

Hilkhot Avelut
Understanding the Laws of Mourning



Rabbi David Brofsky

HILKHOT AVELUT

UNDERSTANDING
THE LAWS
OF
MOURNING

Rabbinical Council of America

Maggid Books

Hilkhot Avelut
Understanding the Laws of Mourning

First Edition, 2019

Maggid Books
An imprint of Koren Publishers Jerusalem Ltd.

POB 8531, New Milford, CT 06776-8531, USA
& POB 4044, Jerusalem 9104001, Israel
www.maggidbooks.com

© David Brofsky 2019

The publication of this book was made possible
through the generous support of *Torah Education in Israel*.

All rights reserved. No part of this publication may be reproduced,
stored in a retrieval system or transmitted in any form or by
any means, electronic, mechanical, photocopying, or otherwise,
without the prior permission of the publisher, except in the case
of brief quotations embedded in critical articles or reviews.

ISBN 978-1-59264-461-2, *hardcover*

A CIP catalogue record for this title is
available from the British Library

Printed and bound in the United States

This book is dedicated by the Smilowitz family in loving memory of

Herbert Smilowitz z"l

חיים בן משה הלוי ז"ל

*whose gentle wisdom, quiet dignity, and humble generosity
touched all who had the good fortune to know him.*

*In memory of Yonatan Adler z"l,
whose memory will always be with us.
Yonatan's character and principles will always inspire us to be
more committed, idealistic, principled, and thoughtful people.*



*To Mali
For your encouragement, support, partnership, friendship and love.*

*To Yehuda, Shira, Yonatan and Hadar
May it be His will that you will continue to follow the ways of
God through Torah study, mitzvot, and concern for others.*

ז' אייר תשע"ז

ק"י אביאל רחם ה', האם המקווה
המורה שכתב וגירג שאלה הם, האזורים
ע' הואשונים ונקודת האחרונים, זה לנסות במה
אלה, כמו של הקנים מור' (החיד' סילוב' צ'יק צ'כל'
עיקר קיומם של... ולכן לימודי הלכה למעשה
היא גם עם היסודות והלחצים נמשך דובר המקצוע זה
סגור של יקר. הרב קור' הרובע ס' (א"ל)
בקובצו של הלכה גלגל והלכה לחדשים, הוא
מיצו לפעם של הקנים דקיקר עם היסודות האחרים
אזרחי קהילות וקיסוקיות. ריטואל של רבוי הדברים
לכך סגור הרב, ואסוף לפעם לא כך למעשה
דקדקו לחזור הדברים בקרה וקני' ד' ב' ס' ק'
זהו וזון שהאחד שלילי יתקן לקום של אהים ע'
סגור ויצוריו מתקן קיומו מהו והרבה יחוס
כפרו וציוו המקווה
קיסוף, אהלים

Rabbi Mordechai Willig
4499 Henry Hudson Parkway
Riverdale, New York 10471

מרדכי וויליג
ריוורדייל, נוא יארק

10 Iyyar 5778

There are many laws relevant to mourning with sources in both the Written and Oral Torah, which have been illuminated by the *Rishonim* and *Aḥaronim* through contemporary *posekim*. However, as Rav Soloveitchik *zt"l* emphasized, the primary observance of mourning occurs in the heart. And for this reason, particularly in this area of halakha, it is vitally important to learn the practical laws together with their conceptual foundations.

This volume, authored by Rav David Brofsky *shlit"a* – like his earlier works on the laws of prayer and the laws of the festivals – marks a masterful blend of concise halakhot and elaborate, in-depth discussion of their underlying principles, presented in a clear, comprehensive fashion. The influence of his outstanding mentors is clearly discernible in his style of presentation, and his devotion to practical halakhic ruling is expressed in his analysis of the writings of leading *posekim*.

May the author continue to bring glory to the Almighty through his lectures and written works amid good health and prosperity, *ad me'ah ve'esrim shana*.

Fondly,
Mordechai Willig



יוסף צבי רימון

רבה של אלון שבות דרום
ראש בתי המדרש ור"ב המרכז האקדמי לב
ראש מרכז הלכה והוראה

רחוב קבוצת אברהם 10
אלון שבות 9043300

משרד: 02-9933644
נ"ד: 052-5456060
פקס: 153-2-9933644

rimonim613@gmail.com

בס"ד, אסרו חג שבועות ה'תשע"ח

מכתב ברכה

הלכות אבלות מיוחדים הם בכך שפרט לדיעת הדינים בגמרא ובראשונים ופרט לדיעת השולחן ערוך והפוסקים, יש צורך לדעת היטב גם את מנהגי האבלות המקובלים בדורנו. אמר לי פעם מו"ר הרב אהרן ליכטנשטיין זצ"ל, שלעתים הוא מתוסכל מכך שלמרות שהוא יודע את הגמרא והראשונים והפוסקים בנושא מסוים בהלכות אבלות, הרי שהוא לא יכול לפסוק למעשה מבלי להסתכל בגשר החיים, בכדי לדעת את המנהג המקובל כיום.

הרב דוד ברופסקי שליט"א, תושב קהילתנו אלון שבות, זכה להוציא כמה ספרי הלכה מאירים, המביאים את יסודות הגמרא והראשונים ומגיעים עד להלכה למעשה. ספרים הכתובים בצורה ידידותית ונעימה. בספר זה, ניתן לראות פרט לדרכו בלימוד ובהלכה גם את הרגישות האנושית שלו. בכמה מקומות באה לידי ביטוי הרגישות לאבל או לסביבתו, בניסוח ההלכות מחד, וביישום למעשה מאידך.

