

Burial of a Non Jewish Spouse and Children
Rabbi Kassel Abelson
Rabbi Loel M. Weiss

This paper was approved on February 2, 2010, by a vote of ten in favor (10-1-3). Voting in favor: Rabbis Kassel Abelson, Elliot Dorff, Robert Fine, Susan Grossman, Aaron Mackler, Daniel Nevins, Paul Plotkin Avram Reisner, Loel Weiss, and Steven Wernick. ***Voting against:*** Rabbi Miriam Berkowitz. ***Abstaining:*** Josh Heller, Rabbis Jay Stein, and David Wise.

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

“We bury non-Jewish dead and comfort their mourners so that we follow the ways of peace”

YD 367.1.2010.

שאלה:

May a non-Jewish spouse or children of an interfaith marriage be buried in a separate section of a Jewish Cemetery?

If so, what kind of ceremony should it be, and who should officiate at the ceremony?

תשובה:

These questions are being asked more and more frequently by our colleagues. The growing concern about these questions reflects the growing number of interfaith marriages in our Conservative communities.

The Jewish Cemetery in Antiquity

In Biblical times burials took place in a burial place owned by the deceased and reserved for members of the family. Abraham bought the cave of *Machpelah* so that he could bury his wife Sarah in a family burial plot.¹ Jacob made his son Joseph swear to bring his body to the land of Canaan so that Jacob could be buried with his fathers.² Joseph also made his brothers swear that they would take his bones with them when the Hebrews would leave Egypt to go up to the Promised Land.³ Though family burial places were the rule in Biblical times there is reference to "the graves of the common people" at the Brook of Kidron in Jerusalem.⁴

After this period, the history of the development of Jewish communal cemeteries is obscure.⁵ In the Talmud, the only requirement is that a person owns the property where the burial takes place.⁶ Jewish communal cemeteries, however, did develop at some point from private family

¹ Genesis 23

² Genesis 47:28-31

³ Genesis 50:24-25

⁴ II Kings 23:6

⁵ Encyclopedia Judaica, vol. 5, Cemetery, page 275

⁶ TB Baba Batra 112a

cemeteries. Communal cemeteries may have started in the Babylonian exile, because the landscape was essentially flat, and there were few caves available for families to purchase and use for the private burial of family members. Through the Middle Ages and into the modern era Jews developed cemeteries in most communities where they settled.⁷

חוב קדוש הטילו רבותינו על בני ישראל, להיות להם בית קברות מיוחד להם,
ושיהיה הקרקע שלהם, ואפילו קהילות קטנות ישגחו על זה, שלא לשלח
מתיהן לעיר אחרת [עין יצחק יור"ד ל"ד]

“Our Rabbis put a holy obligation on the children of Israel, to have special graveyards for themselves, that they should own the ground, and even small communities should be strict about this, so that they do not have to send their dead to another city.”

Jewish communal cemeteries were generally reserved for the burial of Jews. It was not until around the nineteenth century that Jewish cemeteries became part of larger community cemeteries and standards distinguishing Jewish burial grounds from general burial grounds were fixed.⁸ With these facts in mind we turn to the texts that shed light on the question of whether non-Jewish spouses may be buried in Jewish communal cemeteries.

The Basic Source

In the Talmud, the reference to Jewish and non Jewish burial is:⁹

ת"ר: מפרנסים עניי נכרים עם עניי ישראל, ומבקרין חולי נכרים
עם חולי ישראל, וקוברין מתי נכרים עם מתי ישראל,
מפני דרכי שלום.

“We support the indigent of the non-Jews with the indigent of the Jews and we visit the sick of the non-Jews with the sick of the Jews and we bury the dead of the non-Jews with the dead of the Jews because of the ways of peace.”

Rashi's¹⁰ Interpretation

עם מתי ישראל- לא בקברי ישראל אלא מתעסקין בהם אם מצאום
הרוגים עם ישראל.

“Not in Jewish graves. Rather we can involve ourselves in their burial when they are found killed with Israel.”

⁷ Ain Yitzchak YD 34, Kol Bo Al Availut Chapter III, Siman Aleph. Use of this text was suggested by Rabbi Avram Reisner.

