

What's the Truth about . . . a Jew with a Tattoo Being Buried in a Jewish Cemetery?

jewishaction.com/religion/jewish-law/what2/

Ari Z. Zivotofsky

5/13/2010

MISCONCEPTION: A Jew with a tattoo may not be buried in a Jewish cemetery.

FACT: This belief has no basis in Jewish law. Just as a Jew who violated other Torah laws may be buried in a Jewish cemetery, so too may one who violated the prohibition against being tattooed.

BACKGROUND: This misconception is widespread amongst American Jews. References to it are often found in general American culture;² for example, it was mentioned on the TV show *The Nanny*.³

Tattoos are Biblically prohibited.⁴ The Torah states (Vayikra 19:28): “You shall not make gashes in your flesh for a dead person; you shall not etch a tattoo on yourselves. I am God.” The Torah uses the term *ketovet ka’aka* when referring to a tattoo; *ketovet* is derived from the root letters *kaf, tav, vet*, which means to write, while the second word, *ka’aka*, is difficult to translate as this is the only time it appears in the Bible.^{5,6} Onkelos translates the term as “*rushmin charitin, incisions.*” The Septuagint translates it as “*grammata stikta, tattooed writing/drawing.*”



Clarifying the Biblical prohibition, the Mishnah (Makkot 3:6) and Gemara (Makkot 21a; Yerushalmi, Makkot 3:6) state that it only applies if the individual performs a two-step process: perforating the skin and filling the resulting hole with ink. Injecting ink into the deep layers of the skin causes the mark to become permanent. Rashi (Leviticus 19:28; cf. Rashi on Makkot 21a) explains that the writing is done with a needle that yields a mark that is permanent.

Rabbi Shimon, as explained by Bar Kapparah in the Gemara, claims the prohibition only pertains to a tattoo that includes the name of an idol. Tosafot (Gittin 20b, s.v. *beketovet ka’aka*; see Beit Shmuel, EH 124:16) asserts that there is a rabbinic prohibition against applying temporary writing that appears like a tattoo and the *Minchat Chinuch* 253:1 prohibits permanent marking of the skin even if no ink is applied. Rambam and Shulchan Aruch rule that in order to violate the prohibition one needs to pierce the skin and apply color, in either order (Hilchot Avodat Kochavim 12:11; Yoreh Deah 180:1; Shach 180:1; Kitzur Shulchan Aruch 169:1). They both rule that the one being tattooed is not culpable, the tattoo “artist” is. If, however, the person being tattooed assists in the tattooing process, he is culpable, similar to the laws regarding the shaving of one’s beard and peyot (Rambam *ibid.*; Shulchan Aruch, Yoreh Deah 180:2). Some rabbinic authorities maintain that the one who is tattooed is guilty of violating the prohibition and should receive lashes (Kesef Mishnah 12:1, Shach, Yoreh Deah 180:4).

It is not known how prevalent tattooing was in Biblical times. Rambam (Hilchot Avodat Kochavim 12:11) says that tattooing was customary among pagans as a means of declaring the individual indentured to a certain idol.⁷ However, with regard to the prohibition, intent is immaterial.

The prohibition against tattooing has many ramifications in modern times. Tattooing has become very popular, both in Israel and the US, and many Jews are not even aware that such a prohibition exists. What happens when someone with tattoos does *teshuvah*? Is he obligated to have the tattoos removed, an often difficult and painful process? There would seem to be no obligation to have them removed, although one may wish to do so as a *middat Chassidut*; all the more so if the tattoo is of either an immoral or idolatrous nature. Nowadays, there are creams that can fade a tattoo over time. Laser removal is also an option. Undergoing plastic surgery to remove tattoos is, halachically speaking, questionable because it involves inflicting wounds upon oneself.⁸ Another method of

removal involves “covering up” the tattoo by injecting new dye. This method is also halachically questionable as it is possible that the removal process itself is considered tattooing.⁹ A woman once asked Rabbi Ephraim Oshry (1914-2003), the well-known posek who wrote responsa during the Holocaust, if she could remove her concentration camp tattoo via plastic surgery. He advised Holocaust survivors not to remove their tattoos, but rather to wear them as badges of honor (Teshuvot Mima’amakim 4:22).

