מהדורת משפחת ברייטמן
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תמצית ערוך השולחן

TAMTZIS ARUCH HASHULCHAN

A Concise Summary of the Dinim of the Aruch HaShulchan

EVEN HAEZER · SIMANIM 1–178

Piryah v'Rivyah • Issurei Kehunah • Kiddushin • Kesubos • Gittin
Shemos Gittin • Yibum & Chalitzah • Sotah

Concise practical rulings, with source references and explanatory notes from the Pischei Teshuva, Igros Moshe, Chochmas Adam, Get Mesudar, and Shem Chadash

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הורינו היקרים



דבורה בת זוסיע ז״ל
דוב צבי בן יעקב הלוי ז״ל



משה אהרן ורעיתו פייגל ברייטמן

In everlasting memory of our dear parents

Devorah bas Zusya · Dov Tzvi ben Yaakov HaLevi

Dedicated by Moshe Aharon and Faigie Braitman



the body for a long time so it cannot change at all; upon this the great authorities relied to permit in practice. (AH §191; *Beis Shmuel* 17:78)[218]

If we saw that it changed — such as the face swelled — we do not testify on him, for the water's preservation avails nothing once the face changed. (AH §192; Bach)

- If only the body swelled but the face did not, it appears we testify on him when he is recognized. (AH §192)

A Body with a Wound (*Mia Marzi Maka*)

If he was killed by blows and wounds, and all the more if slaughtered, we do not testify on him, for the Sages said the water aggravates the wound, causing swelling. (AH §193; *Yevamos* 121a)

- Even if the wound is not in the face but elsewhere on the body, we suspect the face changed, since the water entering the wound washes through the whole body — so per the leading later authorities. (AH §193)
- But it is not explicitly stated in any authority that a wound elsewhere changes the face; on the contrary, the *Gemara* and Rashi imply the water spoils only the wound's location, and by reason this is sound; so there is essentially no dispute. (AH §195; Rashi *Yevamos* 121a)

Rambam, Semag, and Rabbeinu Yerucham omitted the law of a wound; *Beis Yosef* explained their reason is that a wound elsewhere does not spoil the face, and needed no mention since they already ruled that when the face changes we do not testify. (AH §194; Beis Yosef)

- The essential ruling follows the majority of authorities that *mia marzi maka* applies, but the view of Rambam, Semag, and Rabbeinu Yerucham may be combined with other grounds to permit. (AH §194; *Yevamos* 47b)
- **If it is doubtful whether it is a wound**, we rule leniently, since we did not see the face change. (AH §194; Be'er Heitev in name of Rosh)

Some say *mia marzi maka* applies only to a wound that was in his lifetime and did not heal; but if it healed in his lifetime, or the wound occurred after death — such as fish eating parts of the body — the principle does not apply, since it depends on the pain of the wound. (AH §196)

- *Beis Yosef* added that it applies only when he was cast into the water alive with the wound; if he was already slain on land before being cast in, *mia marzi maka* does not apply. (AH §196; Beis Yosef)
- With a wound, even within three days of death we do not testify on him, since the face is spoiled by the wound — no matter whether within three days or after. (AH §196)

Delay After Removal from the Water

If a water-recovered body lay some time on dry land after removal before being seen again, we do not testify on him, for the Sages said that once left out, it swells; even within three days of death this does not help. (AH §197; *Yevamos* 121a)

- It appears from the authorities that even if removed to a very cold place it does not help, for such is the body's nature: while in water it retains its appearance, and once exposed to the air its face changes. (AH §197)
- **If the head and face are kept in the water**, even though the rest of the body is out, since the face is in the water we testify on him; but the reverse — body in the water, head and face out — certainly does not help. (AH §197; Pischei Teshuvah 17:117)[219]

The Measure of Delay and What Counts as Change

The Sages did not state the length of delay after which the face changes. (AH §198)

- Our text of Rambam reads twelve hours; but many hold this is a scribal error and should read two hours, and some say one hour — to which several Rabbis agreed. (AH §198; Rivash §377; Rambam, Hilchos Gerushin 13:22)[220]
- There is support for the view that the time is one hour, though no clear proof. (AH §198; *Yevamos* 121a)

Once he has been delayed, we presume he swelled even if the change is not visible; and if the change is visible, then even without delay we do not testify on him — this only when the face changed, but change in the rest of the body does not matter. (AH §198)

The meaning of "change" requires great discernment: every corpse's face changes somewhat, but "change" means only that which alters the actual form of the face — such as swelling so great that his living facial form is unrecognizable. (AH §198; Pischei Teshuvah 17:117)

Some say that if he was placed, upon removal from the water, in a cold place such as our winter, then even if delayed somewhat we testify on him; it requires further study whether to rely on this. (AH §198)

A Corpse Found Slain After Uncertain Time

If a slain man is found and recognized by *tevias ayin*, but it is unknown when he was killed, some hold that we assume

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218. see *Pischei Teshuva* 102, citing the *Chelkas Mechokek* and *Mar'os HaTzov'os*, that Maharam of Lublin's leniency for a frozen body has no clear basis and requires that we know the body froze immediately upon removal.

219. see *Pischei Teshuva* 104 at length, citing R' Betzalel Ashkenazi, that a body lying at the water's edge with the waves washing over it is still treated as being in the water, and that the *poskim* dispute how much contact with water suffices.

220. see *Pischei Teshuva* 104, citing the *Mar'os HaTzov'os*, that many rishonim require the body be seen immediately upon removal with no fixed measure at all, and only the Rambam and those following him allow a full hour.