⁸ Encyclopedia Judaica, vol 5, Cemetery, page 275. “During the last century many cities in Europe established communal cemeteries in which separate sections were provided for different faiths. Leading rabbinical authorities held that if the Jewish section is given to the Jewish community as a permanent possession, this section may be used as a Jewish burial ground but must be fenced-off with a space of four cubits between the Jewish and the general section. (M. Deutsch, Duda'ei ha-Sade [I no. 66])”

⁹ TB Gittin 61a

¹⁰ Rabbi Shlomo ben Yitzchak, (1040-1105), France, commentary to TB Gittin 61a.

Rashi makes it clear that non-Jews are not to be buried in Jewish graves and we only involve ourselves in the burial of non-Jews when they are found side by side with Jewish dead.

The Beit Yosef¹¹ suggests that Rashi is basing his interpretation on the text from Sanhedrin 47a, לפי שאין קוברין רשע אצל צדיק "that we don't bury the wicked 'next to' the righteous. And if we don't bury wicked Jews next to the righteous, then we certainly wouldn't consider burying non-Jews next to Jews."¹²

The Tosefta¹³ says.

עיר שיש בה ישראל ועובדי כוכבים הפרנסין גובין מישראל ומעובדי כוכבים מפני דרכי שלום ומפרנסין עניי עובדי כוכבים [ועניי] ישראל מפני דרכי שלום [מספידין] וקוברין מתי עובדי כוכבים מפני דרכי שלום [מנחמין] אבילי עובדי כוכבים מפני דרכי שלום:

“In a city where there are both Jews and Idol worshippers, the Charity Collectors collect from both Jews and Idol worshippers for the sake of peace and we provide sustenance for the poor of the Idol worshippers and the (poor) of the Jews for the sake of peace and we (eulogize) and bury the dead of the Idol Worshippers for the sake of peace and we (comfort) the mourners of Idol Worshippers for the sake of peace.”

The Tosefta leaves out the words, “with the dead of the Jews”.

Interpreting Rashi

A number of commentators (for example the Kesef Mishnah¹⁴ on Hilchot Melachim,¹⁵ the Beit Yosef¹⁶ and the Bach¹⁷) add that the Ran¹⁸ disagrees with Rashi. Perhaps basing his reasoning

¹¹ Rabbi Yosef Caro, (1488-1575) Safed, commentary to Shulkhan Aruch, YD 367.

¹² Rabbi Ben Zion Bergman wrote, “The Conservative Movement has categorically rejected the idea that non-Jews are by definition ‘evil’. “Whatever may have been the justification for such a presumption in times past, I find such a presumption today ethically offensive. This is particularly so, since the statement in its original context (Sanhedrin 47a) is used to explain why *Harugai Bet Din* (those executed by the court) were buried separately. In other words, in the original context the *Rasha* is an executed criminal.” Furthermore, Jewish tradition also teaches us;

חסידי אומות העולם יש להם חלק לעולם הבא

“The righteous of the nations of the world have a share in the world to come”, that not all non-Jews are *r'sha-im* (wicked). Certainly a non-Jewish spouse, who may have contributed services to the synagogue, provided the children with a Jewish education and is not being buried with Christian burial rites or sacraments should not be presumptively characterized as a *rasha* (wicked person).” See Bergman, Ben Zion, A Matter of Grave Concern, in Responsa, The Committee on Jewish Law and Standards of the Conservative Movement, 1991-2000. Ed. Kassel

Abelson and David J. Fine, The Rabbinical Assembly, 2002, pp. 418-425.

Orthodox Poskim as well, reject this view. (See Greenwald, Yekutieli, Kol Bo Al Avelut, vol. 1, p.194 and Feinstein, Moshe, Iggerot Moshe, YD. vol. 1, #60). Eliezer Hausdoff, Responsum in Regard to the Burial of a Non-Jew in a Jewish Cemetery, Leipzig, 1888, writes: “...he has a right to say that he does not care who is buried by his side; and on his own property, he may bury whom he wishes. There is no actual legal prohibition involved.”

