

Heifer whose neck is broken – עגלה ערופה: The mitzva of the heifer whose neck is broken is stated in the Torah (see Deuteronomy 21:7–9). When a murder victim is found outside a town and it is unknown who killed him, the elders of the town nearest to the corpse must bring a heifer “which has not been worked and which has not drawn a yoke” (Deuteronomy 21:3). The heifer is taken to an untilled riverbed, where the elders must break its neck. They then wash their hands and recite a statement absolving themselves of guilt for the death. It is prohibited to derive benefit from the heifer even after its neck has been broken.

ועיר שאין בה זקנים, רבי אמי ורבי אסי, חד אמר: מביאה עגלה ערופה, וחד אמר: אינה מביאה עגלה ערופה. למאן דאמר אינה מביאה עגלה ערופה – בעינן “זקני העיר ההיא” וליבא, למאן דאמר מביאה עגלה ערופה – מצוה בעלמא.

And a city in which there are no elders is the subject of another dispute between Rabbi Ami and Rabbi Asi. **One says:** If a corpse was discovered proximate to that city, the inhabitants of the city bring a heifer whose neck is broken.⁶ **And one says:** The inhabitants of the city do not bring a heifer whose neck is broken. The Gemara explains: **According to the one who says that the inhabitants of the city do not bring a heifer whose neck is broken,** it is due to the fact that we require the presence of the elders of the city, as it is written: “**And the elders of that city shall bring the calf down to a rough valley**” (Deuteronomy 21:4), **and there are no elders. According to the one who says that the inhabitants of the city bring a heifer whose neck is broken,** the presence of the elders is merely a mitzva *ab initio*.

אמר רבי חמא בר חנינא: מפני מה נאמרה פרשת רוצחים

§ Rabbi Hama bar Hanina says: For what reason was the portion discussing murderers stated

Perek II
Daf 11 Amud a

בלשון עזה, דכתיב “וידבר ה' אל יהושע לאמר, דבר אל בני ישראל לאמר תנו לכם את ערי המקלט אשר דברתי אליכם” וגו' – מפני שהן של התורה.

with harsh language, as it is written: “**And the Lord spoke [yavedaber] to Joshua saying: Speak [dabber] to the children of Israel, saying: Assign you the cities of refuge of which I spoke [dibbarti] to you by means of Moses**” (Joshua 20:1–2). Why does the Torah repeatedly employ a term of *dibbur*, connoting harsh speech, as opposed to the term of *amira*, connoting neutral speech? It is due to the fact that the cities of refuge are a mitzva of the Torah, and therefore they warrant emphasis.

למימרא דכל דיבור לשון קשה? אין, כדכתיב “דבר האיש אדני הארץ אתנו קשות” והתנא: “נדברו” אין “נדברו” אלא לשון נחת, וכן הוא אומר “ידבר עמים תחתני!” “דבר” לחוד, “ידבר” לחוד.

The Gemara asks: **Is that to say that all instances of speaking [dibbur] indicate harsh language?** The Gemara answers: **Yes, as it is written** with regard to Joseph’s brothers: “**The man, the lord of the land, spoke [dibber] harshly to us**” (Genesis 42:30). The Gemara asks: **But isn’t it taught in a baraita** with regard to the verse: “**Then they who feared the Lord spoke [nidberu] with one another**” (Malachi 3:16), that the term “**they spoke**” is nothing other than a term of gentleness, and likewise, the same is true of the verse which states: “**He subdues [yadber] peoples under us**” (Psalms 47:4), meaning that God will calmly and gently conduct the nations under the influence of the Jewish people? The Gemara answers: The meaning of *dibber* is discrete and the meaning of *yadber* is discrete. There is a difference between the two conjugations of the same root.

(סימני רבנין מהמני וספרי).

The Gemara provides a mnemonic for the disputes involving Rabbi Yehuda that follow: **Rabbis; mehemi**, i.e., the dispute with Rabbi Nehemya; **and** the dispute with regard to Torah scrolls sewn with threads of flax.

פליגי בה רבי יהודה ורבנן, חד אומר: מפני ששיהם, וחד אומר: מפני שהן של תורה.

The Gemara resumes the discussion of the harsh language employed in the portion discussing murderers in the book of Joshua. **Rabbi Yehuda and the Rabbis disagree with regard to this matter. One says** harsh language was employed because Joshua delayed fulfilling the mitzva of designating cities of refuge, **and one says** it is because the cities of refuge are a mitzva of the Torah, and therefore they warrant emphasis.

“ויכתב יהושע את הדברים האלה בספר תורת אלהים” פליגי בה רבי יהודה ורבי נחמיה, חד אומר: שמנה פסוקים, וחד אומר: ערי מקלט.

The Gemara cites an additional dispute with regard to the portion of the cities of refuge in the book of Joshua. It is written: “**And Joshua wrote these matters in the scroll of the Torah of God**” (Joshua 24:26). **Rabbi Yehuda and Rabbi Nehemya disagree with regard to this matter. One says:** The reference is to the final eight verses in the Torah that record the death of Moses and were recorded by Joshua in the scroll of the Torah, in addition to the rest of the Torah that was written by Moses (see *Bava Batra* 15a). **And one says:** The reference is to the portion of the cities of refuge that appears in the book of Joshua.

בְּשֵׁלֶמָא לְמַאן דְּאָמַר שְׂמִנָּה פְּסוּקִים – הֵינְנוּ דְּכָתִיב “בְּסֵפֶר תּוֹרַת אֱלֹהִים” אֵלֹא לְמַאן דְּאָמַר עָרֵי מִקְלָט – מֵאֵי “בְּסֵפֶר תּוֹרַת אֱלֹהִים”? הֲכִי קָאָמַר: וְיִכְתּוֹב יְהוֹשֻׁעַ בְּסֵפֶר אֶת הַדְּבָרִים הָאֵלֶּה הַכְּתוּבִים בְּסֵפֶר תּוֹרַת אֱלֹהִים.

סֵפֶר שְׂתַפְרוּ בְּפִשְׁתָּן, פְּלִיגֵי בְּהַ רַבֵּי יְהוּדָה וְרַבֵּי מֵאִיר. חַד אָמַר: כְּשׂוֹר, וְחַד אָמַר: פְּסוּל.

לְמַאן דְּאָמַר פְּסוּל – דְּכָתִיב “לְמַעַן תִּהְיֶה תּוֹרַת ה' בְּפִיךָ”, וְאֵיִתְקַשׁ כֹּל הַתּוֹרָה בּוֹלָה לְתַפְלִינָא, מַה תַּפְלִינָא הֲלָכָה לְמִשְׁחָה מְסִינֵי לְתוֹפְרָן בְּגִידֵין – אִף כֹּל לְתַפְרָן בְּגִידֵין, וְאִידָךְ: כִּי אֵיִתְקַשׁ – לְמוֹתָר בְּפִי, לְהַלְכוּתֵי לֹא אֵיִתְקַשׁ.

אָמַר רַב: תּוֹיֵנָא לְהוּ לְתַפְלִינָא דְּבֵי חֲבִיבֵי דְּתַפְרֵי בְּכִיתָנָא, וְלִית הַלְכָתָא פְּוֹתִיָּה.

מִתַּנִּי' אֶחָד מְשׁוּחַ בְּשִׁמּוֹן מְשֻׁחָה, וְאֶחָד הַמְרוּבָּה בְּבָגְדִים, וְאֶחָד שְׂעֵבֶר מְמַשִּׁיחוֹתוֹ – מִחֲזוּרִין אֶת הַרוּצָח. רַבֵּי יְהוּדָה אָמַר: אִף מְשׁוּחַ מִלְחָמָה מִחֲזוּר אֶת הַרוּצָח.