221. see *Pischei Teshuva* 108, citing the *Noda BiYehuda*, that where distinctive signs are also present even the Rashba would permit in a doubtful three-day case, since the identification already removes her from the *Torah*-level prohibition.

he was killed within three days and testify to it; others forbid this. (AH §199)[221]

- Some hold the law is lenient here, since we see no change in his features, and the concern that he became swollen is only Rabbinic. (AH §199; Noda BiYehudah)
- This means that even if within three days is a *Torah*-level concern, that applies only where a change is visible; where no change is seen, there is certainly no *Torah* concern — though some are stringent even here. (AH §199; Beis Shmuel)

If a report went out that "so-and-so died or was killed," and after three days he was found dead and recognized, she is permitted according to the first opinion, since either way she is permitted; the report is confirmed, or it does not detract. (AH §199)

- Some hold she is permitted according to all opinions, since we join the report to the identification. (AH §199; Taz)

One need not raise a difficulty against those who forbid in the case of doubtful three days from the presumption that a person lives, for the husband himself retains a presumption of life and this body may be another's; moreover, she has a presumption of being a married woman, and this is a weakened presumption. (AH §200; Yoreh De'ah 397)

Doubt of Delay in Identification

Where there is a doubt whether identification was delayed [beyond immediate viewing after removal from water], we rule stringently, and even if she married she must leave. (AH §201; Rema)

- This applies to identifying him by *tevias ayin*; but through *simanim muvhakim* [distinctive signs], even where there was delay, his wife is permitted — provided the signs are not ones apt to change after death, such as a mole. (AH §201)
- In doubtful delay we rule stringently even according to the lenient opinion regarding the three-day doubt. (AH §201; Ran)

In a case of witness-from-witness, where the first said he saw him dead after removal from the water but did not clarify whether immediately or after an hour, we rule leniently that he saw within the first hour. (AH §201; *Beis Shmuel* 17:82)[222]

- Where she is permitted by *Torah* law — as where they stood by him long enough for his soul to depart — and the prohibition is only Rabbinic, one may be lenient in doubtful delay. (AH §201; Pischei Teshuvah)
- Some say the leniency of witness-from-witness likewise applies only where she is *Torah*-permitted; and one may likewise be lenient by joining an intermediate sign, and where his whole body is intact by joining Rabbeinu Tam's opinion. (AH §201)

Rabbeinu Tam's View: A Fully Intact Body

According to the Rambam and most *poskim*, one testifies only on the facial profile together with the nose, and only within three days. (AH §202; Rambam)

Rabbeinu Tam holds that the requirement of forehead, nose, and profile applies only when there is only the head; but **if the whole body is intact**, one may recognize him by *tevias ayin* even without the profile — though the *Acharonim* disputed him. (AH §202; Rabbeinu Tam)

Rabbeinu Tam also holds that the limit of three days applies only when he is wounded in the face; but **if his face is unwounded**, one may testify even after many days by *tevias ayin* of his body and form — though the *Acharonim* did not find this clear. (AH §202; Rabbeinu Tam)

In explaining Rabbeinu Tam, some say a fully intact body suffices by *tevias ayin* alone; others say it also requires intermediate signs. (AH §203; *Beis Shmuel* 17:77)

According to Rabbeinu Tam's own words: just as signs are either distinctive or not, so too *tevias ayin* — a complete *tevias ayin* is when the whole body is intact even if wounded in the face, and this is superior to a distinctive sign; where the head is severed from the body it is an incomplete *tevias ayin*, and this is why one testifies only on the profile with the nose and only within three days. (AH §203; *Sefer Ha Yashar* §791)

- When the whole body is intact, even if wounded in the face and without forehead and nose, one may recognize him by the signs of the whole body, and one testifies even after a long time. (AH §203; *Tosafos Yevamos* 121a)
- Likewise when he was removed from water — the requirement of immediate viewing applies only when the head is severed; but where the whole body is intact even if the face is disfigured, one testifies even after a long time. (AH §203)

An Unwounded Intact Body — the Agreed Law

Although many disagree with Rabbeinu Tam, most only reject his view that a fully intact body wounded in the face may be identified after many days; but **where the whole body is intact and unwounded in the face**, all agree one testifies even after a long time — and so too in a case of delay. This is the view of the *Tosafos*, the Rosh, and the Tur. (AH §204)[223]

The Tur rules that where the whole body is intact and unwounded in the face, one testifies even after many days by *tevias ayin* of body and form; the three-day limit applies only where he is wounded in the face even if the whole body

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222. see *Pischei Teshuva* 110, that the leniency of Mahariv"a"l for an *ed mipi ed* was rejected by the *Ranach* and Mahari"t and is relied upon only where the underlying prohibition is merely rabbinic.

223. see *Pischei Teshuva* 113, citing the *Chasam Sofer*, who argues that Rabbeinu Tam's view is in fact primary now that his own words in *Sefer Ha Yashar* are available, where he answered all the objections raised against him.

is intact. (AH §205; Tur)

- Thus, in the case of an intact unwounded body, Rabbeinu Tam's view is not solitary, for *Tosafos*, the Rosh, and the Tur hold like him. (AH §206; Rosh)
- The *poskim* infer from the *Beis Yosef*'s language "the *Acharonim* disputed him" that his words were not entirely rejected, and one joins his view to other assessments and proofs. (AH §206)

The Rema's attribution to Rabbeinu Tam — that only where he is unwounded in the face does one testify after many days — is not truly Rabbeinu Tam's view, for Rabbeinu Tam permits even where he is wounded in the face; rather it is the view of *Tosafos*, the Rosh, and the Tur. (AH §206)

One Present at the Drowning Versus One Who Was Not

Regarding Rabbeinu Tam's view on an intact unwounded body, some distinguish: **whoever was present when he drowned** may not testify even though the body was intact, but one who did not witness the drowning and recognizes him by *tevias ayin* while intact may testify — but this is a separate matter from Rabbeinu Tam's view. (AH §207; Rema)

Testimony Only on Certain Death

One testifies that a person died only in a case of certain death, not for matters that mostly lead to death; concerning the identity of the testimony we are stringent and take account even of a one-in-a-thousand minority. (AH §208)

On one who is dying (*goses*), one does not testify that he died, since even one in a thousand can live — and it is not so that one may testify on a *goses* after three days. (AH §208)[224]

