

THE BAIS HAVAAD

HALACHA JOURNAL

Family, Business, and Jewish Life through the Prism of Halacha

A PUBLICATION OF THE
BAIS HAVAAD HALACHA CENTER
105 River Ave. #301, Lakewood NJ 08701
1.888.485.VAAD (8223)
www.baishavaad.org
info@baishavaad.org
Lakewood • Midwest • Brooklyn • South Florida

לע"נ הרב יוסף ישראל
ב"ר משה גרוסמן זצ"ל

Dedicated in loving memory of
HaRav Yosef Grossman zt"l

VOLUME 5783 • ISSUE XXXIX • PARSHAS DVARIM-SHABBOS CHAZON



FAILURE TO APPEAR: IS A MISSING PERSON EVENTUALLY PRESUMED DEAD?

Adapted from the writings of Dayan Yitzhak Grossman

The AP reports:

A Texas man who went missing as a teenager in 2015 after last being seen walking his dogs in Houston has been found alive, his family and police said Monday.

Police and firefighters found Rudolph "Rudy" Farias IV around 10 p.m. Thursday...It was not immediately known where Farias had been the last eight years, Cannon said... Farias was 17 years old when he was reported missing on March 6, 2015, after taking his two dogs for a walk near his family's home in northeast Houston. The dogs were later found. Houston police, along with Texas EquuSearch, a civilian search and recovery team, looked for Farias but found no signs of him...

Cannon said Farias' family did report to police investigators that they had seen him in September 2018, staying behind the home of a relative. Police investigators followed up on the 2018 sighting and went to the relative's home. But "they could not observe him. They could not locate him," Cannon said...

Possible sightings like the one Houston police followed up in 2018 were common in the case, said Martin Renteria, a private investigator with Checkmate Investigative Field Services in suburban Houston, who had been hired by Farias's mother a few months after Farias went missing. Renteria recalled at least a dozen such reports that turned up nothing. Renteria, who worked the case with his wife,

(continued on page 2)



PARSHAS DVARIM

MEAT COUNTER

Excerpted and adapted from a shiur by Rav Moshe Zev Granek

The Shulchan Aruch (O.C. 551:9) says that some have the minhag not to eat meat or drink wine during the week of Tisha B'Av (*shavua shechal bo*), and others refrain from Rosh Chodesh Av. Sphardim generally follow the first minhag, Ashkenazim the second.

The Rama (551:10) writes that one may eat meat during the Nine Days at a *seudas mitzvah*, such as a *bris milah*, *pidyon haben*, *siyum*, or *seudas eirusin*, if he is *shayach laseudah*, which *sfarim* explain to mean that he is a relative or a friend. The Rama adds that during *shavua shechal bo*, only a *minyan* may participate. The Levush holds this is true of the entire Nine Days.

One can understand the *machlokes* to be that according to the Rama, the *aveilus* is less severe earlier in the Nine Days because the minhag to avoid meat and wine then is only an extension of the original minhag to do so during *shavua shechal bo*.¹ But the Levush maintains that the same parameters that apply during *shavua shechal bo*, like limiting participation in

(continued on page 2)

¹ *Meikar hadin*, meat and wine are only asur at the *seudas hamafsekess*.

Q&A from the
BAIS HAVAAD HALACHA HOTLINE
1.888.485.VAAD(8223)
ask@baishavaad.org

Bath Time

Q Because Tisha B'Av falls on a Thursday this year, are bathing and laundry permitted earlier than usual?

A Because most of the destruction of the *Bais Hamikdash* occurred on the 10th of Av, the restrictions of the Nine Days normally continue until *chatzos* (halachic midday) of the 10th (Shulchan Aruch O.C. 558:1).

