YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**Halakha in the Age of Social Media**

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**In loving memory of Rabbi Dr. Barrett (Chaim Dov) Broyde ztz"l**

**הוֹלֵךְ תָּמִים וּפֹעֵל צֶדֶק וְדֹבֵר אֱמֶת בִּלְבָבוֹ​**

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**Shiur #4:**

**Social Media, Communication and the “Classic” *Aguna,* Part II**

**Recap**

[Last week](https://etzion.org.il/en/shiur-03-social-media-communication-and-%E2%80%9Cclassic%E2%80%9D-aguna-part-i) we introduced the category of *mayim she-ein lahem sof,* endless water. This refers to a series of cases in which a husband is known to have been in a dangerous situation in which he probably died, but we cannot be sure. We discussed how Poskim over the generations have been willing to entertain the possibility that if communication is good enough, lack of news from the husband for a period of time can act as proof that he has died. They interpret the seeming rejection of a similar argument in the Talmud and then *Terumat Ha-deshen* as an issue of degree, assuming that earlier Poskim did not reject this argument in principle, but simply felt that communication was not good enough in their times to create this presumption. However, they were open to the possibility that communications technology could improve to the point where lack of news would be interpreted as proof of death.

**Why this argument works: The concern is only rabbinic**

It is important to note that the reason this kind of argument is entertained is because, as mentioned above, the entire concern here is only rabbinic in nature. From a biblical perspective, the fact that most people who look like they are drowning and seem to have drowned do indeed drown is enough to permit the wife to remarry. This is based on the halakhicprinciple of following the *rov (*majority), which allows us to assume that what happens in the majority of cases has happened in a specific case as well. This is evident in the Rashba’s responsum which we saw last week, and it is explicitly articulated in the positions of many Poskim (see for example the responsum of Rav Herzog we cited).

**Time Limit**

Another avenue for leniency that is similarly built on the recognition of the power of communication is that of Rav Eliezer of Verdun, in the later medieval period, cited by the Mordekhai (*Yevamot* 92). Rav Eliezer contends that when the Talmud states that the woman whose husband is lost is forbidden, it does not mean she is forbidden forever. Rather, after several years have passed without any communication, even the rabbis in the Talmud who challenge Rav Ashi would agree that the woman can remarry.

This position is greatly disputed. The Mordekhai cites several authorities who vigorously reject this, maintaining that one who relies on it should be excommunicated and warning against inventing baseless time limits. Rav Yosef Karo agrees (*Beit Yosef, EH* 17). However, historically many authorities were willing to accept it, including Rav Moshe Feinstein in his above discussion of post-Holocaust cases; Rav Ovadya Yosef utilized it as one of his reason to be lenient in his responsum concerning the 9/11 *agunot.[[1]](#footnote-1)* Rav Eliezer Waldenberg (*Shut Tzitz Eliezer* 15:59) notes that various lengths of time are put forth by Poskim to qualify for this leniency, ranging from one year to four years. In the case of 9/11, Rav Yosef advised the Beth Din of America to wait a year before allowing the *agunot* to remarry.

Again, while neither this leniency nor the previous one is used by itself, they are both based on the belief that it is hard for a person to disappear when advanced communications technology exists, and the better the technology, the harder it is to disappear.

**What if the husband wants to disappear?**

All of this, however, assumes that we have no reason to assume that the husband wants to disappear. All the above cases deal with a husband who has no desire to go off the grid and evaporate. On the contrary, we have every reason to believe that if he were alive and well, he would return to his wife. The fact that he has not acts as an indication that he has died, when coupled with the knowledge that he had been in a life-threatening situation which most people do not survive.

However, what if we have reason to believe that the husband did want to escape? What if he was known to be having marital problems, job problems or any other reason to escape his life? In such a case, being in a situation where people would assume that he died would give him the perfect cover to disappear and rebuild his life elsewhere. Despite how hard it is to escape the world, modern technology has, in some ways, made it easier for someone who wants to start fresh to do so. With enough money, he can get plastic surgery and pay to take on a new identity.

For this reason, Rav Yechezkel Landau (*Shut Noda Bi-Yhuda* 2, *EH* 47) notes that we only seek out leniencies and utilize the arguments mentioned above when we have an intuition to believe that the husband is not the kind of person who wanted to vanish. If, on the other hand, we have reason to believe that he was looking to abscond, we don’t look for reasons to permit his wife:

All the leniencies that I will speak about for this woman are on condition that this man, Rabbi Shimon, who as mentioned, lived with his wife in the way of the land, and there was no hatred between them that would make us think that he wanted to distance himself, wander from her and leave her as an *aguna*. Rather he lived with his wife in peace, and his way was to travel and do business for a few days and then return home. If this is the case, there is at least support for the claim that he is not alive, for if he were alive, he would come to his home. Even though this does not suffice to permit her, nevertheless, it is then worth searching for leniencies.[[2]](#footnote-2)

As Rav Jachter notes:

…this line of leniency underscores the importance of the Beth Din accurately establishing that the husband and wife were on good terms before the husband’s disappearance, to reduce the possibility that the husband has taken advantage of the tragedy to disappear and establish a new identity.

**Conclusion**

We have discussed two arguments for leniency for permitting *agunot,* both of which are predicated on the power of communication. Rav Elazar of Verdun argues that even in the Talmud, Rav Ashi only disagrees about how long it would take for a husband to disappear and be presumed dead. Rav Ashi assumes that when dealing with a Torah scholar it would take a short period of time, while the majority position argues that for all people it takes more time (a year, two years, four years, etc.) This argument by itself is not utilized, and some Poskim reject it altogether, but many authorities cite it as at least part of their argument.

