

Part II—Failure to Appear: Is a Missing Person Eventually Presumed Dead?

Adapted from the writings of Dayan Yitzhak Grossman

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In last week's article we cited the position of the Trumas Hadeshen that although the absence of any news of a missing man does not allow his wife to remarry *ab initio* (*lechat'chilah*), it does allow her to remain married if she already remarried upon the ruling of a reputable authority, though he ruled in error. In this article, we discuss the perspectives of subsequent authorities on this idea.

R' Dovid ibn Zimra (the Radvaz) strongly rejects this leniency, arguing that the entire discussion in the Gemara and *Rishonim* of a presumption of death based on the lack of news of a missing husband is limited to someone who fell into an "endless" body of water and probably drowned, i.e., where there is strong evidence of death *independent* of the lack of news. But where the lack of news is the only basis for an assumption of death, this is not sufficient even to allow a wife who has already remarried to remain married. He also asserts that the absence of news is of dubious significance, because there are a variety of possible alternative explanations for this: The husband may have become disfigured, and out of humiliation fled to a place where no one knows him; he may have fled to avoid creditors; or he may have been kidnapped. He points out that such a possibility was already raised in the Gemara itself:

There was a certain man that at the end of his wedding, a fire broke out in his marriage residence. His wife escaped and said to people, "See my burning husband! See my burning husband!" They came and saw a burned man lying there and a hand lying at a distance. R' Chiya bar Avin... (did not accept her testimony, and he) would say that the burned body lying there does not prove the husband is dead, for I can say that it is the body of another man who came to rescue the occupants and the fire devoured him, and his hand caught fire and was severed. And the husband developed a blemish, and because of his embarrassment, he ran far away.[1]

The Radvaz thus has two major points of disagreement with the Trumas Hadeshen: He challenges his general doctrine that circumstantial evidence (*umdena*) is sufficient basis to allow a woman who has remarried to stay married (in the absence of particular circumstances discussed in the Gemara, such as falling into an endless body of water), and he disputes the significance of the particular *umdena* of the absence of news of the husband.[2]

As mentioned in the last article, the Rama accepts at least the general principle that proofs and circumstantial evidence (*ra'ayos ve'umdenos*) are sufficient to allow a woman who remarried to remain married, and various later *Acharonim* also accept and defend this principle.[3] Some go even further and invoke the absence of news of the husband as a basis for allowing the wife to remarry *ab initio*, at least in the presence of certain other circumstances and conditions,[4] or as grounds for considering the

prohibition against the wife remarrying as only *deRabanan*, resulting in greater latitude for reliance upon other arguments for leniency.[5] This latter point was notably espoused by the Chasam Sofer in several *teshuvos* in which he explains that his time was different from earlier eras, because due to the presence of well-established postal systems and newspapers, information travels much more effectively and swiftly than it used to, and if the missing man were alive, he would surely have contacted his family. Thus, although we may absolutely not (“*chalilah*”) rely directly upon this consideration to permit a woman to remarry—even in combination with other considerations—it is nonetheless grounds for considering the prohibition of her remarriage to be only *deRabanan*, with the concomitant greater latitude for leniency. (In support of the view that twelve months is enough, he notes that according to secular law, anyone who does not respond to a summons published in a newspaper is considered to have passed from memory (“*avad zichro*”), from which we may derive that twelve months is sufficient time for anyone to inform us by mail of his status, no matter how far away he may be.)[6]

But in another pair of *teshuvos* he writes that although he initially found this argument persuasive—even to the extent of possibly allowing the wife to remarry *lechat’chilah*—he changed his mind upon encountering the case of a man who reappeared after not having been heard from for several years, “and I said, ‘Blessed is He who chose them and their teachings,’ for the words of the Chachamim will never be nullified.”[7] Some argue that the dates of the various *teshuvos* indicate that the lenient ones represent the Chasam Sofer’s final position (and that the earlier, stringent *teshuvos* were written, as indicated therein, as a retort to the heretics who challenged the wisdom of Chazal).[8] But if this is the case, the Chasam Sofer’s failure in his later *teshuvos* to even acknowledge his earlier vigorous rejection of this leniency (even if that rejection was only intended as a retort to the heretics) is somewhat puzzling.[9]

