

THE MAHARSHAM PROJECT



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DOUBLE ISSUE · TWO TESHUVOS

Before the War, After the War

Two teshuvos about soldiers and the wives left waiting

This week Avraham Avinu goes out to war to bring Lot home. In the winter of 1904, Jewish men in Poland were sent to a war on the other side of the world. If a husband fell and nobody could prove it, his wife could never remarry. Two rabbanim wrote to the Maharsham: one about gittin given before the men left, one after a soldier never came home.

THE BOTTOM LINE

- 1 **Kielce, 1904.** Soldiers gave their wives a get (a bill of divorce) on condition that it take effect only if they did not come back. The Maharsham upheld these gittin. The condition was given only to the messengers who would deliver the get, not for the writing. In an emergency, the poskim rely on the many who permit this.
- 2 **Zelechow, after the war.** A soldier died at Port Arthur, and no Jew saw him buried. The Maharsham permitted his wife to remarry. Offices that pay out money check their facts. And, he reasoned, inside a fortress under siege a living man had nowhere to go.



Before the Soldiers Left: The Gittin of Kielce

Kielce, Russian Poland · December 1904

THE QUESTION

In February 1904, Russia went to war with Japan. The fighting was in Manchuria, thousands of miles east of Poland. The Tsar's army called up men from all over the empire, Jews among them, and many of them were married.

The rav of Kielce, Rav Moshe Nachum Yerushalimsky, saw the danger. A soldier might be killed far away, with no witness to say so. Then his wife would be an *agunah* (a woman who cannot remarry because her husband's death cannot be proven). Many of these men had no children. That could add a second problem. If a childless soldier died leaving a brother, his widow could also require *chalitzah* before remarrying. Others had children and simply feared they would not come back.

So the men agreed to give a get, but only with a *tnai* (a condition): the divorce takes effect only if I do not return. How can that help, if he is dead by then? In a properly worded conditional get, the get is handed to the wife while her husband is alive, and the condition decides whether it counts. If the condition is met, the divorce takes effect from the time she received it, while he was still alive. If he comes home, it never took effect. The teshuvah does not quote the exact wording or deadline these husbands used; this is how such a get works. There was no time to do it the usual way. Each husband appointed messengers through a *harsha'ah* (a formal appointment of agents), to have the get written, signed, and later delivered to his wife.

Here is the detail that made it hard. When each husband told the messengers his condition, only the witnesses to the appointment were in the room. The sofer (scribe) and the witnesses who would sign the get waited in the next room. They did not hear the condition themselves, but they knew what had been arranged. Rav Yerushalimsky told the husbands plainly: the writing and the signing are with no condition at all. Only the delivery carries the condition.

Several poskim say that for such a get, the sofer and the signing witnesses must not know about the condition at all. These men knew. Were the gittin good?

The Maharsham answered in the week of Parashas Mikeitz 5665, on Tuesday, December 6, 1904. It was Chanukah.

THE MAHARSHAM'S ANALYSIS

1. Why a Condition Is a Problem

A husband may give a get on a condition. "You are divorced, on condition that I do not come back." If the condition is met, the get works. So where is the problem?

The question is not whether a get may carry a condition. It may. The question is whether a condition set *before the writing* affects the intent with which the get is written.

The Rambam holds that it does. If the husband attached the condition before the get was written, the get is only a *safek* (doubtful) get (Hilchos Gerushin, perek 9). The Maggid Mishneh explains his reason as *bereirah* (clarifying something after the fact). The Torah says the get must be written "for her," and the poskim understand this to mean that its purpose must be settled at the time of writing. If the writing itself hangs on a condition, then when the sofer writes, nobody yet knows if this

get is for a divorce. The Rambam holds we cannot go back later and say, "It turns out it was for a divorce all along." Rashi and Tosafos are also strict here. Many other Rishonim (early authorities) disagree. The Ra'avad, the Ramban and the Rashba hold that a spoken condition does not harm the get.

