

שו"ת מהרש"ם

THE MAHARSHAM PROJECT

Weekly Teshuvah Insights from the Maharsham of Brezhan

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Volume I • Issue 001 • Teshuvos Maharsham, Chelek I, Siman 11

DROWNED IN THE DANUBE

A Shochet Is ר"ל Killed, a Wife Waits,
and the Maharsham Untangles the Halachos of Identifying the Dead

A shochet goes to bathe in the Danube. A non-Jew attacks him and pushes him under the water. He drowns. His body surfaces days later, and the whole town identifies him. But the halachah of identifying a body pulled from open water is complicated, and the question of whether his wife can remarry depends on sorting out a centuries-old machlokes.

The Maharsham is asked: is the identification strong enough to free this woman to remarry?

**To the great and distinguished
Rav, R' Shlomo Mehr,
Av Beis Din of Brailov in Moldavia.**

Translator's Note: Brailov sits on the banks of the Danube in what is today Romania. The Maharsham writes from Brezhan in Galicia. That a she'eilah of such urgency could travel that distance tells you something about his stature as a posek.

THE QUESTION

The shochet of a nearby town called Matishien, R' Alter Avraham Yehuda ben R' Hirsh Leib, went to bathe in the Danube on a Thursday morning with two other men. While they were in the water, a non-Jew grabbed hold of him and pushed him under, again and again. The others managed to pull him free, but the attacker threw him back into the deep water.

He came up once and cried out: "Yidden! Ratevet mich!" Save me! He went under again, came up one more time but couldn't speak. He surfaced twice more after that. The last time, only the tips of his fingers showed above the water. Then he was gone.

A judge who happened to be nearby threw a belt toward him, but it was too late. He sent a boat out to search. Nothing. They dragged the river with hooks for an hour and a half. Still nothing. The judge posted soldiers along the river to watch for the body, and they stayed there until Shabbos.

On Motza'ei Shabbos, the body surfaced. It was found about fifty amos downstream from where he had drowned. They turned him over. His face was completely unchanged. Everyone who saw him recognized him immediately by *tevi'as ayin*, the features of his face. The entire town came and confirmed it. There wasn't the slightest question: this was the *shochet*, R' Alter.

The problem is that the Danube is *mayim she'ein lahem sof*, open water with no visible end. The *halachah* is very strict about freeing an *agunah* when someone disappears into that kind of water. The *Rav* of Brailov, R' Shlomo Mehr, wrote a lengthy analysis and sent it to the *Maharsham*.

The core question: everyone knows this is the *shochet*. But is the identification halachically strong enough to let his wife remarry?

The *Maharsham* agrees with R' Shlomo Mehr and permits the wife to remarry. Here's how he gets there.

THE MAHARSHAM'S ANALYSIS

1. The Problem, and How the Maharsham Solves It

The *chiddush* in one sentence: *b'dadmi* is only *derabannan*, so you can't stack two *chumros* from opposing opinions, and either way there's enough to be *mattir* the *agunah*.

Here's the problem. There's a *machlokes* between the *Rif* and the *Rosh*. The *Rif* says: even two witnesses might be wrong about a body. Maybe the person just looked similar. This is *b'dadmi*, "based on resemblance." The *Rosh* says that's only a concern with one witness. Two? We trust them.

But the *Rema* adds a second *chumra*: someone who watched the drowning can't identify the body by *tevi'as ayin*. He already has an image in his mind. He sees what he expects to see, not what's in front of him.

Stack both *chumros* and the whole case collapses. You can't use the witnesses who saw the drowning. You can't trust anyone else either. The *agunah* is stuck forever. R' Shlomo Mehr asked: does that make sense?

The *Maharsham's* answer: *b'dadmi* is only *derabannan*. Once you know that, each side's *chumra* comes with a built-in *kula*. The *Rif* worries about *b'dadmi* even with two witnesses, but he's *meikil* that a drowning witness CAN still identify the body. The *Rosh* goes the other way. Either way, you have enough to work with. In *derabannan* matters, you don't stack two *chumros* from opposing opinions.

2. How Long Can Someone Survive Underwater?

The *Maharsham* also establishes that the *shochet* could not have survived. The *Rivash* holds three hours is the limit. In this case, they searched for an hour and a half on Thursday, soldiers watched until Shabbos, and the body only surfaced *Motza'ei Shabbos*. Not even close.

