

Twenty-Five Years Later: The Agunos of September 11

A World That Was Upturned

Twenty-five years ago, on the 23rd of Elul 5761, two planes were hijacked by Islamic jihadist terrorists and flown into the Twin Towers of the World Trade Center. As we reflect on the impact of 9/11 twenty-five years later, many of us think about the Simchas Torah attack on October 7, which many called "Israel's 9/11."

There is a Rashi at the end of Parshas Ki Seitzei that speaks to why this tragedy has resurfaced in our lifetime. Commenting on Amalek "*asher korcha baderech*," Rashi says *korcha*, can be read as *kor*, cold. Following the plagues heaped upon Mitzrayim, all the nations were terrified to make war with us; we were a boiling bath no creature would dare to enter, because anyone who would do so would be scalded alive:

שהיו כל האומות יריאים להלחם בכם, ובא זה והתחיל והראה מקום לאחרים. משל לאמבטי רותחת שאין כל בריאה יכולה לירד לתוכה, בא בן בליעל אחד קפץ וירד לתוכה, ואף על פי שנכווה, הקרהו בפני אחרים.

For all the nations were afraid to wage war against you, but this one came and started it, thereby showing the way to others. This can be compared to a boiling bath into which no one could enter. One wicked man came, jumped into it, and entered it. Even though he was scalded, he cooled it down for others.

In a certain measure that is what 9/11 did to the world. Within an hour and a half of the first impact, towers that stood for American strength and invincibility were dust and powder, and it became clear that terrorists could wreak this kind of havoc even in an otherwise civilized world. What happened on October 7 was arguably the continuation of the *ma'aseh*



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Amalek of September 11. The idea that you could walk into inhabited towns and massacre men, women and children, and burn their homes, and shoot them without any mercy had been unthinkable. The 9/11 attack, which burned down the two most renowned business towers in the world and many of the people inside them, had also been unthinkable, but it paved the way for similar acts of terror.

Before October 7, the Jewish people had not experienced this kind of inhumane

attack since the Holocaust. The one important difference is that the Nazis were careful not to publicize pictures of the camps, while the October 7 terrorists proclaimed theirs in videos and were proud of it, and found supporters even on American college campuses. That cooling down of basic morality, of the plain sense of the difference between right and wrong, began with 9/11.

Following the attacks of 9/11, it took a few days just to come to our senses; our entire world had been upturned. At the time, I was the director of the Beth Din of America and we realized the Beth Din had a major job to perform. Young men had been cut down in their prime, leaving behind their wives who were presumptively widows. However, halacha does not rely on presumption. It requires concrete proof of death, ordinarily consisting of identification using the remains of a body. When a person has been incinerated beyond identification, there are complex halachos that must be followed to properly determine death.

During my first years in Beth Din, I was very familiar with agunah cases of the modern-day kind, where the man is entirely alive and well and simply refuses to give his wife a *get*. Now we were dealing with the classical case the Gemora describes, where there is *shalom b'olam v'shalom beineihem*, a happy marriage, where the wife would be far happier if her husband were found alive and the marriage could continue, except that the unfortunate reality is that he is probably dead. On the strength of what testimony can we permit the bereaved wife to mourn the husband she loved and rebuild her future?

Halachic Issues

The rule we were leaning on is an ancient one: *mishum iguna akilu bah rabbanan*, namely that to help an agunah the Rabbis were lenient (*Yevamos* 88a). But the *Aruch*

HaShulchan (Even *HaEzer* 17:19–20) draws a distinction that governed everything we did. The leniency of the Rabbis applies to *sof edus*, the question of **who** may testify: for example, we accept a single witness, a woman, a relative, even the wife of the deceased herself, and a non-Jew speaking *mesiach lefi tumo*, telling the story naturally, without knowing he/she is giving testimony. Chazal relaxed the rules of testimony because this is *milsa d'avida l'iglu*, a matter bound to come to light, and because *isha daika u'minsiva*, a woman investigates thoroughly before relying on a heter, knowing the dire consequences (of adultery and illegitimacy of subsequent-born children) if her husband turns up alive.

Regarding *techilas edus*, the **substance** of what is testified, there is no compromise whatsoever. A majority probability is not enough. The Gemara (*Yevamos* 121a) rules that we can't rely on the testimony of a witness who saw a man fall into *mayim she'ein lahem sof*, water that has no visible endpoint, because the sea's current may have carried the man beyond the witness's sight. We may, however, rely on the testimony of one who saw him fall into a deep *kivshan ha'esh*, fiery furnace, because by natural means a person cannot climb out. We do not factor in the possibility of miracles. We may yearn for miracles, but halacha determines reality by the rules of nature.

One precedent was Rav Moshe Feinstein's ruling after the Holocaust (*Igros Moshe*, Even *HaEzer* 1:43), permitting the wife of a man known to have been in an extermination camp on the basis that the overwhelming majority perished there. Rav Moshe reasoned that the stringency of the Rabbis not to rely on probability of death alone only pertained to individual situations, and not to a probability regarding all the Jews in Eastern Europe who ended up in Nazi death camps. Similarly, Rav Gedalia Dov Schwartz zt"l, who was *av beis din* of the Beth Din of America when we were dealing with these

cases, emphasized that despite various precedents in halacha, none of the cases in halachic literature resembled buildings of this height collapsing with thousands of people more than eighty floors up.