¹³ Gittin 3:18

¹⁴ Op. cit., Footnote #11.

on the Tosefta, he says that we can bury the dead of the non-Jew and eulogize the non-Jew and comfort the mourners of the non-Jew, even if he is not found together with Jewish dead.¹⁹

Rambam²⁰ also leaves out the words *עם מתי ישראל*, yet in Hilchot Melachim²¹ (10.12), he includes these words going so far as to say;

אפילו העכו"ם צוו חכמים לבקר חוליהם' ולקבור מתיהם עם מתי ישראל

“And even with the Idol Worshipper, our sages command us to visit their sick and bury their dead with the dead of Israel.”

The Tur²² adds the following:

קוברים מתי נכרים עם מתי ישראל ומנחמין אבליהם מפני דרכי שלום ופירש"י לא שיקברום בקבר ישראל אלא משתדלים בקבורתם כמו שמשתדלים בקבורת ישראל

“We bury the non-Jewish dead with the dead of Israel and we comfort their mourners for the ways of peace. According to Rashi, ‘we do not bury them in Jewish cemeteries, but we involved ourselves in their burial just like we involve ourselves in the burial of Israel.’”

The Shukhan Aruch²³ leaves out the words from the Gemara, *עם מתי ישראל*.

The Tur²⁴ and the Shulkhan Aruch²⁵ say;

מותר לפרנס ענייהם ולבקר חוליהם ולקבור מתיהם ולהספידן ולנחם אבלים משום דרכי שלום:

“It is permitted to support their poor, visit their sick, bury their dead, eulogize and comfort mourners for the sake of peace.”

The Bach on the Tur²⁶, is the one classical commentator who seems to permit the burial of Jews and non-Jews together.

¹⁵ Mishnah Torah, Hilchot Melachim 10.12.

¹⁶ Tur YD 367.

¹⁷ Rabbi Yoel Sirkes, (1561-1640), Poland. Commentary to Shulkhan Aruch YD 151.

¹⁸ Rabbi Nissim ben Yakov, 14th century, Spain. Rabbi Nissim's view is what has informed the decision of the Jewish Welfare Board to permit the burial of fallen Jewish servicemen in battle together with their non-Jewish comrades in National Cemeteries. “Responsa in War Time, National Jewish Welfare Board, 1947. p.83.

¹⁹ We thank Rabbi Avram Reisner for suggesting this interpretation.

²⁰ Moshe ben Maimon (Maimonides), (1135-1204), Spain, Egypt, Mishnah Torah, Hilchot Evel, 14.12.

²¹ Mishnah Torah, Hilchot Melachim 10.12.

²² Yakov ben Asher, (1270-1340), Spain. YD. 367.

²³ YD 367.1.

²⁴ YD 151.

²⁵ YD 151.12.

²⁶ YD 151.

He quotes Rashi who only permits burial of non-Jews when they are found on the battlefield together with Jews, and he says (following the Ran), “Not necessarily, for it is the law that whenever we find non-Jewish dead we involve ourselves in (their burial) for the sake of peace.” He then asks why Maimonides in Hilchot Melachim, leaves out the words *עם מתי ישראל* while in Hilchot Avel he adds them.

“It is to teach that just as we support the non-Jewish poor by themselves even when there are no Jewish poor, we can bury the non-Jewish dead by themselves wherever they are found even when there are no Jewish dead. And just as we support the non-Jewish poor together with the Jewish poor, we can bury the non-Jewish dead together with the Jewish dead.”

But the Bach goes even further saying:

דאס מצאום הרוגים עם ישראל יכול לקבור מתייהם בקברי ישראל
ואע"ג דאין ספק שאין קוברים נכרי אצל ישראל דאפילו ישראל רשע אין
קוברים אצל צדיק כ"ש נכרי אצל ישראל וכדכתב הר"ן מ"מ יכול הוא לקבור
מתי נכרי עם מתי ישראל בחצר אחד מפני דרכי שלום.

“And if we find their dead killed with Israel, we can bury their dead in the graves (cemetery) of Israel even though the Ran says it’s clear that we don’t bury non-Jew next to a Jew for we don’t bury a wicked Jew next to a righteous one even more so we don’t bury a non-Jew next to a Jew. However, (the Bach continues) we can bury the non-Jewish dead with the Jewish dead in the same courtyard for the sake of peace.”