Some Acharonim (later authorities) go further on the strict side. The Mahariv¹, the Knesses HaGedolah, and the Beis Shmuel (Even HaEzer 147:1) say: if the condition is given only to the messenger, the sofer and the witnesses still must not know about it. If they know, it is as if they wrote a conditional get. In Kielce, they knew.

2. The Man Who Was Sailing Away

Rav Yerushalimsky had brought one teshuvah of the Radbaz (IV:105). The Maharsham brings a stronger one, from the next volume (Radbaz V:2232).

A man named Reuven was about to sail on the open sea. He had no time to stay for a get. So he told the sofer to write, told the witnesses to sign, and sent a messenger to deliver the get to his wife, on a condition.

The Radbaz first says the question is a machlokes (dispute). The Rambam, Rashi and Tosafos are strict. The Ra'avad, the Ramban and the Rashba are lenient. Since the Radbaz lived where the Rambam's psak (halachic decision) was followed, he would usually be strict. "But here," he writes, "it is a *sha'as hadchak* (a pressing emergency). I rely on the great poskim who permit, so that she will not stay an agunah all her life."

Then he adds a second reason. The husband said nothing about a condition to the sofer or the witnesses. He spoke of it only to the messenger. So his intent was that the writing be with no condition. Only the delivery was conditional. The Radbaz says that in a case like this, even the Rambam may agree.

Applying this to our case, the Maharsham says Kielce is even easier. In the Radbaz's case, the husband simply did not mention the condition to the sofer, and the Maharsham reads the Radbaz as permitting even if the sofer knew. In Kielce, the rav told everyone in plain words that the writing and the signing were with no condition, and the sofer and the witnesses left the room. Yes, they knew what the husbands wanted. In an emergency, with a woman's future at stake, one can be lenient.

3. How Far Can an Emergency Go?

The Radbaz is not alone. The Beis Yosef writes that the Rashba, the Ran and all the Geonim permit a spoken condition. When the Re'em once ruled such a get invalid, even though the husband was gone and no new get could be had, the Beis Yosef said he *הפריז על מדותיו*, "went too far." By most poskim, this whole problem is only *derabbanan* (from the Rabbis, not from the Torah), and the Maggid Mishneh says that even by the Rambam it is only *derabbanan*.

The Tiferes Shmuel, on the Rosh, goes furthest. Even if the condition was written into the get itself, he writes, "if there was fear of *iggun* (a wife being left an agunah), I would give it *lechatchilah* (from the outset), as long as the condition is kept." If he permits that, says the Maharsham, then surely a condition spoken only to the messenger. The Zera Anashim (siman 42) also permits in an emergency. The Sha'ar Efraim (siman 114) leans toward the lenient side but would not act on it when the husband told the messenger before the writing. The Maharsham notes that he had not seen this Radbaz.

4. Would the Rambam Agree?

The Maharsham then goes further: perhaps these gittin are valid even according to the Rambam.

The Gemara (Zevachim 2) compares a korban to a get. A korban, by default, stands for its purpose. A married woman, by default, does not stand to be divorced. That is why a get needs a clear intent at the time it is written.

But these women were different. The Tur (Even HaEzer 154), quoting the Rosh, says that a man who is wanted by the government and flees from place to place to save his life, or moves to another land, may be compelled by beis din to give a get. And the Gemara (Shabbos 56a) says: כָּל הַיּוֹצֵא לְמַלְחַמַּת בֵּית דָּוִד גֵּט כְּרִיתוֹת כּוֹתֵב לְאִשְׁתּוֹ, "everyone who went out to the wars of the house of David wrote a get for his wife." Rashi explains that it was on condition: if I do not come back from the war. The Baal HaTurim (Mattos) says the same was done in the days of Moshe Rabbeinu.

So the wife of a man going to war does stand to be divorced, and by exactly this kind of get. Then the writing has a clear purpose from the start. The Maharsham concludes that here, even the Rambam would agree the condition does no harm.

