement.

However, Maimonides (Hil. Gerushin XII,5) decides that he is not to be believed, and says that we should say to the man, "If you wish to divorce her, divorce her now." Likewise, the Shulhan Aruch, Even Haezer 152,I, says that he is not believed if he make a statement that he divorced his wife but that the wife, however, is in the status of being dubiously divorced.

Thus the Talmud permits him to be believed about the future status of his wife; and while Maimonides says he is not to be believed, Maimonides evidently visualizes both husband and wife being present since he suggests that he should divorce her now. Joseph Karo acknowledges that the wife is in a state of dubious divorce. It is evident, therefore, that when her husband makes the statement that he has divorced his wife, he is to some extent believed.

The particular case which Chaplain Buaman presents before us is not quite the same as the one dealt with in the Talmud and the codes. In the case before us we are not dealing with the status of the woman, which is always strictly construed, but rather with the status of the man, which is less strictly construed. Furthermore, in this case we do not rely entirely upon the mere declaration of the husband. The lawyer testifies that he was present at the divorce and knows the date on which the get was written.

Answer:
(Cont'd)

Therefore we are not dealing with a case which is dependent entirely upon the man's statement, but one in which "there is some report" of the divorce proceedings (Yesh lo kol). See Rashi to b. Baba Bathra 134b; also Ture Sahav to Even Haezer 152,I; and also Beth Shmuel ad loc. Therefore the man should be permitted to marry the woman to whome he is now engaged.

It is urged at the suggestion of Dr. Jung that in such cases an attempt be made to discover who gave the "get". The man involved, therefore, should give us his Hebrew name and the name of his former wife and an advertisement should be inserted in the Jewish Morning Journal (which is read by Orthodox rabbis) asking for information with regard to this particular divorce.

KETHUBBAH

Question:(1) When the witness or witnesses to a marriage are unable to sign the Kethubbah in Hebrew, is their signature valid in English?

(2) Can any army post or army airfield be designated as the locale of a marriage?

Answer: (1) The Mishna refers to divorces written in Hebrew and signed in Greek. M. Gittin IX, 8. The Talmud, in b. Gittin 9b, speaks of documents whose witnesses cannot sign their names. The Talmud there suggests a stencil be used for them to fill in, but Rabban Simeon ben Gamliel says that this leniency applies only to divorce. Thus, the law does not specifically give any permission for signature of a Kethubbah in any other language than Hebrew. Nevertheless, in the exigencies of military life where witnesses who can sign their name in Hebrew may not be available, the Committee recommends that the rabbi avail himself of the permission which applies to documents in general and that the rabbi be given the pen by the witness (M'sirath kolmos) (Shulchan Aruch Choshen Mishpat 45#5) and sign their names for them. (See the specific case of such a signature on the document in the responsa of Solomon ben Aderet Toldoth Adam, Vol II, #III.) Of course the witnesses should be qualified according to Jewish law.

(2) There are objections in the law to divorces being written in certain cities or towns. The objection is generally based upon doubts as to how the name of the city or the river should

be written in Hebrew. Such cases are mentioned in Noda Bi'yehuda Vol I. Even Haezer #87 & 88. See especially in 88 about the middle of the responsum: "There are many places in Poland and in other provinces in which divorces are not written because of the doubt of the name and we have never heard that this prohibition to write divorces there was ever annulled," Also Chatham Sofer Vol. II, Even Haezer #37; also Eliezer Deutsch, Peri Hasadeh, Vol. I#53.

The Responsa Committee is not aware of any similar restrictions with regard to writing a Kethubbah. As a matter of fact, in the question asked of Ezekiel Landau in Noda Bi'Yehuda I #87, it is stated that in the city of Pilch where no divorces were written, many marriage documents were written. Moreover, we find discussions of marriages in places that are too small even to gather a minyan. See Solomon Ben Aderet quoted by Karo in Beth Joseph to Even Haezer 62, and see also Ezekiel Landau's interpretation of the opinion of Solomon Ben Aderet (Noda Bi'Yehuda) Vol. I #56 in which he says that even Solomon Ben Aderet, who insists that 10 are required for the marriage blessings, would admit that if he recited the blessings without 10 people being present, the marriage would be valid. Thus it is evident that it is not essential for the marriage to be in a fixed community. See also a discussion of this latter question in Mishp'te Uziel (by Ben Zion Uziel) Vol. II #62. Rabbi Uziel (the present Sephardic Chief Rabbi of Palestine) says that a person who cannot find 10 people shall say just two

Answer:
(Cont'd)

of the blessings, and at some later date when he comes to a community where he can gather a minyan, he may recite all 7 blessings. Thus it is evident that there are no restrictions as to the size of the city or its permanence as a community with regard to its being mentioned in a Kethubbah. There is no reason, therefore, why Randolph Field should not be written as the place in the Kethubbah.

Question: *May K'riah be performed, since the uniform may not be multilated?*

An inquiry came from a chaplain with regard to a soldier who received a telegram from home announcing the death of his father. The soldier wanted to know whether he could perform the K'riah since the Army uniform may not be mutilated.

Answer: When K'riah is to be performed the underclothing over the heart should be cut.

THE BURIAL OF THE BLOOD REMOVED FROM THE BODY DURING EMBALMING

Question: *Should we ask the Graves Registration Service to preserve the blood taken from the bodies of embalmed Jewish soldiers and bury the blood with the body? (It is standard procedure of the American Graves Registration Service of the United Kingdom to embalm the bodies of deceased soldiers.)*

Answer: The question whether the blood which comes from the body a considerable time after death is to be buried with the body or is simply to be washed away in the tahara is an undecided question in Jewish law. Maharsham (quoted by Greenwald in Ach L'tsarah, page 33) says that the blood should be buried. However, Pitche Teshuvah to Yore Deah (364,#5, section 6) says that post-mortem blood (as, for example, blood which comes from the body of a drowned man) should be washed away and need not be buried. Pitche Teshuvah's opinion is based upn Chinuch beth Jehuda (#95). Since the question of the burial of the post-mortem blood seems to be undecided in Jewish law, the CANRA, confronted with an emergency wartime situation, will not insist that the Graves Registration Services in the United Kingdom follow the procedure of the burial of the blood. This is, however, only a wartime emergency decision, and does not presume to be a general decision of thr question which is still unsettled.

DRESS OF MILITARY DEAD

Question: *The military custom is to have the man's service cap in his hand rather than upon his head. Should the chaplain request that the cap be placed upon the head of the soldier who is to be buried?*

Answer: If the deceased was known to the chaplain as an observing Orthodox Jew or if the chaplain knows that the family of the deceased would prefer it so, he may ask that the cap be placed upon the head of the deceased.

