YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**Halakha in the Age of Social Media**

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Dedicated in memory of Rabbi Jack Sable z”l and

Ambassador Yehuda Avner z”l

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**Shiur #03: Social Media, Communication and the “Classic” *Aguna*, Part I**

**From *Mechayeh Ha-meitim* to the 9/11 *agunot[[1]](#footnote-1)***

In the [previous *shiur*](https://etzion.org.il/en/shiur-02-social-media-and-berakhot), we discussed the question of whether one can say the *berakha* of *Mechayeh Ha-meitim* in the world of social media. The *berakha* is predicated on a reality in which, after not being in touch with a friend for a year, one has to worry that the friend was dead. Upon discovering that the friend is alive, one blesses God. To put it differently, the recitation of *Mechayeh Ha-meitim* is based on the possibility of “losing someone.” However, as we saw, most authorities assume that in the ever-connected world created by communication technology, there are very few cases in which one would assume that a friend is not alive without having heard news.

The question of whether someone cannot get lost in the world appears in a slightly different form in the world of *ishut,* marital status. The law, as outlined in the first *mishna* in *Kiddushin*, is that a marriage can end in one of only two ways: divorce or the death of the husband. If the husband is known to have died, then his wife is free to remarry.

However, if a husband disappears and his whereabouts are unknown, in many cases his wife becomes an *aguna,* a chained woman.[[2]](#footnote-2), [[3]](#footnote-3) Without certain knowledge that her husband is dead, she cannot remarry. If she does, she risks violating the prohibition of adultery — and if there are children, causing them to become *mamzerim.* Thus, the sixteenth chapter of *Yevamot* discusses various cases in which the status of a husband is unknown and the methods we use to establish whether or not he is dead.

The category we will be exploring in this *shiur* is that of *mayim she-ein lahem sof,* endless waters (i.e. a body of water whose furthest extent is not visible). This refers to a set of cases in which the husband is known to have been in a dangerous situation, such as seemingly drowning in a body of water. If there is no way of finding out whether the husband has actually died, the woman is stuck. In the classic case, because the far shoreline is not observable, we must be concerned that the husband has not died, but rather emerged on the other side of the body of water. Though we have not heard anything, the Talmud assumes that we must at least be concerned that the lack of news regarding him is not evidence that he has in fact drowned.

However, starting in the Gemara, many authorities wonder whether there might be a situation in which communications are so good that not hearing from the husband for a certain period of time would give us good reason to presume him dead, thus giving the court a reason to permit his wife to remarry. As we will see, there has been a chain of authorities making arguments along these lines after each advance in travel or communications technology. Though this type of argument is rarely used as the only reason to permit a woman to remarry, it persistently appears. Most recently, we will see how several rabbinic authorities use a version of this argument to permit remarriage for some of the women whose husbands were trapped in the Twin Towers on 9/11.

***Mayim she-ein lahem sof* in the Mishna and Gemara**

To deal with this question, we must start from the central discussion in the Talmud. The passage is as follows:

**MISHNA:** If a man **fell into the water** and did not come out, **whether** the body of water **has** a visible **end or does not have** a visible **end, his wife is prohibited** from remarrying. There is no absolute proof that the man died, as it is possible that he emerged from the water some distance away. **Rabbi Meir said: An incident** occurred **involving a certain** person **who fell into the Great Cistern and emerged** only **after three days.** This is evidence that sometimes one may survive a fall into water, even when everyone assumes he is dead…

**GEMARA: Rav Ashi said: That which the Sages said,** that if a man fell into **an endless body of water, his wife is prohibited** from remarrying, **applies** only **to an ordinary person** who is not well known and could slip away secretly and live in anonymity, hiding the fact that he survived. **But** it does **not** apply to **a Torah scholar,** because **if he would emerge** from the water, **publicity would be** generated and the news of his survival would spread. The Gemara rejects this: **That is not so. It is no different** for **an ordinary man and it is no different** for **a Torah scholar. After the fact,** i.e., if she remarried, **yes,** she may remain with her new husband, but she may **not** remarry ***ab initio*.** (*Yevamot* 121a, Koren translation and elucidation)

