



Ashes To Ashes and Dust To a Coral Reef? Modern Disposition of Remains

An examination of burial and cremation, and associated options.

ALYX DURACHTA AND LAUREN J. WOLVEN

The history of the world is a story of religious differences, and the religious laws and traditions governing the disposition of remains are reflective of the disparities in religious beliefs. Looking back to the introduction of Christianity in Britain, the disposition of remains was, in large part, controlled by the Church of England.¹ In contrast, as an effect of rejecting the idea of a single church, the United States lacked uniformity in the control of the disposition of remains. Historically, funerals were meant to assist the deceased in passing on to the next life. Over time, however, there has been a shift to post-death rituals providing comfort and closure to those who are still living.

Although religion generally plays a lesser role in the disposition of remains today, it continues to influence how individuals, or their families, choose a course of disposition. By its very nature, the United States is a melting pot of ethnicities and religions. That makes the United States an ideal ground for the study of differing rituals regarding

what happens to the physical remains after a person's death.

The United States Conference of Catholic Bishops Committee on Doctrine (USCBB Committee) provides guidance on the proper disposition of bodily remains for Catholics.² The USCBB Committee emphasizes respecting the body of the deceased. In Catholicism, there is a belief that when at the Final Resurrection, the souls of the dead will be reunited with their bodies, and that the body is not a temporary use for the soul that can be discarded. Based on the sacredness of the body in Catholicism, burial is considered best practice.³ While burial is preferred in Catholicism, cremation is permitted "...unless it was chosen for

reasons contrary to Christian doctrine."⁴

Like Catholicism, the funeral and mourning practices in Judaism are religiously significant and place a large emphasis on the continued sanctity of the human body. Catholic Canon law permits embalming, however, Judaism rejects the embalming of a body. Embalming of the body is not necessary, as under Jewish law, viewing of the body is avoided and burial takes place as soon as possible after death. While burial is preferred within twenty-four (24) hours, there are exceptions such as transporting the deceased or allowing family to travel or to avoid burial on a Jewish holy day, such as Shabbat (the Jewish day of rest). Jewish tradition further requires that the body not be left unattended before burial, and that it be guarded by a Shomer (guardian). While Jewish funerals are brief, there is a seven day mourning period known as "shiva" for the immediate family members of the deceased beginning on the day of the burial.

ALYX DURACHTA is an associate in the Trusts & Estates Group of Levenfeld Pearlstein, LLC in Chicago. LAUREN J. WOLVEN is a partner in the Trusts & Estates Group of Levenfeld Pearlstein, LLC in Chicago and a Fellow of the American College of Trust and Estate Counsel. She concentrates her practice on estate planning, tax and succession for privately held businesses, charitable planning, and fiduciary risk management.

Believing in reincarnation, Hindus follow the idea that it is only the body and not the soul that dies. While Hindu practices are diverse, the last rite of passage in a Hindu's life cycle is the cremation ceremony or "Antyesti" (last sacrifice). It should be noted that some sects of Hinduism follow the practice of burial rather than cremation.

Hindu funerals typically take place within 24-48 hours of death, as there is the belief that the body can prevent the soul from moving on to its next journey. In preparation for disposition of the corporeal remains, the body is washed by family while prayers and hymns are recited. The body is adorned with marks of the family and community, and family members will choose flowers that symbolize the health benefits to pass on to their loved ones as they move to their next life. Flowers play an important role in a Hindu funeral, so bringing or delivering flowers to a Hindu funeral may be considered a distraction that could harm the soul of the deceased. As in Judaism, there is a Hindu mourning period following a person's death. This mourning period lasts thirteen days. The cremains of the body usually are spread in a body of water, preferably the Ganges River in India. While the mourning period differs from family to family, the purpose of the Hindu

mourning period is to provide condolences to the family and assist the deceased in their journey to the next life.

Similar to Judaism and Hinduism, the Islamic faith follows the belief that burial should happen as quickly as pos-

Whether rooted in religion, tradition, or both, there is a commonality in laying the no longer living to rest; respecting the deceased and providing the living with a way to honor and mourn the loss of a loved one.

sible after death. The body is ritually bathed and shrouded in preparation of the burial. In keeping the Muslim ideals of modesty, women perform the ritual bathing of women and men perform the ritual bathing of men. Children may be bathed by either sex. Additionally, the ritual washing should

be done as many times as it takes for the body to be cleaned but should always occur an odd number of times. Once cleaned, the body is covered in a simple sheet, with the hands placed in a prayer position, and the body is then brought to the mosque. Various rituals are performed in threes during an Islamic burial. These include using three sheets to wrap the body, forming three lines during prayer at the mosque, mourners placing three handfuls of soil in the grave of the deceased, and providing food to the family for the first three days of the mourning period.