Some say that in all cases where the Sages said she may not marry, if she married she must leave even in matters that mostly lead to death — except water with no visible end; and some early authorities dispute this. (AH §208; Rivash §379)

- This is not a blanket rule for all cases; some indeed require her to leave if she married, and matters depend on the God-fearing judgment of the local sages. (AH §208; Mareos HaTzovos)

Lion's Den, Snakes, Fire, and Slaughter

If he fell into a lion's den that is very wide, such that he does not land upon the lions, one does not testify, for perhaps the lions were not hungry. (AH §209; Nimukei Yosef)

- But if he fell upon the lions, one testifies, for they certainly killed him. (AH §209)
- If he fell into a pit full of snakes and scorpions, one testifies, for having trodden upon them they certainly killed him; we do not say perhaps he knows to charm snakes. (AH §209)
- In a place where one does not permit his wife, even if he was not found in the pit we suspect he emerged and left; but if human bones were found in the pit, some permit his wife, though some object. (AH §209; Bach)[225]

If he fell into a deep furnace of fire or into a boiling cauldron full of wine, oil, or water and waited a short while, one testifies; in a shallow furnace too he must wait a little, lest he leapt out immediately. (AH §210)

If two [vital] pipes or their majority were slaughtered in him, one testifies even if he rose and fled, since he will certainly die. (AH §210)

If he was seen crucified with a bird eating from him, even if they pierced him or shot arrows at him, one does not testify. (AH §210)

- Some say this was only in ancient times when they hung by the hand and one could live long, but nowadays that they hang by the neck one testifies, for he chokes immediately — and this is reasonable, provided he stood by him a short while. (AH §210; Bach)[226]
- But if the bird eats from a place whose removal causes death — such as the brain, heart, or innards — one testifies in any case. (AH §210)

If he saw the man hung and after a day or two saw a man still hanging there, he testifies, and we do not say perhaps the first fell and this is another; we say it is he who was hung and he who now hangs, since the spot is exact and only a Rabbinic stringency is at issue. (AH §210; Noda BiYehudah)[227]

Even if he was seen wounded (*megudad*) — cut in his flesh and full of sword-wounds — one does not testify; and even where cut in a place rendering him *tereifah*, the *Mishnah* rules stringently. (AH §211; *Yevamos* 120a)

- If we know he was cut with a heated blade, she is forbidden according to all, [in the view that such a one may live]. (AH §211)
- The Rambam omitted the law of *megudad* altogether, since he holds a *tereifah* does not live beyond twelve months; hence where cut in a *tereifah*-place she is certainly permitted after twelve months, and the Rif likewise omitted the entire discussion. (AH §211; Rambam)

Water With and Without a Visible End

If he fell into water with a visible end and one stood at the shore long enough for the drowned man's soul to depart

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224. see *Pischei Teshuva* 131, that all the great authorities — the *Beis Meir*, *Dagul MeRevava*, *Mar'os HaTzov'os*, and *Yeshuos Yaakov* — reject the *Beis Shmuel*'s ruling that one testifies on a *goses* who lingered three days, and hold one never testifies on a *goses*.

225. see *Pischei Teshuva* 128, citing the *Noda BiYehuda*, who rejects the Bach's leniency where bones were later found, since one may equally say the bones were there long before he fell in.

226. see *Pischei Teshuva* 130, citing the *Noda BiYehuda* and his son, who dispute whether the executioner's breaking of the neck is a fixed practice of the government, and hold that even a broken neck does not render him a *tereifah* if the windpipe and most of the flesh remain.

227. see *Pischei Teshuva* 130, citing the *Noda BiYehuda*, that the leniency of "he who was lost is he who was found" applies here since crucifixion in secret is uncommon, and see the *Shav Yaakov* who likens it to a "single instance of falling."

and he did not emerge, his wife is permitted. (AH §212)

- Water with a visible end is where one standing at its edge sees all its banks from all four directions — a pit, cave, or small pool — so that if the drowned man surfaced he would be seen. (AH §212)

If he fell into water with no visible end, his wife is forbidden, for the current may have carried him far and he emerged elsewhere or entered a fish's burrow — all seas and rivers are so classified. (AH §212)[228]

- There is no distinction whether he drowned naked or clothed, whether he could swim or not, whether he fell in or the water came upon him — such as one seated in a ship's lower cabin that sank; even one in a thousand escapes. (AH §212)
- If he did not stand there long enough for the soul to depart, she is forbidden even by *Torah* law. (AH §212)

A Severed Limb Recovered From Water

If they lowered a man by his foot into the sea and drew up only the foot, with the rope torn off with the foot and the whole body drowned, if the foot is from the knee upward his wife may marry, for such a cut cannot live even if cast ashore. (AH §213)

- The *Beis Yosef* rules she marries only after twelve months, since a *tereifah* does not live twelve months; but the Rambam and Tur write simply that she marries — implying at once — and did not defer to the *Yerushalmi*; still, one should rule like the *Beis Yosef*, since no early authority is found to dispute it explicitly. (AH §213; Beis Yosef)

But if a man fell into the sea and afterward a human foot was drawn up with no distinctive sign identifying it as his, even if from the knee upward, his wife may not marry, for I say it is another's foot; here "it is he who was lost and he who was found" does not apply, and many drown in the sea. (AH §214)[229]

- Perhaps if they stood by him until his soul departed — so the prohibition is only Rabbinic — one may permit; this requires study. (AH §214)
- So too perhaps by an intermediate sign on the foot one may permit in such a case. (AH §214)

Some say that even a distinctive sign on his garments avails here, since he was seen drowning in these garments. (AH §215; Rema)[230]

- One seen falling into the sea, and afterward a foot with a garment or shoe recognized as his is drawn up, his wife is certainly permitted; the concern of borrowing does not apply, for he could not undress and lend his clothes underwater. (AH §215; Chelkas Mechokek 17:60)
- Even where after several days a drowned body clothed in these garments was found and the corpse itself is unrecognizable, one may permit his wife, for it is a remote concern that two men drowned in these very garments; and though some object, in the concern of borrowing — where many dispute the very rule — one may permit. (AH §215; Maharam Padua)