The central argument we have focused on is that as communications and travel technology improve, the world becomes a smaller and smaller place. Thus, when we have reason to believe that a husband would not want to vanish, if he was in a situation in which he might have died and then he fails to reach out to his wife, we assume that that is evidence of his death. While, as we noted above, neither of these arguments is used by itself to permit an *aguna,* Poskim do utilize it in conjunction with other arguments.

As in the case of *Mechayeh Ha-meitim,* the Poskim recognize that the world we live in is significantly more connected than that of the Talmud or any other early authority. Thus, in each generation, Poskim wonder about the implications of this increase in communications technology. While in previous generations, lack of news may not have indicated anything, in the modern world, the silence from a husband who would presumably want to return home is meaningful. Unless we have reason to believe the husband would want to hide, we assume that he could not just “get lost.”

And, as we saw, in each generation, Poskim thought that they had reached a state which represented a leap forward from that of previous authorities. Whether it was the presence of Jews around the world in the time of Rav Isserlan, post offices for Rav Sofer, steamboats for Rav Palagi, newspapers for Rav Feinstein, or cellphones and the internet for Rav Yosef, each *posek* reflects the conviction that at some point, the world must reach a state at which silence and lack of connection can best be explained by death.

While none of these halakhic authorities speak about social media, I can imagine that in the next tragedy that strikes, they will make use of it. When the Facebook apps on our phones ask us whether we want to “check in” at each location, when anyone in the world can be contacted in an instant, there is all the more reason to assume that someone who wants to connect would.

1. Rav Jachter notes that the authorities who approve of utilizing this argument include *Shut Mahari Beirav* 13; *Shut Mabit* 1:187; *Shut Noda Bi-Yhuda* 2, *EH* 47; and *Shut Iggerot Moshe, EH* 1:43. [↑](#footnote-ref-1)
2. The question of why it is legitimate for a *posek* to enter into a discussion with a preconceived notion, namely that he wants to provide a leniency, is beyond the scope of this *shiur*. However, it is worth noting that throughout halakhic literature we find the notion that extenuating circumstances legitimate searching and relying on even tenuous reasons to be lenient. This type of argumentation is particularly common in cases of *aguna*, where the Talmud itself notes that we prefer to be lenient if possible.

For a brief discussion on the topic, see this author’s post here: <https://shaashuim.wordpress.com/2013/12/22/halachic-decision-making-in-extenuating-circumstances-part-1-halachic-methodology-part-9/>.

See also, my *shiur* and sources here: <https://www.yutorah.org/lectures/lecture.cfm/802192/_Jonathan_Ziring/Halachic_Decision_Making_in_Extenuating_Circumstances>.

The words of *mori ve-rabbi* HaRav Aharon Lichtenstein *zt*”l are particularly enlightening:

…what is the halakhic basis of such license? That the basis must indeed be halakhic is beyond question. No committed halakhist can seriously countenance the simplistic socio-economic interpretation that, under pressure, the Halakhah just periodically capitulates. For one thing, the image — or rather the reality — of Halakhah and its masters which he envisions simply does not correspond with this theory. For another, if *posekim* or their constituents have always been bent, consciously or subconsciously, upon adjusting the Halakhah to suit social or economic needs, they have certainly made a terrible botch of things. In one area after another, they have “modified” one injunction only to leave untouched a dozen far more stringent. Pressures of circumstance no doubt make themselves felt, but they generally operate within halakhic limits and to the extent that they are accorded halakhic recognition. Interpretations of the Halakhah’s past — or projections of its future — that ignore its fundamental objectivity distort its very essence. Least of all, will the halakhist accept the contention that, under pressure, the Halakhah *should* capitulate. We are confronted, once again, by Newman’s dictum. Despite its terrifying severity, it expresses one ineluctable truth. Given the conception of an absolute religious law, no degree of purely temporal bliss or suffering can compensate for the slightest sin — except insofar as the legal system itself has provided for such compensation….

For the Jew, therefore, it is Halakhah and Halakhah alone that determines what it can exact from him. Hence, if straitened circumstances can justify a degree of leniency, the rationale must be grounded in — must, in a sense, constitute — a halakhic principle. This rationale is based upon two premises. The first is the obvious desire and duty to employ every possible means to assist those in need…

It impinges upon the process of *pesak* as well. In cases of genuine difficulty, the imposition of possibly needless burdens is not merely neutral. It violates the letter as well as the spirit of Halakhah. Or, to put it more positively, within the limits of flexibility, the exercise of ingenuity in an effort to relieve potential hardship becomes a matter of the highest duty. Of course, ingenuity alone does not suffice. It can only be used in conjunction with erudition and commitment, and the number of those possessing the religious and intellectual qualifications for halakhic decision can never be very large….

The obligation to compassionate leniency is imposed by *caritas*. The opportunity is provided by a pluralistic conception of Halakhah. So long as Halakhah is defined in purely monistic terms, every text being subject to only one correct interpretation and every problem amenable to only one solution, it is difficult to justify such leniency. However, the Rabbis interpreted Halakhah in somewhat more flexible terms….

See HaRav Aharon Lichtenstein, “‘*Mah Enosh*’: Reflections on the Relation between Judaism and Humanism,” *Torah u-Madda Journal* 14, 2006-2007, pp. 44-45. [↑](#footnote-ref-2)