The Bach, following the Ran, permits Jews to be involved in the burial of non-Jews EVEN when there are no Jewish dead. And he permits the burial of non-Jews together with Jews, in the same courtyard (cemetery). There are differing opinions as to whether the Bach would permit the burial of non-Jews together with Jews only if they were killed together or even if they were not killed together.

The Arukh HaShulkhan²⁷ adds that when we see their dead, we stand and we eulogize their dead for the sake of peace.

Even though Rashi limits the applicability of the Gemara to situations where Jewish and non-Jewish dead are found together, as we have shown, a number of the traditional commentators (Tur, Kesef Mishnah, Ran) permit the burial of non-Jews even when there are no Jewish dead. The Bach goes even further and permits the burial of non-Jews in the same courtyard (cemetery) where Jews are buried.

Conservative Teshuvot on Related Issues

²⁷ Rabbi Yechiel Michel Epstein, (1829-1907), Lithuania, YD 367.

In years past the Committee on Jewish Law and Standards (CJLS) dealt with questions closely related to the question. Two Teshuvot point the way to dealing with the question of the burial of non-Jewish spouses in Jewish cemeteries but do not give a definitive answer. Rabbi Ben Zion Bergman wrote a Teshuvah entitled "A Matter of Grave Concern: A Question of Mixed Burial."²⁸ Rabbi Myron Geller wrote "Peaceful Paths: Burial of Non-Jews in a Jewish Cemetery Following a Common Disaster"²⁹

Israel also must grapple with the question of burying non-Jews in a Jewish cemetery. This question was raised concerning the burial of Olim from the FSU in a new cemetery in Beer Sheva. Rabbi David Golinkin, writing for the Va'ad Halakha of the Rabbinical Assembly in Israel wrote a Teshuvah entitled "The Burial of Non-Jews in a Jewish Cemetery."³⁰

Each of the Teshuvot approaches the issue from a different vantage point, and sheds light on the issues with which we must deal.

Concerning Rashi's interpretation of the Talmud cited above, Rabbi Geller expands on this in his Teshuvah:

"... Rashi and others limit its application to a common disaster when non-Jews and Jews are found dead along side each other (B. Gittin 61a). Rashi understands the Baraita to refer to a situation in which the identification of the faith group of each of the cadavers is possible and the Rabbis are concerned about the unseemliness of Jews carrying away their own dead for burial while abandoning the non-Jewish dead. Only in these circumstances and מפני דרכי שלום (so that we follow peaceful paths), does Rashi acknowledge a Jewish obligation to non-Jewish dead. It is restricted to burial alone, but interment in a Jewish cemetery is not permitted. However, if non-Jewish dead are found without Jewish dead nearby, no obligation falls on Jews to undertake their burial. The later authorities accepted Rashi's interpretation that non-Jews were not to be buried together with Jews. This became the accepted practice down to modern times.

Rabbi Geller's Teshuvah, however, deals with a terrorist incident where the body parts and limbs of Jews and gentiles are so mangled they cannot be identified for burial. May these limbs and body parts that could be from both Jews and gentiles be buried together in a mass grave in a Jewish cemetery? Rabbi Geller concludes "The burial of Jews and non-Jews or their body parts or limbs found together following a common disaster is permitted in a Jewish cemetery. Even when remains of an enemy of Israel may be present, such burial is permitted. Ample precedent exists in ancient and modern sources to allow this course of action. Such burial does not desecrate the final resting place of Jews already interred there and does not prohibit future Jewish burials."

Rabbi Bergman, in his Teshuvah, answers the question of whether the burial of non-Jewish spouses in the Reform section of a Jewish communal cemetery in any way detracts from the sanctity of the rest of the Jewish cemetery. He deals with the rationale given for the separation of Jewish and non-Jewish burial grounds in the Talmud. As mentioned above (see footnote #12), Rabbi Bergman rejected this rationale and he explained:

²⁸ Op. cit. Responsa, CJLS 1991-2000, pp.418-425.