A Single Witness on Death in Water or War

If one witness says he saw the man die in war or in a collapse, or drown in the great sea and die, and similar matters that mostly lead to death: if he said "I buried him," he is believed and she marries on his word; if he did not say "I buried him," she may not marry, but if she married she does not leave. (AH §216; Rambam, Hilchos Geirushin, ch. 13)[231]

A woman for whom one witness testified that her husband drowned in water with no visible end and did not surface, and his memory was lost — she may not marry on this testimony, and if she married she does not leave; even if a non-Jew speaking casually said so, if she married she does not leave. (AH §216; Rambam)

A woman is believed to say "my husband died" only when she says he died in his bed; but if she says he died in war, she is not believed, for we say she spoke by conjecture (*bidedami*). (AH §217)

- Not only war, but any place of great danger where most die — if she says he died she is not believed, for we say she spoke by conjecture. (AH §217)

Water is likened to war: even if she says her husband drowned and the sea immediately cast him ashore and she saw him dead, she is not believed, for we suspect he did not truly die and the water confounded her — many drowned appear dead when removed and revive with treatment. (AH §217; Rivash §378)

- This applies to water with no visible end; but in water with a visible end there is no conjecture, for one stands by until the soul departs. (AH §217; Gra 17:107)
- According to the Rambam, where a witness did not say "I buried him," the doubt is not resolved and she is not permitted; but where he said "I buried him," she may marry, since we do not need her precision. (AH §217; Gra 17:107)

How Many Witnesses Are Needed and "I Buried Him"

The Rambam holds the concern of conjecture exists only

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228. see *Pischei Teshuva* 132, citing the *Yeshuos Yaakov* and *Kehilas Yaakov*, that where the water was frozen over or the man was bound in chains it is treated as water with a visible end.

229. see *Pischei Teshuva* 135, citing the *Noda BiYehuda*, that if the recovered limb was from the knee upward with the mark of circumcision on it there is room to permit through a *sefek sefeika*.

230. see *Pischei Teshuva* 137, citing Maharam Padua, that garments recognized on a drowned body permit even when found some days later, since one does not lend clothing underwater — and one need not insist the body be seen immediately.

231. see *Pischei Teshuva* 141, citing the *Chasam Sofer*, that nowadays with postal service and newspapers everywhere, one who was drowned and never made himself known is treated as though the interval for the soul to depart had been observed.

with a single witness; with two witnesses there is no concern at all, and when they said he died in war or in water, she is permitted. (AH §218; Rambam)

The Rif holds even two witnesses face the concern of conjecture and it does not avail until they say "we buried him"; yet it seems from his language that this applies only to war, whereas in water it suffices that they recognized him immediately upon removal. (AH §218; Rif)

- Some say the Rif requires "I buried him" even in water. (AH §218)
- Some of our Rabbis hold that with a witness there is no concern of conjecture at all, even in war, and no need to say "I buried him"; the Rif's and Rambam's view is a great stringency. (AH §218; Rivash §377)

According to the Rambam, where we permitted upon removal from water without delay by recognizing the profile, and did not require "I buried him" — that is with two valid witnesses; with a single witness, alongside recognition we require "I buried him." (AH §218; Rambam)

- Not specifically "I buried him" — likewise if they moved him from place to place and he had no life in him, it is as though buried. (AH §218)
- Perhaps the Rambam requires "I buried him" only where the water cast him out before the interval for the soul to depart; but if he was in the water a long time such that he cannot live, only recognition is required. (AH §218; Mareos HaTzovos)

Explaining the Rambam's Formulations

The Rambam's case of a witness testifying a man drowned and did not surface and his memory was lost, and if she married she does not leave, teaches [in its first clause] that even where the sea cast him out immediately and the witness saw him dead she may not marry, from the concern of conjecture; and [in its latter clause] that even where he did not surface after the interval for the soul to depart she still may not marry, since the sea may have carried him far. (AH §219)

Witness Present at the Drowning — Requiring a Sign

Some early authorities distinguish that **one who saw or knew of the drowning** may speak by conjecture. Therefore, recognizing him by *tevias ayin* upon removal does not avail unless he says "I buried him" or the like, or states an intermediate sign in addition to the *tevias ayin*. (AH §220; Baal HaMaor)

- One who did not see or know of the drowning and recognized him immediately upon removal by *tevias ayin* needs nothing more. (AH §220)
- According to this explanation, conjecture means that perhaps it is another and he was misled by having witnessed the drowning; hence a sign confirms it. (AH §220)
- Some distinguish even here between one who saw and one who merely knew — but the main view is that there is no distinction between knowing and seeing. (AH §220; Mareos HaTzovos)

The Tur's Approach: One Who Did Not Witness the Drowning

According to the Tur, **one who did not witness the drowning** has no concern of delay; even if he recognized him only after a long time by *tevias ayin*, we rely on him and permit her; but **one who witnessed the drowning** must not only view him immediately upon removal, but even then *tevias ayin* without intermediate signs does not avail. (AH §221; Tur)

- The Tur: if a witness says "I saw him immediately after he was raised and recognized him by signs on his body," he is believed; by *tevias ayin* [alone] he is not — but this is only where the witness saw him fall. (AH §221; Tur)
- One who did not witness the drowning is believed even without immediate viewing and even by *tevias ayin* without signs, provided he sees him whole-bodied; but if only the profile with the nose is intact, *tevias ayin* alone without signs does not avail. (AH §221; Tur)
- The Rema did not adopt the Tur's ruling that one who did not witness the drowning need not view him immediately, deferring to the other *poskim*. (AH §221; Rema)
- With two witnesses, even those who saw the drowning need not view him immediately, for with two there is no conjecture, per the Tur. (AH §221; *Beis Shmuel* 17:87)