Much rabbinic discussion surrounds the relatively new semi-permanent cosmetics (also known as cosmetic tattooing) that are applied via needle.¹⁰ Several leading rabbinic authorities believe that if the cosmetics are indeed long lasting, and applied to the deep layers of the skin, it is prohibited to use them.¹¹ Others note that Rashi emphasizes in both his commentary to the Chumash and to the Gemara that in order for a tattoo to be prohibited, it must last a lifetime, and semi-cosmetics do not. Rabbi Yaakov Ariel, chief rabbi of Ramat Gan, wrote in an online responsum that the prohibition is with regard to writing words or pictures, but mere color on the skin does not constitute a tattoo and is, therefore, not prohibited. Despite this, the general consensus among posekim is to prohibit semi-permanent makeup for a variety of different reasons.¹²

Rabbi Shmuel Vosner also raises some philosophical problems with regard to semi-permanent makeup. In a discussion unrelated to tattoos (Teshuvot Shevet HaLevi 6:33), he discourages women from putting on too much makeup and cites the Gemara (Shabbat 62b) that states that one reason for the destruction of the Beit Hamikdash was the excessive use of cosmetics.¹³ He brings this argument up again with regard to semi-permanent makeup, and insists that makeup, when appropriate, should be used in moderation.

The question of whether a tattoo is considered by halachah to be a chatzizah with regard to hand washing before eating bread or with regard to bathing in a mikvah is also raised, but most authorities determine that a tattoo does not constitute a chatzitzah. Other rabbis have questioned—and ultimately permitted—the writing on the skin by a doctor to mark the location where surgery should be performed (Rabbi Avraham Sofer Avraham, Nishmat Avraham 5:67-8). Mishpitei Uziel (Il Yoreh Deah 22) ruled that for a need, tattooing is permissible.

Since tattooing is Biblically prohibited and has a possible connection to idolatry, one can easily understand where the misconception comes from. There is a Biblical obligation to bury a dead Jew (Sanhedrin 46b; Shulchan Aruch, Yoreh Deah 348:2; 357:1-2; 362:1), even an evil one (Shu”t Chatam Sofer, Yoreh Deah 341). Furthermore, the halachah states that one should not bury an evil person near a tzaddik, nor even a very wicked person near a mildly wicked person, nor a good person near an outstandingly pious individual (Sanhedrin 47a; Rashi, *ibid.*; Shulchan Aruch, Yoreh Deah 362:5).^{14, 15} This law is derived from the incident in Il Kings 13:21, where the body of a false prophet was thrown into the Prophet Elisha’s grave and then arose from the dead because God did not want the rasha buried with Elisha. The Gemara explains that there were therefore different cemeteries even for different levels of rishut, evil. For example, there were different burial areas for those killed by beit din via stoning and those killed by sword.¹⁶

This halachah led to the formation of burial societies—groups of people with common values who purchase burial plots near each other. Thus, only in a Jewish cemetery does one find separate burial sections for societies of like-minded individuals. Indeed, a halachically conscious person should be alert to this issue when purchasing a burial plot, and should try to purchase one with a group that is particular about whom they accept. Burial societies were created specifically for this purpose. Membership in such a society is different than membership in, for example, a shul, which does not necessarily guarantee the religious observance of its members.

In general, a sinner is not excluded from a Jewish cemetery on the basis of his having violated certain laws, and thus Shabbat desecraters are buried in Jewish cemeteries. There are, however, rare exceptions. Since cremation was introduced in the late 19th century, there has been a great deal of rabbinic discussion about how to deal with a Jewish person’s cremated ashes. Some authorities maintain that excluding them from a Jewish cemetery will help discourage the practice of cremation. Three different positions emerged: exclude the ashes of cremated Jews from a Jewish cemetery, permit their internment in a Jewish cemetery, or permit the burial but in a separate section (see e.g., Seridei Aish 2:123-124; Melamed L’hoil 2:113-114; and Geshet Hachaim 1:16:9). Cremation is so frowned upon

in rabbinic literature that in a lengthy response (Chelkat Yaakov, 2:4), Rabbi Mordechai Yaakov Breisch ruled in 1957 that it is better to be buried in a non-Jewish cemetery than to be cremated. This truly highlights the negative attitude halachah has towards cremation.