R’ Shalom Mordechai Schwadron (the Maharsham) discusses the idea of the Trumas Hadeshen and the Chasam Sofer in a couple of his *teshuvos*; in one, he suggests that even the Radvaz might accept the lenient view in the conditions prevalent in the Maharsham’s time and place (the latter half of the nineteenth century in Eastern Europe), because the region was at peace, the roads were safe, and post offices and telegraph wires were ubiquitous.[10] But in a subsequent *teshuvah* he notes the Chasam Sofer’s own rejection of the lenient position, and he implies that it is therefore difficult to rely upon the lenient *teshuvos*. [11]

In a pair of *teshuvos*, R’ Moshe Feinstein (discussing men incarcerated in German death camps and men on an airplane that crashed into the sea) invokes the absence of any news of a husband as grounds (in combination with other considerations) to permit his wife to remarry. He cites the leniency of the Trumas Hadeshen and the Chasam Sofer (in his lenient *teshuvos*; he does not mention the stringent ones), and asserts this is a fortiori true in our time, when information travels even more swiftly and effectively than it did in the Chasam Sofer’s era, and certainly more than it

did in the Trumas Hadeshen's, due to the increase in the number of post offices and the existence of the telegraph and telephone, by which information from throughout the world is available quickly.[12]

R' Eliezer b. Shmuel of Verona (often referred to as R' Eliezer of Verdun) maintained that although the Gemara rules unequivocally that a man who fell into an endless body of water cannot be presumed dead, this only means that he cannot be presumed dead immediately, but after the passage of a considerable amount of time without any news of the missing man, he may indeed be presumed dead.[13] This opinion is conceptually quite similar to that of the Trumas Hadeshen et al., and the Trumas Hadeshen cites it in support of his position, but the Radvaz points out that R' Eliezer's colleagues did not accept his view. A detailed discussion of R' Eliezer's position (and the degree to which it is accepted by later authorities) is beyond the scope of this article.

[1]Yevamos 115a.

[2]Shu"t Radvaz *cheilek 1 siman 526*.

[3]Mar'os Hatzov'os to Rama *ibid. os 58*; Shu"t Ein Yitzchok *cheilek 1 E.H. siman 29 anaf 6*. Cf. Pis'chei Teshuvah E.H. *siman 17 s.k. 77*; Shu"t Yabia Omer *cheilek 7 siman 14 os 7*.

[4]Shu"t Ein Yitzchok *cheilek 2 (E.H.) siman 1 anaf 4*.

[5]Shu"t Tzitz Eliezer *cheilek 15 siman 59 os 1*.

[6]Shu"t Chasam Sofer E.H. *cheilek 1 siman 48 s.v. Uve'emmess; siman 58 from s.v. Ve'amnam bechol zos*; and *siman 65 s.v. Uvis'shuvah acheress*. Cf. Pis'chei Teshuvah *ibid. s.k. 138*.

[7]*Ibid. cheilek 2 end of siman 131 from s.v. Vehaderech hasheini*; end of *siman 138 from s.v. Vehinei bedidi hava uvda*.

[8]Shu"t Kol Mevaser end of *siman 84 os 6*.

[9]Cf. Shu"t Toras Chessed (Lublin) *cheilek 2 E.H. end of siman 7 os 7 s.v. Ve'od yeish letzareif*; Yabia Omer *ibid*.

[10]Shu"t Maharsham *cheilek 1 end of siman 6 s.v. Ve'ulam bateshuvah hana"l*.

[11]*Ibid. cheilek 3 siman 252 os 8*.

[12]Shu"t Igros Moshe E.H. *cheilek 1 siman 43 s.v. Ve'od yeish letzareif shitas Trumas Hadeshen; siman 48 s.v. Al kol panim*.

[13]Cited by Mordechai, end of Yevamos.