The Tur's basis is that even according to those who dispute Rabbeinu Tam, all agree that a fully intact unwounded body may be testified upon even after three days and even after delayed removal from water; hence the *Gemara*'s cases requiring immediate viewing refer to those who witnessed the drowning — this being the Rosh's view as well. (AH §222; Rosh, Perek HaIshah Shalom §3)

A Sage Who Erroneously Permitted

A sage who deliberately permitted in a case of water with no visible end is placed under a ban; **if he erred** — thinking it was water with a visible end — what is done is done, and if she married she does not leave, since delayed water with no visible end [where they waited for the soul to depart] is only Rabbinic. (AH §223)

- Some say the interval is three hours, some two hours; the law is that there is no fixed measure but rather according to appearance, as several great authorities agreed. (AH §223)[232]
- If she has not yet married, the sage's permission is of no effect. (AH §223)

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232. see *Pischei Teshuva* 134, citing the *Chasam Sofer*, who reconciles the Rivash's three hours with Mahari"t's brief interval: by nature one cannot survive more than a moment underwater, but until three hours pass revival by physicians is still possible.

- If she married through error, thinking she was permitted, she does not leave; but if she married in defiance — after being warned, or where one sage permitted and a greater one forbade — she must leave. (AH §223; *Beis Shmuel* 17:102,103)

Ambiguous Testimony of Drowning

Where one testified that the man was in a ship that broke apart at sea, or the like, or even that he drowned but did not testify that he remained in the water long enough for his soul to depart, she must leave, for people commonly call such events "drowning"; she may marry only if the witness explicitly stated he truly drowned and remained long enough for the soul to depart. (AH §224; Rema)

- Here witness-from-witness does not avail when he did not state explicitly how he drowned, for the leniency of witness-from-witness applies only where the wording indicates greater likelihood of death. (AH §224; Taz)
- If he states explicitly that he drowned in water with a visible end but does not say he remained until his soul departed, one rules leniently in witness-from-witness. (AH §224; Taz)
- If he testified he saw him drown and stand until his soul departed, but there is doubt whether the water had a visible end or not, one likewise rules leniently, since even in water without a visible end she does not leave if she married — so this is only a Rabbinic doubt. (AH §224; Taz)

Whether Failure to Wait Is a *Torah* Prohibition

Many dispute the ruling that where one did not wait until the soul departed it is a *Torah* prohibition and she must leave; they hold that even without waiting it counts among matters that mostly lead to death, she is *Torah*-permitted, and if she married she does not leave. (AH §225; *Yevamos* 121b)[233]

- Yet it is certain that where it is evident the speaker meant to announce his death, he certainly knows he is dead and presumably waited the interval for the soul to depart. (AH §226; Maharit)
- In the case of a well-known person one may find grounds to be lenient after the fact in a genuine drowning even without waiting the interval — all according to the God-fearing judgment of the local sages. (AH §226; Mareos HaTzovos)

Collecting the Kesubah When Forbidden to Marry

Some say that if he fell into water with no visible end, she collects her *kesubah* even though she is forbidden to marry. (AH §227)

- This is where two witnesses testified to his drowning; though we do not permit her — a stringency in matters of a married woman — for the *kesubah* we follow such a strong majority, since the minority is a minority of a minority. (AH §227; Gra)
- With a single witness it is the reverse: though he is believed for the prohibition of a married woman, for money we do not extract on a single witness, and the heirs do not take possession on his word; her *kesubah* is collected only from the general terms of the *kesubah* — and some dispute even this. (AH §227; *Beis Shmuel* 17:107)

Besieged City, Storm-Tossed Ship, One Led to Judgment

A city surrounded by a siege, a ship tossed at sea, and one going out to be judged are presumed alive; one certainly does not testify that any of these died, and if she married she must leave and her betrothal to the second is nothing. (AH §228; *Gittin* 28b)

A ship lost at sea — where it is unknown who was saved and who drowned — and a city taken by siege in ancient times [where all found in the fortress were killed], and one going out to be executed: we impose upon them the stringencies of both the living and the dead regarding a *get*; if she received betrothal from another she requires a *get* from him out of doubt, but if she married she must leave. (AH §228; Shiltei Giborim)

- If a witness testified that this woman's husband was lost at sea and not saved, that is the law of water with no visible end, where if she married she does not leave; but where he testified merely to the loss of the ship without knowing who was saved, if she married she must leave, for it is a complete doubt and she stands presumed a married woman. (AH §228; Rivash §379)
- Even if his memory was lost it does not avail. (AH §228; Knesses HaGedolah)
- Some distinguish between a Jewish court and a non-Jewish court, but practically there is no difference here, and one should be stringent. (AH §228; Rashba)

The Rambam did not mention these *agunah* laws, apparently relying on what he wrote regarding a *get*; there he added, per the *Yerushalmi*, that likewise one dragged off by a beast, swept away by a river, or upon whom a landslide fell, we impose the stringencies of both living and dead. (AH §228; Rambam, Hilchos Geirushin, ch. 6)

- "Swept away by a river" is unlike falling into water with no visible end — it is where he sat at the riverbank and the current swept him, from which it is easier to escape; hence this is a complete doubt. (AH §228)

A Wife's Report of Death in Wartime

A woman who says "my husband died" is believed only **when there is peace between them and peace in the**

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233. see *Pischei Teshuva* 144, citing the *Bris Avraham*, that even a single witness to a drowning in endless water suffices to remove her from the *Torah*-level prohibition, so that the remaining stringency is only rabbinic.

world; but if there is war in the world — even with peace between them — or strife between them even with peace in the world, she is not believed. (AH §229)

- When there is war and she says he died in war, we suspect she spoke by conjecture, reasoning that since the first and last were killed and he was among them, he too was killed. (AH §229)

Since the reason is conjecture and not deliberate falsehood, **if she said "I buried him"** she is believed according to most *poskim*, for having buried him she saw that he died. (AH §229)

- Not specifically "I buried him" — likewise if she moved him from place to place and saw clearly that he died, there is no concern of conjecture. (AH §229)