²⁹ Ibid, pp.426-430.

³⁰ Responsa of the Va'ad Halakha of the Rabbinical Assembly of Israel, vol.6, pp.287-308.

"While a congregation may, for a variety of reasons, seek to have its own section in the cemetery, it need not establish a barrier separating the section from the rest of the Jewish cemetery. Clearly, the congregation may, in its own wisdom, establish rules of eligibility for interment in the congregational section. Nevertheless, it should not do anything which by inference casts aspersion on the Jewish character of the total Jewish section. The interment of non-Jewish spouses and children by Reform rabbis does not vitiate the Jewish character of the cemetery or its sanctity."

Rabbi David Golinkin dealt with a situation that arose in Israel. Land was set aside by the community of Beer Sheva for a cemetery a portion of which was to belong to the Masorti movement and another section to a secular group in which inter-married Jews would be buried together with their spouses. He was asked "how should the two parts of the cemetery be separated?"

Rabbi Golinkin answers:

יש לבדיל בין ההחלקות באמצעות קיר בגובה עשרה טפחים
[80 או 96 ס"מ] או גדר חיה [שיחים] בגובה עשרה טפחים או,
לחילופין, באמצעות מדרכה או שביל או כביש
ברחב ד' אמות [=1.9 או 2.3 מטר].

"The two sections of the cemetery should be separated by a wall or by bushes ten *tefahim* (80 or 96 cm) high or, alternatively, by a path or a road or a sidewalk four *amot* (1.9 or 2.3 meters wide).³¹

We must keep in mind that Rabbi Golinkin's Teshuvah was written from the viewpoint of those who live in Israel.³² The situation outside of Israel reflects a different sociology and relationship between Jews and non-Jews.

The CJLS has a wide variety of opinions on whether a non-Jewish spouse may be buried in a Jewish cemetery, ranging from it is forbidden, to allowing it on condition that the grave of the non-Jew be separated from other Jewish graves by the space of an empty grave on all sides or a hedge or barrier.³³ In years past, Rabbi Abelson in his Teshuvah on The Non-Jewish Spouse and

³¹ Responsa of the Va'ad Halakha of the Rabbinical Assembly of Israel, Vol.6, 5755-5758, p.xxxii. There are differing Halachic interpretations on the length of an *amah*.

³² Rabbi Golinkin follows the normative Halacha. See Rabbi Leopold Greenwald, *Kol Bo Al Availut*, Vol.2, pp.129-142. Rabbi Moshe Feinstein, *Iggrot Moshe*, Vol.2, Siman 149, p.254.

³³ The Summary Index of the Rabbinical Assembly 5758, has many responses on this question. We quote 3 to provide a context for our Psak.

"Permission for the non-Jewish spouse to be buried in a Jewish cemetery should not be granted." (Rabbis Joel Roth and Daniel Gordis), 6:1

"The *Kol Bo Al Avelut* is not as harsh about the burial of the spouses of Jews as are Rabbis Roth and Gordis." (Rabbi Seymour Siegel), 6:1

"If non-Jewish spouses of Jews continue to associate with us and raise their children to be Jews, then when their days on earth end, we should permit their interment in our burial grounds." (Rabbi Harry Sky), 6:1

Children of a Mixed Marriage in the Synagogue, discouraged this practice.³⁴ We are now re-examining the issue.

Status of Non-Jews in Jewish Law

A discussion of the burial of non-Jews in Jewish cemeteries is part of a larger discussion of how Judaism views non-Jews. The answers to that question changed both chronologically and geographically.

The Bible classified people as Israelite or non-Israelite.³⁵

Josephus³⁶ adds another classification of non-Jews:

“[The Antiochian Jews] were constantly attracting to their religious ceremonies multitudes of Greeks, and these they had in some measure incorporated with themselves.”³⁷ And, “But no one need wonder that there was so much wealth in our Temple, for all the Jews throughout the habitable world, and ‘God Fearers’, even those from Asia and Europe, had been contributing to it for a very long time.”³⁸

These *Yirei Shamayim* (God Fearers) seem to have been members of the gentile community who affiliated themselves to some degree with Jewish morality and monotheism yet are not in obedience to all aspects of Jewish Law nor have they formally converted to Judaism.