לְפִיכָךְ אֵימֹתֵיהֶן שָׁל כְּהֻנָּם מִסְפָּקוֹת לְהוֹן מִחַיָּה וּכְסוּת, כְּדֵי שְׁלֹא יִתְפַּלְלוּ עַל בְּיָהֶם שְׂיָמוּתוֹ.

The Gemara discusses these two opinions: **Granted, according to the one who says that the reference is to the final eight verses in the Torah, that is the reason that it is written:** “And Joshua wrote these matters in the scroll of the Torah of God,” as he wrote those verses and they were included in the Torah. **But according to the one who says that the reference is to the portion of the cities of refuge in the book of Joshua, what is the meaning of the phrase “in the scroll of the Torah of God”?** They appear in the book of Joshua, not in the Torah. The Gemara answers: **This is what the verse is saying: And Joshua wrote in his book these matters that are also written in the scroll of the Torah of God.**

The Gemara proceeds to cite another dispute between Rabbi Yehuda and one of the Sages in which it is not clear which opinion is attributable to which Sage. In the case of a Torah scroll where one sewed its sheets with linen threads,^H **Rabbi Yehuda and Rabbi Meir disagree with regard to this matter. One says: The Torah scroll is fit for use, and one says: The Torah scroll is unfit for use.**

The Gemara elaborates: **According to the one who says that the Torah scroll is unfit for use, the reason is as it is written with regard to phylacteries:** “And it shall be for you a sign on your hand and a memorial between your eyes, in order that the Torah of God shall be in your mouth” (Exodus 13:9). **And in this verse the entire Torah is juxtaposed and likened to phylacteries: Just as with regard to phylacteries, there is a halakha transmitted to Moses from Sinai to sew them with sinews,**^{HB} **so too, with regard to all sheets of the Torah scroll, there is a requirement to sew them with sinews. And the other Sage holds: When the Torah scroll is juxtaposed and likened to phylacteries, it is only with regard to the principle that the sheets of the Torah scroll may be prepared only from a species of animal that is permitted to your mouth, i.e., that it is permitted for a Jew to eat; but with regard to its other halakhot, it is not juxtaposed and likened to phylacteries.**

Rav said: **I saw that the phylacteriesⁿ of the house of my uncle, Rabbi Hiyya, were sewn with linen. But the halakha is not in accordance with his opinion; phylacteries may be sewn only with sinews.**

MISHNA The Torah states that an unintentional murderer is required to remain in the city of refuge to which he fled until the death of the High Priest. The mishna elaborates: With regard to High Priests, who were appointed in several different manners, **one anointed with the anointing oil,**^H which was the method through which High Priests were consecrated until the oil was sequestered toward the end of the First Temple period; **and one consecrated by donning multiple garments,** the eight vestments unique to the High Priest, which was the practice during the Second Temple period; **and one who received a temporary appointment due to the unfitness of the serving High Priest, who departed from his anointment with the restoration of the serving High Priest to active service, their deaths facilitate the return of the murderer from the city of refuge to his home. Rabbi Yehuda says: Even the death of a priest anointed for war to address the soldiers (see Deuteronomy 20:1–7) facilitates the return of the murderer.**

The mishna continues: **Therefore, the mothers of High Priests would provide those exiled to cities of refuge with sustenance and garments so that they would not pray that their sons would die.** The more comfortable their lives in the city of refuge, the less urgency they would feel to leave, and the less likely it would be that they would pray for the death of the High Priests.

Torah scroll where one sewed its sheets with linen threads – סֵפֶר שְׂתַפְרוּ בְּפִשְׁתָּן: The sheets of a Torah scroll must be sewn with the sinews of a kosher domesticated or undomesticated animal. If it was sewn with any other thread, or with the sinew of a non-kosher animal, the Torah scroll is not valid for use until he sews them with halakhically acceptable sinews (Rambam Sefer Ahava, Hilkhot Sefer Torah 9:13; Shulhan Arukh, Yoreh De'a 278:1).

תַּפְלִינָא...לְתוֹפְרָן – פְּלִיגֵי: Phylacteries must be sewn with the sinews of a kosher domesticated or undomesticated animal, even if the animal was an unslaughtered carcass or a tereifa. This is a halakha transmitted to Moses from Sinai. The sinews of an ox should be used *ab initio*. The later commentaries disagree as to whether in exigent circumstances one may sew the phylacteries with the hide or innards of a kosher animal (Rambam Sefer Ahava, Hilkhot Tefillin 3:9; Shulhan Arukh, Orah Hayyim 32:49).

אֶחָד מְשׁוּחַ בְּשִׁמּוֹן – הַמְשֻׁחָה וְכו': One anointed with the anointing oil, etc. Upon the death of the High Priest, whether he was installed by means of anointing with the anointing oil, or whether he was installed by donning the eight vestments of the High Priest, the unintentional murderer returns home from the city of refuge. Whether the High Priest was still serving or whether he was no longer on active duty, the murderer returns home upon his death. The murderer does not return upon the death of a priest anointed for war to address the troops, as his status is that of a common priest (Rambam Sefer Nezikin, Hilkhot Rotze'ah UShmirat HaNefesh 7:9).

BACKGROUND

To sew them with sinews – לְתוֹפְרָן בְּגִידֵין: Although both phylacteries and Torah scrolls are sewn, it is sheets of parchment that are sewn in the Torah scrolls, while it is boxes that are sewn in the phylacteries in order to shape the leather.

The sinews are dense white fibers that attach the muscles to the bones in order to control movement of the limbs. In order to render it suitable for use in sewing, the sinew is beaten and separated into its component fibers. The longest and most durable fibers, sometimes made of several entwined fibers, are used much in the manner of cotton or linen threads.



Sewing phylacteries

NOTES

I saw that the phylacteries – תּוֹיֵנָא לְהוּ לְתַפְלִינָא: The early commentaries question this statement, as everyone agrees with regard to phylacteries that it is a halakha transmitted to Moses from Sinai; the dispute is limited to sewing a Torah scroll. Therefore, there is a variant reading: I saw that the phylacteries of the house of my uncle, Rabbi Hiyya, were sewn with linen, or his book of Psalms was sewn with linen (see Tosefot HaRash and Rid).

GEMARA

The Gemara asks: **From where are these matters**, that the death of these High Priests facilitates the return of the murderer, derived? **Rav Kahana** said they are derived from a verse, as the verse states: **“And he shall dwell there until the death of the High Priest who was anointed with the sacred oil”** (Numbers 35:25), and it is written: **“For in his city of refuge he shall dwell until the death of the High Priest”** (Numbers 35:28), and it is written: **“And after the death of the High Priest the murderer shall return to his ancestral land”** (Numbers 35:28). The three mentions of the death of the High Priest correspond to the three types of High Priest enumerated by the first *tanna* of the mishna: One anointed with oil, one consecrated by donning the eight vestments, and one who was relieved of his position.

גמ' מנא הני מילי? אמר רב כהנא: דאמר קרא "וישב בה עד מות הכהן הגדול", וכתוב "כי בעיר מקלטו ישב עד מות הכהן הגדול", וכתוב "ואחרי מות הכהן הגדול".

ורבי יהודה: כתיב קרא אחרינא – "לשוב לשבת בארץ עד מות הכהן" (וגו'). ואידך: מדלא כתיב "הגדול" – חד מהנך הוא.

And **Rabbi Yehuda** holds that **another verse is written**: “And you shall take no ransom for him that fled to his city of refuge, to return and dwell in the land until the death of the priest” (Numbers 35:32), from which it is derived that the death of the priest anointed for war also facilitates the return of the murderer. **And the other tanna** says: **From the fact that High Priest is not written** in that verse, it is clear that the reference is not to an additional type of High Priest; rather, the reference is to **one of those High Priests** mentioned in the preceding verses.