The Rambam holds that even if she said "I buried him" she is not believed. (AH §230; Rambam)

- Some say the reason is that saying "I buried him" appears false, since it is not customary to wait in wartime to bury him. (AH §230; *Beis Shmuel* 17:146)
- Some say it is because in wartime she is anxious to flee, and in her great haste may have buried another thinking it her husband. (AH §230; Levush)
- Some say that since her conjecture that he died is strong, she lies and says "I buried him" so she will be more readily believed. (AH §230; Bach)
- There is support from the *Yerushalmi*, which says that even if she said he died in his bed she is not believed during wartime; though we do not rule so, at least in wartime she is never believed — but most early authorities hold like the Tur, that with "I buried him" she is believed. (AH §230; Yerushalmi, ch. 15)

A Single Witness on Death in War

If one witness testified that he died in war, the Rambam rules that if he said "I buried him" he is believed; if he did not say "I buried him," she may not marry, but if she married she does not leave. (AH §231; Rambam)

- The reason: without "I buried him" we suspect the witness too spoke by conjecture, but with "I buried him" there is no such concern, and we do not suspect him of lying as we suspect her. (AH §231; *Beis Shmuel* 17:152)
- Even according to our earlier explanation that a witness has no conjecture at all: the matter is an unresolved question in the *Gemara* — whether a single witness's credibility rests on "a matter apt to be revealed" or on her precision, and in war she is not precise — so it is a Rabbinic doubt resolved leniently; by *Torah* law he is believed in any case since the matter is apt to be revealed. (AH §231; *Yevamos* 115)
- This is stated explicitly in the *Yerushalmi*, where such a case came before Rebbi and he ruled she may not marry, but if she married she does not leave; a landslide is like war. (AH §231; Yerushalmi)[234]

A Single Witness at War

Some of our teachers hold that a single witness who testifies she was widowed in war is believed — even without saying "I buried him" — and she may remarry *lechatchilah*, likening it to a body of water with a definite end. (AH §232; Rashba and Raavad)

- The Rosh and Tur agree with the Rambam that here "I buried him" is required, since at war one may err by assumption (*bidedami*). (AH §232; Rosh, ch. 15 §3)

Some say the witness is believed not only with "I buried him" but even when he says "he died" or "was killed, and I afterward recognized him clearly by *tevias ayin* and saw that he had died" — this is as if he said "I buried him." (AH §232; Mordechai)

- Some restrict this leniency to one who did not witness the killing itself. (AH §232; Chelkas Mechokek 17:103)

With two witnesses, all agree "we buried him" is not required, since *bidedami* does not apply to two. (AH §232)

Regarding a non-Jew speaking casually (*mesiach lefi tumo*) who reports a war death, he must say "I buried him," lest he speak by assumption. (AH §232)[235]

- Some are lenient, since *bidedami* applies only to one who sets his mind to testify and permit, unlike one speaking casually. (AH §232; Gra 17:156)
- It is difficult to rely on the lenient view without "I buried him" except in combination with other grounds for leniency. (AH §232; Chelkas Mechokek 17:103)

Died in Bed During Wartime

If she says he died in bed — even though it was wartime — she is believed. (AH §233; *Tosafos*, Perek HaIshaShalom)

If she says he went to war, was struck, returned home, and died in bed — she is believed. (AH §234; Rashba)

- According to the Rambam, who holds even "I buried him" is not believed at war, it appears she is not believed even in this case, though this depends on the reasoning underlying the Rambam's ruling. (AH §234; Mar'os HaTzov'os §177)

Death Away From the Battlefield

If she says he died or was killed far from the war — she is believed, for *bidedami* applies only to a death at the actual battle; even if he went near the front to gather spoils, she is believed. (AH §235; Rema)

- In wars of savages who kill even bystanders and those

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234. see *Igros Moshe* EH 5:15, who questions the Bahag's position that even in water with a visible end a single witness does not help after the fact, and leaves the matter for further study.

235. see *Pischei Teshuva* 148, citing the *Chasam Sofer*, that a woman's own report of a wartime death is likewise suspect of *bidedami* even as to the interval for the soul to depart, though the *Yam Shel Shlomo* holds otherwise.

near the fighting — as occurred in the Chmielnicki decrees — there is no such distinction, and anyone present is considered part of the war. (AH §235; Taz)

- Some question the Rema's ruling, suggesting that per the Rambam even a death far from the war would not be believed, but this is rejected: far from the war she is not panicked and does not err. (AH §235; Beis Shmuel)

If she says he died a natural death at war — per the Rema she is not believed. (AH §236; Rema)

- Some disagree and hold she is believed, since she attributes the death to a cause other than the war. (AH §236; Yam Shel Shlomo)
- "I buried him" may help even the Rambam in such a case. (AH §236; Beis Shmuel Siman 148)

An Unknown War She Herself Reports

Where no war was known to the world and she comes saying "there was a war in such-and-such place and my husband died in it" — she may not remarry *lechatchilah*, but if she remarried she need not leave; the Rambam rules this way. (AH §237; Rambam)

- Some say if she remarried she must leave. (AH §237)
- By *Torah* law she is believed even at war, the *bidedami* concern being only Rabbinic; since the *Gemara* left it unresolved it is a Rabbinic doubt, decided leniently. (AH §237; Kesef Mishneh)

If she says "I buried him" in such a case — some say even the Rambam permits her to remarry *lechatchilah*, and some dispute this. (AH §237; *Beis Shmuel* 17:150)

If she says simply "he died" — if it is known there was a war, we assume he died in war and she is not permitted until she specifies he died in bed; if no war is known, we assume she meant he died in bed. (AH §237; Rashi 115a)

A Quarrel Between Husband and Wife (*Ketatah*)

Where there is a quarrel between them — even though the world is at peace — the Sages said she is not believed to say her husband died, even saying he died in bed. (AH §238)

