

שו"ת מהרש"ם

THE MAHARSHAM PROJECT

Weekly Teshuvah Insights from the Maharsham of Brezhan

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THE FLOOD AT SIKATIN

When a flood tore a Yiddishe family from their home, two women were left waiting, both facing the same terrible question: ***Were they widows who could begin to rebuild their lives, or were they agunos, still bound by uncertainty?***

It was erev Rosh Chodesh Tammuz when a sudden flash flood ripped through the village of Sikatin in Galicia. In a few terrifying moments, the water swept through the family's home and carried people away.

The mother grabbed a floating log. Non-Jews pulled her from the water. But as she was being saved, she saw her husband Avraham Yosef and her son Meir drifting away in the rushing floodwaters. ל"ג

The father's body was found the next morning. His face was intact. His son Moshe recognized him right away.

But another son, Meir was still missing. Days later, a battered body turned up downstream, among other drowning victims near the Dniester. Meir's wife sent her father to check for identifying marks: a scarred thumb, protruding teeth, a distinctive skin marking.

The marks matched.

Now two women waited in a painful holding pattern.

And the Maharsham had to decide: **Was the evidence strong enough to free them?**

As far as the father Avraham Yosef, the question seemed more straightforward. His body had been found the next morning, his face was intact, and his son Moshe had recognized him immediately.

But Meir's case was far more difficult.

His body was found only later, downstream, after time had passed. It was battered by the water. It was found among other drowned victims. The identification depended not on a clear face, but on simanim; a scarred thumb, protruding teeth, and a distinctive skin marking.

Were those signs enough?

Could his wife rely on them?

Could the beis din say with confidence that the body was Meir?

That was the painful sh'eilah brought before the Maharsham.

**To Rav Avraham Yaakov Isserlish,
Av Beis Din of Turka, Galicia.**

Turka sits in the foothills of the Carpathian Mountains in eastern Galicia, near the rivers that feed the Dniester. In that part of the world, sudden floods caused by mountain runoff were a real danger to Jewish communities.

THE MAHARSHAM'S ANALYSIS

1. One Witness Couldn't Tell the Brothers Apart

One of the witnesses who came forward said he recognized the body as a son of Avraham Yosef. But he admitted he couldn't tell which son it was, Meir or Moshe, because the two brothers looked a lot alike.

Rav Isserlish had reasoned: since Moshe is alive and well, the body must be Meir. Simple. And the Shulchan Aruch does support that kind of reasoning.

But the Maharsham isn't comfortable.

If this witness really couldn't tell the brothers apart, how carefully did he actually look at the face? The whole idea of identifying someone by their face depends on the fact that no two people look exactly alike. But that's usually true, not always true.

The Maharsham brings a Yerushalmi that shows just how far physical resemblance can go. Even people who know someone well can be fooled.

So this witness's testimony is helpful. But it's not enough on its own.

2. Did the Witnesses See What They Expected to See?

There's another deeper problem.

Everyone already knew that Meir was missing. Everyone already knew there had been a drowning. So when witnesses went to look at the body, they were already expecting it to be Meir.

In halachah, this is called b'dadmi — the worry that a witness who already heard what happened looks at a body and convinces himself it's the right person, when really he's just seeing what he expected to see. Today we'd call it confirmation bias.

Rav Isserlish had argued that since there were two witnesses, this concern should go away. Two people are less likely to make the same mistake.

The Maharsham pushes further. He brings a teshuvah attributed to the Ramban that raises an even bigger problem: when a body has been in water for a long time, it changes. It swells. Features shift. Even an honest, careful witness might not be able to recognize someone after days in the river.

And that's exactly what happened here. Meir's body had been in the water for days and had taken a beating from the current.

This was a real obstacle.

3. The Physical Marks

Now the Maharsham turns to the physical evidence. Here the case gets stronger.