“לפיכך אימותיהן של כהנים” כו'. טעמא דלא מצלו, הא מצלו מיתה? והכתיב “כצפור לנוד בדרור לעוף כן קללת חנם לא תבא!” אמר ליה ההוא סבא: מפיקיה דרבא שמיע ליה, שהיה להן לבקש רחמים על דורן ולא בקשו.

§ The mishna teaches: **Therefore, the mothers of High Priests** would provide those exiled to cities of refuge with sustenance and garments so that they would not pray that their sons will die. The Gemara asks: **The reason** that the High Priest will not die is that they do not pray; but if they prayed for the death of the High Priest, would he die? **But isn't it written**: “As the wandering sparrow, as the flying swallow, so a curse that is baseless shall come home” (Proverbs 26:2)? Why does the mishna express concern over a baseless curse? **A certain elder said to him: I heard in the lecture delivered by Rava** that it is not a baseless curse, as the High Priests share the blame for the unintentional murders performed by these people, **as they should have pleaded for mercy for their generation**, that no murder should transpire, even unintentionally, **and they did not plead**. Due to their share in the blame, prayers for their death could be effective.

ואיכא דמתני: כדי שיתפללו על בניהם שלא ימותו. טעמא – דמצלו, הא לא מצלו – מיתה? מאי הוה ליה למעבד? הכא אמרינן: טוביה חטא ויגוד מנגיד.

And some teach a variant reading of the mishna: Therefore, the mothers of High Priests would provide those exiled to cities of refuge with sustenance and garments, **so that those exiled would pray that their sons will not die**. The Gemara infers: **The reason** that the High Priests will not die is that they pray, but if they did not pray for the High Priest not to die, would the High Priest die? **What could the High Priest have done** to prevent the unintentional murder? **Here, in Babylonia, we say** an adage to describe a situation of that sort: **Toviyya sinned and Zigud is flogged**. Toviyya violated a prohibition and Zigud came as a single witness to testify against him. Since the testimony of a single witness is not valid in court, he is flogged for defaming Toviyya. The sinner is unpunished and the person who sought to testify against him is flogged. This became a colloquialism for a situation where one is punished for the sin of another.

התם אמרי: שכם נסיב ומבגאי גזיר.

There, in Eretz Yisrael, they say a different adage with the same application: **Shechem married a woman and Mavgai¹ circumcised himself**. This is based on the episode of the abduction of Dinah in the city of Shechem (see Genesis, chapter 34), where Shechem compelled all the male residents of the city to undergo circumcision so that he could marry Dinah. Shechem married Dinah, while the rest of the males suffered the pain of circumcision and received no benefit.

LANGUAGE

Mavgai – מבגאי: Some maintain that this is a first name, and perhaps it is from the Greek name Βάγος, Bagos, and it is cited in fact, it is employed as a first name elsewhere (*Eiruvn* 64b). here as an example of a common gentile first name.

אמר רבי יהודה אמר רב: קללת חכם, אפילו בחנם היא באה. מנלן? מאחיתופל. שבשעה שברח דוד שיתין קפא תהומא, בעא למישטפא לעלמא. אמר: מהו לכתוב שם אחספא ומישטרא בתהומא. דליקו אדוכתייה? ליכא דאמר ליה מידי. אמר: כל היודע דבר זה ואינו אומר – יחנק בגורנו.

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נשא אחיתופל קל וחומר בעצמו, אמר: ומה לעשות שלום בין איש לאשתו, אמרה התורה: שמי שנכתב בקדושה ימחה על המים, לכל העולם כולו לא כל שבין? אמר ליה: שרי. כתב שם אחספא, שדי אתהומא, נחת וקם אדוכתייה.

ואפילו הכי בתיב "ואחיתופל ראה כי לא נעשתה עצתו ויחבש את החמור ויקם וילך אל ביתו (ו)אל עירו ויצו אל ביתו ויחנק" וגו'.

אמר רבי אבהו: קללת חכם אפילו על תנאי היא באה. מנלן? מעלי, דקאמר ליה [עלי] לשמואל: "בה יעשה לך אלהים ובה יוסיף אם תכחד ממני דבר". ואף על גב דתיב "ויגד לו שמואל את כל הדברים ולא כחד ממנו" – [ואפילו הכי] בתיב "ולא הלכו בניו בדרכיו" וגו'.

A certain elder said to him: I heard in the lecture delivered by Rava that the High Priests share the blame, as they should have pleaded for mercy for their generation and they did not plead. Consequently, they required the exiles to pray on their own behalf. The Gemara illustrates the concept of the responsibility held by the spiritual leadership: This is like in this incident where a certain man was eaten by a lion at a distance of three parasangs⁸ from the place of residence of Rabbi Yehoshua ben Levi, and Elijah⁹ the prophet did not speak with him for three days because of his failure to pray that an incident of this kind would not transpire in his place of residence.

Apropos curses that are realized, Rav Yehuda says that Rav says: With regard to the curse of a Sage, even if it is baseless, i.e., based on a mistaken premise, it nevertheless comes to fruition and affects the object of the curse. From where do we derive this? It is derived from this incident involving Ahithophel. When David dug the drainpipes in preparation for building the Temple, the waters of the depths rose and sought to inundate the world. David said: What is the *halakha*? Is it permitted to write the sacred name on an earthenware shard and throw it into the depths, so that the water will subside and stand in its place? There was no one who said anything to him. David said: Anyone who knows the answer to this matter and does not say it shall be strangled.

Then Ahithophel raised an *a fortiori* inference on his own and said: And if in order to make peace between a man and his wife in the case of a *sota*, when the husband suspects his wife of having committed adultery, the Torah says: My name that was written in sanctity shall be erased on the water, then, in order to establish peace for the whole world in its entirety, is it not all the more so permitted? Ahithophel said to David: It is permitted. David wrote the sacred name on an earthenware shard and cast it into the depths, and the water in the depths subsided and stood in its place.

And even so it is written that during the rebellion of Absalom: "And Ahithophel saw that his counsel was not taken, and he saddled his donkey and he arose and went to his house, to his town, and he commanded his household and strangled himself" (11 Samuel 17:23). Although David stipulated that his curse would take effect only if one who knows the answer fails to share it with him, and Ahithophel did not fail to share it with him, the curse was realized.

The Gemara cites a similar statement: Rabbi Abbahu says: With regard to the curse of a Sage, even if it is stated conditionally, it comes to realization. From where do we derive this? It is derived from an incident involving Eli the High Priest, as Eli said to Samuel, after the latter had received a prophetic vision with regard to Eli, that his sons do not follow his path: "Therefore may God do to you, and more also, if you hide any matter from me of all the matters that He spoke unto you" (1 Samuel 3:17). And even though it is written immediately thereafter: "And Samuel told him all the matters, and did not hide from him" (1 Samuel 3:18), it is written at the time of Samuel's death: "And his sons did not follow in his ways" (1 Samuel 8:3), indicating that God did to Samuel as he prophesied with regard to Eli, and his own sons did not follow his path. Despite the fact that Eli stated the curse conditionally, Samuel was affected by the curse.

BACKGROUND

Three parasangs – תלתא פרסי: A parasang is a Persian measurement, equal to four *mil*. In terms of modern measurements, three parasangs are roughly equal to 12 km.

Elijah – אליהו: In many places in the Talmud and the midrash, Elijah the prophet appears to various people, primarily Sages, and resolves their dilemmas. As it is stated in the Prophets (see II Kings 2:11), Elijah did not die, and he continues serving as an emissary of God.

LANGUAGE

Place [*shafa*] – שָׁפָא: Some maintain that this is from the Greek σιπυῆ, *sipeē*, meaning bin.

NOTES

With the death of all of the High Priests – במיתת כולן: This means through the death of all the High Priests listed in the mishna, as several can serve concurrently.