דוגמה לכך ניתן לראות בדבריו על ילדים מאומצים. ישנם פוסקים שכתבו שאין שום עניין באבלות במקרה זה. הרב ברופסקי נוקט כדברי הפוסקים הסבורים שיש מקום לאבלות גם במקרה זה, אולם, ברגישות רבה, הוא דואג לתת מקום לאבל להתגמש במקרה זה בדיני האבלות בהתאם למצבו הרגיש, ומתוך הבנה שאין זו חובה ממשית כמו כל אבל פרט לכך, שם לב לדקדק בפרטי הדברים בכך שאמנם יכול הילד המאומץ לקבל עליו דיני אבלות, אך לא יהיה פטור ממצוות ואין עליו את הפטורים של האנינות. כמו כן, גם ביחס לקדיש, לא תהיה כיום בעיה לילד מאומץ לומר קדיש, שהרי כל האבלים אומרים כיום את הקדיש כאחד, אולם, ביחס לתפילה לפני העמוד, הרי שלאנשים אחרים האבלים על אב ואם ביולוגים תהיה קדימות. בכך הוא משרטט בקצרה את המורכבות של הילד המאומץ, שמצד אחד איננו חייב בדיני אבלות באופן רגיל, ומצד שני ראוי מאוד שינהג באבילות מדין הכרת הטוב. נאחל לרב ברופסקי שליט"א, שיזכה להוסיף לזכות את עם ישראל בכתביעת ספרי הלכה נוספים, ללמוד וללמד, לשמור ולעשות ולקיים.

בברכת התורה והמצווה,

יוסף צבי רימון

BS"D, Issru Ḥag Shavuot, 5778

A Letter of Recommendation

The laws of mourning are unique in that aside from knowledge of the laws as they appear in the Gemara and Rishonim, and aside from knowledge of the *Shulḥan Arukh* and the *posekim*, it is necessary to be familiar with the accepted customs of our generation. My teacher, Rav Lichtenstein, *zt"l*, once told me that he was often frustrated because despite his knowledge of the Gemara, Rishonim, and *posekim* regarding a certain topic of *avelut*, he was unable to offer a practical halakhic ruling without looking at the *Gesher Haḥaim*, in order to know the currently accepted custom.

Rav David Brofsky, *shlit"u*, a resident of Alon Shevut, has published a number of enlightening halakha books, which present the foundations of the law as they appear in the Gemara and Rishonim, and concluding with the practical halakha. These books are written in a friendly, pleasant manner.

In this book, in addition to his method in learning and halakha, one can perceive his sensitivity as well. In a number of places his concern for the mourner or his surroundings is evident, in his formulation of the laws and in their practical application.

We see an example of this in his treatment of adopted children. There are *posekim* who write that there is no reason to mourn in this case (i.e., for adoptive parents). Rav Brofsky, however, adopts the position of those *posekim* who maintain that there is room for *avelut* even in this situation, however, with great sensitivity, he makes sure to leave room for the mourner to be flexible in accordance with his situation, understanding that there is no formal obligation, as there is with other mourners. In addition, Rav Brofsky pays attention to the details, and writes that although an adopted child may accept upon himself laws of mourning, he is not exempt from the performance of mitzvot and he is not subject to the laws of *aninut*. Similarly, regarding the Kaddish, while there is no problem for an adopted child to recite Kaddish, as nowadays all of the mourners recite the Kaddish in unison, those mourning their biological parents still have precedence in leading the prayers. In this manner he briefly outlines the complexity of being an adopted child, who on the one hand, is not formally obligated in the laws of mourning, yet on the other, it is appropriate that he should mourn out of a sense of *hakarat hatov* (gratitude).

Let us wish Rav Brofsky, *shlit"u*, that he should continue to benefit the public by writing additional halakhic works, and to learn and teach, fulfill, act and perform.

With Torah blessings,

Yosef Zvi Rimon



יוסף צבי רימון

רבה של אלון שבות דרום
ראש בתי המדרש ורב המרכז האקדמי לב
ראש מרכז הלכה והוראה

רחוב מקוצת אברהם 10
אלון שבות 9043300

משרד: 02-9933644
ני"ד: 052-5456060
פיקס: 153-2-9933644

rimonim613@gmail.com

Contents

<i>Foreword, by Rabbi Mark Smilowitz</i>	xv
<i>Introduction, by Rabbi Elazar Muskin</i>	xxi
<i>Preface</i>	xxiii

<i>A Practical Summary of the Laws of Avelut</i>	1
--	---

1. <i>Aninut</i>	31
2. <i>Burial</i>	53
3. <i>Burial Customs and the Laws of Keria</i>	77
4. <i>The Obligation of Avelut: Source, Nature, and Reasons</i>	97
5. <i>For Whom Is One Obligated to Mourn</i>	105
6. <i>The Beginning of the Seven-Day Mourning Period</i>	127
7. <i>The Prohibitions of the Week of Mourning [Shiva]</i>	143
8. <i>The House of the Mourner [Beit Haavel]</i>	167
9. <i>The Laws of the Thirty-day Mourning Period [Sheloshim]</i>	181
10. <i>The Laws of the Twelve-Month Mourning Period [Yud-Bet Hodesh]</i>	191
11. <i>Simḥa, Marriage, and Attending Semahot and Social Gatherings after Shiva</i>	197
12. <i>Avelut on Shabbat, Yom Tov, and Other Holidays</i>	211