While the Talmud has some positive views of non-Jews³⁹ and as we have shown, considers the support of non-Jewish poor and the visitation of non-Jewish sick to be a Mitzvah, in general the Talmudic world-view is to separate Jews and non-Jews.

By the Middle Ages, contact with non-Jews in Europe and North Africa is a necessary reality. The Tosafists⁴⁰ recognized that economic circumstances, (in their day and age) could allow us to change Halachic prohibitions with non-Jews to permit the sale of domesticated animals to a non-Jew, something that was prohibited in the Talmud.

³⁴ Proceeding of the Committee of Jewish Law and Standards of the Conservative Movement, 1980-1985, pp.129-142.

³⁵ The earliest references speak of the Israelites as monotheists while non-Israelites were idolaters. King David, Solomon and others would enter into political alliances with idolaters but they were limited in scope. The negative attitude seems to flow from the stories where relationships between Israelites and non Israelites led our people astray.

³⁶ (37?-100? CE), Palestine.

³⁷ Josephus, *BJ* 7.45.

³⁸ Josephus, *Ant.* 14.110.

³⁹ Tosefta, Sanhedrin Chapter 13 and TJ Rosh Hashanah 57a, “Shmuel says that on Rosh Hashanah, God judges both Israel and the nations of the world.”

⁴⁰ BT Avodah Zarah 15a, The first Tosafists were Rashi’s sons-in-law and grandsons.

Maimonides⁴¹ and the Shulkan Aruch⁴² make a Halachic distinction between non-Jews who are monotheist (Christians and Muslims) and those who are idolaters.

As we have shown, Jewish tradition and Halacha have periodically revisited the status of non-Jews and for social and economic reasons have permitted what was once prohibited. Halacha differentiates between those non-Jews who are monotheistic and those who are not. This division has been accepted by the Conservative Movement.⁴³

Rabbi Moshe Feinstein⁴⁴ an Orthodox Posek in the modern period seems to provide support for classifying certain monotheistic non-Jews as *Yirei Shamayim*. He⁴⁵ discusses whether those, whose conversions were performed by non-Orthodox rabbis, can be buried in Jewish cemeteries. The discussion is extended to non-Jews who have begun the process of conversion with circumcision but who died before *Tevilah*. Clearly in both cases he holds that the person in question is not Jewish, nevertheless, "...I do not see any obligation for the rabbis to contend with [the burial of these 'quasi Jews' in a Jewish Cemetery]. It suffices that this *met* not be buried immediately next to the bodies that have already been interred in this cemetery."

And Rabbi Moshe Yeres⁴⁶ summarizes the Orthodox view by saying "It appears then, that the non-halachic convert and the "incomplete" convert-though they clearly cannot be labeled Jewish according to the halachic considerations of their status-have perforce entered some form of identification with the Jewish community which enables them...to qualify for some form of limited burial privileges in the Jewish cemetery."⁴⁷

The operative reasoning seems to be these non-Jews, through their identification with the Jewish community "have attained *Shem Yisrael* without yet having acquired *Kedushat Yisrael*."⁴⁸

We are suggesting that in our times and in the spirit of Josephus, we want to acknowledge those non-Jews married to Jews to permit their burial in a separate section of a Jewish cemetery.

Shinui Ittim

Two modern phenomena cause us to suggest that we need to continue to open our communities to these non-Jews who have tied their lives to Jews and to the Jewish community.

⁴¹ Mishnah Torah, Forbidden Foods 11.7 and in his Teshuvah (ed. Blau, #448). He requires that they accept the 7 Noahide Laws.

⁴² YD 148.12 and the Rema OH 156.

⁴³ See the Teshuvah by Avram Reisner and Mayer Rabinowitz on *Tevilat Kelim*. The Conservative Movement has not made any determination as to whether any other modern religious traditions are monotheistic.

⁴⁴ (1895-1986) Lithuania, United States.

⁴⁵ *Iggerot Moshe*, YD vol. 1, #60, vol. 2, #149, vol. 3, #47.