USE OF THE TALLITH IN MILITARY BURIAL

Question: *How can a chaplain obtain talleithim for use in funeral services overseas?*

Answer: Chaplain Aryeh Lev at headquarters submits the following reply:

"In this country, bodies of Jewish soldiers may be prepared according to the wishes of the parents. The body is brought to the denominational undertaker and properly placed in the coffin ready for burial either at the home cemetery or a national cemetery.

"Overseas and especially in time of war such elaborate preparations cannot be made. In war conditions the body is buried as soon as possible so as to avoid decay or despoiling by the enemy. Burial parties work even under fire and they could not be expected to carry about with them talleithim to place on the Jewish dead."

The CANRA agrees with Chaplain Lev. Machneh Yisrael, Chapter 40, says, "The slain is buried without Taharah and in his garments and shoes just as he is found. See also Shulchan Aruch, Orach Chayyum 364, 4. This of course applies to the boys fallen in battle overseas. The bodies of soldiers who die in this country may be claimed by their parents and the funeral provided for by them.

TALLEITHIM FOR THE DEAD

Question: *The Quartermaster Department will buy talleithim to be placed in the coffins of soldiers of Jewish faith. The question has been asked whether these talleithim need the fringes or not, and if they need fringes, do these fringes need to be made pasul before being put into the coffin.*

Answer: Before dealing with the question itself, there is a related matter which conerns us with regard to the talleithim. These talleithim will be new and will never have been used in worship. Jacob Emden in his Responsum I #166 deals with the question based upon some objections to the use of a new, unused tallith for the dead. He says that there is no objection at all to a new tallith that has not been used for worship.

As to the fringes, this is an almost classic dispute. It is discussed in the Tur, Yore Deah #351 and in the Shulchan Aruch (ibid.). The Tur says that it is an old dispute whether to have fringes or not on the tallith for the dead. He quotes the dying statement of Rabbenu Gershom, who said: "Tsitsis chutz", and they did not know whether he meant that the fringes should be removed from the tallith or whether they should hang outside of the coffin. The Ramban says, however, that there is no doubt that the dead is buried with the tallith that has fringes. In the Shulchan Aruch, Isserles says that the fringes should be made pasul first, and that is frequently the custom. But he adds, they can either be made pasul or they can be just folded

Answer:
(Cont'd)

up under the corners. This last suggestion of Isserles that the fringes be folded up is in consonance with the opinion of Joel Sirkes (Bach) quoted by Be'er Hetev (see large Shulchan Aruch, edition Lemberg), who said that the Bach wrote that the fringes should not be made pasul but they should be tied or folded up.

Since the CANRA decided in the previous discussion of the tallith that the tallith should be placed folded in the coffin, it will fulfill the general requirements of the law if the talleithim will have fringes but the whole tallith be folded up.

USE OF THE TALLITH IN MILITARY BURIAL

Question: *Would it be fitting to have the tallith placed inside the blouse since it is not practical to dress the bodies of Jewish soldiers for burial in traditional burial clothes -- shrouds, tallith, etc.*

Answer: We have already discussed the question of burial in a tallith with regard to soldiers fallen on the field of battle. In their case we have decided that they should be buried as the Jewish law permits in the case of the slain in the garments in which they were found, i.e., in their uniforms.

(a) It should be said at the outset that soldiers should be buried as they would have been buried if they had died as civilians. Sons of Reform Jewish families who would be buried in civilian clothes are buried with their military clothes without change. As for Orthodox boys or boys of from homes of strict observance who would be buried in a tallith, the Orthodox practice should be followed.

If the body is turned over to the family, they will of course see to it that traditional practices are followed.

(b) May the tallith of an Orthodox soldier be placed beneath his blouse in burial?

Rabbi Greenwald in "Ach L'tsarah", page 65, gives full discussion including the latest authorities on the question of burial in a tallith. In paragraph #13 he quotes late

Answer:
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authorities to this effect: "he who is accustomed to pray wrapped up in his tallith shall be buried in a tallith; while he who is accustomed to pray in his tallith katan shall be buried merely with his tallith katan."

It is the sense of CANRA that a tallith is preferred. For burial in this country the Jewish Welfare Board will supply a number of talleithim since the tallith is to be preferred for the use of deceased soldiers of Orthodox families.

POSITION OF INDIVIDUAL OFFICIATING AT GRAVE

Question: *A chaplain says that he has always been accustomed to stand at the foot of the grave during the ceremony. In the army reservations the graves do not face east and army regulations seem to require that the chaplain stand at the head of the grave.*

Answer: Whether graves should be east and west and whether the head of the body should be towards the east or west or in any specified direction is a matter not of law but of minhag. Moses Sofer denies that the minhag has any basis in law, and he calls attention to the graves discussed in Baba Bathra, VI, 8, where the niches are cut in all directions.

There is therefore no objection in Jewish law to the chaplain conforming to army practice and standing at the head of the grave during the funeral service.

POSITION OF COFFIN DURING SERVICE

Question: *How can we reconcile with Jewish practices the Army practice of allowing the coffin to remain above the ground during the funeral service and giving of military honors?*

Answer: The problem involved in this matter is what is the proper time for reciting of the Tsidduk Ha-Din. The discussion is found in Beth Joseph to Tur Yore Deah 339 and in the Tur itself 376. It is evident from the Tur that the older custom was to say the Tsidduk Ha-Din at the home the moment the relative died. Another (a later custom) was to say it at the cemetery.

The present Ashkenazic custom is to say the Tsidduk Ha-Din at the cemetery before the body is buried and the Kaddish after the burial.

Inasmuch as Jewish custom permits so much of the service before the body is buried, i.e., the psalms on the way to the grave, etc., there can be no objection to following the custom of permitting the services and the rendering of the military honors before the coffin is lowered.

DECORATION OF JEWISH MILITARY GRAVES

Question: *In the case of a mass military observance in a military ceremony, as for example on Memorial Day, when the graves are decorated with flowers should the chaplain request that an exception be made with regard to the graves of Jewish soldiers, so that no flowers be put upon them?*

Answer: The objection to planting flowers and shrubs on graves is based upon the principle that the living may not derive benefit from the earth of the grave (asur b'hanaah). However, this applies to permanent planting. The objection to extravagant display does not apply in the case where once or twice a year a few flowers are placed on all the graves in a military ceremony.

The chaplain need not ask for any exception to be made in this case with regard to the graves of Jewish soldiers, since this decoration is for the honor of the dead (mip'ne kevod ha-meth).