Start with the teeth. The Rema rules that just having large or prominent teeth doesn't count as an identifying mark, because plenty of people have somewhat prominent teeth. But the Maharsham points out that Meir's situation was different. His lower teeth didn't just stick out, they stuck out because the gum tissue had receded in that specific spot. That's not a normal variation. That's unusual. And unusual is exactly what matters.

The scar on the left thumb was even more convincing. A scar, a wrinkle, and a dark discoloration — all in the same spot on the left thumb, exactly where Meir had been injured by an axe years earlier. You don't find that kind of thing by coincidence.

Then there was the third sign: small pit-like depressions in the skin where clusters of hair had once grown. The hairs themselves were gone — probably torn away by the battering the body took in the water — but the marks in the skin were still there.

Any one of these signs alone might not have been enough. But in halachah, when two identifying marks of moderate strength come together, they can add up to what's called a **siman muvhak** — a sign strong enough to be considered definitive. The teeth and the thumb scar together already reached that level. The skin markings made it even stronger.

4. But What If the Body Changed Too Much?

Here the Maharsham runs into the strongest argument against him.

R' Itzele Peterburger — one of the great talmidim of R' Yisrael Salanter — had written in his sefer Pri Yitzchak that once a body has been in water for an extended period, it changes so much that even clear identifying marks can't be trusted anymore. His reasoning was surprising: if the body has definitely changed shape, then finding a mark that happens to match could actually mean it's a different person whose body just looks similar now.

Think about what that would mean for this case. If R' Itzele is right, all the evidence — the teeth, the scar, the skin markings — would be worthless. Every identifying mark would collapse.

The Maharsham takes this argument seriously. But he takes it apart.

First, he points out that almost no one else agrees with R' Itzele on this. The Taz, the Beis Shmuel, the Maharit, the Noda BiYehuda — they all hold that identifying marks are still valid even after time has passed. R' Itzele stands nearly alone.

Second, the Maharsham makes a structural point: the worry about a body changing shape is only a rabbinic-level concern. But the identifying marks provide Torah-level evidence. A rabbinic doubt cannot override Torah-level proof. R' Itzele's argument puts the weaker concern on top of the stronger one. That's backwards.

Thirdly, and this is simple but perhaps the most powerful point; a body may swell, but it doesn't rearrange itself. A scar on the left thumb is still on the left thumb. A dark mark in the same spot is still in the same spot. Location doesn't change when a body swells.

R' Itzele's position is respectfully set aside.

5. What About the Clothing?

Serach recognized two garments found with the body: a dark wool leibtzidekl and a vestil — a woven (vest) piece with black stripes.

There was one complication. The vestil wasn't actually on the body. It was found covering the dead man's face.

Normally, that would be a problem. The Beis Shmuel rules that clothing found near a body — but not on it — doesn't count as identification. Maybe the garment was already lying there before the body arrived.

But the Maharsham explains what actually happened. The local non-Jews who found the body had taken the vestil off and placed it over the face to keep birds away. They covered the rest of the body with tree branches for the same reason. The garment didn't just happen to be nearby. It had been on the body, and they moved it deliberately.

Could the clothing have come from a different person in the flood? The Noda BiYehuda raises that possibility — a drowning person might tear off heavy garments trying to stay afloat, and those clothes could end up near someone else's body. But the Maharsham responds simply: a lightweight vestil is not the kind of garment a drowning person rips off to survive. That concern applies to heavy coats, not light inner clothing.

The clothing doesn't prove the case by itself. But it adds to it.

6. The Argument That Changes Everything

Even if someone could challenge every piece of evidence above, the Maharsham has one more powerful argument:

Think about what actually happened to Meir.

He was up in the attic when the building was torn apart by the flood. He fell from a significant height, crashed through the collapsing structure, and plunged into raging floodwaters.

Most people don't survive that.

In halachah, this is called **ruban l'misah** — a presumption of death based on the circumstances themselves, not on identifying the body. When someone is in a situation where most people die, we can presume that he died too.