⁴⁶ Twentieth Century, Canada.

⁴⁷ Yeres, Moshe, Burial of Non-Halakhic Converts, Tradition 23/3 (1988), pp.60-74. He gives many examples throughout history of non-Jews who were buried in Jewish Cemeteries.

⁴⁸ Ibid.

In the United States there is an unprecedented respect for Jews and Judaism. On a day to day basis, Jews and non-Jews, work together and socialize together. This has led to the second change; a significant increase in marriage between Jews and non-Jews.

Studies have recently appeared that indicate that the Jewish community can encourage interfaith families to choose Judaism for themselves and their children. In addition, every rabbi has members who are married to non-Jews or knows non-Jews who have a strong connection to the Jewish community while deciding for various reasons, not to formally affiliate with Judaism through conversion. These non-Jews are a part of our communities.

We have shown above that there is no specific Halachic prohibition to bury a non-Jew in a Jewish cemetery. Josephus' description of the existence of a group that was part of the ancient Jewish community without formal conversion to Judaism is similar to what exists in the modern American Jewish community.

We have also shown that throughout Jewish history, the Halacha has relooked at the relationship between Jews and non-Jews and has permitted, for various social and economic reasons, various activities between Jews and non-Jews that were prohibited in earlier times.

Non Halachic Concerns

Interestingly a big obstacle to the burial of non-Jewish spouses in Jewish cemeteries is the regulations of the cemeteries themselves. The two largest Jewish Cemetery holding companies in Eastern Massachusetts (The Jewish Cemetery Association of Massachusetts and Sharon Memorial Park) both make it clear in their Rules and Regulations and contracts that the person is buying the right to be buried in the cemetery. The person is NOT buying the actual grave. In addition, their rules stipulate that only persons of the Jewish faith may be buried in the cemetery although both associations have separate sections within the cemetery where non-Jewish and Jewish family members may be buried next to each other.

In addition there are many congregational cemeteries that also have specific regulations as to who may be buried there.

A Separate Section

We suggest that one way to deal with the burial of non-Jewish spouses and children in already existing cemeteries is to set aside a separate section for the burial of interfaith couples. Other Jews may also be buried in this section, provided they are informed when they acquire the burial plots that non-Jewish spouses will also be buried in the section. This section should be separated from the rest of the cemetery. If the by-laws governing the cemetery explicitly restrict the burials to Jews, it may be possible to legally divide the cemetery into two cemeteries. A section for mixed burials might be "sold" to and run by a separate Board of Directors.

The separation of the two sections can be by a wall, a bush, or a path. If it is possible, a path is preferable. A physical barrier sends a message of exclusion. However "a path or a road or a

sidewalk of four amot (1.9 or 2.3 meters) wide”⁴⁹, which is easily crossed, sends a message that the non-Jewish spouse was a part of the present day extended Jewish community.

The Funeral

The funerals of these non-Jewish spouses and children are a sensitive matter. The funeral, both at the Funeral Home and at the Jewish Cemetery should not contain non-Jewish ritual. The ceremony could include Psalms such as Psalm 23, a eulogy, and appropriate prayers as determined by the local rabbi. Jewish relatives may elect to say a *Kaddish*⁵⁰ in memory of the deceased. They may elect to say the Kaddish for thirty days or eleven or twelve months, as appropriate. The tombstone should not have any non-Jewish religious symbols engraved on it.⁵¹

Summary

There is no specific prohibition in the entire Bible dealing with burying non-Jews together with Jews. Jewish graves in Biblical times were privately owned caves or tombs reserved for family members, though there is mention of "the graves of common people." This continued to be the practice in Talmudic times. The history of the development of Jewish communal cemeteries is obscure, but around the nineteenth century they became part of general community cemeteries for all religions, and standards were set to distinguish Jewish burial grounds from general burial grounds.