5. When Everyone Does It in the Open

One more question bothered the Maharsham. If the Rambam is strict when the sofer and witnesses know about the condition, how did King David's soldiers manage? Every one of them wrote such a get. Everyone knew. The sofrim and witnesses surely knew too.

His answer starts with why the Rabbis were strict. A get must cut the bond completely. A get that says "you are free to marry anyone except this man" is no get. That is called *chutz* (except). Chazal (the Sages) worried that people would mix up "on condition" with "except," so they made a *gezeirah* (a rabbinic safeguard) against conditions in the writing.

The Maharsham argues that where an arrangement is made in public, with many people involved, they remind one another of the difference. The Gemara uses this idea in other places, רַבִּים מְדַכְרִי אֶחָדִי, "many people remind each other" (Eruvin 3a). In David's army, the whole nation did this in the open. So, he argues, the *gezeirah* did not apply there.

The same is true in Kielce, he writes. These gittin were made with formal appointments, through two messengers, before batei din in the towns where the wives lived. Many people were doing it, and it was known in every land. "There is no reason for the safeguard," he writes, "and certainly one should be lenient, for all the reasons explained."

6. For the Future, and a Town's Name

Kielce had never arranged gittin before. Rav Yerushalimsky wrote that, since this was an emergency, there was no reason to hold back, and the town should keep arranging gittin from now on. The Maharsham agreed. He cites the Panim Me'iros (siman 82), who reports that Rav Avraham Broda ruled the same way, and the Panim Me'iros agreed with him.

Then the two rabbanim went into a detail that can sound small. How do you spell "Kielce" in a get? A get must name the place exactly. In Polish the name ends like a plural. In Hebrew letters there is doubt about an aleph, an ayin or a yud. The Maharsham agreed with Rav Yerushalimsky to write the name the Jews used. Later the rav told him that some Jews say "Keltz." So they agreed to write קֵיעֶלֶץ דְּמַתְּקָרִיא קֵעֶלֶץ, "Kielce, which is called Keltz."

The river, too. A get names the river of the town. The river in Kielce has no name of its own among Jews, so they would write it the way it appears on the maps of the land: סְאֵלְנִיצָא, the Silnica.

This was not a side interest for Rav Yerushalimsky. His first sefer, Minchas Moshe, came with a treatise on how to write names in gittin.

THE P'SAK · TESHUVAH 1

These gittin may be relied on. The writing and signing were done with no condition, and the condition was given only for the delivery. Even though the sofer and the witnesses knew, in this emergency, and to prevent iggun, one should be lenient.

Kielce should keep arranging gittin going forward. In the get, write קיעלץ דמתקריא קעלץ, and name the river as it appears on the maps.

KIELCE, 1904

Kielce was a city in Russian Poland, about a hundred miles south of Warsaw. Rav Moshe Nachum Yerushalimsky (1855–1914) became its rav in 1902, after serving in Kamenka and in Ostrolenka. He wrote several sefarim of teshuvos, including Minchas Moshe and Be'er Moshe.

The war with Japan ran from February 1904 to September 1905. A list printed in St. Petersburg in 1911 names close to three thousand Jewish soldiers killed, wounded or missing in it. Behind each name that never came home was a family, and often a wife waiting for news.

TESHUVAH 2 OF 2 · CHELEK III, SIMAN 303

After the War: The Soldier Who Died at Port Arthur

Zelechow, Russian Poland · a few years after the war



THE QUESTION

The first teshuvah asked about gittin given to protect a wife *before* her husband left. This letter concerns a wife who needed proof of her husband's death before she could remarry.

Shalom ben Boruch, of the town of Zelechow, was taken into the army and sent to the war with Japan. His wife sent him five rubles. Then nothing.

A long time later, an official notice came to the town hall from the government treasury in Harbin, in Manchuria. It held five rubles, to be given to Shalom's heirs. The notice said he was killed in the siege of Port Arthur. A letter from there came to his wife, too.