The *Maharsham* then notes that doctors in his time had developed an early form of resuscitation for drowning victims, and that it only works within three hours. "How great are the words of Chazal," he writes. They derived this same limit from the *Gemara* in *Bava Kamma*. The scientists caught up to what the *chachamim* already knew.

3. The Full Case for Being *Mattir* the *Agunah*

The *Maharsham* goes step by step:

- The body was found only fifty amos from where he drowned.
- Soldiers guarded the river for days. Nobody else went missing.
- The *Chasam Sofer* holds that in circumstances like these, the *chumra* is only *derabannan*.

- The entire community identified the body unanimously through tevi'as ayin. Not a single person had a doubt that this was the Matisheiner shochet, R' Alter Avraham Yehuda.
- The body showed no change whatsoever. His face looked exactly as it had in life.

He adds the Chasam Sofer's view that in a case when everyone recognizes the person, even the Rif would agree there's no concern. And the Pischei Teshuvah says that when people look carefully and at length, all opinions agree you can be meikil.



THE P'SAK OF THE MAHARSHAM

The Maharsham permits the wife of the shochet to remarry. "In combination with all the grounds for leniency that R' Shlomo Mehr has written, I concur with him to permit the wife of the shochet to the world."



HISTORICAL CONTEXT

A shochet was one of the most important people in a small Jewish community. He was the one who made sure the meat was kosher. Losing him was a communal tragedy, not just a family one.

The Maharsham doesn't dwell on the violence of what happened. He mentions it in passing and moves straight to the halachah. But the reader feels it. A Jew is attacked and killed while bathing in the river. And now his wife needs the poskim to work through centuries of halachic reasoning just to be allowed to move on with her life.

The Maharsham was known for not being unnecessarily machmir. When there was room for leniency, he would find it. But he didn't bend anything here. He showed that halacha itself, properly understood, was able to release this woman.

The Maharsham shows that the leniency was always there, waiting for the right case.

KEY TERMS

Tevi'as ayin — Identifying someone by looking at their face and overall appearance

B'dadmi — "Based on resemblance"; the worry that a witness identified the wrong person because they looked similar

Mayim she'ein lahem sof — Open water with no visible end; the halachah is extra strict about someone who disappears into this kind of water

Agunah — A woman whose husband has disappeared and who cannot remarry until his death is established

FOR THE SHABBOS TABLE

- The Maharsham says Chazal already knew the three-hour survival limit that doctors only discovered recently. What does that say about the relationship between Torah and science?
- Everyone in town knew this was the shochet. Is there a point where "everyone just knows" should be enough, or does the halachah always need formal proof?
- The Maharsham's breakthrough was showing that two chumros from opposing shitos can't be stacked. Can you think of other areas in halachah where this principle applies?





WHO WAS THE MAHARSHAM?

Rabbi Shalom Mordechai HaKohen Schwadron (1835–1911) served as the Rav of Brezhan in Galicia for over 40 years. He is best known for his seven-volume Shut Maharsham, containing thousands of teshuvos on every area of halachah, and his Da'as Torah commentary on Shulchan Aruch. Regarded as one of the foremost poskim of his generation, his rulings are cited in halachic works to this day.

Coming next week: A fire breaks out in a city, a judge pressures the Jews to rebuild on Shabbos.

Is fear of the government is a reason to be lenient?

PRINCIPAL SOURCES CITED

Gemara: Yevamos 115a, 121a; Bava Kamma 50a; Sanhedrin 37a; Sotah 11a

Rishonim: Rif (Yevamos); Rosh (Yevamos); Tosafos (Yevamos, Sotah); Rabbeinu Tam, Sefer HaYashar siman 493

Shulchan Aruch & Nosei Keilim: Rema, Even HaEzer 17:28; Beis Shmuel; Chelkas Mechokek

Acharonim: Noda BiYehuda (Mahadura Kamma, EH 43, 50–52); Chasam Sofer (EH I:65, II:137, 142); Rivash; Maharit (EH 33); Tiferes Tzvi (EH, Kav V'Naki 17–18); Pischei Teshuvah (EH 17); Ma'adanei Yom Tov (Berachos 9:22)

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