Question: *May a soldier or sailor who is on lonely outpost duty for a considerable period of time (as for example, men on coast guard duty) in the event of Yahrzeit say Kaddish alone, since he cannot possibly assemble a minyan?*

Answer: Just as in the case of the tefillah it is preferable to say it with the congregation and yet it is permitted to be said silently alone, so the Kaddish which is primarily part of the congregationwl response mwy also be recited silently alone.

Furthermore, the CANRA will arrange for Kaddish to be recited in a congregation in honor or the departed relative of any soldier or sailor who writes in to CANRA or makes such arrangement with the chaplain. The soldier or sailor should report the date of the Yahrzeit and the name of the relative.

COMMUNAL RECITATION OF KADDISH

Question: *What is the attitude of CANRA on the communal recitation of Kaddish? The men attending services at one camp seem to object to the concerted communal recitation of Kaddish.*

Answer: If by communal reciting of the Kaddish is meant that the cantor or chaplain reads the Kaddish alone for the entire congregation, as is the custom in most Reform congregations, clearly this method of reading the Kaddish will not do when there are mourners present who want to say the Orphan's Kaddish individually.

An opportunity must be provided for mourners who so desire it to recite the Kaddish.

If, however, by communal reciting of the Kaddish is meant that the mourners are indeed allowed to say Kaddish but they are required to say it as a group in unison and the congregation responds 'Y'hay sh'meih rabba, etc.", this subject has received considerable discussion in rabbinic literature, chiefly in connection with the disputes between orphans or Yahrzeits as to who should have the privilege of saying Kaddish. Discussing the mourner's Kaddish Jacob Emden in his Siddur says:

"I will not go into the matter as to who should have the privilege of saying Kaddish, etc., for that is a matter of minhag; but how fine and praiseworthy is the custom of the Sephardim in this regard, namely, that if there are many who have to say Kaddish, they say it together and dispute is thus obviated."

Answer:
(Cont'd)

Moses Sofer discusses the same subject in his Responsa (Chatham Sofer, Yore Deah 345). He quotes with approval the Sephardic custom mentioned by Jacob Emden and says that in fact in his school they do have the same thing with regard to Kaddish d'Rabbanan, namely, that the orphans say it all together, and he adds, and what harm is there in it (mah b'chach).

There is also a still more recent responsum on this subject by Markhus Horovitz, the Orthodox rabbi of Frankfurt in the first half of the 19th century (Matteh Levi II, #3). He said that he accepted this custom of saying Kaddish in unison (although he did not prefer it) because it is an ancient custom in Frankfurt according to the old Frankfurt minhag.

We may conclude that while opportunities for a minyan for any mourner shall be provided whenever possible on his Yahrzeit nevertheless at the regular public service in the army and navy the mourners be asked to recite the Kaddish in unison in accordance with the customs as recorded above.

YAHRZEIT

Question: *Should CANRA direct chaplains to obtain furloughs for Jewish boys to go home for their Yahrzeit?*

Answer: The committee agrees that a chaplain is not justified in asking for a furlough to make possible the return of the boys to their homes to observe their Yahrzeit. However, the chaplain should make every effort to arrange for a minyan in camp or in a nearby Jewish community.

YAHRZEIT — WHICH DAY IS TO BE OBSERVED WHEN DATE OF DEATH IS UNKNOWN

Question: *A chaplain asks what date is to be observed as Yahrzeit when a man is declared officially dead but no trace of remains is found and no accurate date of when he was missing is available. He was lost during a battle of several days duration.*

Answer: The main question which we are asked is which day shall be observed as Yahrzeit when the date of the death is not known. This question is complicated by the fact that although the man is officially declared dead by the report of the government, no trace of the remains can be found, and the observance of mourning is involved with the question of the right of the wife to remarry. Thus, Ture Zahav to Shulchan Aruch in Yore Deah 375 #7, declares that there should be no forms of mourning for a man who is drowned in the sea isasmuch as the ceremonies of mouring would be taken by some to indicate that the wife is permitted to remarry. See also Joseph Karo to the Tur, ibid. In fact, even if the man who was drowned in the sea is an unmarried man and the question of the remarriage of a wife is therefore not involved, even so, no forms of mourning should be observed for him. See Greenwald, "Ach L'tsarah," page 235, note 15. However, in all these matters of the reliability of the official report of death, the CANRA has decided in a previous responsum (based chiefly upon a responsum of Moses Sofer) that the government report should be accepted, and as for the final determination of death by a Beth Din, the CANRA decided to leave that to each individual family and their rabbi. While this matter of remarriage

Answer:
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is not directly concerned in the main question which we are asked, namely, concerning Yahrzeit, nevertheless, it is involved in it and it is important to mention it in this responsum.

Now as to the main question, namely, when should Yahrzeit be observed since the date of death is not specifically known: in the case of tidings of death (either Shemuah Kerovah or Shemuah Rechokah), the date when the tidings are received is the important date.

Thus, when the report of death comes, the mourning begins from the time the report came. In the case of a close report (Shemuah Kerovah) the mourner counts the thirty days from the day that he gets the report, since the principle is that the day of the tidings, Shemuah Kerovah, is legally equivalent to the date of burial (Shulchan Aruch, Yore Deah, 402). So, in the case of a distant report, Shemuah Rechoka, which is this case referred to us, the one hour of mourning takes place on the day that the report came and the thirty days of mourning for a father or mother begin with the day when the tidings came.

Since, therefore, it is clear that the day of receiving the report has the status of the day of the actual burial, that is the only date he has for the Yahrzeit in succeeding years.

BURIAL ON SABBATH

Question: *Is burial on the Sabbath ever permissible? Is It permissible during the War Emergency period?*

A plane crash took place killing several military men of whom one was a Jew. The post authorities made all arrangements for the funeral which occured on the Sabbath. The chaplain was asked to participate and agreed to participate insofar as the military honors were concerned. But he explained to the authorities that Jews do not bury on the Sabbath.....But the bodies were so mangled and in such condition that it would have been better to bury them at once. How can burial on Sabbath be permitted on the battlefield?

Answer: The Jerushalmi to Moed Katan III, 5 discusses the question of the termination of the period of Shiva and speaks of a case in which the eight day comes on the Sabbath (which means that the burial itself took place on the past Sabbath). But how could that have occured? One answer given by the Jerushalmi is that the grave was closed on the Sabbath by gentiles.

