

## **Ritual of Mourning When a Body is Not Recovered**

**RABBIS KASSELABELSON and MAYER RABINOWITZ**

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### **שאלה**

In the September 11, 2001 terrorist attacks on the World Trade Center, the Pentagon, and the passenger plane that eventually crashed in a field thousands of people were killed. Many bodies were totally destroyed and will never be recovered. The following questions arise: When does the ritual of mourning begin for a Jewish victim whose body is not found? If the body, or identifiable body parts are later recovered what procedures should be followed? Are there additional Jewish legal procedures that should be followed?

### **תשובה**

Recent terrorist attacks around the world have caused us to suspect that similar tragedies will claim more victims in the months and years to come. Therefore, it is important to establish and clarify the way in which we apply the standard rituals of mourning, in cases where Jews lose their lives in these circumstances.

The question of mourning procedures when there is no body, has been raised in the past. The *Yoreh Deah* lists a number of parallel situations and outlines a procedure to be followed (Y.D. 375:7).

מי שטבע במים שיש להם סוף או שיצא קול שהרגוהו לסטים או שגרתו חיה מאימתי מונים? משתייאו לבקש. מצאוהו אברים אברים ומכירים אותו בסימני גופו אין מונים לו עד שימצא ראשו ורובו, או שנתיאו מלבקש. ואם נמצא אחר שנתיאו ממנו אין הקרובים צריכים לחזור ולהתאבל, אלא הבנים, אם הם שם בשעה שנמצא מתאבלים אותו היום דלא גרע מליקוט עצמות אביו, אבל אם אינם שם, ושמעו אחר שעבר היום אין צריכים להתאבל.

“If someone drowned in waters that are surrounded by land (e.g. a lake) or there was a report that he had been killed by thieves, or a wild beast dragged him off, when do we begin to count the ritual of mourning? When they despair of looking for (and of finding the body). If they find body parts, and identify them by body signs, they do not begin the ritual of mourning until they find the head and most of the body, or (they begin) when they have despaired of looking for (and of finding the rest of the body). If it is found after they gave up hope (and observed the ritual of mourning), the relatives do not need to mourn again, but the children, if they are there when the body (or parts) is found, they follow the ritual of mourning that day, for it is no less than the case of gathering the bones of their father. But if they are not there and they hear after

the day has passed, they need not observe the ritual of mourning.” (Y.D. 375:7)<sup>1</sup>

The Yoreh Deah gives several examples of cases where the ritual of mourning begins when death seems to be certain, but the body cannot be found. We may add to this category cases where bodies were incinerated when hijacked planes, loaded with jet fuel, crashed into the World Trade Center building or the Pentagon, or into a field.

The same principles that apply in the examples in the Yoreh Deah, of mourning where there is no body, would also apply in the case of the recent terrorist attack. It is advisable to mark each occasion with an appropriate ritual.

### **A. Initial Mourning Rituals**

When a body of an individual who was in the destroyed buildings is not found, the ritual of mourning begins at the time the family despairs<sup>2</sup>, giving up hope that the missing person’s body will be found. For passengers known to have been on a plane that has crashed and burned, the ritual of mourning may begin at any time following the crash<sup>3</sup>.

To help the mourners deal with their loss, a memorial service should be held. It may follow the ritual in the *Moreh Derekh*<sup>4</sup>. The service may include an opening prayer, appropriate psalms, a eulogy, an *El Maleh*, and a *Kaddish*. It should not include the *Tziduk Hadin*, which is reserved for a cemetery service, if and when the body is found.

The Mourning period should follow the rules for *Shivah*. The date of death for those victims of the World Trade Center, Pentagon, and plane crash tragedies is Sept 11, 2001, and the *Yahrzeit* would be observed on 23 Elul.

### **B. Upon Finding the Body or Body Parts**

If, at some later date, the body of a victim is found, it is buried in a grave in a Jewish cemetery. If body parts are found, and identified through DNA testing or other means, as belonging to the missing person, they too should be buried in a Jewish cemetery. If the parts include the head and a major part of the body, ראשו ורובו they are buried in a separate grave. If they do not include the head and major parts of the body, the parts may be buried with body parts of other victims.<sup>5</sup> A family may elect to bury identifiable remains in a family plot, or in a separate grave. An urn containing ashes or soil from the World Trade Center site need not be buried in a separate grave, but may be interred in the grave of a family member, or in some other appropriate place.<sup>6</sup>

The burial ceremony should include *Yoshaiv B’Seter*, *Tzidook Hadin*, brief remarks<sup>7</sup>, *El Maleh*, and *Kaddish*.

If the family has already observed the mourning ritual, the family need not be expected to come together a second time for the burial. Those immediate family members who are present at the burial should observe *Aveylut*, until sunset.