אָמַר רַב יְהוּדָה אָמַר רַב: יָדוּי עַל תְּנַאי צְרִיךְ הַפְרָה. מִנְּלִין מִיְהוּדָה, דְּכִתְיִב “אִם לֹא הִבִּיאֲתוּ אֲלֵיךְ” וְגו’. וְאָמַר רַבִּי שְׁמוּאֵל בְּרַחֲמֵי אָמַר רַבִּי יוֹנָתָן: מָאי דְכִתְיִב “יְחִי רְאוּבֵן וְאֵל יָמָת וְגו’... וְזֹאת לִיהוּדָה”?

Apropos declarations that take effect even if they were stated conditionally and the condition was not fulfilled, Rav Yehuda says that Rav says: **Ostracism that was declared conditionally⁴ requires nullification**, even though the condition was not fulfilled. **From where do we derive this?** It is derived from Judah, as it is written with regard to his request that his father allow the brothers to take Benjamin to Egypt: “**If I do not bring him to you... I would have sinned to you for all days**” (Genesis 43:9), i.e., I will remain ostracized as a sinner. **And Rabbi Shmuel bar Nahmani says that Rabbi Yonatan says: What is the meaning of that which is written: “Let Reuben live and not die”** (Deuteronomy 33:6), followed immediately by the verse: “**And this for Judah**” (Deuteronomy 33:7)? Why was the blessing of Judah linked to that of Reuben?

כָּל אוֹתָן אַרְבָּעִים שָׁנָה שְׁהִיוּ יִשְׂרָאֵל בְּמַדְבָּר, עֲצֻמוֹתָיו שֶׁל יְהוּדָה הָיוּ מְגוֹלְגְלִין בְּאֶרְוֶן, עַד שֶׁעֲמַד מֹשֶׁה וּבִקֵּשׁ עֲלָיו רַחֲמִים. אָמַר לְפָנָיו: רְבוּנוּ שֶׁל עוֹלָם, מִי גָרַם לְרְאוּבֵן שִׁוְדָה – יְהוּדָה, “וְזֹאת לִיהוּדָה... שְׁמַע ה’ קוֹל יְהוּדָה”.

Throughout those forty years that the children of Israel were in the wilderness, Judah’s bones were rattling in the coffin, detached from one another, because the ostracism that he declared upon himself remained in effect, **until Moses stood and entreated God to have mercy upon him**. Moses said before Him: **Master of the Universe, who caused Reuben to confess his sin with Bilhah? It was Judah**. Judah’s confession to his sin with Tamar led Reuben to confess to his own sin. Moses continued: “**And this is for Judah... hear God, the voice of Judah**” (Deuteronomy 33:7).

עַל אִיבְרִיָּה לְשָׁפָא, לֹא הָיָה קָא מַעֲיִלִי לִיָּה לְמַתִּיבְתָא דְרִקִיעַ – “וְאֵל עֲמוֹ תְּבִיאֲנוּ.” לֹא הָיָה קָא יָדַע לְמִשְׁקַל וּמִיִּטְרָח בְּשִׁמְעָתָא בְּהָדִי רַבָּנָן – “יָדוּי רַב לוי”, לֹא הָיָה יָדַע לְפְרוֹקֵי קוּשְׁיָא – “וְעִוַר מַצְרִי תְהִיָּה”.

At that point **his limbs entered their designated place** [*leshafa*]¹ and no longer rattled, but the Heavenly court still **would not allow him to enter the heavenly academy**. Moses continued: “**And bring him to his people**” (Deuteronomy 33:7), so that he may join the other righteous people in Heaven. That request was also granted, but Judah **did not know how to engage in the give-and-take of halakha with the Sages** in the heavenly academy. Moses continued: “**His hands shall contend for him**” (Deuteronomy 33:7). That request was also granted, but Judah **did not know how to resolve any difficulty** raised to reject his opinion until Moses prayed: “**And You shall be a help against his adversaries**” (Deuteronomy 33:7).

אִיבְעִיא לָהּ: בְּמִיתַת כּוֹלָן הוּא חוּזֵר, אוּ דְלִמָּא בְּמִיתַת אֶחָד מֵהוֹן?

The mishna enumerates those High Priests whose death facilitates the return of unintentional murderers to their homes from the city of refuge to which they fled. **A dilemma was raised before the Sages: Is it only with the death of all of the High Priests⁶ enumerated in the mishna that the unintentional murderer returns, or perhaps it is even with the death of one of them⁷** that he returns?

תָּא שְׁמַע: נִגְמַר דִּינוּ בְּלֹא כְּהֵן גְּדוּל – אִינוּ יוֹצֵא מִשָּׁם לְעוֹלָם; וְאִם אֵיתָא – לִיהָדֵר בֵּיהּ בְּדַהֲנָה! בְּדִלִיכָא.

The Gemara suggests: **Come and hear a resolution to the dilemma** from the succeeding mishna: If the **verdict of a murderer was decided at a time when there was no one filling the position of High Priest, he never leaves the city of refuge. And if it is so that the death of any of those listed in the mishna facilitates his return, let him return with the death of one of these other High Priests, the one who was sanctified by donning the eight vestments or a priest who was relieved of his position**. The Gemara rejects the proof: The mishna is referring to a case **where there were no High Priests** when the verdict was decided.

HALAKHA

Ostracism that was declared conditionally – יָדוּי עַל תְּנַאי: Ostracism that was declared conditionally, even if one ostracized himself, must be rescinded even if he fulfilled the condition, in accordance with the statement of Rav Yehuda. The Rambam maintains that if one is a Torah scholar he may rescind his own ostracism. The Ra’avad disagrees, noting that Judah did not rescind his ostracism. The *Shulhan Arukh* writes that it is specifically when the person in question is uncertain whether he will be able to fulfill the provisions of the ostracism that the ostracism must be rescinded, but if he is certain that he can

abide by the provisions of the ostracism, it does not require rescinding, in accordance with the opinion of Rabbeinu Tam (Rambam *Sefer HaMadda, Hilkhot Talmud Torah* 7:11; *Shulhan Arukh, Yoreh De’ah* 334:30).

With the death of one of them – במיתת אחד מהן: The death of any High Priest enables the return of unintentional murderers from exile. The commentaries on the Rambam question the source of his ruling, as the dilemma remains unresolved in the Gemara. The *Mishne LaMelekh* suggests that since this is a matter of life and death, as, if the ruling is that the murderer can leave only after the death of all the High Priests, and he left after the death of one, the blood redeemer can kill him, the ruling is lenient (Rambam *Sefer Nezikin, Hilkhot Rotze’ah UShmirat HaNefesh* 7:9, and see *Mirkevot HaMishneh* there).

מתני' משנגמר דינו מת בהן גדול – הרי זה אינו גולה. אם עד שלא נגמר דינו מת בהן גדול, ומנו אחר תחתיו, ולאחר מכן נגמר דינו – חוזר במיתתו של שני. נגמר דינו בלא בהן גדול, וההורג בהן גדול, ובהן גדול שהרג – אינו יוצא משם לעולם.

ואינו יוצא לא לעדות מצוה, ולא לעדות ממון, ולא לעדות נפשות. ואפילו ישראל צריכים לו, ואפילו שר צבא ישראל כיוצא בן צרויה – אינו יוצא משם לעולם. שנאמר "אשר נס שמה" – שם תהא דירתו, שם תהא מיתתו, שם תהא קבורתו.

בשם שהעיר קולטת כן תחומה קולט. רוצה שיוצא חוץ לתחום ומצאו גואל הדם, רבי יוסי הגלילי אומר: מצוה ביד גואל הדם, ורשות ביד כל אדם. רבי עקיבא אומר: רשות ביד גואל הדם, וכל אדם חייבין עליו.