Nevertheless in spite of this implication that burials may have taken place on the Sabbath with gentiles performing the necessary work, the law is clear that burial on the Sabbath is forbidden. See particularly Tosafoth to b. Baba Kamma, 81a (under the phrase 'Omer L'Nochri') as follows: "Logically it ought to be permitted to bury the dead on the Sabbath, but since it is ugly and shameful to be buried on the Sabbath, in violation of the Sabbath law, it is forbidden also for burial to be performed by gentiles."

Answer:
(Cont'd)

Even a Meth Mitzvah may not be buried on the Sabbath. (See b. Sanhedrin 35a and b where a theoretical supposition by Resh Lakish that such a burial be permitted, is refuted by the Talmud.)

This general prohibition applies to normal circumstances. Yet even in civilian life in case of an epidemic, if the government orders the immediate burial of someone who dies on Friday evening, then the burial must take place. (See Greenwald's "Ach L'tsarah" p. 971). In wartime, a military command sets aside the laws of the Sabbath. (See Chofetz Chayyim, Machneh Yisrael, Chapter 28: "With regard to a man in military life, the duties imposed upon him by the command of the government, Tsivvui Hammemshalah, are permitted to be done and he is not thereby a profaner of the Sabbath."

On the battlefield where a burial detail is specifically ordered to bury the dead, the Jewish chaplain and whatever Jewish soldiers receive the order must bury the dead even on the Sabbath.

Back of the battle areas or in the United States when specific military order is given for immediate burial owing to an epidemic or a catastrophe, such as an airplane accident when the condition of the bodies requires immediate burial, then this specific order should be accepted without question and the bodies should be buried even on the Sabbath.

Answer:
(Cont'd)

Aside from these exceptional circumstances, burial should not take place on the Sabbath.

But in exceptional cases as referred to above, the chaplain should consult the officer in charge as to whether the burial may not be postponed to another day when burial is permitted according to Jewish practice.

Dr. Jung adds to the above that while as mentioned the burial should not be opposed by the chaplain, the usual service should be modified.

DISINTERMENT

Question: *We have been informed semi-officially as follows: It is becoming increasingly apparent that at the termination of the war, the War Department, upon polling and receiving the consent of 70% of the nearest of kin, will bring back all the American dead buried overseas. For the percentage who do not give consent there is no choice—the bodies will be brought back and no American cemeteries will be kept overseas. May this disinterment be done under Jewish law?*

Answer: Considering the special circumstances involved there can be no objection from the point of view of Jewish law to this proposed removal of bodies to America. In the first place it was clearly the intention of the government to move the bodies back to America, therefore this burial overseas was made with the intention of re-interment; second, the government will not maintain overseas cemeteries and, would be none to protect and guard any graves that might by chance be left; and third, because the re-burial will be al kever avoth (Yore Deah 363 #1).

(Since the above was written the Government has changed its policy somewhat. There will be a few central cemeteries maintained overseas for those whose relatives do not desire that they be brought back to the United States. The bodies of the soldiers will be disinterred from the various scattered places where they are now buried and will be removed to three central cemeteries. As to the disinterment, there is no doubt that the rule mentioned above applies

Answer:
(Cont'd)

namely, that it is permitted to disinter the bodies from the scattered cemeteries and place them in the cemeteries where the graves will be protected and guarded. See also "Aruch Ha Shulchan" to Yore Deah 363, I.)

However, the further question is asked with regard to whether there should be any ritual or order of services for exhumation. With regard to ritual or services in connection with exhumation, there is some reference in the older sources. The Palestinian Talmud to Moed Katan I,5, says that there should be no bircath avelim and no tanhume avelim but only words of praise for the departed. Hai Gaon (quoted by Isaac ibn Ghayyat in Shaare Simchah, Hilchoth Evel, p. 73) tells of the custom of burying in Bagdad and then removing the bodies for reburial in the desert. He says that it is not the custom for people to gather for the occasion or to say Tsidduk ha Din, but he continues, follow the custom of your fathers in this matter, yet do not pronounce blessings for they may be blessings pronounced in vain, i.e., since no blessing was prescribed for disinterment.

Judging by the statement of Hai Gaon, who had considerable experience with the custom of disinterment, it is preferable that there should be no services at the disinterment. In line with this tradition, we might well decide that there is no requirement to have services at the disinterment, nor is it necessary for the people at home to have any or to follow any of the ritual of mourning unless they know the exact day when

Answer:
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the disinterment takes place. See Yerushalmi ad loc. However, following the statement of Hai Gaon, who speaks of the use of Biblical passages and collections of Biblical verses (and also the statement of the Palestinian Talmud that omrim d'varim, we speak words of praise), we might write a service composed of appropriate Biblical passages and provide in the service for a memorial address at the time of the re-burial.*

With regard to the further question of arranging for a Jew to accompany the body when it is brought back overseas and the caution that this may not always be possible, the CANRA would request the War Department that inasmuch as many bodies will be brought over in the same ship, a soldier of Jewish faith be included in every detachment which accompanies a shipment of bodies or at least whenever it is known that bodies of Jewish personnel are included.

The CANRA also request that a Jewish chaplain be assigned to the Quartermaster's department who should be available for consultation and inspection of the entire work involved.

*- The family should observe aveluth after the reburial until the evening of that day. (Moses Sofer, Yore Deah 353 and Greenwald Ach L'tsarah p. 234.)

MAY A BODY BEING REMOVED FROM A TEMPORARY TO A PERMANENT COFFIN BE THEN DRAPED WITH A TALLITH?

We received the following information from the War Department: "Some time after hostilities are over, the bodies will be disinterred, the temporary coffins will be opened, the bodies will be re-examined and checked for identification and finally will be placed in a metal casket which will be sealed. During this operation it will be possible to drape a tallith over the remains of those who were buried without one. I want you to clearly understand that no additional step in the handling of the deceased will be involved in the placing of the tallith in the casket. The operational procedure is standard and is followed to insure proper identification, proper sanitation and proper handling of the deceased so as to minimize the agony of the nearest of kin."

Answer: The suggestion to place a tallith on the body when it is removed from the first casket to the second has no specific parallel in Jewish law, but there is sufficient material closely related to it to give us the basis for coming to a conclusion. The Talmud in b. Baba Bathra 154 a and b discusses whether it is permitted to open a coffin to examine the body, and the conclusion is that it is forbidden "lenavvelo", to treat it disrespectfully by handling.

A question closer to our discussion is the following: is it permitted to disinter a body in order to clothe it in the manner required by Jewish law and custom. i.e., shrouds, tallith, etc.? The question is discussed by many of the rabbis.