The Talmud has one statement that deals with the burial of non-Jews together with Jews: "Non-Jews may be buried with Jewish dead so that we follow the ways of peace." Standing by itself, this statement, at the very least, permits Jews to be involved in the burial of non-Jewish bodies. It might also mean that it is permitted to bury non-Jews together with Jews. Rashi's interpretation of this statement, however, provides a very different understanding. He says; "not in the graves of Jews, but one cares for them if they were found dead together with Jewish bodies", Rashi's interpretation that non-Jews were not to be buried in Jewish cemeteries may reflect earlier practice, but it certainly became the accepted practice.

Other commentators expand Rashi's understanding of the Talmudic passage to include the burial of non-Jews even if no Jewish dead were found with them. Finally the Bach returns to the original Talmudic statement and permits the burial of non-Jews together with Jews in the same courtyard.

Rabbi Myron Geller in a Teshuvah entitled "Peaceful Paths," approved by the CJLS, shows one

⁴⁹ A *tefach* is the cross measure of a man's four fingers, about three inches. An *ama* (cubit) is the measure of a man's forearm usually from 17-21 inches. A meter is equivalent to 39.37 inches. Thus the suggested walkway or road would be approximately 65-90 inches wide.

⁵⁰ Op. cit., Responsa, pp. 431-438. Rabbi Joel Rembaum discusses the mourning obligations of converts including recitation of *Kaddish*. Also, see "2001 Update to the Summary Index of the Committee on Jewish Law and Standards, #10: "It is not permissible for a priest or other Christian clergy to officiate at the burial of a Christian in the intermarried section of a synagogue cemetery." (061501, Correspondence of the Chairperson, not an official position of the CJLS)

⁵¹ 2004-2005 Update: "It is not permitted to put religious symbols of another faith on a tombstone in a Jewish cemetery." (062305, Correspondence of the Chairperson, not an official position of the CJLS)

way the Bach can be interpreted: "The burial of Jews and non-Jews or their parts or limbs found together following a common disaster is permitted in a Jewish cemetery. Such burial does not desecrate the final resting place of Jews already interred there and does not prohibit future Jewish burials".

In his Teshuvah entitled "A Matter of Grave Concern", approved by the CJLS, Rabbi Ben Zion Bergman deals with the question of whether the burial of a non-Jew in the Reform section of a Jewish communal cemetery detracts from the sanctity of the rest of the Jewish cemetery. He concludes "The interment of non-Jewish spouses and children by Reform rabbis does not vitiate the Jewish character of the cemetery or its sanctity."

A thousand-year custom should be respected and not lightly discarded. Nevertheless, we live in different times. Our relations to non-Jews are very different than in the past. Many of us have non-Jews in our families. All of us know non-Jews who are strongly connected to the Jewish community although they have chosen not to convert and retain their status as non-Jews. In regard to the question of interfaith marriages, we must be sensitive to their feelings and make them feel welcome in our communities. In addition, non-Jewish spouses and children who are involved in our synagogues, while not Jewish, are nevertheless part of our community. Our tradition has continually evolved in our understanding and differentiation of non-Jews. We must respect those who have married Jews and have raised Jewish families and are connected to the Jewish community. Since there is no specific prohibition in the Bible or the Talmud and the first mention of a prohibition is Rashi's interpretation, special provisions should be made to allow the non-Jewish spouses and children to be buried in Jewish cemeteries, in specially designated sections that are separated from the rest of the Jewish cemetery by a path or a road.

Piskei Halakhah

1. We must be sensitive to the commitments that were made with those who have already been buried under the assumption that only Jews would be buried with them. Hence we recommend the creation of "mixed burial" sections in Jewish cemeteries, where non-Jewish spouses and children may be buried alongside Jews. The mixed section should be separated from the rest of the cemetery by a path, a road or a sidewalk of four *amot* (1.9 to 2.3 meters wide).
2. Following the Tur, the Beit Yosef, the Bach and the Arukh HaShulkhan, it is permitted for Rabbis to attend and officiate at the funerals of non-Jewish spouses and children.
3. The funeral ceremony should be conducted by Jewish clergy and not contain any non Jewish ritual. The ceremony may include Psalm 23, a eulogy, and other appropriately worded prayers as determined by the local rabbi. If there are surviving Jewish family members they may recite the *Kaddish*. The tombstone should not have non-Jewish religious symbols engraved on it.