Whether rooted in religion, tradition, or both, there is a commonality in laying the no longer living to rest; respecting the deceased and providing the living with a way to honor and mourn the loss of loved one.

Cremation of Remains

The most well-known alternative to a burial is cremation. Cremation is the process that diminishes human remains to bone fragments and atomizes the fragments into small pieces that are a fraction of an inch.⁵ There are two types of cremation processes; flame-based cremation and alkaline hydrolysis. Flame-based cremation, the most common type of cremation, uses a flame to reduce the human remains to cremains. The newer method, alkaline hydrolysis, also referred to as "aquamation," uses a chemical mixture of alkali and water in a highly pressurized, high temperature container, accelerating natural decomposition. The process of aquamation will liquify all but the bones, which are then dried and reduced to the ash provided to family members. Alkaline hydrolysis was first legalized in 2003 in the United States by Minnesota.⁶ Alkaline hydrolysis is currently legal in 21 states in the United States.⁷

The USCCB Committee has specifically stated that cremation via alkaline hydrolysis is not permitted due to the

¹ Marsh, *The Law Of Human Remains* (2015).

² *On the Proper Disposition of Bodily Remains*, Committee on Doctrine, US Conference of Catholic Bishops (March 3, 2023), www.usccb.org/resources/On%20Proper%20Disposition%202023-03-20.pdf

³ *Id.* at 2.

⁴ *Id.* (citing Code of Canon Law, can. 1176 section 3. Cf. Catechism of the Catholic Church, no. 2301).

⁵ *Cremation Process*, Cremation Association of North America, <https://www.cremationassociation.org/page/CremationProcess> (last visited Aug. 23, 2023).

⁶ Minn. Stat. Ann. section 149A.941.

⁷ Ala. Code section 34-13-1; Cal. Health & Safety Code section 7010.1 et seq; Colo. Rev. Stat. Ann. section 12-135-103; Fla. Stat. Ann. section 497.005; Ga. Code Ann. section 43-18-1; Haw. Rev. Stat. Ann. section 531B-2; 410 ILCS 18/5; Idaho Admin. Code r. 24.08.01.250; Kan. Stat. Ann. section 65-1760; Code Me. R. tit. 10-144 Ch. 227, section 1 et seq; Md. Code Ann., Bus. Reg. section 5-101; Minn. Stat. Ann. section 149A.941; Mo. Code Regs. Ann. tit. 20, section 2120-2.071; Nev. Rev. Stat. Ann. section 451.637; N.H. Rev. Stat. section 325-

A:30 (repealed June 26, 2008, S.B 322); N.C. Gen. Stat. Ann. section 90-210.136; Or. Rev. Stat. Ann. section 692.010; Tenn. Code Ann. section 62-5-801 et seq; Utah Code Ann. section 58-9-613; Vt. Stat. Ann. tit. 26, section 1211; Wash. Rev. Code Ann. section 68.50.110; Wyo. Stat. Ann. section 33-16-502.

⁸ *On the Proper Disposition of Bodily Remains*, Committee on Doctrine, US Conference of Catholic Bishops (March 3, 2023), www.usccb.org/resources/On%20Proper%20Disposition%202023-03-20.pdf

⁹ *The Rabbinical Assembly Guide to Jewish Funeral Practice*, <https://www.rabbinicalassembly.org/story/guide-jewish-funeral-practice>, Rabbinical Assembly (last visited Aug. 23, 2023).

¹⁰ *COVID-19 and Islamic Burial Laws: Safeguarding Dignity of the Dead*, Humanitarian Law & Policy Blog (April 30, 2020), https://blogs.icrc.org/law-and-policy/2020/04/30/covid-19-islamic-burial-laws/#_ftn4, (see Al-Dawoody, *Management of the dead from the Islamic law and international humanitarian law perspectives: Considerations for humanitarian forensics*, International Review of the Red Cross, 99 n.2, 769-770 (2017)).

lack of respect the process brings to the body, and that it does not carry hope in resurrection.⁸ Cremation is against Jewish tradition, although if a Jewish person is cremated, a Rabbi may still choose to officiate prior to the cremation.⁹ Similarly, Muslims are never cremated, and cremation is considered a violation of the dignity to the body.¹⁰ On the other hand, it is Hindu tradition to cremate the remains of the deceased, except for the remains of babies, children, and saints, as those bodies have not accumulated any karma and are considered pure.¹¹