Answer:
(Cont'd)

The first to discuss it seems to be Gershon Ashkenazi of Metz (17th century), author of Avodath Hagershuni. He discusses specifically the following question: two bodies, one of a man under twenty and one of a man older than twenty, were buried, but those in charge of the funeral neglected, in the case of both bodies, to put on one of the garments of the tachrichim. May the bodies be disinterred in order to put on the missing garment? Gershon Ashkenazi decides that the body of the man above twenty may not be disinterred for this purpose (mippene cherdath hadin) whereas the body of the man under twenty (who is considered not subject to punishment) may be disinterred. This opinion is quoted by David Oppenheim of Prague in his long responsum on disinterment quoted at the end of "Chavath Yair" (Yair Chaim Bachrach), page 136b of the Lemberg 1894 edition. David Oppenheim, referring back to the Talmud in Baba Bathra which declares that bodies cannot be disinterred for examination mippene nivvul hameth, would forbid the disinterment of either body. The same opinion is expressed by Ezekiel Landau in "Noda Bi'-Yehuda" II #164. The subject is likewise discussed by Chacham Zvi #47 and Keneseth Ezekiel #144.

In modern times the subject was taken up by Rabbi Joseph Elijah Fried in "Ohel Yosef" #18. He was asked whether a man who was buried in his street clothes may be disinterred so as to be buried in the traditional burial clothes. He quotes most of the above authorities and therefore decides in the negative. (See also Ach

Answer:
(Cont'd)

L'tzarah, page 179 #14.)

The situation as described by the War Department is not quite the same as the various situations which came up in the responsa literature, where the question is asked whether we should disinter in order to put on the proper burial clothes, and the answer is almost unanimously in the negative. Here, however, the bodies of the soldiers will be disinterred anyhow and will be removed from one coffin to another, and we are told that it will not require much extra handling of the body to put on the tallith.

It would seem, therefore, natural to decide that the tallith might as well be put upon the body.

However, the Committee hesitates to make a decision which is contrary to the almost unanimous decision of past authorities even though the cases with which they dealt were not identical with our present case. Even though we are told that the putting on of the tallith will not involve any extra handling of the body, there will manifestly be some extra handling for that purpose and this certainly is against the spirit of all who have dealt with the analogous questions. Therefore, the Committee certainly cannot inform the War Department that Jewish law requires the tallith in these circumstances.

Besides, the CANRA has decided that soldiers should be buried as they would have been buried if they had died as civilians. Some of Reform Jewish families who would be buried in civilian

Answer:
(Cont'd)

clothes are to be buried with their military clothes without change. As for Orthodox boys, or boys from homes of strict observance who would be buried in a tallith, the Orthodox practice should be followed.

According to the method described in the War Department proposal no distinction should be made since the original chaplains, who know the boys, would certainly not be present. Besides it is open to question whether it is permissible to clothe a man in a tallith who never used a tallith in his lifetime (cf. Ach L'tsarah page 179 #18).

Rabbi Fried (Ohel Yosef #18) makes a suggestion which might be of help to us, in the case quoted above in which the man was buried in street clothes. He suggests, in the case which we discuss, that the earth be removed and the tallith placed upon the coffin. By analogy, we might suggest that when it comes to the reinterment, those families who desire it may request that the tallith be put directly upon the coffin under the flag.

If the tallith is placed in the coffin when the body is not disturbed unduly by any attempt to clothe it in the tallith, most of the difficulties mentioned above will be overcome. We, therefore, agree that the folded tallith be placed in the coffin.

JEWISH FUNERAL ESCORTS

Question: *The Director of CANRA has asked the following question of the Responsa Committee:*

A memorandum from the quartermaster general's office (Memorial Division) describes the procedure which will be followed in bringing bodies from overseas to the next of kin. After the bodies will be brought to the various distribution centers in this country they will be sent to the nearest of kin in accordance with directions given by the nearest of kin. It is further planned to furnish an individual escort for the body when sending it from the distribution center to the nearest of kin. This individual escort will be a member of the same arm of service as the deceased; thus an Army Air Force man for air forces, a Marine or Marines, etc. Owing to the multiplicity of sects in our country and the difficulty of obtaining appropriately trained escorts for all denominations from the limited resources of a peacetime Army and Navy, it has been decided not to regard the religion of the deceased in providing the escort.

In reference to this memorandum the Director asks: asks: "Should we insist with the War Department that a Jew must accompany the body of a Jewish soldier from the distribution center to the nearest of kin?"

Answer: Before going into the question of the attitude of Jewish law, it is of interest to know what the desires of other denominations are likely to be in this matter. Upon inquiry from a high Catholic source the chairman ascertained that Catholics will almost certainly not ask that Catholic per-

Answer:
(Cont'd)

sonnel be detailed to escort the bodies of Catholic soldiers. We may well assume that Protestants also will refrain from making such a request. If, then, we made the request, we would be the only major denomination declaring that members of other religious groups are inacceptable to us as escorts. In that case the general principle of Mippene Darchei Shalom should be considered before we decide to insist.

If there is a clear requirement in Jewish law that only Jews accompany the body of a Jew, then of course, we must override the principle of Darchei Shalom in behalf of the requirement of religious conscience. Is there such a requirement in Jewish law?

Whenever the escorting of bodies is mentioned in Talmudic literature, the reference is generally to a son escorting the bones of his father (m. Moed Katan I,5 and Talmud ad loc.; Semachoth Chapter XIV). It is, of course, the natural situation that it should be the son who is engaged in this task, and no general conclusion can be drawn from that as to the participation of non-relatives or even non-Jews. As for the relationship of non-Jews to the burial of a Jew, the law is clear, that just as a Jew may actively participate in the burying of a non-Jew, so may a non-Jew participate in the burying of a Jew. Thus: "It is permitted to sustain their poor, to visit their sick, to bury their dead and to pronounce eulogies and console them M'shum Darchei Shalom". (Shulchan Aruch Yore Deah 151 #12; 367, #1; based upon the Talmud b. Gittin 61a.)

Answer:
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Also under special circumstances Christians may participate in the burial of a Jew. If a Jew dies on the first day of a festival, Jews are not permitted to attend the burial. Since the burial may not be delayed the physical work of the burial must be done by non-Jews. It is forbidden to keep the body over to the second day so that Jews alone shall do the work of the burial (Shulchan Aruch Orach Chayyim 536 #1 and #2). This law in the Codes (it is also in the Tur) is based upon the Talmud (b. Betsa 7a). As to the specific tasks to be done by the Gentiles see the Talmud ad. loc., and Kitsur Shulchan Aruch 200 #1.