גמ' מאי טעמא? אומר אבוי, קל וחומר: ומה מי שגלה כבר – יוצא עכשיו, מי שלא גלה – אינו דין שלא יגלה? ודלמא, האי דגלה – איכפר ליה, האי דלא גלה – לא? מידי גלות קא מכפרא? מיתת בהן הוא דמכפרא.

MISHNA If, after the unintentional murderer's verdict was decided and he was sentenced to exile, the High Priest died,^h he is not exiled, as the death of the High Priest exempts him from exile. If it was before his verdict was decided that the High Priest died and they appointed another in his place, and thereafter his verdict was decided, he returns from exile with the death of the second High Priest. If the verdict of a murderer was decided at a time when there was no High Priest,^h and likewise in the cases of one who unintentionally killed a High Priest and in the case of a High Priest who killedⁿ unintentionally, the unintentional murderer never leaves the city of refuge.

And one who is exiled may not leave the city at all, either for testimony^h relating to a mitzva,ⁿ or for testimony relating to monetary matters, or for testimony relating to capital matters. And even if the Jewish people require his services, and even if he is the general of the army of Israel like Joab ben Zeruiah, he never leaves the city of refuge, as it is stated: "And the congregation shall restore him to his city of refuge, that he fled there" (Numbers 35:25), from which it is derived: **There shall be his dwelling, there shall be his death, there shall be his burial.**

The mishna continues: **Just as an unintentional murderer is admitted to the city^h of refuge, so is he admitted to its outskirts, located within the Shabbat boundary.** Once he entered the outskirts of the city, the blood redeemer may not kill him. In a case where a murderer emerged beyond the Shabbat boundary of the city of refuge and the blood redeemer found him there, Rabbi Yosei HaGelili says: It is a mitzva for the blood redeemer to kill him, and it is optional for every other person^h to do so. Rabbi Akiva says: It is optional for the blood redeemer, and every other person is liable for killing him.

GEMARA The mishna teaches: If after the unintentional murderer's verdict was decided and he was sentenced to exile, the High Priest died, the unintentional murderer is not exiled. The Gemara asks: **What is the reason for this? Abaye says:** It is derived through an *a fortiori* inference: **If one who was already exiled now emerges with the death of this High Priest, with regard to one who was not yet exiled, is it not right that he should not be exiled?** The Gemara rejects this reasoning: **And perhaps with regard to this one, who was already exiled, his sin was atoned for by his exile, and therefore the death of the High Priest facilitates his return, but that one, who was not yet exiled, no, his sin was not atoned for and the death of the High Priest should not prevent his exile.** The Gemara rebuts: **Is it his exile that atonesⁿ for his sin? It is the death of the High Priest that atones for his sin, and the High Priest died.**

And one who killed a High Priest and a High Priest who killed – וההורג בהן גדול ובהן גדול שהרג – Some say that this is referring to a case where another High Priest was not yet appointed before he was sentenced, and therefore he cannot return home upon the death of the High Priest. Early commentaries attribute this interpretation to Rashi; apparently the Rambam agrees. Others claim that due to the severity of the sin of killing the High Priest, and due to his having lost the opportunity, through his own actions, to have his sin atoned for, there is no remedy to his situation (Rabbeinu Yehonatan of Lunel; Ritva).

For testimony relating to a mitzva – לעדות מצוה: The reference is, for example, to testimony with regard to the New Moon (Rabbeinu Yehonatan of Lunel; Rabbi Ovadya Bartenura). Others added that this example was cited because it is a mitzva that affects the entire Jewish people.

Is it exile that atones – מידי גלות קא מכפרא – Some sought to prove from here that exile is neither punishment nor atonement for the murderer; rather, it is merely to the unintentional murderer's benefit, as it protects him from the blood redeemer. The early commentaries write that this cannot be, as the Gemara earlier (2b) states that exile effects atonement, even though it is not the primary generator of his atonement.

HALAKHA

If after the verdict was decided the High Priest died, etc. – משנגמר דינו מת בהן גדול וכו': If an unintentional murderer was sentenced to exile and the High Priest died before he was exiled, he is exempt from exile. If the High Priest died before he was sentenced and another was appointed in his place, the murderer returns home upon the death of the High Priest who was alive when he was sentenced (Rambam *Sefer Nezikin, Hilkhot Rotze'ah UShmirat HaNefesh* 7:11).

If the verdict of a murderer was decided when there was no High Priest – נגמר דינו בלא בהן גדול: An unintentional murderer who was sentenced to exile when there was no High Priest, or if he unintentionally murdered the only High Priest, or in the case of a High Priest who unintentionally killed a person, he is exiled and must remain in his city of refuge for the duration of his life (Rambam *Sefer Nezikin, Hilkhot Rotze'ah UShmirat HaNefesh* 7:10).

And one who is exiled may not leave the city at all, either for testimony, etc. – ואינו יוצא לא לעדות וכו': An exiled unintentional murderer may not leave his city of refuge, not even to perform a mitzva or to provide testimony in a monetary or capital case. He may not leave the city of refuge to save a life with his testimony or to rescue people from invading troops, a flooding river, a fire, or a rockslide. Even if the Jewish people require his leadership in order to be saved, as in the case of Joab ben Zeruiah, he may not leave the city of refuge until the death of the High Priest. If he leaves the city, he is in danger of being killed by the blood redeemer (Rambam *Sefer Nezikin, Hilkhot Rotze'ah UShmirat HaNefesh* 7:8).

Just as an unintentional murderer is admitted to the city, etc. – בשם שהעיר קולטת וכו': Just as an unintentional murderer is admitted to the city of refuge, so is he admitted to its outskirts, located within the Shabbat boundary (Rambam *Sefer Nezikin, Hilkhot Rotze'ah UShmirat HaNefesh* 8:11).

It is optional for every other person, etc. – רשות ביד כל אדם – וכו': One who fled to a city of refuge and then intentionally left the city has placed himself in danger of being killed. It is permitted for the blood redeemer to kill him, and if any other person kills him, that person is not liable. The *halakha* is in accordance with the opinion of Rabbi Akiva in his disputes with his colleagues, based on the version in the Gemara: And all other people are not liable for killing him, and in accordance with the opinion of Abaye in the Gemara (Rambam *Sefer Nezikin, Hilkhot Rotze'ah UShmirat HaNefesh* 5:10).

An unintentional murderer whose verdict was decided and he died – נגמר דינו ומת – If an unintentional murderer who was sentenced to exile died before reaching the city of refuge, his remains are transported there and buried there, in accordance with the statement of Abaye (Rambam *Sefer Nezikin, Hilkhhot Rotze'ah UShmirat HaNefesh* 7:3).

If an unintentional murderer died before the High Priest died – מת קודם שמת בהן גדול – An unintentional murderer who died in a city of refuge is buried there. After the death of the High Priest his bones are transferred to his ancestral burial plot, as it is taught in the *baraita* (Rambam *Sefer Nezikin, Hilkhhot Rotze'ah UShmirat HaNefesh* 7:3).

The High Priest was deemed the son of a divorced woman, etc. – נעשה ביהן בן גרושה וכו' – The Rambam rules that if one was sentenced to exile and the High Priest serving at the time was disqualified from the priesthood, e.g., if he was discovered to be the son of a divorced woman or the son of a *halutza*, his priesthood is negated, and the status of the murderer is that of one who was sentenced at a time when there was no High Priest, and therefore the murderer may never leave his city of refuge. See the *Kesef Mishne*, who explains that the Rambam's ruling is based on the conclusion of the Gemara in tractate *Kiddushin* (66b) of the Babylonian Talmud and tractate *Terumat* (8:1) of the Jerusalem Talmud (Rambam *Sefer Nezikin, Hilkhhot Rotze'ah UShmirat HaNefesh* 7:12).