She wrote to the Minister of War. The answer: he fell sick with a stomach illness and was sent to the hospital. The office in St. Petersburg wrote that he died in the hospital on November 21, 1904. The rav of Zelechow, Rav Yitzchak Dovid HaKohen, wrote to the central office in St. Petersburg himself. Their answer: Shalom died in the hospital on November 22. After that, the government began to pay her the yearly pension that the law gives every woman whose husband fell in the war.

But no Jew saw him die, and no one said "I buried him." Could she remarry?

The Maharsham's answer opens with an apology. He had been very sick, he writes, the whole summer, and could not take up the question. Now he answers briefly.

THE MAHARSHAM'S ANALYSIS



1. Can We Trust a Government Letter?

Testimony that frees an agunah usually comes from a Jew. A non-Jew is believed only when he is *mesi'ach lefi tumo* (speaking naturally, in passing, not to give testimony). Here, the notice came from government clerks, about money, and not to free anyone. The rav had already written that this counts.

The Maharsham agrees. He cites the Tiferes Tzvi (Even HaEzer 22): when a writing was made for some other purpose, even a non-Jew's writing is accepted.

2. But It Was a War

There is a well-known worry with deaths in war. A soldier sees his friend fall, and he is sure he is dead. Maybe he was only wounded and got away. This is called *baddami* (he only thought it). So in a war, the poskim usually want a witness who can say *kevartiv*, "I buried him."

The Maharsham gives two answers. First, he had already written (Shu"t Maharsham II:51) that people who stand to lose money do not throw it away. The Mahari"k (shoresh 87) says the same. And in Shu"t Maharsham II:168 he explained that officials who would have to repay the money themselves, if the report proved false, check their facts carefully. The rav had made the same point in his own letter.

Second, the view of the Mahariv"l (Rav Yosef ibn Lev) is well known: when a witness reports what he heard from another witness, we may presume that the first witness said "I buried him." Others disagree with the Mahariv"l. But his view can still be added to the other reasons.

3. Inside the Fortress

Then comes the point that only this case has:

בשלמא במלחמה שע"פ השדה יש לחוש בדדמי ושנשאר חי וברח למק"א, אבל בנ"ד הרי ה' כולם במצור בתוך החומה
של המבצר הנורא ולא ה' מקום לברוח

"In a battle out in the open field, there is reason to worry that the witness only thought he died, and that he stayed alive and ran somewhere else. But here, they were all under siege, inside the walls of the fearsome fortress, and there was no place to run."

The Maharsham adds that if Shalom had stayed alive inside the fortress, those in charge would have known it. So he distinguishes this case from a death reported on an open battlefield, and writes that here there is no worry of *baddami* at all. The Maharsham found almost the same reasoning in a teshuvah of the Ralbach and in the Birkas Yosef (Even HaEzer 33), quoting the Sha'ar HaMayim. He adds that our case is even stronger.

The siege of Port Arthur began in the summer of 1904. The fortress surrendered to the Japanese on January 2, 1905.

4. November 21 or November 22?

One office said he died on the 21st. The other said the 22nd. A contradiction in the witnesses' dates can sink testimony. Here it does not. Several gedolim ruled that in testimony to free an agunah, a contradiction about the date does not cancel it. And the Maharsham offers a simpler reading. He may have died on the 21st and been buried on the 22nd. The second office may have given the day of burial, when his death was confirmed.

Those were Russian dates, and the Russian calendar then ran thirteen days behind the Western one. November 21 in St. Petersburg was December 4, 1904, in Brezhan. Two days later, the Maharsham wrote his letter to Kielce.

THE P'SAK · TESHUVAH 2

For all these reasons, the Maharsham agreed with the rav of Zelechow: convene a beis din of three, and permit the agunah to remarry.

WHY IT MATTERS

Read the two letters together. In Kielce, the rav acted before the men left, and the Maharsham did not settle for one lenient opinion. He showed why the gittin could stand, and then argued that even the Rambam would agree. In Zelechow, a wife waited a long time for an answer, and the Maharsham, sick and writing briefly, went through every link in the chain.

In one teshuvah, he examined how the get was arranged and how the town's name should be written. In the other, he examined the army's reports and explained why their conflicting dates did not prevent a heter (permission to remarry).