This is, of course, a special circumstance, but it indicates that it is not contrary to Jewish law that a Gentile participate in the work of burying a Jew. Since the law permits actual participation in the burying, then surely the mere escorting of the dead is permitted, especially since the Army authorities inform us that it is impossible to assure escorts of the religion of each deceased soldier.

Although Jewish law does not require us to insist upon a Jewish escort in the circumstances, the CANRA may, nevertheless, decide that a Jewish escort is desirable. In that case we must base our request upon another ground than a requirement of Jewish law. We may state that the participation in the burial of the dead is for Jews a sacred privilege. Organizations which devote themselves to this task are called "Holy Societies". We, therefore, ask the privilege of adding a Jewish veteran to the official escort pro-

Answer:
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vided by the Army. Such a request if granted would involve a great deal of planning and considerable expense, and the CANRA will have to decide whether in the light of all the above mentioned considerations it will undertake the task.

CREMATION OF AMPUTATED PORTIONS OF THE BODY

Question: *The following question has been asked by a chaplain:*

"Under the present law, when a veteran in a Veterans' Administration Hospital is operated on, the part of the body that is removed has to be cremated. The question is whether or not historic Jewish tradition calls for burial in a Jewish cemetery of the parts which are removed through surgical operation."

Answer: It is the well established procedure from ancient times that parts removed from a body of a living person should be buried. In the Babylonian Talmud (b. Kethuvoth 20b) in speaking of a cemetery, Rabbi Hanina says: "There the diseased limbs (which *have* been cut off) are buried". In other words, even in Talmudic times it was taken as an established procedure. The reason for the burial of limbs taken from a living person is not identical with the reason for the burial of the body of the dead. The body of the dead must be buried either out of respect for the dead (mishum bizayon) or because burial in the ground is considered atonement (kapparah). Neither of these two motivations is the reason for the universal custom of the burial of limbs from the living. The reason in this regard is the ritual uncleanness which is brought about by contact with a dead body. The law is clear that contact with a limb from a living person is a source of ritual uncleanness just as much as a dead body would be. This law goes back to the Mishnah (Eduyoth VI No. 3) and is clearly stated by Maimonides ("Yad"

Answer:
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Hilchoth Tumath Ha-Meth II No. 3): "The limb cut from a living man is as unclean as a whole corpse."

It should be stated that these laws of uncleanness apply nowadays only to the contact of priests with dead bodies or parts of dead bodies. They do not apply to contact of non-priests with dead bodies, inasmuch as all the laws of uncleancontact apply only to the Temple in Jerusalem (See Maimonides, Yad, Hilchoth Tumath Ochlin XVI, 8.) and are still kept applicable to priests.

While there has been the custom to bury amputated limbs, there is no law that the specific mode of disposal be burial and not (for example) burning. With regard to the body of the dead the law requires burial as a specific mode of disposal, since the earth provides atonement (or as an alternate explanation, it is a disgrace to the dead to remain unburied). But as to amputated limbs of the living, neither "atonement" nor "disgrace" apply. See Jacob Reischer (Shevuth Yakov II, 10.) who specifically makes this point, and also Ezekiel Landau (in Noda Bi'Yehuda II Y.D..#209). Jacob Reischer therefore concludes that since burial as such is not mandatory, one may simply put the limb away in a room where priests are not likely to come into contact with it.

Jewish law therefore does not specifically require burial of amputated limbs. If, of course, the patient or his family prefer to have the limb

Answer:
(Cont'd)

buried, the law has no objection to it, and indeed this has been the custom. But the law requires merely disposal of it so that no priest be defiled by contact with it. If it is the procedure of the hospital to burn the limbs, Jewish law has no objection to the procedure.

AUTOPSY

Question: *Should parents or other close relatives of soldiers or ex-soldiers who have died in a veterans' hospital consent to the request of the hospital authorities to permit autopsy?*

Answer: There are certain principles in the Talmud which are used by Rabbinic authorities in discussing the question of autopsy. First of all, it is prohibited unnecessarily to delay the burial of the dead; and also, it is forbidden to deface or to shame the dead ("nivvul" or "bizayon"). On the other hand, there is the general principle that saving a life voids all the prohibitons in the law except those of idolatry, adultery or murder. There is one specific case in the Talmud in b. Chullin IIb in which there is discussion of whether a body should be cut up for the benefit of the living, as in a case where a man is accused of murder and it is a question whether the victim was not dying anyhow. The Talmud takes for granted that to save the life of the accused it would be permitted to cut the body and investigate.

However, the Talmud does not specifically deal with the question of autopsy for the benefit of medical science which may save the lives of others, and the Shulchan Aruch does not mention at all any prohibition of autopsy.

Later authorities, beginning with Ezekiel Landau (1713-1793), deal with this question to a considerable extent. There is no doubt that the overwhelming body of rabbinical opinion would prohibit the turning over of Jewish bodies to

Answer:
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medical schools, for there the body would be cut up completely for the sake of teaching anatomy and would never come to burial. But as for an autopsy by physicians in a hospital for the sake of discovering the cause of death in order to help other patients there is some variety of opinion. The strictest of all in this matter is Jacob Ettlinger of Altona (1798-1871) who would prohibit it entirely unless a man, before his death, agreed to turn over his body for autopsy. (Binyan Zion #170-171.) But the two classic authorities, Ezekiel Landau (in "Noda bi'Yehuda", II, Yore Deah #210) and Moses Sofer (in "Chatham Sofer", Yore Deah #336) both agree that while autopsy would not be permitted for the general advancement of medical science, merely upon the general expectation that something might be learned from the autopsy, nevertheless if there were an invalid present with that same disease who therefore might be benefited by the autopsy, then it would be permitted, for then the principle that the saving of a life voids the other commandments would definitely and specifically apply.

The Committee of the CANRA makes no general decision on this question to be applicable to civilian life, but the military situation in veterans' hospitals is somewhat different from civil life. First of all, military hospitals are very large and a vast number of patients are present in the building. Secondly, many of these patients suffer from diseases and wounds caused by the war, and, therefore, there is a great similarity in the sicknesses encountered. Hence the proba-

Answer:
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bilities are very great in a veterans' hospital that there is actually present more than one patient with the same sickness as that of which this patient has died. On that basis it would seem that the conditions set by Ezekiel Landau and Moses Sofer would apply affirmatively to the veterans' hospitals. It is, of course, to be understood that the body should not be defaced more than absolutely essential and that the burial be not unduly delayed.