Oftentimes uninformed Jews think that because they violated various Torah laws (such as having a tattoo), they will be denied a Jewish burial; they therefore conclude that they would like to be cremated, since they prefer cremation over a non-Jewish burial. However, there is a terrible irony here. For almost no one is excluded from a Jewish cemetery due to lack of halachic punctiliousness. When one is cremated, however, one denies oneself the privilege of having a Jewish burial. In fact, cremation is one of the only ways to guarantee that one will not have a Jewish burial.

Another related misconception is that suicides are buried outside of the cemetery. In fact, they are not buried outside of a Jewish cemetery, although they are buried at a distance from the other deceased, sometimes in a separate section of the cemetery (Gilyon Maharsha, Yoreh Deah 345; Sidney Goldstein, *Suicide in Rabbinic Literature* [New Jersey, 1989], 60-61). In other cultures, such as the Greek and Roman cultures, suicides were excluded from cemeteries. However, there is no Talmudic source for excluding suicides from being buried in a Jewish cemetery, and this practice was discouraged by halachic authorities (see Tzitz Eliezer 10:41 and Benjamin Gesundheit, "Halakhic and Moral Analysis of Masekhet Semahot," *Tradition* 35:3 [2001]: 40 and sources on 48).

Ab initio, those of similar religious and moral stature should be buried next to each other. If, however, a tzaddik and a rasha are buried next to each other, it may not be necessary to move the rasha, although some separation, such as a halachic partition, is usually advised (see Gilyon Maharsha, Yoreh Deah 362:5; Shu"t Chatam Sofer, Yoreh Deah 341; Minchat Yitzchak 6:136; Shevet HaLevi 7:193). If, however, fraud or bribery was involved in acquiring the desirable plot, then the rasha should indeed be moved (Shu"t Maharsham 7:47). Although moving graves is for the most part discouraged, it is sometimes recommended. Rabbi Shmuel Engel (Shu"t Maharash, 3:65) permitted one to move his wife's grave when it was discovered that she was mistakenly buried in a section of the cemetery reserved for Shabbat desecraters.

Despite the lack of any halachic basis, the misconception about tattoos continues to prevail. The *Jerusalem Post Magazine* ("In the Flesh," by Malina Sarah Saval, March 21, 2003, 12-13) reported: "True, in past generations rabbis responded to the biblical injunction by denying the tattooed a taharah [purification]—the traditional cleansing and preparation of a Jewish body for burial. However, in today's predominantly secular society, where tattoos are usually acquired for decorative and not idolatrous reasons, that sanction has been unofficially lifted." The author quotes an individual who performs taharot in Los Angeles as stating that no chevrah kadishah today would deny a taharah to someone merely because he had a tattoo. The article also states that taharot had historically been denied to those with tattoos because of their association with idolatry. I managed to locate the journalist who wrote the article and the individual quoted in the article. Neither of them could provide a source for the assertion made regarding taharot.

The bottom line is that just as those who ate treif, violated Shabbat, took interest on loans or cheated on taxes can be buried in a Jewish cemetery, so can those who violated the prohibition of tattooing. If sinners were excluded from Jewish cemeteries, our cemeteries would be empty. A person with a tattoo is buried in a Jewish cemetery, no questions asked. אַ

Notes

1. I thank Rabbi Joel M. Finkelstein, rabbi of Anshei Sphard-Beth El Emeth Synagogue in Memphis, Tennessee, for alerting me to this misconception and Rabbi Elchonon Zohn, chevrah kadishah director of the Vaad Harabonim of Queens and national director of the National Association of Chevra Kadisha, for his helpful comments on the presented material.

2. Geraldo Rivera, interview, *TV Guide*, 13 May 1989, 21; *Curb Your Enthusiasm*, HBO, season 3, episode 6, "The Special Section."