KEY TERMS

Agunah · אגונה A wife who cannot remarry because her husband's death or whereabouts cannot be proven. The state is called iggun.

Yibum / Chalitzah · יבום / חליצה When a man dies with no children and leaves a brother, the brother marries the widow or releases her through chalitzah. Until then she cannot remarry.

Tnai · תנאי A condition. Here: "you are divorced only if I do not return."

Bereirah · ברירה Clarifying something after the fact, as if it had been settled from the start.

Sha'as hadchak · שעת הדחק A pressing emergency, when poskim rely on views they would not rely on otherwise.

Baddami · בדדמי "He only thought so." The worry that a witness believed a man died when he did not.

Mesi'ach lefi tumo · מסיח לפי תומו Speaking naturally, not to testify. Such words are believed even from a non-Jew.

COMING NEXT WEEK

A poor man loses his purse in a shop that sells lottery tickets. He suspects the owner, a respected, G-d-fearing man, and the owner's wife. He wants them both to swear. Do they have to?



WHO WAS THE MAHARSHAM?

Rabbi Shalom Mordechai HaKohen Schwadron, ben HaRav Moshe (1835–1911), served as the Rav of Brezhan in Galicia for thirty years, from 1881 until his passing. He is best known for his Shu"t Maharsham, thousands of teshuvos on every area of halachah, and his Da'as Torah commentary on Shulchan Aruch. He was regarded as one of the foremost poskim of his generation, and his piskei halachah are cited to this day.

SOURCES

SOURCE	WHAT IT SAYS	WHAT IT DOES HERE
רמב"ם הל' גירושין פ"ט	A condition set before the get is written makes it a doubtful get.	The strict view the whole teshuvah answers.
מהריב"ל; כנה"ג; ב"ש אה"ע קמ"ז:א	The sofer and witnesses must not know of the condition at all.	The problem in Kielce: they knew.
רדב"ז ח"ד סי' ק"ה; ח"ה סי' בר"ב	A man sailing away gave the condition only to the messenger. Permitted in an emergency.	The main support. The Kielce case is even easier.
ב"י; זרע אנשים סי' מ"ב; תפארת שמואל על הרא"ש	Many permit a spoken condition, all the more in an emergency.	The lenient side is broad.
זבחים ב; טור אה"ע קנ"ד; שבת נו ע"א	A wife does not usually stand to be divorced. A soldier's wife does. David's soldiers wrote gittin.	Even the Rambam would agree.
מהרש"ם ח"ג סי' ש"ג	Teshuvah 2: the soldier who died at Port Arthur.	The second case.
תפארת צבי אה"ע כ"ב; מהרי"ק שורש פ"ז	A writing made for another purpose is accepted. People who stand to lose money check their facts.	The army notice and the pension can be trusted.
רלב"ח; ברכת יוסף אה"ע ל"ג	Where no one could have fled, there is no worry of baddami.	The siege of Port Arthur.

SOURCE TEXTS. Teshuvah 1: Shu"t Maharsham, chelek III, siman 7, dated Tuesday of Parashas Mikeitz 5665 (December 6, 1904), to Rav Moshe Nachum Yerushalimsky, Av Beis Din of Kielce. Teshuvah 2: Shu"t Maharsham, chelek III, siman 303, to Rav Yitzchak Dovid HaKohen, Av Beis Din of Zelechow; the letter is undated, and Pinkas HaKehillos (Poland, vol. 7) dates his appointment in Zelechow to 1908. In the printed text the witness-from-a-witness view first appears as מהרש"ל, but every source cited there discusses it as the view of the Mahariv"l, and the Pischei Teshuvah (Even HaEzer 17:33) attributes this argument, with the same objections, to the Mahariv"l. We read it as a printing error. Port Arthur fell on January 2, 1905. Rav Yerushalimsky's dates and posts: Jewish Virtual Library. The casualty list: M. L. Usov, *Jews in the Army*, St. Petersburg 1911.

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