If a priest was standing and sacrificing, etc. – הויה – עומד ומקריב וכו' – If a priest was serving in the Temple and it was discovered that he was disqualified from the priesthood, any service that he performed in the past is valid, as the *halakha* is in accordance with the opinion of Rabbi Yehoshua in his dispute with Rabbi Eliezer. He may not continue his service, but if he does continue to serve his service is not invalidated, although some authorities dispute this and deem his service invalid from that point forward (Rambam *Sefer Avoda, Hilkhhot Biat HaMikdash* 6:10).

“אם עד שלא נגמר דינו וכו', מנא הני מילי? אמר רב בהנא: דאמר קרא 'וישב בה עד מות הבהן הגדל אשר משיח אתו בשמן הקדש', וכי הוא מושח? אלא זה שנגמשה בימיו.”

מאי הויה ליה למעבד? הויה לו לבקש רחמים שיגמור דינו לזכות, ולא ביקש.

אמר אבמי נקטינן: נגמר דינו ומת – מוליכין את עצמותיו לשם, דכתיב 'לשוב לשוב בארץ עד מות הבהן', ואיזהו ושיבה שהיא בארץ – הויה אומר זו קבורה. תנא: מת קודם שמת בהן גדול – מוליכין עצמותיו על קברי אבותיו, דכתיב 'שוב הרצח אל ארץ אחרת', איזהו ושיבה שהיא בארץ אחרתו – הויה אומר זו קבורה.

נגמר דינו, ונעשה בהן בן גרושה או בן חלוצה, פליגי בה רבי אמי ורבי יצחק נפחא. חד אומר: מתה בהונה, וחד אומר: בטלה בהונה.

לימא בפלוגתא דרבי אליעזר ורבי יהושע קא מיפליגי. דתנן: הויה עומד ומקריב על גבי המזבח, ונדע שהוא בן גרושה או בן חלוצה. רבי אליעזר אומר: כל קרבנות שהקריב פסולין, ורבי יהושע מכשיר.

מאן דאמר מתה – כרבי יהושע, ומאן דאמר בטלה – כרבי אליעזר?

The mishna teaches: If it was before his verdict was decided that the High Priest died and they appointed another in his place, and thereafter his verdict was decided, he returns with the death of the second High Priest. The Gemara asks: From where are these matters derived? Rav Kahana said that they are derived from a verse, as the verse states: “And he shall dwell there until the death of the High Priest, whom he anointed with the sacred oil” (Numbers 35:25). Now is it the unintentional murderer who anoints the High Priest? Rather, the reference is to that High Priest who was anointed during his days, after he committed the unintentional murder.

The Gemara asks: Why is his return home dependent on the death of the second High Priest? Earlier (11a), the Gemara explained that the High Priest bears a share of the responsibility for unintentional murderers, as he should have pleaded for mercy for his generation and he did not do so. In this case, as the High Priest in question was appointed only after the murder transpired, what could he have done to prevent the unintentional murder? The Gemara answers: He should have pleaded for mercy that the verdict of the unintentional murderer would be decided by the court favorably, so that he would not be sentenced to exile, and he did not plead.

§ Abaye said: We have a tradition that with regard to an unintentional murderer whose verdict was decided and who was sentenced to exile, and he died^h before he was exiled to the city of refuge, one transports his bones to the city of refuge, and buries him there, as it is written: “To return and dwell in the land until the death of the priest” (Numbers 35:32). And what is the dwelling that is in the land? You must say it is referring to his burial. A Sage taught: If an unintentional murderer died in a city of refuge before the High Priest died,^h one transports his bones to the graves of his ancestors after the High Priest dies, as it is written: “The murderer shall return to his ancestral land” (Numbers 35:28). What is the dwelling that is taking place in his ancestral land? You must say it is his burial.

§ The Gemara cites a dispute with regard to a case where the murderer's verdict was decided, i.e., he was sentenced to exile, and the High Priest filling the position at the time was deemed the son of a divorced woman^h or the son of a *halutza*, and the High Priest was thereby disqualified from the priesthood. Rabbi Ami and Rabbi Yitzhak Nappaḥa disagree with regard to this matter. One says: The priesthood died, i.e., it is as though the High Priest died, and all exiles return home from the city of refuge. And the other one says: The priesthood is voided, i.e., it is as though there was no High Priest filling the position during that period, and therefore, the exiles may never leave the city of refuge.

The Gemara suggests: Let us say that these *amora'im*, Rabbi Ami and Rabbi Yitzhak Nappaḥa, disagree with regard to the issue that is the subject of the dispute between Rabbi Eliezer and Rabbi Yehoshua, as we learned in a mishna (*Terumat* 8:1): If a priest was standing and sacrificing^h offerings upon the altar, and it became known that he was the son of a divorced woman or the son of a *halutza*, and he was disqualified from the Temple service, Rabbi Eliezer says: All offerings that he sacrificed up to that point are not valid, as it is apparent that he is not and never was fit for Temple service, and Rabbi Yehoshua deems all offerings that he already sacrificed as valid.

The Gemara explains: Let us say that the one who says here that the priesthood died holds in accordance with the opinion of Rabbi Yehoshua. He holds that the High Priest is disqualified only from the time of the discovery that he is disqualified from the priesthood and forward, while any service performed previous to that discovery is valid. The discovery that he is disqualified from the priesthood is like the High Priest's death, but his priesthood is not invalidated retroactively. And the one who says that the priesthood is voided holds in accordance with the opinion of Rabbi Eliezer, and since his priesthood is voided retroactively, there was no High Priest filling the position when he was sentenced.

אליבא דרבי אליעזר כולי עלמא לא פליגי, כי פליגי – אליבא דרבי יהושע; מאן דאמר מתא – פרבי יהושע. ומאן דאמר בטלה – עד כאן לא קאמר רבי יהושע התם, דכתוב בפרך ה' חילו ופעל ידיו תרצה" – אפילו חללין שבו, אבל הכא – אפילו רבי יהושע מודה.

נבמר דינו" וכו'. אמר רב יהודה אמר רב: שתי טעיות טעה יואב באותה שעה, דכתוב "וינס יואב אל אהל ה' ויחזק בקרנות המזבוח",

טעה – שאינו קולט אלא גגו, והוא תפס בקרנותיו. טעה – שאינו קולט אלא מזבוח בית עולמים, והוא תפס מזבוח של שילה. אבוי אומר: בהא נמי מיטעא טעה – טעה שאינו קולט אלא כהן ועבודה בידו, והוא זר היה.

אמר ריש לקיש: שלש טעיות עתיד שרו של רומי לטעות, דכתוב "מי זה בא מאדס חמוץ בגדים מבצרה", טועה – שאינה קולטת אלא בצר והוא גולה לבצרה, טועה – שאינה קולטת אלא שויג והוא מזיד היה, טועה – שאינה קולטת אלא אדם והוא מלאך הוא.

אמר רבי אבהו: ערי מקלט לא נתנו לקבורה, דכתוב "ומגרשיהם יהיו לבהמתם ולרכשם ולכל חיותם" – לחיים נתנו ולא לקבורה. מיתבי: "שמה" – שם תהא דירתו, שם תהא מיתתו, שם תהא קבורתו; וצח שאני, דגלי ביה רחמנא.

The Gemara rejects this parallel: According to the opinion of Rabbi Eliezer, everyone agrees that he holds that the priesthood is voided. When they disagree, it is according to the opinion of Rabbi Yehoshua: The one who says the priesthood is dead holds in accordance with the straightforward understanding of the opinion of Rabbi Yehoshua. And the one who says the priesthood is voided can also hold in accordance with his opinion and explain that Rabbi Yehoshua states his opinion only there, with regard to Temple service, as it is written: "Bless, God, his property [heilo], and accept the work of his hands" (Deuteronomy 33:11).ⁿ The term *heilo* is interpreted homiletically to mean that even the offerings of those disqualified from Temple service due to flawed lineage [*halalin*] are accepted after the fact. But here, with regard to the status of the priest, even Rabbi Yehoshua concedes that the priesthood is voided retroactively.