Many states require a mandatory waiting period before remains can be cremated. Requiring such waiting period can eliminate the issue that one funeral home in Texas faced. The adult son of a decedent brought an action against a funeral home, seeking damages for mental anguish due to the funeral home's cremation of his mother without his consent.¹² When the decedent died unexpectedly, the decedent's sisters were contacted and travelled to where the decedent resided at her death. The decedent's sisters were aware that the decedent had an adult son, but efforts in locating him came up short. Texas, like many other states, has a 48-hour waiting period before remains can be cremated.¹³ The decedent's sisters noted that they were unable to ride out the waiting period as they needed to get back to work, and

due to an exception in the Texas Health & Safety Code, the waiting period was waived. Upon learning of his mother's passing and the disposition of her remains without his approval, the decedent's son filed the negligence action against the funeral home seeking damages for mental anguish. On appeal, the Texas Supreme Court held,

Some people cannot determine what to do with a loved one's cremains, so the box of ashes sits in a dark closet or dank basement for years.

inter alia, "...that the negligent mishandling of a corpse is one such legal duty where mental anguish damages may be available."

Before deciding to cremate the remains of a loved one, a person should first take into consideration the personal preferences and religious beliefs of the loved one, statutory require-

ments, and the preferences of those who may have the legal authority to override decisions.

Creative Disposition of Cremains

Six feet under? To the moon? Food for the fishes? Future options seem endless when it comes to disposing of one's remains, and even today there is a cottage industry affording a plethora of options. The business of death is good business, and disposition of remains can be surprisingly expensive. According to the National Funeral Directors Association (NFDA), the national median cost of a funeral with viewing and burial for an adult in 2021 was \$7,848.¹⁴ This is a 6.6% increase in median cost since 2016.¹⁵ This median cost does not include cemetery, monument, or marker costs, or other costs such as flowers or an obituary, which could significantly increase the cost of disposing of remains. Due, in part, to the increasing cost of a funeral and burial, more and more people are choosing alternative methods to dispose of their loved ones' remains.

Although generally considered the alternative to burial, cremation is hardly the final step these days when it comes to the ultimate disposition of remains. Most of us have gone into someone's house to see grandma hanging out on the mantle. We have heard

¹¹ *Hindu Funeral Traditions*, Everplans, <https://www.everplans.com/articles/hindu-funeral-traditions> (last accessed Aug. 23, 2023); Thran, *Hindu End of Life: Death, Dying, Suffering, and Karma*, 12 *Journal of Hospice and Palliative Nursing* 6, 340.

¹² *Nelson v. SCI Texas Funeral Servs., Inc.*, 484 S.W.3d 248, 250 (Tex. App. 2016), *aff'd*, 540 S.W.3d 539 (Tex. 2018).

¹³ See Tex. Health & Safety Code section 716.004(a) ("A crematory establishment may not cremate human remains within 48 hours of the time of death indicated on a death certificate unless the waiting period is waived in writing by: (1) a justice of the peace or medical examiner of the county in which the death occurred; or (2) a court order.").

¹⁴ *2021 NFDA General Price List Study Shows Funeral Costs Not Rising as Fast as Rate of Inflation*, National Federation of Funeral Directors Association (Nov. 4, 2021), <https://nfda.org/news/media-center/nfda-news-releases/id/6182/2021-nfda-general-price-list-study-shows-funeral-costs-not-rising-as-fast-as-rate-of-inflation>

¹⁵ *Id.*

¹⁶ Brooks, *State and Federal Laws for Scattering Ashes Explained*, CAKE (May 1, 2021) <https://www.joincake.com/blog/scattering-ashes-laws-explained/#Laws%20For%20Spreading%20Ashes%20at%20Sea>

¹⁷ 40 CFR 229.1 (2023).

¹⁸ 40 CFR 229.1(a)(2) (2023).

¹⁹ 40 CFR 229.1(a)(3) (2023).

²⁰ 40 CFR 229.1(a)(3)(d) (2023).

²¹ National Park Service, <https://www.nps.gov/index.htm> (last visited Aug. 23, 2023).

²² *Id.*

²³ Ashely, Michels, *AVS Fan Banned From Ball Arena After Spreading Friend's Ashes On The Ice*, News Channel 8 (June 24, 2022), <https://www.wfla.com/sports/nhl/avs-fan-banned-from-ball-arena-after-spreading-friends-ashes-on-the-ice/>

²⁴ *Ten Important Things to Know About Scattering Ashes*, The Leaving Urn (Feb. 6, 2022), <https://www.thelivingurn.com/blogs/news/10-important-things-to-know-before-scattering-ashes>

<https://www.thelivingurn.com/blogs/news/10-important-things-to-know-before-scattering-ashes>

²⁵ *How it Works*, Eterneva, <https://www.eterneva.com/how-it-works> (last visited Aug. 23, 2023).