When the 10th of Av is Friday, leniency is afforded in deference to Shabbos, and the

(continued on page 2)

(continued from page 1)

Barbara, also followed up on possible sightings in other cities. "After a couple of years...we finally just had to give up on it," Renteria said Monday. He added he also considered that Farias, who had become an adult in the time he was missing, might have run away and didn't want to be found.¹

In this two-part series, we discuss the question of whether a person's disappearance for a substantial period of time creates a halachic presumption that he is dead, or whether we are obligated to consider the possibility that, as in the case of Rudolph Farias, he is alive.

This question is first discussed in the Gemara, which concludes that the absence of any news of a missing person does not create a presumption of death sufficiently strong to allow his wife to remarry:

Rav Ashi said: That which the *Rabanan* said that if a man falls into water that has no end, his wife is forbidden to remarry, these words are stated with regard to an ordinary man only, but not if he is a *talmid* chacham. For if a *talmid* chacham were to emerge from the water, the matter would become widely known.

But that is not so. It makes no difference whether he is an ordinary man or a *talmid* chacham; after the fact, yes (if she already remarried, she may remain with her new husband), but initially, no (she may not remarry).²

R' Yisrael Isserlin (the Trumas Hadeshen), however, maintains that although the absence of news does not allow the wife to remarry *ab initio* (*lechat'chilah*), it does allow her to remain married if she has already remarried upon the ruling of a reputable halachic authority (despite the fact that we consider that authority to have erred). He initially asserts this with respect to the particular missing husband in his case, who was "a prominent figure, with many relatives in many countries," of whom nothing had been heard for years, because

Due to our many sins, currently (he is writing in the first half of the fifteenth

century) in our Diaspora we are scattered abroad and dispersed,³ a few in every place, and if he were alive, even two or three hundred *parshah* distant, he would be known to and heard of by us.⁴

But he subsequently extends it to any missing person in his time:

And it seems that in our time, even with respect to an ordinary person, there is a presumption that if he were still alive, there would have been publicity of this over the years, much more so than the publicity associated with a *talmid* chacham in the time of the Chachmei HaGemara, when the Jewish people consisted of large communities in many places.

In addition to the absence of news, the Trumas Hadeshen also relies upon the presence in his case of a "rumor that does not cease" (*kala dela pasik*)⁵ that the husband had died. The Rama codifies the general principle of the Trumas Hadeshen that a woman who has already remarried based on the ruling of a reputable authority may remain married if there are proofs and circumstantial evidence (*ra'ayos ve'umdenos*) of the husband's death (i.e., despite the insufficiency of these indications to allow her to marry *ab initio*), although he does not mention the specific proof from the absence of news of the husband.⁶

In a follow-up article, we will *iy"H* discuss the positions of subsequent authorities regarding the idea of the Trumas Hadeshen.

NOTE: As we go to press, the Rudy Farias story has taken a shocking turn. It has emerged

³ Esther 3:8.

⁴ Trumas Hadeshen, *Psakim*, *siman* 1739.

⁵ See *Yevamos* 25a.

⁶ Shulchan Aruch E.H. 17:15 (and see Chelkas Mechokeik *ibid.* s.k. 33 and Bais Shmuel *ibid.* s.k. 50). R' Chaim Jachter (*Gray Matter* 2 p. 134) writes: "The reasoning of the Trumas Hadeshen was not accepted as normative (see Shulchan Aruch E.H. 17:34).¹ I do not understand the basis for this assertion, in light of the fact that the basic holding of the Trumas Hadeshen is codified by the Rama (and, as is noted in the follow-up to this article, defended and accepted by various later authorities as well). Perhaps Rav Jachter means that the Trumas Hadeshen's reasoning is not accepted as a basis to allow the wife to remarry *lechat'chilah*—but the Trumas Hadeshen himself (as opposed to some later *Acharonim*, as we note in the follow-up) never makes such a suggestion! Alternatively, perhaps Rav Jachter means that while the general principle that *ra'ayos ve'umdenos* are an acceptable basis for leniency may be normative, the specific proof from the absence of news of the husband is not accepted as normative, although this specific proof is indeed defended and accepted by later authorities, as above.