- One reason: we suspect she lies out of hatred, intending to forbid herself to him. (AH §238; Rashi 116a)
- The second reason: she speaks by assumption, not troubling to verify carefully because of her hatred. (AH §238; Rashi)

We rule stringently in accordance with both reasons, since the *Gemara* did not decide between them; the Rambam likewise cites no reason and draws no distinction between whether he or she began the quarrel. (AH §238; Rashba)

What Constitutes a Disqualifying Quarrel

Ordinary quarrels and disputes between spouses do not disqualify her, since most couples quarrel at times yet love strongly; even her saying "my husband, divorce me" is nothing, for so speak all women in anger. (AH §239)

The disqualifying case is where she told her husband to his face "you divorced me before so-and-so," and we asked the witnesses and they said it never happened; once contradicted by witnesses she can no longer be believed on anything. (AH §239; Gemara)

- But if she said not to his face "my husband divorced me" — where she is not believed by law — she is still believed to say her husband died, since she was not contradicted by witnesses. (AH §239; *Beis Shmuel* 17:140)
- **Nowadays**, when even a statement to his face is not believed [due to increased brazenness], she is believed when she says her husband died, since she was not contradicted by witnesses. (AH §239; *Beis Shmuel* 17:140)

Even in such a quarrel she is not believed even saying "I buried him"; and even by the reasoning that only *bidedami* is at issue, the assumption born of hatred is different and is not treated like the *bidedami* of war. (AH §241)

A Single Witness in a Quarrel Case

If a single witness testifies her husband died in such a quarrel case — she may not remarry *lechatchilah*, lest she hired him, but if she remarried she need not leave, since she has a witness. (AH §242; Rambam)

- The reason: since she has been established as a liar who seeks to extricate herself by falsehoods, we fear she hired and induced the witness, even in a matter likely to become known — for the concern of hiring a single witness applies where the permission is finalized through his testimony. (AH §242; *Gittin* 67a)

The doubt regarding a single witness in a quarrel case, according to the reason of falsehood, is whether she hired him; and the ruling that she need not leave if she remarried is because this concern is only Rabbinic, and a Rabbinic doubt is decided leniently — as most *poskim* agree. (AH §244)

A Husband Who Apostatized

If her husband converted to Islam and left her an *agunah* — the Rema rules this is like a quarrel and she is not believed to say he died. (AH §245; Rema to se'if 48)[236]

- Some disagree, since she is not suspected of remarrying illicitly, the Talmudic disqualification applying only to one who sought to extricate herself illicitly and was contradicted by witnesses. (AH §245; Chelkas Mechokek 17:94)
- Nonetheless, a *bidedami* concern certainly exists, since she hates him; with "I buried him" it depends on the Rambam-*poskim* dispute regarding war. (AH §245)

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236. see *Pischei Teshuva* 170, citing the *Noda BiYehuda* and R' Akiva Eiger, that in our lands where the apostate cannot compel her to live with him she is believed when she says "I buried him," and on a single witness she may even marry *lechatchilah*.

- A single witness in such a case follows the law of a single witness at war; some say she may remarry *lechatchilah*. (AH §245)

The reasoning of "she verifies carefully" still applies here, so that she not forbid herself to the second husband, even if the verification is relevant only regarding the second. (AH §246; Pischei Teshuvah 17:168)

- Practically there is little difference: on her own she is certainly not believed, and only with "I buried him" is there doubt, and one should not be lenient without some additional ground. (AH §246; Mar'os HaTzov'os)
- For other types of quarrels, even the most severe, there is no room for doubt, for we have only what the Sages stated — and the matter requires further study. (AH §246)

Death Under a Collapse (*Mapoles*)

If she says her husband died under a collapse — she is not believed, for a collapse is like war and she speaks by assumption; all the laws of war apply, whether she says "I buried him," "he died in bed," or a single witness testifies. (AH §247)

- Even according to one lenient about "he died in bed" at war, if she says "he was killed" or "fell from the roof and died," she is not believed, since she did not wait due to fear of the collapse. (AH §247; Yam Shel Shlomo, ch. 15 §3)
- It appears the Sages' "collapse" refers to when collapses are prevalent throughout the city and all flee — like a war; but the collapse of a single house, after which they search for those beneath it, requires further study. (AH §247; Rashi, ch. 15)

Snakes, Scorpions, and Plague

Where there was a plague of snakes and scorpions and she says "a snake or scorpion bit him and he died" — she is not believed, this being like war; all the laws of war apply. (AH §248)

- "A plague of snakes" means they were sent among many people; but if one snake bit and his wife came saying he died of a snakebite, she is believed, since she was not panicked to flee. (AH §248; Beis Yosef)
- The distinction some draw regarding "I buried him" — that the Rambam would concede here — is rejected, for here too the panic is great and one does not wait to bury. (AH §248; *Beis Shmuel* 17:156)

Regarding an epidemic (*magefah*) — there are two versions in the *Gemara* whether it is like war; the Rambam rules leniently that she is believed, and the Tur rules she is not believed. (AH §249; Rambam and Tur)

- With "I buried him" all agree she is permitted. (AH §249)
- If she remarried she need not leave, since the *bidedami* concern is only Rabbinic and the matter is disputed — a Rabbinic doubt decided leniently. (AH §249; *Beis Shmuel* 17:160)
- A single witness in an epidemic may permit her to remarry *lechatchilah* by way of a double doubt (*sefek sefeika*). (AH §249; Mar'os HaTzov'os §189)
- Some great authorities hold one should not permit an *agunah* by *sefek sefeika*; yet many great authorities do permit it, and where the prohibition itself is only Rabbinic, such as *bidedami*, it appears clear one may rely on a *sefek sefeika* — though the matter warrants deliberation. (AH §249; Pnei Yehoshua, Kuntres Acharon Kesubos)

In an ordinary epidemic the dead are buried properly and none flee, unlike war; but in a contagious plague from which people fled and feared to touch or bury the dead, it is certainly like war — though the *poskim* did not draw this distinction. (AH §250)