3. The Nanny, CBS, season 4, episode 9, "Tattoo," aired November 20, 1996.
4. Rabbi Itamar Machpud wrote *Kedushat Yisrael*, a book on this prohibition. The book does not mention that a tattooed individual cannot be buried in a Jewish cemetery, and in a personal conversation I had with the author, he said he knows of no source for such a claim. This misconception seems to be predominantly American and is not well known in Israel.
5. Rashi points out similar words in Bamidbar 25:4 and II Samuel 21:6.
6. See Ralbag on the verse for a summary of positions. Ibn Ezra says that there are those who interpret *ketovet ka'aka* not as a prohibition against tattooing but as a prohibition against having a procedure done with fire, i.e., branding, as was done with cattle or slaves. Seforno says that there should only be one physical mark on one's body—circumcision.
7. See Steve Gilbert, *Tattoo History* (2001); many ancient cultures tattooed, often for the purpose of branding. The Greeks in Plato's time marked slaves so that if they escaped they could be recognized. Ancient Romans tattooed mercenary members of the army to prevent desertion. Samoans tattooed the noses of criminals. In eighteenth-century Japan, criminals had a pictograph of a dog marked on their foreheads.
8. For interesting discussions on the topic, see B'mareh Habazak 5:78 (Jerusalem, 5765), 164-5; Dayan Weiss, *Minchat Yitzchak* 3:11; Rabbi Eliyahu Bakshi-Doron, *Techumin* 22:387-391.
9. See Rabbi Ezra Batzri, *Techumin* 10: 282-287 and Rabbi Betzalel Stern, *B'tzel Hachachmah* 5:82 who discusses many aspects of the prohibition.
10. I thank Rabbi Professor Aryeh Frimer for pointing me to many of these sources.
11. See Rabbi Ezra Batzri, *Techumin* 10: 282-287; Rabbi Baruch Shraga, *Techumin* 18: 110-114; Rabbi Shmuel Vosner, *Shevet HaLevi* 10:137; and B'mareh Habazak 2:81.
12. For an excellent summary of this topic, see Rabbi Chaim Jachter, *Gray Matter*, vol. 3 (New York, 2008), 67-78.
13. For a discussion of many reasons offered for the Temple's destruction see: Ari Z. Zivotofsky, "What's the Truth about . . . the cause of the Destruction of the Beit Hamikdash," *Jewish Action* (summer 2004).
14. Because death and burial atone for sins, rabbis have questioned whether the deceased, irrespective of who he was, could be deemed fully righteous after death such that anyone can be buried next to him (*Sha'agat Aryeh*, new *Shu"t*, 17). For a similar discussion, see *Maharsham* 3:343.
15. Regarding burying a non-Jew in a Jewish cemetery, see: *Gittin* 61a; *Rambam*, *Avel* 14:12 and *Melachim* 10:12; *Shulchan Aruch*, *Yoreh Deah* 367:1; *Kesef Mishnah*, *Melachim* 10:12; *Megillat Ruth* 1:17; *Targum*, *ibid.*; and *Yevamot* 47b.
16. Based on this, the Chatam Sofer was asked the following interesting question (*Shu"t Chatam Sofer*, *Yoreh Deah* 333, cited in *Pitchei Teshuvah*, *Yoreh Deah* 362:4). The Talmud (*Sotah* 8b; *Sanhedrin* 37b) states that the four types of death penalty that a *beit din* can mete out still exist and that if, for example, a person is guilty of a capital crime warranting stoning, he will fall off of a building. The Chatam Sofer was thus asked whether a murder victim may be buried in a regular cemetery. After all, a person put to death by *beit din* was not buried in a regular Jewish cemetery. The Chatam Sofer responded that he may be buried in his family plot for a variety of reasons [although note that this was often not the practice]. One reason is that the rabbis were careful about their words. According to the Talmud, a person guilty of a capital crime gets the due punishment. Thus, one deserving of stoning may fall off a tall building. But the rabbis did not state that all those who fall off of buildings are necessarily guilty of a capital offence.

17. It is not always prohibited and when there is a need, a grave may be transferred. See Rabbi Yisrael Rosen, Techumin 18 (5758): 254-273.

Rabbi Dr. Ari Zivotofsky is on the faculty of the Brain Science Program at Bar-Ilan University in Israel.

This article was featured in Jewish Action [Summer 2010](#).