²⁶ *Where is Human Composting Legal*, Recompose, <https://recompose.life/faqs/where-is-human-composting-legal/> (last visited Aug. 23, 2023).

²⁷ *Frequently Asked Questions*, Recompose, <https://recompose.life/faqs> (last visited Aug. 23, 2023).

²⁸ *Bio Urn*, The Living Urn, <https://www.thelivingurn.com/pages/product> (last visited Aug. 23, 2023).

²⁹ *About the Living Urn Design and Production*, The Living Urn, <https://www.thelivingurn.com/pages/about-us-1> (last visited Aug. 23, 2023).

³⁰ *What is an Eternal Reef?*, Eternal Reefs, <https://www.eternalreefs.com/the-eternal-reefs-story/what-is-an-eternal-reef/> (last visited Aug. 23, 2023).

³¹ *Id.*

stories of people (or even have done it ourselves) who have scattered their loved one's ashes in places that were significant to the deceased person, such as the ocean or Wrigley Field (which is actually illegal, in case you were wondering). Some people cannot determine what to do with a loved one's cremains, so the box of ashes sits in a dark closet or dank basement for years.

Before you go scattering ashes at a sports stadium, at the peak of a mountain, on the beach or off the bow of a boat, it's important to understand the law around releasing cremains and when you may need a permit. Federal, State, and local laws need to be looked at when disposing of cremains.¹⁶ For example, the Environmental Protection Agency (EPA) has issued a general permit for the spreading of ashes at sea in the United States.¹⁷ Pursuant to the EPA's requirements, human remains which are not cremated shall be buried no less than three nautical miles from land and in water that is at least 600 feet deep, and it must be ensured that the remains sink to the bottom of the ocean rapidly and permanently.¹⁸ The disposition of cremated remains do not have the same depth requirements as non-cremated remains, but the disposition of cremains must still take place at least three nautical miles from land.¹⁹ Furthermore, all burials at sea must be reported within 30 days to the EPA.²⁰

Most National Parks allow for the scattering of ashes, but each park has specific conditions that must be met and a permit is required.²¹ Some conditions of dispersing cremains at a National Park may include a limit on the number of attendees, the exact location

(or prohibited locations) in the park where the cremains may be disposed of, and restrictions on the use of sound-amplifying devices during the ceremony.²²

Spreading ashes at a sports arena is generally illegal, and if you don't want to be banned from watching your favorite team live, then do not try it. In 2022, Ryan Clark was removed from an Avalanche game after spreading some of his friend's ashes on the ice, and was banned from watching the team at Ball Arena for the remainder of the season.²³ That was an unfortunate year to be banned, as the Avalanche made it to the Stanley Cup Finals. Other tips for spreading ashes include checking wind conditions and avoiding crowds.²⁴

As society evolves away from its reliance on religion to guide all rituals, entrepreneurs have jumped into the void to create an entire industry of intriguing options. For example, if you want to keep your loved one with you always, you can wear them as jewelry. One of a few companies that handles the carbon transformation, Eterneva will take a person's ashes (or hair), and make a lab grown diamond through a process that involves extracting the carbon to grow the diamond.²⁵

Was the loved one more of an environmentalist? Human composting is now legal in seven states (Washington, Colorado, Oregon, Vermont, California, New York, and Nevada) with 10 others having human composting legislation that has been introduced.²⁶ The composting company Recompose has a human composting process which takes between eight and 10 weeks to complete and creates soil,

which they say, "...returns the nutrients from our bodies to the natural world."²⁷ On a similar note, The Living Urn allows people to turn their loved ones into trees.²⁸ With the Living Urn, the ashes of a loved one are placed into the patented BioUrn, and the roots of a young tree are placed into the urn. The urn is planted into the ground, resulting in the growth of tree memorializing a loved one. The Living Urn notes that "[this] is a smart, sustainable and environmentally friendly way to approach an inevitable phase of life. It allows us to give back to nature while, at the same time, creating a living memory to keep our loved ones present in our lives after their passing."²⁹

Another environmentally friendly option is an Eternal Reef. Eternal Reef uses the cremains of an individual and incorporates them into environmentally safe cement artificial reef formations that are placed on the ocean floor and create marine habitats for sea life.³⁰ The Eternal Reef can be personalized with messages from loved ones, handprints, or environmentally-safe mementos.³¹

Death has been around as long as life itself. In an ever-changing world, and in a country that was built upon the diversity of people and religions, we have not only seen the changes in the way people live, but in the way people choose to be laid to rest. With new options to dispose of remains popping up on an increasing basis, you can almost certainly find a creative way to keep your loved one with you or lay them to rest in a way that embodies the person they were here on earth. ■