And this changes the entire calculation. Once you can establish that Meir most likely died in the flood, the remaining question, of whether the body found downstream is really his, becomes easier to answer. The prohibition against the wife remarrying shifts from a Torah-level concern to a rabbinic-level one. And at the rabbinic level, the accumulated evidence — the marks, the witnesses, the clothing — is more than enough.

The Maharsham makes the point sharply: Meir's own mother survived the same flood only because she managed to grab a floating log at exactly the right moment. That was the exception — a remarkable rescue, not the norm. Meir, who fell from an attic through collapsing beams into the current, didn't have that kind of chance.

That single reality — that Meir almost certainly did not survive — together with the signs found on the body, opens the door for the Maharsham to permit Serach to remarry.

7. What About the Father's Case?

The father's case was much simpler. Rav Isserlish had suggested that since Avraham Yosef's body was found on the riverbank with his face intact, maybe he actually survived the water and died afterward on dry land. That would make the identification easier, because a body found on land doesn't raise the same halachic complications as one pulled from the water.

The Maharsham says no. When someone is found dead at the water's edge, you can't just assume he climbed out alive and then died later. He may well have drowned and been washed ashore.

But this technicality doesn't matter much in the end. Ruban l'misah applies to Avraham Yosef too — he was also swept away in the flood. And his body was identified by his face, by his clothing, by his arba kanfos, and by his mill keys — something no one borrows and no one lends.

The case for Avraham Yosef was overwhelming.



THE P'SAK

The Maharsham rules that both women may remarry.

He adds one condition: he agrees with Rav Isserlish's conclusion, but requires that one additional rav also sign on to the decision.

That wasn't a sign of doubt. It was standard practice in agunah cases this serious — a way of showing respect for the weight of what was being decided. Permitting an agunah to remarry means allowing a woman to rebuild her life. But if the identification turns out to be wrong, any future children could be mamzeirim. (There are teshuvos of the Maharsham where questions of this type came to him after this this ח"ו happened.) The stakes are too high for any one posek to carry alone.

A mother-in-law and a daughter-in-law — two women whose lives had been frozen by the same flood — could now begin again.

HISTORICAL CONTEXT

The Yidden of Galicia lived close to nature's dangers. The same rivers that powered their mills could destroy their homes in a single night. A flash flood in the Carpathian foothills didn't give warnings.

And when tragedy struck, halachah had to respond. Not for theoretical cases, not for names in a sefer — but for real women standing in front of a real rav, asking whether they were free to move on with their lives or whether they would remain chained to uncertainty forever.

The Maharsham doesn't permit out of emotion. He never says, "This is a sad story, so let's be lenient." He works through every challenge carefully — the witnesses, the marks, the clothing, R' Itzele's objection. And then he reveals the argument that reframes everything: the fact that Meir almost certainly did not survive the flood changes the nature of the question itself. Once the presumption of death is established, the remaining evidence — which had seemed borderline — becomes more than sufficient.

KEY TERMS

Siman Muvhak — A definitive identifying mark. It has to be unusual enough that finding it on a body means you can say with near-certainty who it is. In this teshuvah, the scar on Meir's left thumb, in the exact spot where the axe had slipped, is the clearest example.

B'dadmi — The worry that a witness identified someone based on what he expected to see, not on what he actually saw. If that happened here, the body might not be Meir at all — and Serach could never remarry.

Ruban L'misah — When someone is in a situation where most people die, halachah presumes that he died too. This is the argument that changes the entire case. Once the Maharsham establishes that Meir almost certainly didn't survive the flood, the remaining evidence becomes strong enough to free Serach, his *almanah*.

FOR THE SHABBOS TABLE

- Meir's mother survived the same flood by grabbing a floating log at the right moment. The Maharsham uses her rescue as proof that surviving was the exception, not the rule. When someone we know beats the odds, how should that shape our understanding of what happened to those who didn't?