Rav Jachter seems to misconstrue the Trumas Hadeshen's position in his preceding paragraph as well; he reasons that the Gemara did not wish to distinguish between a wife of a Torah scholar and others because of the principle of *lo plug* (that the Rabbis do not make special exceptions to their rules). However, reasons the Trumas Hadeshen, in a time of improved communication, the reasoning that a husband's surviving *mayim she'ein lahem sof* would be communicated to the wife applies to everyone equally, so there should not be any need to rule strictly in cases of *mayim she'ein lahem sof*. Rav Jachter here implies once again that the Trumas Hadeshen intends his argument to justify remarriage even *lechat'chilah*. Moreover, he characterizes the Trumas Hadeshen's rationale for the inapplicability of the Gemara's *lo plug* as rooted in the fact that "the reasoning...applies to everyone equally," whereas what the Trumas Hadeshen actually writes is that the *lo plug* applies only to remarriage *lechat'chilah*, but not to remaining married *bedieved*. The truth is that this understanding of the position of the Trumas Hadeshen (and of that of the Chasam Sofer cited in the follow-up) appears in Shu"t Igros Moshe E.H. *cheilek* 1 *siman* 48 s.v. *Al kol parnim* as well, but Shu"t Maharsham *cheilek* 3 *siman* 252 or 5, on the other hand, explicitly states that the entire discussion of the Chasam Sofer (and presumably that of the Trumas Hadeshen as well) is only with respect to avoiding the possibility of a Torah prohibition against the woman remarrying, "but it never occurred to him to be lenient [with respect to allowing her to remarry] *ab initio*."

(continued from page 1)

restrictions are lifted earlier. Some *poskim* say they end at nightfall of *motza'ei* Tisha B'Av (See Magein Avraham *ibid.* 1), while others say they persist until Friday morning (Sha'arei Teshuvah *ibid.* 2, Kitzur Shulchan Aruch 124:20).



RAV ARYEH FINKEL

Later *poskim* disagree about which view to follow. R' Shlomo Zalman Auerbach (*Halichos Shlomo* 15 n. 26) differentiates among the restrictions: Laundry may be done on *motza'ei* Tisha B'Av, because one only benefits from it later, when he wears the clothes; but bathing, haircutting, and nail cutting must wait for morning.

The prevailing minhag in America today—which takes into account the availability of washing machines—is to wait until Friday morning even for laundry. In pressing situations, one may be lenient (*Koveitz Halachos* 22:7).

Those restrictions that don't interfere with *kvod* Shabbos remain in place until *chatzos*, including refraining from meat, wine, and music (Aruch Hashulchan 558:2). The same applies to the restrictions on construction and gardening.

One may not swim in the morning if he plans to bathe for Shabbos afterward (*Koveitz Halachos* 22:11). Likewise, one may not shower in the morning if he plans to do so again closer to Shabbos (*ibid.* 10).

Laundry is only permitted in the morning

that Farias actually returned home on March 7, 2015—one day after he went missing—but his mother, Janie Santana, hid her son from the authorities, who kept looking for him. Farias says his mother "brainwashed" him into staying hidden all these years.

(continued from page 1)



the *siyum* to a minyan, apply from Rosh Chodesh.

Another possible approach is that that the Rama and Levush disagree about the reason for the minyan *metzumtzam* limit.

The Rama holds it is because no more are needed for a *seudas mitzvah*, but the Levush holds it is to prevent strangers from participating (see Elyah Rabbah O.C. 249), and this concern applies to this approach, we can better understand why the Levush is

quoted as allowing many relatives to participate in the *siyum* during *shavua shechal ba*, because the concern for strangers does not apply to family.



BHHJ SPONSORS

Rabbi Kalman Katz

To become a corporate sponsor of the BHHJ or disseminate in memory/zechus of a loved one, email info@baishavaad.org

Elevate your Inbox.

Scan here to receive the weekly email version of the Halacha Journal or sign up at www.baishavaad.org/subscribe