The *mishna* introduces the category of *mayim she-ein la-hem sof.* The *mishna* assumes that if a body of water does not have a visible end, we cannot assume that a husband who fell into it has drowned, as Rabbi Meir illustrates with his story of a man who seemed to have drowned, only to turn up alive several days later. Thus, the *mishna* seems to assume that, at least in the ancient world, we have to be concerned that a husband could “get lost.” The ruling in *Shulchan Arukh* (*EH* 17:32,34) based on this is that a woman cannot remarry simply because it is known that her husband fell into endless waters, and testimony that a man has fallen into such waters is therefore not evidence that he is dead.

However, as the Gemara goes on to say, this is only true *ab initio*. If, however, a woman were to remarry because her husband has probably died by drowning in such a situation, she would not be forced to divorce her new husband. This is because the prohibition for her to remarry is only rabbinic. *Beit Shemuel* notes (*EH* 17:102) that on a biblical level, we rely on *rov,* majority. Thus, as most husbands who have fallen into a body of water in this way do die, on a biblical level she may remarry. Rashba (*Ketubot* 3a, s.v. *kol*) notes that the Rabbis are apparently quite concerned about this possibility, as though there are cases in which the Rabbis “uproot” marriages retroactively to prevent cases of *igun,* chained women, this is not one of them. Nevertheless, as this law is only rabbinic, if the woman does remarry, the court does not force her to divorce.

**Rav Ashi and the case of the Torah scholar**

The Talmud already raises the possibility that there are cases in which, if we do not hear from the husband, we may assume that he is dead. While it is true that communication was not great in the Talmudic period, Rav Ashi assumes that as Torah scholars are well-known, were a scholar to float up on the other side of a body of water, word would get to his wife’s town. If it does not, this is de facto evidence that the husband has drowned and died. Thus, he allows the wife to remarry.

However, the position of Rav Ashi is rejected by the Talmud. The question we must ask is why. There are two possibilities: The first is that Rav Ashi assumes that theoretically there are cases where hearing no news about someone may contribute evidence to our belief that he is dead. However, the majority opinion rejects this totally. It is possible for a person to appear on the other side of the ocean and lose contact with his hometown, no matter who he is. Thus, we can never take lack of news as evidence of the husband’s death. Were this the case, the law would never change, no matter how good communication becomes.

However, one might argue that this is a question of degree — namely, everyone agrees that theoretically there could be a situation in which there is a presumption that if someone is alive, we would hear about it, and if we don’t, that may lend credence to the assumption that he is dead. However, they argue that the husband’s being a Torah scholar is not enough. This opens the possibility that in other circumstances, even the majority position would accept a view akin to that of Rav Ashi.

The majority view accords with the former view, as reflected in the ruling in *Shulchan Arukh* in the passages mentioned above. However, Rav Yisrael Isserlan (Germany, 15th century) argues that the latter view is correct (*Terumat Ha-deshen, Pesachim* 139). He contends that the majority view in the Talmud only rejects the opinion of Rav Ashi because simply having been a Torah scholar is not enough of a reason to assume that if the husband had shown up, the wife would have heard about it; however, in other cases, they would agree. Thus, he argues that if a husband known to have been in a life-threatening situation vanishes, we can allow his wife to remarry after several years. He notes that in the Diaspora, Jews are scattered all over the world; as Jews tend to be connected, if the husband were to show up even “200 or 300 *parsa* [away]” — over a thousand miles — we would hear about it. The fact that we have not heard means that the court can permit the wife to remarry.

**Is this position actually rejected?**

However, the fact that the majority of authorities do not accept Rav Isserlan’s opinion does not mean that the story ends. As above, there are two ways of taking the rejection of his opinion. The first is that the majority position maintains that there is no circumstance under which lack of news may be used as proof of a husband’s demise. The second is that in principle this absence of evidence may have weight, but in practice the authorities felt that this threshold had not been reached during the time of Rav Isserlan. However, perhaps in later generations, in which communications and travel technology make the world an even smaller place, this argument would be acceptable.