R' Itzele Peterburger argued that once a body has changed, even matching marks might just be a coincidence. The Maharsham disagreed.

Coming next week:

A husband bound for five years of military service nearly destroys his wife's only chance at freedom with a single sentence.



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.

Mekoros: Gemara: Sanhedrin 37a; Yevamos 121a; Bava Basra 24b; Yerushalmi Yevamos 15:4

Rishonim: Ramban (attributed teshuvah); Rivash; Rabbeinu Tam (cited in Shulchan Aruch E.H. 17:25); Rosh (Bava Metzia 1:50)

Shulchan Aruch & Nosei Keilim: Rema E.H. 17:24; Taz E.H. 17:29, 37, 39; Beis Shmuel E.H. 17:69, 83, 87; Pischei Teshuvah E.H. 17:95, 103, 133

Acharonim: Noda BiYehuda (Mahadura Kamma E.H. 49–52, 65; Mahadura Tinyana 46, 61); Chasam Sofer (E.H. 80); Pri Yitzchak (E.H. 8); Radbaz; Bach; Maharit

Correction: The teshuvah in Issue #5, "The Shochet and the Seventh Goose," is located in Chelek III, Siman 189. The previous issue had incorrectly said Chelek I instead of Chelek III.

From the Maharsham's Techeiles Mordechai

PARASHAS EMOR

The Marvel of Maror: Why Suffering Was Part of the Redemption

There is a question that sits quietly at every Seder table.

On the night of cheirus, the night of freedom, why do we eat maror?

The Haggadah tells us about the Rasha, the wicked son. He asks, "What is this service to you?" And, really, he is not wrong to be confused. If we have been redeemed, why interrupt the freedom with the taste of slavery?

The Maharsham explains that the bitterness was not simply the suffering before redemption. The bitterness itself was part of what redeemed us.

The decree was explicit. At the Bris Bein Habesarim, Avraham Avinu was told that the exile would last 400 years. Yet the Jewish people were enslaved in Mitzrayim for only 210 years.

How was the sentence reduced?

Chazal answer that the intensity of the slavery accelerated the completion. Suffering was concentrated, and through that concentration, time itself was redeemed.

This does not mean suffering is good.

The torah never asks us to love our oppressors. But it teaches that Hashem's providence runs deeper than simple cause and effect. Suffering can be real and terrible and still, in ways we cannot fully understand, be part of a path toward restoration.

This is the answer to the Rasha. He says: "What is this service to you?", emphasizing distance. And the answer is: "To you and not to him. If he had been there, he would not have been redeemed."

The people who were enslaved in Mitzrayim tasted the maror. They did not separate themselves from the suffering. They remained connected to the fate of the people.

And because they did not distance themselves, they could perceive that even the suffering was reweaving destiny.

But one who stands apart from his brothers, who asks, "What is this to you?" — separates himself from the story. He will not eat the maror as they did. And therefore, he cannot taste the redemption in the same way.

Because redemption does not come only to those who escape suffering. It comes to those who understand that suffering has made them part of something larger. One without the other would be incomplete.

Matzah alone is hollow, a commemoration of speed without understanding what we were speeding from. And Maror alone is despair. It is memory of bitterness, but without transformation.

But together, they tell the real story: We were enslaved. We were freed... And the path from slavery to freedom ran through the very bitterness that seemed to be only our burden.

This is a teaching we need in every generation.

Life brings suffering that we cannot explain. But the Maharsham teaches: do not separate yourself from the suffering of your people. Stay connected.

The geulah comes not to those who escape suffering, but to those who understand that suffering is part of the larger story of liberation.

This translation is presented for Torah study and enrichment purposes only. It is not intended as halachah l'maaseh. The translator has made every effort to render the Maharsham's words faithfully, but this English adaptation may contain errors or imprecisions. For any practical halachic question, consult your own Rav.