§ The mishna teaches: If the verdict of a murderer was decided at a time when there was no High Priest, and likewise in the cases of one who unintentionally killed a High Priest and in the case of a High Priest who killed unintentionally, the unintentional murderer never leaves the city of refuge. And one who is exiled may not leave the city at all, even if the Jewish people require his services, and even if he is the general of the army of the Jewish people like Joab ben Zeruiah, he does not leave the city of refuge ever. Rav Yehuda says that Rav says: Joab made two errorsⁿ at that moment, when he fled from Solomon, as it is written: "And Joab fled to the Tent of God and grasped the horns of the altar" (1 Kings 2:28).

He erred in that only the top of the altar provides refuge, and he grasped its corners. Moreover, he erred in that only the altar of the eternal House, i.e., the Temple, provides refuge, and he grasped the altar at Shiloh. Abaye said: It is with regard to this that Joab also erred, as the altar provides refugeⁿ only for a priest who grasps the roof of the altar and his service is in his hand, and Joab was a non-priest.

Apropos errors, the Gemara cites that Reish Lakish says: The angel of Rome is destined to make three errors, as it is written: "Who is this who comes from Edom, with crimsoned garments from Bozrah?" (Isaiah 63:1), which is a parable for God's arrival after killing the angel of Rome in Bozrah. The angel of Rome will err in that it is only the city of Bezer that provides refuge and he exiled himself to Bozrah; he will err in that it provides refuge only to an unintentional murderer and he was an intentional murderer; and he will err in that it provides refuge only to a person and he is an angel.

§ The Gemara resumes its analysis of the mishna. Rabbi Abbahu says: Cities of refuge were not given for the purpose of burial^{nH} of unintentional murderers within them, as it is written with regard to the Levite cities: "And their open land shall be for their cattle, and for their property, and for all their beasts [*hayyatam*]" (Numbers 35:3), from which it is derived: For life [*lehayyim*] they are given, but not for burial. Even Levites who reside in these cities are buried beyond the open land surrounding the city. The Gemara raises an objection to this from the mishna's interpretation of the term: "That he fled there" (Numbers 35:25), from which it is derived: There shall be his dwelling, there shall be his death, there shall be his burial. The Gemara answers: A murderer is different,ⁿ as the Merciful One revealed concerning him that he is to be buried there. That does not apply to the other residents of the city.

NOTES

ופועל ידיו תרצה – And accept the work of his hands: This is understood as a special directive that the Temple service of a disqualified priest, the work of his hands, is accepted (Rashi). According to the opinion that his priesthood is negated, although his service is accepted, his personal status as a priest is retroactively negated. According to the opinion that the priesthood died, since his Temple service is accepted after the fact, his priesthood is not entirely negated.

Joab made two errors – שתי טעיות טעה יואב: As related in the book of Kings (see 1 Kings 2:5–6), on his deathbed, David commanded Solomon to make certain that Joab would be executed for killing two generals of the army of Israel, Abner, son of Ner, and Amasa, son of Jether.

Cities of refuge were not given for burial, etc. – ערי מקלט לא נתנו לקבורה וכו': Cities of refuge are Levite cities. Additionally, all the other Levite cities serve as cities of refuge, the only difference being that the other Levite cities provide refuge only if the murderer enters the city deliberately (see 10b).

A murderer is different – רוצח שאני: The reason is that there is a Torah edict that unintentional murderers are to be buried in a city of refuge; by contrast, it was not permitted for Levites to be buried there. Furthermore, the burial of the murderers there is temporary, as their remains would be reinterred in their ancestral burial plot after the death of the High Priest (Meiri).

HALAKHA

Refuge provided by the altar – קליטה במזבוח: The altar functions like a city of refuge in providing protection for an unintentional murderer. Therefore, in the case of an unintentional murderer protected by the altar, if the blood redeemer killed him, he is liable to be executed. Only the roof of the altar of the Temple provides refuge, and only to a priest in the midst of his Temple service. It does not provide refuge for a non-priest, or for a priest who is not in the midst of his service, or for a priest who was not on the roof of the altar but standing adjacent to it, or for one grasping the horns of the altar. One protected by the altar does not remain there but instead is provided with an escort to accompany him to a city of refuge.

These provisions apply to an unintentional murderer liable to be exiled. One fleeing the king who seeks to have him executed for sedition, or one fleeing the court that issued a provisional edict to execute him is protected by the altar, even if he is a non-priest. In that case, he is removed from the altar only if he was forewarned, tried based on the testimony of witnesses, and sentenced to be executed (Rambam *Sefer Nezikin, Hilkhoh Rotze'ah UShmirat HaNefesh* 5:12–14).

ערי מקלט – לא נתנו לקבורה: Levites who live in cities of refuge are buried neither in the cities nor in the environs delineated in the Torah, which total three thousand cubits in each direction (Rambam *Sefer Zera'im, Hilkhoh Shemitta VeYovel* 1:33 and *Sefer Nezikin, Hilkhoh Rotze'ah UShmirat HaNefesh* 7:4).

Here being admitted, there to dwell – כאן לקלוט כאן – לדרור: While an unintentional murderer is admitted anywhere within the boundaries of the city of refuge, he must dwell within the city itself (Rambam *Sefer Nezikin, Hilkhot Rotze'ah UShmirat HaNefesh* 8:11).

One may not render the field of a Levite city an open space, etc. – אין עושים שדה מגרש וכו': The land of Levite cities may not be reclassified as land of the open space adjacent to the city, nor may the land of its open space be appended to the city. Similarly, the land of the open space of the city may not be reclassified as part of the city field, nor may land of the field be reclassified as open space. The *halakha* applies to other cities in Eretz Yisrael as well, in accordance with the mishna in tractate *Arakhin* 33b (Rambam *Sefer Zera'im, Hilkhot Shemitta VeYovel* 13:4–6).

NOTES

One may not render the field of a Levite city an open space, etc. – אין עושים שדה מגרש וכו': The provisions of the Levite cities, which include the cities of refuge, are detailed in the book of Numbers (chapter 35), where it states that there is an area measuring two thousand cubits beyond the city walls appended on all sides of each city. The one thousand cubits closer to the city serve as open space, and no dwellings or fields may be established there. The one thousand cubits farther from the city serve as the city's field, where trees are planted and other agricultural activity is undertaken. Since the measure of the field and the open space is determined by Torah law, it may not be altered.

And any person is liable for killing him – וכל אדם: This is the version of the text according to the Maharshal, as otherwise there would be no clear difference between the two *tanna'im* with regard to people that are not the blood redeemer. The version cited by virtually all early commentaries is: And any person is not liable for killing him. The reason is that by leaving the city of refuge, the murderer has rendered himself subject to being killed, and even Rabbi Akiva concedes that there is no liability for killing him.

The verse states: Until he stands, etc. – תלמוד לומר עד עמדו וכו': The Ran (*Sanhedrin* 45a) explains that this *halakha* applies to an unintentional murderer as well. If he leaves the city of refuge and the court sentences him to death for doing so, the blood redeemer is first in line to kill him. Rabbeinu Hananel explains that Rabbi Eliezer is referring to an unintentional murderer who was not yet been sentenced to exile by the local court and it is only in that case that the blood redeemer may not kill him. Once the court sentences him to exile, Rabbi Eliezer concedes to Rabbi Yosei HaGelili and Rabbi Akiva that it is permitted for the blood redeemer to kill him, or perhaps there is even a mitzva for him to do so.

“בשם שהעיר קולטת” וכו'. ורמינהו: “וישב בה” – בה, ולא בתחומה! אמר אביי: לא קשיא, כאן – לקלוט, כאן – לדרור.