What emerges from a survey of later halakhic literature is the latter argument. After every expansion of humanities technological abilities, major authorities argue that even if it were not true in the time of Rav Isserlan, now that we have X form of technology, the world is so connected that lack of news is proof of the husband’s death. Rav Moshe Sofer (*Responsa Chatam Sofer, EH* 58, cited in *Pitchei Teshuva,* *EH* 17:135) makes this argument in the early 19th century, noting the presence of post offices in every city. Thus, were the husband alive, he would have contacted his wife. A few years later, Rav Chayim Palagi (*Responsa Chayim Ve-shalom* 1) writes that with the fast transportation provided by boats, one could apply the *Terumat Ha-deshen* argument in his time.

This argument is also made by several modern authorities. Rav Yitzchak Ha-Levi Herzog, the first Ashkenazi Chief Rabbi of the State of Israel, cites this argument in the mid-20th century *Shut Heikhal Yitzchak (EH* 2:9). Rav Moshe Feinstein (*Responsa Iggerot Moshe, EH* 1:43) makes this argument as part of his attempt to permit remarriage for women whose husbands went missing during the Holocaust. He argues that even if one could not make this argument in the time of Rav Moshe Sofer, the situation is different now:

And all the more so in our times, with the number of post offices, the speed of information [flow] in the entire world has increased exponentially when compared to the year 5571 [1810-1811], in which *Chatam Sofer*’s responsum was written. Also, newspapers have proliferated in every country. Due to the pressure, the great poverty and the persecution everywhere, each Jew who remains alive is seeking his relatives here in America, whom the Holy One, Blessed be He, in His mercy, left as a remnant. One writes to them, as well as to distant people. [In such a case], it is a very well-established presumption that the fact that we have not heard from him [means] that he has died. And since every person has this presumption, one cannot argue “we do not distinguish,” and we may permit even *ab initio*.

Rav Feinstein notes the increase in the desire and ability to communicate, so that even those who reject the arguments of *Terumat Ha-deshen* and *Chatam Sofer* might agree that under current circumstances, lack of news could be considered proof.

In 2001, this argument was cited again by the authorities dealing with the tragic *aguna* issues that arose in the aftermath of the attack on the Twin Towers, such as Rav Ovadya Yosef (*Shut Yabia Omer, EH* 10:18). [[4]](#footnote-4) He notes that though there is much controversy regarding the position of *Chatam Sofer*, and even some who argue that Rav Sofer retracted it in later responsa, Rav Yosef is willing to accept it. Again, here we find an argument of the form: even if was not true then…

According to my humble opinion, since the very essence of *Chazal*’s decree regarding endless waters is due to survivors being the minority and uncommon, in our times, as many media outlets have been added, as above, the concern that he may be found among tent-dwellers or the wild ones of the desert represents a minority of a minority…

This becomes true even more so in our times, with the great development of media — telephone, wireless [Internet], telegram, newspapers, radio, television — which have gone out to the whole world and fill the ends of the earth. Also, there are planes flying from one end of the world to the other, every day, every morning anew.

Rav Nota Greenblatt, in his responsum, writes similarly:

[I]t seems there is another compelling reason to permit [the *aguna*] based on the extreme changes which have arisen in recent years with the way life is managed in this country and in all other developed countries. At this time it is not possible that a person can disappear and not know where he is. Even those that wander and sleep in the streets have a social security number registered with the government in order to receive benefits and to be treated by a doctor or in the hospital, etc.[[5]](#footnote-5)

It is important to reiterate that this leniency is rarely used by itself, as Rav Chaim Jachter notes in his summary article in the Beth Din of America’s book on the 9/11 tragedy:

We should note that Poskim do not rely on this line of reasoning alone, as it virtually eliminates a rule from the Gemara, something Poskim are loath to do.

Still, even if this argument is only used in conjunction with other reasons, it indicates a recognition by Poskim of the effect communications technology has on Halakha*.* One can only imagine that soon authorities will be making the argument that even if this was true before the prevalence of social media, now…

Next week, we will discuss why this argument works, as well as another avenue of leniency that is based on issues of communication.