13. <i>The Mourner's Kaddish [Kaddish Yatom] and Leading the Prayer Service</i>	225
14. <i>The Yahrzeit</i>	241
15. <i>The Monument and Memorial Prayers</i>	253
<i>Index</i>	261

Foreword

Two Faces of Halakha

When my father, Herbert Smilowitz z"l, suddenly collapsed and passed away on *Taanit Esther* 5774, I felt like my world fell apart. Then, halakha put it back together.

I had just put down the phone in my Beit Shemesh home after learning from my sister that my father had died in America. My father was a foundational figure in our family, and grasping that his life was over seemed impossible. I was not prepared for the shock, and it is difficult to describe in words how I felt at that moment, but I feel an obligation to try, if only to give testimony to how halakhic commitment can impact a person's inner world.

I hung up the phone and sat down, but inside I felt a sense of falling, like I were tumbling down a bottomless black hole, even though I knew in the back of my mind that I was sitting on my couch. Although I was obviously in no physical danger, I was gripped by an increasing sense of terror. What was I scared of? Perhaps I felt trapped in an unfamiliar world of swirling negative emotion, and I could see no path by which to emerge. Suddenly I noticed from the corner of my eye that my wife was holding a book on the halakhot of mourning. I asked Michelle for the book, and as I scanned the pages, reviewing the laws of *keria* (tearing the garments) and *kevura* (burial), I felt a certain calm come over me. Order and meaning started to return to my world. The

terror dissipated and I felt that although there was still much sorrow and grief to go through, this brief brush with insanity – for it felt like insanity – was over.

How did this happen? How did halakha rescue me from my descent? My reflections have led me to conclude that halakha presents two faces that complement each other, and that the two in combination can offer redemption for the halakhic devotee even in the most trying of times.

Halakha is law, and law is stability. When the vicissitudes of life leave one dizzy and disoriented, the human spirit yearns for stability and reliability. The first face of halakha is the rock of law that stabilizes and redeems the storm-tossed soul.

Most systems of law are not capable of doing this. But being a communication of God's will, halakhic laws are rooted in eternity. To study and keep halakha is to join hands with God, so to speak. I recall that just before the circumcision of one of my sons, I was asked by a relative if I was afraid. I said no, because I knew that at that moment I was doing exactly what God wanted me to do. Halakha connects a person to the permanent and the eternal, and in so doing, brings serenity and tranquility and dissolves fear and doubt.

To say that halakha provides a sense of permanence and stability is not to say that it is stagnant, as if there is no movement or innovation in it. As the pages of this book show, halakha is an ongoing discourse, as sages throughout the generations seek to clarify areas that remain undefined or to grapple with new situations. Nevertheless, there always remains a firm halakhic bedrock of immutable laws. Newly adopted rules and customs can achieve an air of permanence if accepted by the Jewish people at large, as R. Yosef Dov Soloveitchik has shown us in his Hebrew essay, "Two Types of Tradition."¹ And even while our sages demonstrate the highest levels of ingenuity and creativity in their halakhic discourse, they are guided by rules of legal discourse that themselves are timeless and immutable.

This, then, is the first face of halakha, the firmly anchored permanence of law. At times this face of the law can appear friendly, but at other times it can make inconvenient demands. As consoling as the customs of *shiva* may be, there are times where *shiva* is canceled due to a higher halakhic priority, and the mourner has to manage without the usual support. At such times we are reminded that halakha is not just a kind of religious therapy,

1. R. Yosef Dov Soloveitchik, "Shnei Sugei Masoret," in *Shiurim LeZekher Abba Mari* (Jerusalem, 1983), vol. 1, pp. 220–39.

but an expression of service and sacrifice in response to the Almighty's communication to us of His will. Even then, despite the emotional and personal challenges involved, there is something profoundly redemptive and dignifying in expressing such commitment and devotion, in obeying God's higher will with humility.

The mood of today's general society, despite its openness to multiple cultures, remains suspicious of the idea of halakhic living, recoiling from what people perceive as a robot-like conformity. But this, of course, would be a poor caricature of halakhic life. As I have said, obedience to God's will can in itself be redemptive because it allows us to reach up to the eternal and the permanent, but halakha also presents a second face that adds a new dimension, in which it reaches down from above and penetrates deep into our inner experience. Halakhic living involves a rich and vibrant subjective experience stimulated by thoughtful reflection on the specific content of the laws and their meanings. More than just a collection of laws, halakha is also a thought system reflecting a worldview. Each rule connects to other rules in a sophisticated network of meaningful interaction; behind every regulation stands an intricately and expertly woven conceptual and historical tapestry full of life, color, and beauty.

The ideas, meanings, and messages undergirding the interrelated laws of halakha are not usually spelled out explicitly, and can be easily overlooked. Much has been said about how halakha and *hashkafa* (Jewish worldview or philosophy) are separate disciplines. This distinction is important, because what if my *hashkafa* leads me to conclusions that contradict the codified law? The Orthodox halakhic community has always held that the rock of law takes priority over the philosophy of law. As R. Soloveitchik explains in *The Halakhic Mind*, Jewish philosophy properly done emerges from the halakha, and is not a decider of halakha. In cases where philosophy and halakha clash, such a conflict may be a signal to revise the philosophical conclusions.