Inasmuch as there are grounds for religious scruples in this matter, the request coming from the hospital authorities should make it clear that they are asking for an autopsy, and instead of merely saying "scientific examination of the body is requested" they should say "scientific examination (autopsy) of the body is requested."

We are informed that the Chief Rabbinate of Palestine has entered into an agreement with the Rothschild University Hospital of the Hadassah permitting autopsy upon a number of grounds, some of which go beyond those mentioned above. It permits autopsy as does the above responsum for the purpose of saving the life of a patient, need not be within the hospital but may be outside of the hospital. Other grounds for autopsy in accordance with this agreement are when the physicians are unable to state the cause of death without an autopsy, or in the case of hereditary diseases where it is necessary to guide the families as to methods of protective caution.

Answer:
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The Chief Rabbinate requires a certificate from the physicians as to the reasons for the autopsy and also consultation with the rabbinate in cases of hereditary disease.

The ground for autopsy given in our responsum is that in the large veterans' hospitals where most of the sicknesses are war-caused sicknesses there is strong likelihood of a patient being present with the same disease as the deceased. This reasoning is strengthened by the broader opinion given by the Chief Rabbinate of Palestine.

BURIAL OF ASHES OF CREMATED SOLDIERS

Question: *A veteran died in the Japanese Prisoner of War Camp at Osaka, October 19, 1945, and the U.S. Army asked of our committee the following questions:*

a. Does Jewish law permit cremation?
b. Does Jewish law permit burial of cremated bodies in a Jewish cemetery?
c. Is there any requirement of a special place in this cemetery where the urn is to be buried?
d. Can the urn be buried separately, or must it be buried in a casket?
e. Do you have a regulation size grave or a smaller grave?
f. Do you have a similar service as in all other services for repatriated bodies?

Answer: The general question of cremation and the Jewish law does not need to be restudied. The overwhelming opinion is that cremation is forbidden, although it should be noted that Michael Higger in the last essay of his book, "Halachos Va'aggados," re-examines the entire relevant Talmudic and post-Talmudic material in order to prove that cremation is permitted. However, almost all other opinions declared it prohibited.

As to the burial in a Jewish cemetery of the ashes of one who has been cremated, there is less unanimity of opinion. Most of the opinions prohibiting such burial were collected by Meir Lerner of Altona, Germany, in his book, "Chaye Olam". However, the opposite side of this question was taken by his contemporary, Simon Deutsch of Fuerth, in the book "Or Ho-emeth".

Answer:
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Furthermore, an absolute permission for the burial of the ashes of the cremated is given in the booklet on the subject, "Ya'aney Boesh", by the great Italian rabbi, Elijah ben Amozegh. In this booklet, the bulk of which is devoted to proving that cremation is forbidden by Jewish law, he ends by saying, however, that not only is it permitted to bury the ashes, but that it is even a mitzvah to rescue for burial as much of the body as possible, in this case, the ashes.

It is not necessary for us to decide the moot question as to whether burial of cremated ashes is *in general* permitted since the burial of the ashes of this soldier forms a special case and there will be other special cases like it. This soldier was not cremated by the United States Army, which does not practice cremation, but by the Japanese in the prison camp where he died. In this case the situation of the ashes is exactly the same as the situation of the ashes of those who were murdered by the Nazis and whose ashes were sent to the nearest of kin by them. They belong to the category described by Maimonides in "Hilchos Ovel," I:9, namely those who are killed by heathen governments (Malchuth Akum) and are not to be deprived of any of the rituals involved in mourning or burial. (Ain monin mehem kol dovor.) These soldiers, victims of enemy cruelty, whose bodies were cremated without their prior consent or the consent of their relatives, must not be deprived of any of the traditional Jewish rites.

Answer:
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Moreover, in order not to give the impression that the burial of the ashes of the cremated is to be permitted in general, we advise that the urn be placed in a regular sized coffin and buried in a regular size grave. Besides, for the sake of diminishing the grief (agmath nefesh) of the relatives, it is better if a regular coffin is used and no difference be made from other funerals of the repatriated dead.

We have been informed that in the case of the ashes of the soldier mentioned above, the military authorities had agreed to put the ashes in a container and the container into a regular coffin. There is certainly no reason why the container should be removed from the coffin. The coffin, as it is delivered, should be buried with the regular ritual used for all repatriated dead.

WASHING OF BODIES AND BRONZE CASKETS

Question: *We have been asked two questions with regard to the procedure which should be followed when the bodies of soldiers who died overseas are brought back to the United States:*

(a) Should the bodies be taken out of the caskets and washed, inasmuch as the ritual washing, tahara, was very likely not performed overseas?

(b) Since the bodies will be brought in closed bronze caskets, should the bodies be transferred to the open wooden caskets before re-burial in a Jewish cemetery?

The CANRA is no longer directly concerned with these questions. When the bodies are turned over to the families, those families can ask their own rabbi for a decision. This matter has become a civil matter.

However, many are asking us for our recommendation. We, therefore, offer the following opinion.

Answer: (a) As to tahara: The general attitude of the Jewish law is against unnecessary disturbing of the body, chiefly for the reason of nivvul hameth. Even for the purpose of putting on shrouds it is forbidden to remove the body from the coffin. (See our earlier responsum on this matter, and also Dudaey Hasodeh #26.) Also, when a body was given incomplete tahara (i.e.

Answer:
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less than nine kabs of water were used) the question is discussed in various responsa whether the body should be disinterred for the purpose of giving it a complete tahara. And the answer given is that the body should not be dusturbed (see authorities cited in "Ach L'Tsarah," page 60, note 2). Certainly in the case of the bodies brought from overseas, in which the process of decay is well advanced, nivvul hameth applies more completely than in bodies just recently buried. Moreover, many bodies were buried on the battlefield in a condition in which tahara was not permissible (i.e. with the blood of wounds). Besides, tahara of the soldiers' remains, except in rare cases of embalming, is practically impossible. Therefore, no attempt should be made to take out the remains for the purpose of attempting tahara.

(b) There are many practical reasons why the casket in which the body is brought from overseas should not be opened. It is impossible to know what the condition of the body was when it was placed in the casket originally, or to estimate the state of decomposition after all this time has passed since the original burial.