1. Much of my analysis here is drawn from the excellent book put together by the Beth Din of America dealing with halakhicand philosophical perspectives on the 9/11 attack on the Twin Towers. See Michael J. Broyde, ed., *Contending with Catastrophe*: *Jewish Perspectives on September 11th* (New York: Beth Din of America Press and K'hal Publishing, 2011). Specifically, the introductory article by Rav Michael Broyde and the summary article by Rav Chaim Jachter are particularly helpful. Also, many of the central responsa on the issue have been translated for that volume. A version of Rav Jachter’s article can also be found here: [https://static1.squarespace.com/static/52a75d36e4b06a3e88b21253/t/52eabe6fe4b07b90a848dcc2/1391115887699/The+Beth+Din+of+America+ruling+about+the+World+Trade+Center+agunot.pdf](https://static1.squarespace.com/static/52a75d36e4b06a3e88b21253/t/52eabe6fe4b07b90a848dcc2/1391115887699/The%2BBeth%2BDin%2Bof%2BAmerica%2Bruling%2Babout%2Bthe%2BWorld%2BTrade%2BCenter%2Bagunot.pdf) [↑](#footnote-ref-1)
2. The word *aguna* is often used in modern parlance to refer to the wife of a “recalcitrant husband”, a husband who refuses to grant his wife a *get,* a bill of divorce, even though they are in a dead marriage or have been separated for years. As Halakharequires a husband to initiate the *get* proceedings uncoerced, it is often difficult to solve this problem. Many attempts have been successful at minimizing the problem, such as the RCA Halakhic Prenuptial Agreement and similar documents in Israel and Canada; enforcement mechanisms that are open to the rabbinic courts in Israel; and public shaming of husbands by organizations such as ORA, the Organization for the Resolution of Agunot. This issue is important, but the classic term refers, as mentioned here, to a wife whose husband is missing. The issue of public shaming, using social media to pressure a husband into granting a *get,* is an important topic that has been heavily debated recently after several Israeli rabbinical courts sanctioned these tactics formally as part of their ruling against a recalcitrant husband. This has led to a public debate about when and if these methods are appropriate. This will be the topic of a later installment in this series, in which we will discuss the historical use of “weaponized information” and the ways in which this sheds light on the modern situation. [↑](#footnote-ref-2)
3. In Halakha*,* the reverse case is much more easily solved, as from a biblical perspective, men may marry more than one wife. Polygamy is prohibited by the *Cherem* of Rabbeinu Gershom only. Thus, it is easier to permit a man whose wife has disappeared to remarry. Rav Jachter, in the context of the 9/11 cases, summarizes as follows:

We should note that there is also an issue for husbands whose wives were missing. However, we are much more lenient for men (see Pitchei Teshuva Even HaEzer 1:14) since the prohibition for a married man to marry is only rabbinical in nature whereas the prohibition for a married woman to marry another man involves a very severe biblical prohibition, whose violation constitutes a capital offense. Rav Yonah Reiss, the administrator of the Beth Din of America, informed me that a number of husbands called the Beth Din of America regarding their wives who were missing after the World Trade Center attack. Rav Reiss told me that the Dayanim followed the ruling of the Gesher Ha-chayim who rules that a husband may remarry if there is adequate evidence that a wife was at the place where a tragedy occurred and that most people who were in her location and situation perished. [↑](#footnote-ref-3)
4. This responsum was originally sent to the Beth Din of America and published in Yeshiva University’s journal *Kol Tzvi*. It can be accessed here: <https://www.yutorah.org/lectures/lecture.cfm/727369/rabbi-ovadia-yosef/%D7%94%D7%AA%D7%A8%D7%AA-%D7%A2%D7%92%D7%95%D7%A0%D7%94-%D7%9E%D7%91%D7%A0%D7%99%D7%A0%D7%99-%D7%94%D7%AA%D7%90%D7%95%D7%9E%D7%99%D7%9D-%D7%91%D7%90%D7%A8%D7%94-%D7%91/>. It was later published in the tenth volume of *Yabia Omer.* A translation can be found in *Contending with Catastrophe.* [↑](#footnote-ref-4)
5. See Rav Broyde’s introductory article in the above volume. [↑](#footnote-ref-5)