Nevertheless, a philosophy of Judaism can emerge through halakhic study, a philosophy that addresses our deepest thoughts and feelings. Thus, halakha is not only a rigorous master; it is also a nurturing teacher. As R. Soloveitchik describes in *And From There You Shall Seek*, through intellectual mastery of halakha, fear of God blossoms into love of God, and servile obedience turns into *dveikut*, cleaving to Him. If the first face of halakha invites me to join hands with God through action, the second face summons me to join minds with God, as it were, through understanding.

This second face of halakha, not a rock of stability but a springboard of thought, also helped to save me on that unfortunate night. The book my wife handed me merely listed the laws and did not provide background, but I was fortunate that my previous study in yeshiva of the laws of mourning provided enough context to help me remember and intuit the meanings, feelings, and concepts associated with the details of the various laws.

During *avelut* for my father z"l, members of my family and I felt we wanted a book that presented the laws as such but also provided the conceptual and historical framework of those various customs and laws, a framework that would help stimulate philosophical and hashkafic reflection as well as clarify practice. We wanted to see *both* faces of halakha. Knowing Rabbi David Brofsky for many years, having studied together with him in yeshiva and having seen his excellent work in his earlier books on the laws of prayer and the laws of the festivals, I knew he was an ideal author for this undertaking. One advantage of this work is that by differentiating between biblical obligations, rabbinic requirements, and that which resides in the realm of custom, it allows us to discover more easily the fundamental principles and structures that give rise to the various details of the law. This book is also of great value because it considers opinions cited in the halakhic literature that are not necessarily practiced; nevertheless, such opinions can often illuminate hidden meanings behind the laws. And the style of the book, which tells the story of the give-and-take found in responsa and other halakhic writings, also provides glimpses into the world of thought behind the law.

While Judaism has always advanced the cause of educating the layman in halakha, in many cases a rabbinic authority will need to be consulted. Expert opinion is necessary not only to avoid error, but to sustain community standards. While Judaism has always honored and valued various forms of individualism – one life is worth the world (Mishna Sanhedrin 4:5) – it is also communitarian, preferring consensus over “every man doing what is right in his eyes” (Deut. 12:8; Judges 17:6, 21:25). Still, even when one consults an authority, a book of this kind can help the layman formulate the appropriate questions, participate in the discussion, and appreciate the answer. Furthermore, there may be times when the halakhic authority concludes that there is no fixed law in the matter at hand, and he may leave the matter to the preference of the questioner; in such cases, the rigid face of strict halakhic law may open a path for the more creative and flexible face

of halakhic thought to guide the practitioner. The knowledge acquired from this book will be very useful then as well.

As I reflect on my father's memory I see both faces of halakha. Halakha provided him a steadiness and dependability, demonstrated in many ways, perhaps primarily through his devotion to attending daily *minyan*, as well as through the respect and deference he showed to rabbinic authorities. Halakha also provided him with a worldview, especially in the way his particular style of halakhic living emphasized human dignity, humility, and community. This volume is a fitting tribute to his memory, and I hope that many will find it useful and meaningful in their own halakhic observance.

Rabbi Mark Smilowitz
Beit Shemesh, Nisan 5778

Introduction

In his masterful and popular work, *The Jewish Way in Death and Mourning*, the late Rabbi Maurice Lamm wrote about the dilemma in producing a work on mourning. He noted, “The futility can be expressed in a paradox simply stated: People do not wish to learn about how to deal with death until they are confronted with death, and when they are confronted with death, they are not inclined to study how religion approaches it.”

Although this is certainly true, a rabbi is asked more questions in *Hilkhot Avelut* than in any other area of halakha. The questions posed often include when and if to say *Viduy* with the dying patient, and how to treat the dying during the state of *gesisa*. Further issues arise in deciding when to declare death and how to treat the body once death has been established.

These are the immediate questions that one confronts. As soon as death occurs more issues must be addressed, including the handling of the body, the *tahara*, the preparations for the funeral, as well as the role of the eulogy. The unique period of *aninut* also requires special attention and halakhic responses.

From burial through the *shiva* period, halakhic issues arise and immediate answers are required. After *shiva* and through the *sheloshim* new realities surface, while the twelve months of mourning for a parent create their own questions of what is permitted and what is prohibited.

Hilkhhot Avelut

This work addresses all these issues and many more, focusing on the halakhic debate and analysis while sharing the halakhic consensus and allowing for practical reference. A special feature of this work is a compendium of practical decisions that can be referred to for immediate use.

Rabbi Brofsky's brilliant ability to clarify the most complicated halakhic problems in a coherent and user-friendly fashion will make this work a must-have *sefer* that deserves to be found in every Torah library in the English-speaking world.

The Rabbinical Council of America is honored and delighted to partner with Maggid Books in presenting this work to the public. Rabbi Brofsky is a highly regarded member of the RCA who has earned the respect of his colleagues as a master halakhic writer and a brilliant exponent of Torah.