### **C. Tangible Memorials**

A tangible memorial to the deceased can be of deep psychological significance and support to family members and friends. A memorial tablet in the synagogue is one example. Rabbi Ephraim Oshry, in his collection of *Teshuvot* from the Holocaust<sup>8</sup>, suggests another way. Rabbi Oshry reports that a survivor of the Holocaust asked a question. The survivor’s parents’ graves had been destroyed by the Nazis. The location of the graves in the cemetery was uncertain. He asked Rabbi Oshry if he might set up a stone in memory of his parents somewhere in the cemetery. Rabbi Oshry permitted “the putting up of a tombstone in memory of his parents anywhere in the cemetery” explaining “the main reason for placing a tombstone on a grave is so that the person buried there should not be forgotten by the living. It is therefore irrelevant whether one places the tombstone exactly on the grave or at some distance from it.” Hence, if a family wishes to have a tangible

memorial to the deceased it is permissible to place a monument on a family plot, or on some other appropriate place in the cemetery, or to arrange for a memorial plaque on a synagogue memorial wall.

#### D. Documentation

To avoid potential Jewish legal problems the following procedure should be followed:

- Prepare a dossier including a copy of the government-issued death certificate, an employee list or manifest on which the individual's name appears, and any anecdotal material which would show that the person was in the destroyed buildings, was there for some special reason, or was a passenger on the downed planes.
- The dossier should be presented by a certified *Mesadder Gittin* to the National Joint Bet Din<sup>9</sup>.
- The Joint *Bet Din*, upon review of the evidence, will authorize the *Mesadder Gittin* and his *Bet Din* to issue a *Teudat Petira* (Death certificate).

#### Conclusion

When a death appears, by all signs, to be a certainty, but the body is not recovered, the ritual of mourning begins when the family despairs of finding the body. A Memorial service should be held at that point. If the body, is recovered at a later date, the body should be buried in a Jewish cemetery. If the head and most of the body are recovered they should be buried in a separate grave. If identifiable body parts are recovered they may be buried in a family plot, in a communal grave, or in a separate grave. Those next of kin who already have observed the mourning ritual, and are present at the burial, should observe *Aveilut* until sunset of the day of burial. Those family members who do not learn of the recovery and/or are not present at the burial, need not observe *Aveilut* that day. The *Yahrzeit* date is the probable date of death. An appropriate memorial may be set up in the Synagogue or in the Jewish cemetery. To avoid potential Jewish legal problems involving personal status, the next of kin should obtain a *Teudat Petira* (Death Certificate) from the local *Mesadder Gittin* and his *Bet Din*, upon authorization from the Joint *Bet Din*.

#### NOTES

- 1 The *Be'er Heiteiv*, on Y.D. 375:7, specifically limits the examples to cases where it is evident that death has occurred. He excludes cases of disappearance, which he would place in the category of מים שאין להם סוף.
- 2 There may be times when different members of the immediate family come to different conclusions e.g. a wife may despair of ever finding her husband's body, but a parent continues to hope that somehow the son has survived, or the body will be found. In such cases if some reasonable compromise can not be worked out, the memorial service may be held when official rescue efforts cease.
- 3 Rabbi Ovadia Yosef in ד"ר סימן 107 and Rabbi Isaac Herzog in כ"ט-ל"ו write about incidents of presumed death in cases where the body was not recovered or found. Rabbi Yosef deals with a case of an Israeli jet pilot who was shot down and crashed in the sea. Rabbi Herzog wrote about a South African bomber lost at sea during World War II and only four out of eight bodies were washed ashore. In both cases the missing were declared dead and their wives were ruled to be widows and therefore could remarry. The basic reasons used by both are: Most people whose planes crash die. Most people whose plane crashes into the sea die. In our times if these people had survived such a crash, someone would have heard about their survival or would have heard from them. These reasons constitute רובי תרי או תלת רובי two or three majority or plurality of cases-which are sufficient grounds to be lenient and to declare them dead and their wives widows. In addition in the case of *Agunot* the Rabbis are lenient משום עיגונה אקילו בה רבנן, and אשה דייקא ומינסבא a woman checks before she marries and therefore she would know if her husband would disappear on purpose.

These cases are similar to the tragic events of September 11, 2001, and the reasoning used in them can be applied to the missing persons from these events. When a civil death certificate is issued by the civil authorities, as was done in the case dealt with by Rabbi Herzog, then we can use that fact as additional proof for declaring the missing dead.

- 4 The Rabbinical Assembly's *Moreh Derekh* is an invaluable resource. See section E pp. 3-49 for material that would be appropriate for the particular situation.
- 5 Rabbi Myron Geller, in a *Teshuvah* entitled "Peaceful Paths," said that the burial of Jews and non-Jews or their body parts found together, following a common disaster-such as a terrorist attack or an earthquake, is permitted in a common grave in a Jewish cemetery. The *Teshuvah* was approved October 1994. It may be found in *Responsa 1991-2000: The Committee on Jewish Law and Standards of the Conservative Movement* (New York: Rabbinical Assembly, 2002), pp. 426-430.
- 6 The urn containing ashes or dirt from the World Trade Center site is a purely symbolic reminder. It is not the same as cremains, ashes from the body itself, which would require a separate grave.
- 7 Brief remarks are recommended instead of repeating a full eulogy.
- 8 Rabbi Ephraim Oshrey, *Responsa from the Holocaust* (New York: Judaica Press, 1983), p. 159. Rabbi Joseph Prouser called this citation to my attention.
- 9 The Joint Bet Din usually works with the *Mesadrei Gittin* and their *Batei Din*. However if there is another functioning Conservative *Bet Din*, it may contact the Joint *Bet Din*.