Death by Famine or Thirst

If she says her husband died of famine — she is not believed, since she speaks by assumption; famine is worse than war, for she is not believed even saying he died in bed, since one who dies of famine ordinarily dies in bed. (AH §251; Gra)

- It is more lenient than war in that "I buried him" helps even per the Rambam, since here she does not lie and the panic regarding burial is unlike war. (AH §251)
- Thirst is like famine: if she says he died of thirst she is not believed. (AH §251)
- A single witness testifying he died of famine follows the law of war: she may not remarry *lechatchilah*, but if she remarried she need not leave. (AH §251)
- If she says he did not die of famine but of another illness or was killed — she is believed. (AH §251; Yam Shel Shlomo)

Death by Smoke, Fire, and Bandits

If she says "they smoked us out of a house or cave" — that wicked men set it ablaze, it filled with smoke, she fled and he remained and died — she is not believed, for we say: just as a miracle happened for you, perhaps one happened for him and he escaped. (AH §252; Gemara)

- "Miracle" here does not mean an outright miracle, but that he found a place to escape. (AH §252)
- Even if we know of the event only from her, she is not permitted, for she speaks explicitly by assumption. (AH §252; Kesef Mishneh)

If there was a fire and we see a person burning and she cries "see, my husband is burning" — she is believed even though he was burned to ash beyond recognition, provided no limb was found belonging to another body. (AH §252; Gemara)

- If a limb known to be from another body was found — she is not permitted, for we say the one we saw burning is also that other body and her husband went off. (AH §252; Gemara)
- **In a great fire** where many charred bodies were found

beyond recognition, and we know only the number of bodies once present — whether the wives may be permitted requires study, and in pressing circumstances one may permit. (AH §252; Noda BiYehudah §46)[237]

If she says "non-Jews or bandits attacked us, he was killed and I was saved" — she is believed, even where we know they attacked, for there is no *bidedami* concern; only in a great war where spears and arrows fly does she flee in panic and speak by assumption, but in a small bandit fight — where the woman herself is in no danger, for bandits do not kill her — she waits until they kill him and does not err. (AH §253)

- She need not say "I buried him," and all the more so a witness testifying to a small war is believed without "I buried him." (AH §254)
- Some question this, arguing the witness fears to remain and may speak by assumption; but from the *poskim* it appears this is not comparable to water, for in killing it is clearly discernible whether one is alive or dead, and such [feigning] concern applies only to a great war like the times of the decrees. (AH §254; Mar'os HaTzov'os §187)

A Rule for Permitting Agunos

Whenever the matter is not entirely obvious for leniency and requires a scholar's ruling — even the greatest in *Torah* should not permit on his own until two other great authorities concur with him; and even one remarried on a single witness's testimony requires a court of three to permit her — this is not to be changed. (AH §255)[238]

Where the Husband Returns After Remarriage

If they told her her husband died and she remarried, and then he returned — the Sages penalized her in several ways, since the basis for believing a single witness was the presumption that she would verify carefully until certain, and she did not. (AH §256)

Even if she remarried on the testimony of two witnesses and the husband returned — the same penalties apply, because of the great damage of marrying while married and multiplying *mamzerim*, and she is somewhat negligent since the witnesses proved false. (AH §256)

Even if she was not yet cohabited with by the second — once she entered the *chuppah* with him she is penalized, and likewise if she secluded herself with him after betrothal. (AH §256; Chelkas Mechokek 17:110)

- But if she was only betrothed and did not yet seclude with him, she is not penalized. (AH §256)

The Penalties Imposed

She goes out from both — she is forbidden to the second by *Torah* law, and to the first she is permitted by *Torah* law (being like a coerced woman) but the Sages penalized her to leave him; she requires a *get* from both — from the first by *Torah* law and from the second as a penalty. (AH §257)

- She is also forbidden to the first lest people say the first divorced her and now takes her back after she married another. (AH §257)

If she was only betrothed to the second and the first returned — she needs no *get* from the second and may return to the first, since she committed no transgression. And if she neither married nor secluded with the second, she is permitted to the second as well should the first die or divorce her — she is like any other divorcée or widow. (AH §257; *Beis Shmuel* 17:170)

- If the second who betrothed her gave her a *get*, she is forbidden to the first [lest people err]; some dispute this. (AH §257; *Yevamos* 92a)
- If she secluded with the second after betrothal, it is like being married; and if she was betrothed to the second as a concubine, she is forbidden to the first. (AH §257)

She has no *kesubah* from either — from the second certainly, and from the first it is a penalty; even if the first illicitly took her back she has no *kesubah*, and likewise if the second illicitly took her back after she was divorced from the first. (AH §258; Chelkas Mechokek)

The produce both consumed from her *nichsei melug* (property whose principal remains hers, the husband enjoying its yield) need not be repaid, though by law they are liable, for the Sages penalized her. (AH §258)

- The second is exempt only for what he consumed before the first returned, thinking she was his wife; what he consumed after the first returned he must repay. (AH §258)
- The first eats until he divorces her, since she is his wife. (AH §258)

What was worn out from her *nichsei tzon barzel* need not be repaid, her status being like one who committed adultery. (AH §258; Siman 115)

- Only what was entirely consumed; what still exists in kind she takes. (AH §258)
- Some say she does not even take the surviving remnants, but most *poskim* hold she does. (AH §258; *Beis Shmuel* 17:163)

Whatever she lost by penalty, seizure does not help, even if she seized without witnesses; but whatever is rightfully hers, even seizure before witnesses is not recovered from her. (AH

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237. see *Pischei Teshuva* 172, citing the *Noda BiYehuda*, that where the burnt bodies are unidentifiable and only the number of persons present is known, one may permit in pressing circumstances but not on estimation alone.

238. see *Igros Moshe* EH 1:41, who permitted a renowned *talmid chacham*'s wife where nothing was heard of him for years after the war, on the strength of the *rov* that a public figure's survival would have become known.