Until the prophetic vision of Isaiah is fulfilled, "and death is wiped from the face of the earth," may this work guide all its readers in appreciating the halakhic rulings in *Hilkhhot Avelut*.

Rabbi Elazar Muskin
President, RCA

Preface

When I was first approached regarding the possibility of writing a halakhic compendium on the laws of mourning, I was not only honored, but also intrigued and intimidated. The laws of *avelut* are particularly interesting, but writing an in-depth yet practical treatise seemed daunting, for a number of reasons.

First, I am fervent believer in exploring both the conceptual and philosophical aspects of Torah. The laws of *avelut* are especially intriguing, as the study of these halakhot reveals the interplay between the halakhic categories and the emotional, psychological, and sociological experiences. Although R. Yosef Dov Soloveitchik often related to the action (*maase*) and fulfillment (*kiyum*) of the mitzvot, his description of the relationship between the mourning practices and inner grieving (*avelut shebalev*) is particularly powerful. The laws and customs of *avelut* simultaneously reflect and create the mourning experience; the structure of the *avelut* categories and their details guide the mourner through the various stages of grieving.

Second, I felt a great burden and heavy responsibility to present the mourner with the fundamental principles, the development of and rationale behind different halakhot (laws) and *minhagim* (customs), the spectrum of accepted practices, and clear and concise practical guidance.

Hilkhot Avelut

While my previous halakhic works were not necessarily instructive, it was clear that the mourner cannot be left with conceptual halakhic queries. For that reason, a practical summary of the laws of *avelut*, devoid of sources, footnotes, and diversity of opinions and practices, precedes the main text of the book.¹

I believe that the methodology used in recent halakhic literature, as described below, enables this author to write a book that can, God willing, fulfill these goals.

* * *

R. Yehoshua Hutner,² in his introduction to R. Shlomo Yosef Zevin's (1888–1978) *Ishim VeShitot*,³ discusses a recent change in the style and nature of halakhic literature. In this fascinating essay, he asserts that R. Zevin, founder and chief editor of the *Encyclopedia Talmudit* and author of other important works, including *HaMo'adim BeHalakha* and *LeOr HaHalakha*, opened a new era of halakhic literature.

It seems that we would not be exaggerating if we were to say that the *gaon* R. Shlomo Yosef Zevin not only created a new style of writing, characterized by compilation [of halakhic opinions] and clarity, but he was also the one who revealed and developed a philosophy of Jewish law in a clear and radiating light.

R. Hutner explains that this new methodology is characterized by:

Collecting, sorting, and attaching the many various topics of the Oral Law... and molding them into one unit. From the books and *hiddushim*, views and opinions, from the beginning [of halakhic literature] until the later scholars of our generation, he made the words of the scholars of all the generations into one organic unit.

-
1. Although in this section and throughout the book male pronouns are used to refer to the mourner, the same halakhot generally apply to female mourners as well, except where otherwise noted.
 2. R. Yehoshua Hutner (1920–2009) served as director of the *Encyclopedia Talmudit* project for over fifty years.
 3. R. Shlomo Yosef Zevin, *Ishim VeShitot* (Kol Mevasser, 2007).

Most importantly, R. Hutner insists that R. Zevin “did not do this in Rambam’s way of [halakhic] rulings and decisions, but rather, in the Talmud’s way, gathering and sorting the entire assembly of opinion and debates in one collection.” In other words, presenting the scope and spectrum of halakhic views, with proper analysis, in a clear and organized manner, enhances and enriches the halakhic process. Furthermore, R. Hutner writes:

What emerges is that even the practical halakhic rulings that each and every generation needs are also enriched and made possible due to the breadth of the Torah’s philosophy and scope of its insights ... To the extent that the field of [Torah] *hiddushim* is expanded and enriched, upon the foundations of the *Rishonim* and insights of the *Aharonim*, so too, the rulings of the recognized halakhic authorities are further based in [the Torah’s] depth and breadth, and they are unified and merged into one organic entirety of Torah and halakha.

He concludes by asserting that “one who claims that the halakha is ‘frozen and fossilized’ is mistaken and deceives others, and it seems that [this person] has not tasted the flavor of deep and uplifting new Torah and halakhic insights all of his days.”

Although R. Hutner’s analysis relates to the *Encyclopedia Talmudit* and its contribution to halakhic literature, R. Zevin himself displayed this style in his earlier works, including the aforementioned *HaMo’adim BeHalakha*, *LeOr HaHalakha*, *Ishim VeShitot*, and in his many published articles.

Over the past seventy years we have seen the proliferation of halakhic treatises, in English and Hebrew, which focus upon all areas of Jewish law, including the laws of Shabbat, Yom Tov, *kashrut*, family purity, *berakhot*, *ribbit*, and even *shiluah haken*. These books provide a great service to the observant community, in that they make the details of Jewish law accessible to all. One who wishes to observe the laws of Shabbat or *kashrut*, for example, can simply purchase a halakhic guidebook, and study. However, these books often do not present the origins or development of a specific practice. They do not provide the reader with an opportunity to learn a topic in depth. When disagreement arises, the author often chooses which position to present as authoritative, and dissenting opinions, even those which are practiced by some, are relegated to the footnotes, and at times not even mentioned.