However, although the practical necessities would require burying the body in the receptacle in which it is delivered by the government to the family, the question is whether this is at all permissible according to Jewish law. There is, of course, the general legal objection to

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disturbing the remains unduly. On the other hand, there is some objection to a metal casket. The fact of the matter is that even a complete wooden casked has no firm legal basis, the law requiring that the body should be actually buried in the earth. See Nachmanides quoted by Karo to Tur Yore Deah 363, who says that the use of the coffin in Talmudic times was only for the bones *after* the flesh decayed. The only Scriptural warrant for a wooden casket seems to be the midrash in Genesis Rabba Chapter 19, Section 8, based upon the phrase in Genesis 3:8; "And Adam hid himself from before the Lord among the trees (etz) of the garden. — To this the Midrash comments: This is the hint that his descendants will be buried in coffins of wood. The law, Tur Yore Deah 363 and Shulchan Aruch, prefers burial directly in the earth. It seems to concede burial in a coffin provided that the coffin is open to the earth at the bottom. Then a concession is made to the completely closed coffin provided holes are bored in it to permit contact with the earth. However, Karo, Yore Deah 363 #5, speaks of stone caskets; and the Talmud (b. Sota 13a) says that Joseph's coffin was made of metal.

While the custom of using metal coffins never did become general (as did the use of wooden coffins), perhaps in the present special circumstances it may be sufficient to bore holes in the metal casket for contact with the earth. However, even piercing the casket is not entirely necessary. Eliezer Deutsch (in Dudaey Hasodeh #26) discusses an analogous question. A righteous man was buried in a double coffin which, at the doctor's orders,

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was not pierced for direct contact with the earth. The question was asked of Eliezer Deutsch whether or not the grave should be opened in order to bore holes in the coffin. He said that it should not be done, because a righteous man does not need the atonement (kapparah) of direct contact with the earth; and that when Judah Hannasi asked that his coffin be pierced (j, Kilaim 32b) he asked it out of modesty, in order to indicate that he did not claim to possess special righteousness. Besides, to hammer at the coffin with tools and to run the risk of piercing the body is certainly an insult (bizoyon to the dead).

May we not say, therefore, that while indeed it is not the custom to use a metal casket, yet these soldiers who gave up their life for a righteous cause be deemed righteous and therefore do not necessarily need direct contact with the earth; that therefore the casked be not disturbed or pierced but they be buried in the earth as received. Moreover, all these bodies had previously been buried overseas in wooden coffins and indeed some without coffins. Thus, the purpose of burial in contact with earth (namely, atonement, Deuteronomy 32:43) has been amply fulfilled.

As for the permissibility of burial in a metal casket, the proof that it is permissible is given in "Ben Zekunim" by Rabbi Jacob Bruell (published in Drohobicz in 1889 - p. 29ff) and developed fully by Rabbi Jacob Levinson in his

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"Hatorah V'hamada" (New York, 1932 - p. 66ff),

If certain cemetery authorities nevertheless insist that the metal government casket cannot be used and that a wooden casket be used, what shall be done with the metal casket? The law is generally that a casket made for one body may not be used for any other body and is Assur b'Hanaah. In that case it could not be sold to a Gentile undertaker or for metal. But it may be argued that since the bronze casket is not considered by Jewish custom to be a proper coffin at all, it may be used for any purpose (cf. Ach L'tzarah, page 63). But the Shulchan Aruch Yore Deah 363 #5 (based upon Semachot XIII) says specifically that a coffin from which a body has been removed be destroyed, and that it it is a stone coffin it should be broken up, and if it is a wooden coffin it should be burned.

BURIAL IN NATIONAL CEMETERIES

Question: *The government is establishing a number of national cemeteries (in addition to the cemetery at Arlington). We have been asked whether Jewish law permits the burial of the body of Jews in such a cemetery and whether a rabbi may officiate at such a burial.*

Answer: The soldiers and sailors whose bodies are now being brought back from overseas were buried where they fell. The graves of Christians and Jews were side by side. Crosses and Stars of David were near each other, an evidence of comradeship in duty and fellowship in death. If in these now permanent national cemeteries there would be no Stars of David at all, it might lead some to unjust conclusions. It is a question whether the principle of Mipne Darche Sholom is not to some extent involved.

However, such a general principle cannot be decisively invoked if Jewish law would clearly prohibit such burial.

But is it clearly prohibited? While universal and longstanding custom requires burial of a Jew in a Jewish cemetery (Kever Yisrael) there is no definite law in the Talmud or the great codes either requiring a community to establish a Jewish cemetery or requiring that a Jew be buried only in such a cemetery.

The only requirements in the law as to place of burial are that a man be buried in his own property (B'toch Shelo) (b. Baba Bathra 112a), and that we may not bury a wicked man next to a righteous man (b. Sanhedrin 47a).

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One rabbi about a century ago made an attempt on the basis of these two laws to establish a legal foundation for the requirement to have Jewish cemeteries (Eleazar Spiro of Muncacz in Minhath Eleazar II, 41) (also Dudaey Hasodeh #33, #66, #89).

Therefore, it can at most be said only that it is against general custom (minhag) for a Jew to be buried elsewhere than in a Jewish cemetery but it cannot be said that such burial is forbidden. Therefore, it is suggested that each family ask its own rabbi for his decision. The rabbi will then decide also whether he will officiate.

RITUAL OF MOURNING FOR REINTERMENT

Question: *The question has been asked as to what mourning ritual should be followed when the body of a repatriated soldier is returned for burial.*

Answer: The laws dealing with the ritual in disinterment and reinterment are all based upon the Palestinian Talmud, Moed Katan, I, 5, where it is clear that all the ritual mentioned concerns only the *disinterring* of the bones and that there is no ritual of mourning for their *reinterment*.

If the mourners know the exact hour of the disinterment, they should observe the rites of mourning up to the end of that day (i.e. the day of the disinterment). Also at this time the relatives should perform K'riah. However, it is noteworthy that even these observances are not encouraged.

Moses Sofer in his famous responsum on the subject ("Chatham Sofer" Yore Deah #353) says that when there is considerable disinterment, as when many bodies have to be removed, the rabbi and the rabbinical court should issue a decree forbidding anybody to tell the family so that they should not need to mourn and perform K'riah.

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There is a distinct possibility that even these observances which Moses Sofer discourages are not applicable at all inasmuch as the bones are removed in a closed coffin. There is considerable discussion in the Palestinian Talmud to the effect that the laws of mourning apply at the disinterment only when the bones are carried loosely in a garment, but not if carried in a coffin as they are here.

Similarly the Shulchan Aruch, Yore Deah #403 and the Aruch Ha Shulchan likewise speak only of K'riah and mourning at the time of the *disinterment*.

As for observances in this country when the bodies are *reinterred*, there should be no K'riah, but Moses Sofer in the responsum quoted says that after the burial there should be mourning ritual (i.e. sitting on the ground, etc.) until the evening of that day.