Rav Ovadia Yosef zt"l, ruling for us on one of our cases (*Yabia Omer* 10, Even *HaEzer* 18), held, based on a similar analysis that the uniqueness of our situation made it even stronger than the usual *trei rubei* (compounded majorities) leniency also written about by the Rabbis. Here, fifty tons of jet fuel spread instantly across the width of the tower, leaving no escape for anyone above. As such we can employ the rule that if someone testified that the husband fell into a fiery furnace, we can presume that he is dead.

The two towers turned out to be two different halachic cases. The first plane struck the North Tower at 8:46 a.m. and severed it at the 93rd floor; the tower fell at 10:29 a.m. Anyone above the 92nd floor at impact was considered like one who fell into a fiery furnace. By contrast, the second plane struck the South Tower diagonally at the 78th floor around 9:02 a.m. (it collapsed at 9:59 a.m.) but did not sever it, and one stairwell remained passable. We established that at least eight people descended from above the point of impact. So even a husband known to be above the impact in the South Tower was only in the category of *mayim she'ein lahem sof*, and majority alone could not free his wife.

That forced us into questions of identification. Halacha recognizes three grades of *simanim*: a poor sign, like the color of a man's trousers; an intermediate sign, such as an unusual mark on a lost object, which suffices to return a lost object but not to permit a wife (an analogous case would be a missing husband who had a mole on his face); and a *siman muvhak* (ironclad sign of identification), upon which a wife may be permitted. The *Masas Binyamin* requires a sign found in no more than one in a thousand or two thousand people, and Rav Hershel Schachter *shlit"a*

observed that the threshold tracks the number of people in the place. With three thousand people missing, we needed to identify a sign no more than one in three thousand people would share. Fingerprints and dental records that matched remains found on the site of the attack certainly met this standard, but few bodies were able to be identified in this traditional fashion.

As time went on, many identifications of the remaining fragments of bodies were made by the New York City medical examiner's office through DNA. However, DNA was new and contested: Chazal's *simanim* are visible to the eye, while DNA is a genetic code. Is it a *siman* at all, and if so, is it one *siman muvhak* or a combination of intermediate signs, which do not join together according to many authorities (see Rema, *Even HaEzer* 17:24)? Rav Shmuel Vosner zt"l ruled it close to a *siman muvhak* where there are corroborating grounds; Rav Zalman Nechemia Goldberg zt"l, in his analysis of the 9/11 evidence, went even further and held it is admissible as a form of *tevias ayin* (*Chulin* 96a) — just as no two faces are alike and we recognize a man by his face, each person carries his own unique genetic signature. Thus, we were able to rely upon DNA evidence, certainly together with other corroborating evidence, in cases where identification was made in that fashion.

In certain cases, we were able to collect testimony from individuals who had spoken to husbands who worked on the upper floors of the North Tower (above the 92nd floor) where it was clear that they had no escape route and were essentially in a *kivshan ha'eish* situation from which no

person could be expected to emerge alive.

Where we lacked such testimony, we went to the records. In one case, nobody had spoken to the husband at all. We obtained his subway fare-card data from Times Square, including the time that he entered the subway station on 9/11, and Port Authority swipe-card records from the North Tower lobby. September's swipe-card records were destroyed with the building, but August's records had been backed up, and the trip from the subway station to the World Trade Center never took more than twenty minutes, as indicated by the August records. The arithmetic put him in his office on the 96th floor at the latest three minutes before impact. Eventually there were also remains of this husband that were identified through DNA.

We did not act alone. Where a heter rests on a single witness and other lenient considerations, an old *takana* requires that any lenient determination be done through a beis din, and the custom is not to rely on one posek, however great, without two others concurring. Rav Gedalia Dov Schwartz therefore withheld his ruling until he had the opinions of Rav Ovadia Yosef, Rav Zalman Nechemia Goldberg, Rav Nota Greenblatt and Rav Mordechai Willig, and we convened a special beis din under Rav Hershel Schachter to receive all the testimony that had been collected.

Aftermath

With the relentless collection of relevant testimony and evidence, most of the cases

were resolved within the first year. There was one case, in which a missing husband was determined to be in the South Tower but there was no physical evidence or DNA proving his demise, that took three years of research and consultation to find enough data to determine death according to halakhic standards.

The careful approach carved out by halakha was prominently borne out in a case where New York City authorities issued a death certificate for a World Trade Center sidewalk vendor who was missing after the collapse of the Twin Towers, but was then found alive six months later in one of the local hospitals.

In the aftermath of the horrific October 7 terrorist attack, the veteran Israeli army Rabbi Yaakov Ruzah, who had previously been involved in resolving agunah cases after the Yom Kippur War, was charged with identification of remains of victims, and he mentioned (*Times of Israel*, December 27, 2023) that the work done by halakhic authorities in the aftermath of 9/11 provided a precedent for identification on the basis of DNA evidence. There was ultimately a measure of comfort that was achieved in following time-honored halakhic processes in resolving the tragic agunah situations of 9/11 that not only provided a framework for the widows and their families to move forward but also helped develop protocols for resolution of the tragic cases that would unfortunately need to be addressed two decades later. We pray that in the future all these discussions will be purely theoretical in nature and that we will merit to experience *nechemas Tzion ve'Yerushayalim* speedily in our days.



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