Hilkhhot Avelut

In recent years, in the spirit of R. Zevin's literary contribution, numerous Torah scholars have written clear, comprehensive, and accessible halakhic works, practically redefining the style of modern halakhic literature. While decades ago one might have noted the writings of R. Shimon Eider (English) and R. Chaim David Halevi (Hebrew), today, R. Yosef Zvi Rimon (Rav of southern Alon Shevut and head of Merkaz Halakha VeHuraa) in his *Halakha MiMekora* series, and R. Eliezer Melamed (Rav of Har Berakha and Rosh Yeshiva of Yeshivat Har Berakha) in his *Peninei Halakha* series, may currently best represent this genre, each in his own way.

This volume, which focuses upon the laws of *avelut*,⁴ begins each topic with its primary sources, be it a talmudic passage, a comment of the *Geonim*, or a practice instituted by the *Rishonim* or *Aḥaronim*. Each section traces the halakha through the *Rishonim* and *Aḥaronim*, including relevant debates among the *posekim* regarding contemporary applications. At times, historical and philosophical sources, as well as traditional “*lomdus*,” are woven into the chapter.

Without any presumption of halakhic authority, this book attempts to present a clear and comprehensive narrative, based upon the classic and contemporary halakhic literature, to the student studying *Hilkhhot Avelut*, and to the mourner who, *rahmana litzlan*, is observing its laws. Although at times the simplicity of direct instruction is sacrificed, a deeper, richer, and more accurate understanding is gained. This book, however, is still committed to presenting the “bottom-line” practical halakha. For that reason, as mentioned above, a practical summary of the laws of *avelut* precedes the main text of the book.

I sincerely hope that this volume will succeed in clearly presenting the scope, depth, complexity, and nuance of the laws of *avelut* in particular and of the halakha in general.

* * *

Over the course of writing this book, our extended family suffered a tragic loss. I would like to take this opportunity to mention our cousin Yonatan

4. I employed a similar methodology in my previous books, *Hilchot Tefilla: A Comprehensive Guide to the Laws of Daily Prayer* (Ktav/Yeshivat Har Etzion, 2010) and *Hilkhhot Mo'adim: Understanding the Festivals* (Maggid/Yeshivat Har Etzion, 2013).

Adler z"l, whose memory will always be with us. Yonatan's character and principles will always inspire us to be more committed, idealistic, and thoughtful people.

* * *

I have been blessed in that I had the opportunity to study at Yeshiva University, and to learn from R. Michael Rosensweig. In addition, I spent close to eight years studying, and later teaching, in Yeshivat Har Etzion, primarily under the guidance of R. Aharon Lichtenstein z"l. I have also spent almost twenty years writing weekly halakha *shiurim* for Yeshivat Har Etzion's Israel Koschitzky Virtual Beit Midrash (VBM); I am grateful to R. Ezra Bick, R. Reuven Ziegler, and Mrs. Debra Berkowitz for this opportunity. Yeshivat Har Etzion remains my spiritual home, and its *Roshei Yeshiva*, R. Aharon Lichtenstein z"l and R. Yehuda Amital z"l, who have since passed away, are still my guiding lights. I feel forever indebted to the Yeshiva for its contribution to my growth. The Jewish people have benefited from the many graduates of the Yeshiva, and Judaism is a richer religion due to its teachings.

Throughout my research I consulted with the many modern halakhic compendiums and treatises written on the laws of *avelut*, as well as numerous articles and *shiurim* published in halakhic journals and available on the internet. R. Yechiel Michel Tukachinsky, author of the *Gesher HaHayim* and the "*mara de'atra*" of the laws of *avelut*, continuously provided structure, insights, direction, and even inspiration. Other well-known works, such as the *Penei Barukh*, *Nitei Gavriel*, and R. Maurice Lamm's *The Jewish Way in Death and Mourning*, each written for a different audience, demonstrate halakhic depth and sensitivity. I sincerely hope that I duly cited all those who provided sources, ideas, or references, in fulfillment of the words of our sages, "Whoever says a thing in the name of he who [originally] said it brings redemption to the world" (Avot 6:6). If I unintentionally omitted an author, journal, or *sefer*, I express my sincere apologies.

Over the course of my research, a number of *posekim*, *talmidei hakhamim*, scholars, and friends offered their halakhic guidance and insights. I especially wish to mention R. Mordechai Willig, R. Yosef Zvi Rimon, and R. Yehoshua Reich, who were always available to discuss halakhic issues related to *avelut*, and R. Avishai David, who generously reviewed parts of this book and offered invaluable insights. I also appreciate the diligent work

Hilkhhot Avelut

of R. Yehoshua Schreier, who read and meticulously edited the first draft of this book.

I would like to acknowledge and thank Mr. Matthew Miller, Publisher at Maggid Books, R. Reuven Ziegler, Chairman of the Editorial Board, and Mrs. Shira Finson, assistant editor at Maggid, for their efforts in printing this volume. I appreciate the diligent work of Mrs. Oritt Sinclair and Mrs. Ilana Sobel, who so assiduously attended to the editing of this book, and Mrs. Ita Olesker, who brought it to press.

I would like to thank the Smilowitz family, especially my friend and former *hevruta* R. Mark Smilowitz, for generously supporting the publication of this book. R. Smilowitz identified the need for this book, and his vision and assistance greatly contributed to the content and style of the *sefer*. I sincerely hope that this volume will succeed in providing guidance and comfort for mourners, and Torah insights for those studying the laws of *avelut*, and I pray that it will be a worthy memorial to Mr. Herbert Smilowitz, of blessed memory.

I also thank my parents, Jarrett and Arlene Brofsky, and my in-laws, Dr. Mark and Leah Adler, who have been a constant source of support and encouragement.

Finally, I am indebted to my wife, Mali, who not only encouraged me in this and all my endeavors, but is also a constant source of personal and spiritual support and inspiration. I pray for many more years of partnership and companionship, and that our children, Yehuda, Shira, Yonatan, and Hadar, will continue to learn, fulfill, and live the words of the Torah.

David Brofsky
Alon Shevut, Elul 5778

A Practical Summary of the Laws of *Avelut*

One of the unique and profound characteristics of the laws of *avelut* is the division into different stages of mourning. The mourner first experiences the period between the death and the burial [*aninut*], and then observes the seven-day mourning period [*shiva*]. After the conclusion of the seven-day mourning period, he continues to observe certain mourning practices for thirty days [*sheloshim*], and for the loss of a parent, for twelve months [*yud-bet hodesh*]. These different periods of mourning are not just quantitatively different; they reflect and correspond to different stages of bereavement, and gradually ease the mourner back into his daily routine.

In this short compendium, we will summarize the fundamental laws of each stage of mourning. These issues are treated in greater depth in their corresponding chapters.

ANINUT

Following the death of a close relative, i.e., a parent (father or mother), sibling (brother or sister, half-brother or half-sister), child (son or daughter), or spouse, one becomes an *onen*, and observes the laws of *aninut*, until the burial. The term *onen* connotes a deep, inner sadness.

A person who has lost a relative should not act frivolously; rather, he should conduct himself as one who is preoccupied and overwhelmed

by the death and burial. The *onen* may not eat meat or drink wine, as this is inappropriate during this time of intense sorrow, and may distract him from dedicating himself to the funeral preparations. Furthermore, the *onen* must not eat in the presence of the deceased.

An *onen* is exempt and prohibited from fulfilling all positive commandments, including reciting blessings and daily prayers. Some sources suggest that this exemption enables the *onen* to single-mindedly attend to the burial of his relative. Other sources explain that out of respect for the deceased, he is not to be distracted by the performance of mitzvot. There is much discussion regarding whether the *onen* remains exempt from fulfilling mitzvot after the deceased has been entrusted to the *hevra kadisha*, or in a case where the mourner must travel to a different city to attend the funeral. Although some *Aharonim* rule that in these cases, if the *onen* is not engaged in any funeral preparations, he may perform mitzvot, it is customary to observe *aninut* in all situations, from the time of the relative's death until the burial.

The *onen* should wash *netilat yadayim* in the morning, as well as before eating bread, without reciting the blessing. He may also wear his *tzitzit*. The *onen* is not counted in a *minyan* or a *zimun*, and should not answer "Amen." An *onen* may recite psalms for the protection of the deceased [*shemirat hamet*].

The *onen* does not don *tefillin* on the day of the death, on the day of the burial, or, in a case of delay, on any days in between them. Some maintain that if the deceased is buried on a day other than the day of death, the mourner should don *tefillin* in private after the burial, without reciting the blessings; this is not the common custom.

The *onen* must also observe the laws of mourning that do not interfere with the preparations for the burial, i.e., one should refrain from washing, anointing, participating in joyful occasions, greeting, haircuts and shaving, marital relations, work, and Torah study. He may wear leather shoes if necessary. Although technically an *onen* may not bathe, if the need arises, he may shower briefly in lukewarm water, thereby limiting the degree of pleasure. He may also apply deodorant. The *onen* may change his clothing before the burial if he wishes to rend a shirt other than the one he is wearing. The *onen* does not sit on the ground, or on a low chair; he does not do so until he becomes a mourner, after the burial.

There are different customs regarding whether an *onen* may, or should, recite the Mourner's Kaddish before the burial. While Ashkenazim do not recite Kaddish before the burial, some Sephardim recite it.

A Practical Summary of the Laws of Avelut

On Shabbat and Yom Tov most of the restrictions of *aninut* are lifted: An *onen* may eat meat and drink wine, participate in a *zimun*, recite *Shema* and the *Shemoneh Esreh*, and perform all of the mitzvot. The *onen* may not engage in marital relations on Shabbat, nor may he study or read the Torah, and he is not called to the Torah for an *aliya*. An *onen* who is a Kohen should leave the sanctuary before being called for *Birkat Kohanim*, and should not ascend to recite *Birkat Kohanim* even if called. In some Sephardic communities the Kohen participates in the *Birkat Kohanim* on Shabbat.

After Shabbat, the *onen* does not recite Havdala, although he may eat, and perform *melakha*, after reciting: *Barukh hamavdil bein kodesh lehol*. Havdala should be recited, without the spices and candle, after the burial.

During this time, if the *onen* is a business owner or partner, he should consult with a halakhic authority regarding the proper manner in which his business should be conducted.

BURIAL

The mitzva of burying the dead [*kevurat hamet*] appears in various places throughout the Torah and rabbinic literature. The Talmud notes that burial was apparently an ancient Jewish custom. Burial is such an important commandment that the Torah commands a Kohen to become impure to bury a relative (Lev. 21:1–3).

The Talmud suggests that burial may be part of the process of atonement [*kappara*]. Alternatively, the Gemara explains that burial may be for the purpose of preserving the dignity of the deceased. Some explain that the Gemara is concerned with preventing the embarrassment of the family. The wishes of one who requests not to be buried are not honored.

The Torah prohibits leaving the corpse unburied overnight. However, the Mishna teaches: “If he kept him overnight for the sake of his honor, to procure for him a coffin or a shroud, he does not transgress [the prohibition].” Therefore, one may delay burial to enable relatives to come from another place, even from overseas. One should make certain not to delay the burial unnecessarily.

Halakhic authorities oppose cremation and prohibit even the interment of ashes in Jewish cemeteries. The *Aharonim* raise numerous objections to the practice of cremation. Some suggest that cremation is a violation of the Torah obligation to bury the dead and is a form of mutilating the corpse [*nivul hamet*]. R. Avraham Yitzchak HaKohen Kook suggests that cremation

may even be a form of *hukkat akum* (imitating the ways of the gentiles). Others add that just as burial is an affirmation of the belief in the resurrection of the dead [*tehiyat hametim*], destroying the body through cremation may demonstrate a rejection of this fundamental principle. After millions of Jews were murdered and then cremated by the Nazis during the Holocaust, cremation seems even more distasteful. Some insist that one should not observe the laws of mourning for one who chooses to be cremated. Most authorities maintain that the Mourner's Kaddish is recited in any case. One should discuss these complicated and sensitive issues with a halakhic authority.

There are numerous laws that relate to and protect the human body even after death. For example, there is a prohibition to derive benefit [*issur hanaa*] from or to mistreat or mutilate a corpse [*nivul hamet*]. The *Aḥaronim* consider whether one is permitted to perform forensic, clinical, or academic autopsies.

The Talmud likens the human body to a *sefer Torah*. The body is the vessel that contains the soul, similar to the *sefer Torah*, which contains the names of God. The body of the deceased is treated with the utmost respect; one must behave appropriately in its presence. It is carefully guarded, and meticulously prepared for burial. The Talmud teaches that one should not eat or drink in the presence of the deceased. Furthermore, the Gemara even expresses concern that certain behavior may be viewed as mocking the deceased.

It is proper to appoint a guard [*shomer*] to protect the body until it is entrusted to the *hevra kadisha*. The Talmud mentions protecting the deceased from a weasel or from mice. In addition, other sources indicate that watching the body is an act of respect so that the deceased should not appear to be “an unwanted vessel” (Jer. 22:28). It is proper for those guarding the deceased to recite psalms and other prayers, and to refrain from idle conversation.

There is an ancient Jewish custom to wash and prepare the body for burial. The *hevra kadisha* is entrusted with this task, known as *tahara*, during which its members wash and dress the body in burial shrouds [*takhrikhin*]. Just as when the body enters this world it is washed and cleaned, the same is done to it when a person leaves this world. The body is washed, and then nine *kavim* (20 L) of water are poured over it, after which the body is dressed in *takhrikhin*. The *tahara* is performed with the utmost modesty and sensitivity; those engaged in preparing the body for burial recite biblical verses relating to the *tahara*. The details of the *tahara* differ from community to

community. There are circumstances where a *tahara* is not performed, e.g., if the deceased was killed by gentiles or if much blood was discharged from the body before death, such as in the case of a fatal accident, and according to some, even if a person dies by natural causes in a manner involving significant bleeding, such as a woman in childbirth; in those cases the body is simply dressed in burial shrouds.

The human body is buried in the ground, in accordance with the verse: “And to dust you shall return” (Gen. 3:19). Although in Israel it is customary to bury the body directly in the ground, in many countries it is customary to bury in wooden coffins. If possible, in accordance with the law of the land, and with the custom of each community, holes should be made in the coffin. Although halakhic authorities prohibit interment in a mausoleum, in recent years, multi-tier burial structures have been built in numerous cemeteries in Israel, including Jerusalem’s Har HaMenuhot, according to the strict requirements of Jewish law.

There is an ancient tradition, tracing back to biblical times, to make every effort to be buried in the Land of Israel. Indeed, the Book of Genesis concludes as both Jacob (Gen. 47:29) and Joseph (ibid., 50:25) request that their bodies be brought from Egypt to Eretz Yisrael for burial. The Talmud relates different reasons for burial in Eretz Yisrael. One source indicates that burial in Eretz Yisrael may atone for one’s sins. Others indicate that burial in Eretz Yisrael may be auspicious during the resurrection of the dead [*tehiyat hametim*]. Many pious individuals instruct their children to bury them in Eretz Yisrael. Interestingly, R. Yosef Eliyahu Henkin sharply criticized the practice of ordinary people spending large sums of money on funeral arrangements, including burial in Israel, and recommended instead to give money to charity or to support Torah study.

RENDING ONE’S GARMENTS [KERIA]

Rending one’s garments is one of the earliest expressions of mourning (Gen. 37:29, 34; II Sam. 13:31; Job 1:20). The commentaries offer numerous insights into this practice. While tearing one’s garment may be viewed as an expression of outrage and intense grief, Rambam explains that tearing one’s garment ultimately assuages one’s anger and calms one’s soul. Rending the article of clothing that covers the heart, in response to the death of a parent, may symbolize a broken heart, as the prophet Joel says: “And rend your heart, and not your garments” (Joel 2:13).