לדרור? תיפוק ליה דאין עושים שדה מגרש, ולא מגרש שדה, לא מגרש עיר, ולא עיר מגרש! אמר רב ששת: לא נצרכה אלא למחילות.

“ורצח שניצא חוץ לתחום” וכו'. תנו רבנן: “ורצח גאל הדם את הרצח” – מצוה ביד גואל הדם, אין גואל הדם – רשות ביד כל אדם, דברי רבי יוסי הגלילי. רבי עקיבא אומר: רשות ביד גואל הדם, וכל אדם חייבין עליו.

מאי טעמא דרבי יוסי הגלילי – מי כתיב “אם רצח”? ורבי עקיבא: מי כתיב “ורצח”?

אמר מר זוטרא בר טוביה אמר רב: רוצח שניצא חוץ לתחום, ומצאו גואל הדם והרגו – נהרג עליו. כמאן? לא ברבי יוסי הגלילי ולא ברבי עקיבא!

הוא דאמר כי האי תנא, דתנא, רבי אליעזר אומר: “עד עמדו לפני העדה למשפט”, מה תלמוד לומר? לפי שנאמר “ורצח גאל הדם את הרצח”, יכול מיד? תלמוד לומר “עד עמדו לפני העדה למשפט”.

The mishna teaches: **Just as an unintentional murderer is admitted to the city of refuge, so is he admitted to its outskirts, located within the Shabbat boundary. And the Gemara raises a contradiction from a baraita with regard to that which is written concerning the unintentional murderer: “And he shall dwell in it” (Numbers 35:25), from which it is inferred: “In it,” but not within its boundary. Abaye said: This is not difficult. Here, the mishna is referring to the unintentional murderer being admitted to the city, which will provide refuge from the blood redeemer, who may not kill him there. There, the baraita is referring to the place where it is permitted for the murderer to dwell,**^H i.e., within the city itself and not on its outskirts.

The Gemara asks: Why is it necessary to state that the murderer may not dwell on the outskirts of the city? **Let him derive that halakha from the fact that one may not render the field of a Levite city an open space,^{HN} nor an open space a field, nor an open space part of the city, nor the city an open space.** Apparently, the outskirts of the city, whose status is that of an open space, may not be utilized for residential purposes. **Rav Sheshet said: It is necessary to state this halakha only for tunnels.** If a murderer excavated a tunnel on the outskirts of the city, although he did not violate the prohibition against ruining the fields of the city, he may not reside there based on the *halakha* by Torah law that he must reside inside the city.

§ The mishna teaches a dispute between Rabbi Yosei HaGelili and Rabbi Akiva with regard to a case where the unintentional murderer emerged beyond the Shabbat boundary of the city of refuge, and the blood redeemer found him there. **The Sages taught that it is written: “And the blood redeemer finds him outside the border of his city of refuge and the blood redeemer murders the murderer, he has no blood” (Numbers 35:27): It is a mitzva for the blood redeemer to kill him, and if there is no blood redeemer available to fulfill this mitzva, it is optional for any person to do so; this is the statement of Rabbi Yosei HaGelili. Rabbi Akiva says: It is optional for the blood redeemer to kill him, and any other person is liable for killing him.**^N

The Gemara analyzes the mishna: **What is the reason for the opinion of Rabbi Yosei HaGelili?** He says: **Is it written: If the blood redeemer murders the unintentional murderer, he has no blood?** It states: “And the blood redeemer murders the murderer,” indicating that it is a mitzva. **And Rabbi Akiva says: Is it written: The blood redeemer shall murder, in the imperative?** It merely states: “And the blood redeemer murders,” which is merely relating the scenario under discussion.

On a related note, the Gemara cites that **Mar Zutra bar Toviyya says that Rav says: In the case of a murderer who emerged beyond the Shabbat boundary of the city of refuge, and the blood redeemer found him there and killed him, the blood redeemer is executed for killing him.** The Gemara asks: **In accordance with whose opinion did Rav issue this ruling?** He issued it **neither in accordance with the opinion of Rabbi Yosei HaGelili, who maintains that there is a mitzva for the blood redeemer to kill him, nor in accordance with the opinion of Rabbi Akiva, who says the blood redeemer has the option of killing him.**

The Gemara answers: Rav states this ruling in accordance with the opinion of that *tanna*, as it is taught in a *baraita* that Rabbi Eliezer says with regard to the verse: “And the murderer shall not die, until he stands before the congregation for judgment” (Numbers 35:12): **Why must the verse state this?** It is necessary since it is stated: “And the blood redeemer finds him... and the blood redeemer murders the murderer” (Numbers 35:27). One might have thought that the blood redeemer may murder him immediately; therefore, the verse states: “Until he stands^N before the congregation for judgment,” from which it is derived that the blood redeemer may kill the murderer after only he is convicted in court. **Mar Zutra bar Toviyya says that Rav says that the blood redeemer is liable if he kills the murderer before he is convicted.**

ורבי יוסי ורבי עקיבא, האי "עד עמדו לפני העדה למשפט" מאי דרשי ביה? ההוא מיבעי ליה לכדתניא, רבי עקיבא אומר: מנין לסנהדרין שראו אחד שהרג את הנפש, שאין ממיתין אותו עד שיעמוד בבית דין אחר? תלמוד לומר "עד עמדו לפני העדה למשפט" – עד שיעמוד בבית דין אחר.

The Gemara asks: **And as for Rabbi Yosei HaGelili and Rabbi Akiva, with regard to this verse: "Until he stands before the congregation for judgment," what do they derive from it?** The Gemara answers: **That verse is necessary for that which is taught in a baraita that Rabbi Akiva says: From where is it derived in the case of a Sanhedrin that saw one kill^H a person that they may not execute him until he stands trial in a different court?** It is derived from a verse, as the verse states: **"Until he stands before the congregation for judgment,"** meaning: **Until he stands before a different court.** Since they themselves witnessed the murder, they are no longer capable of considering the possibility that he may be innocent.

תנו רבנן: "אם יצא יצא הרצח", אין לי אלא במויד, בשוגג מנין? תלמוד לומר "אם יצא יצא" מכל מקום.

The Sages taught in a *baraita* with regard to the verse: **"And if the murderer emerges [yatzo yetze] ... and the blood redeemer murders the murderer, he has no blood"** (Numbers 35:26–27): **I have derived only that the blood redeemer may kill the unintentional murderer if the unintentional murderer emerges from the city intentionally. From where is it derived that the same applies if he emerges unwittingly?** It is derived from this verse, as the verse states: **"If yatzo yetze"**; the doubled form of the verb serves to teach that this *halakha* applies in any case where the unintentional murderer emerges from the city of refuge.

והתניא: וההורגו במויד נהרג, בשוגג גולה! לא קשיא, הא – כמאן דאמר: אמרינן דברה תורה כלשון בני אדם, הא – כמאן דאמר: לא אמרינן דברה תורה כלשון בני אדם.

The Gemara asks: **But isn't it taught in a baraita with regard to an unintentional murderer who emerged from the city of refuge unwittingly: And one who kills him intentionally is executed,^N and one who kills him unintentionally is exiled?**^H The Gemara answers: **This is not difficult, as this second baraita is in accordance with the opinion of the one who says that we say: The Torah spoke in the language of people, and no halakha is derived from the doubled form of the verb: Yatzo yetze, as it is merely a rhetorical flourish, and that first baraita is in accordance with the opinion of the one who says that we do not say: The Torah spoke in the language of people, and the compound verb was employed in order to derive that the blood redeemer may kill the unintentional murderer even if he emerged from the city of refuge unwittingly.**

אמר אביי: מסתברא כמאן דאמר דברה תורה כלשון בני אדם, שלא יהא סופו חמור מתחלתו, מה תחלתו – במויד נהרג בשוגג גולה, אף סופו – במויד נהרג בשוגג גולה.

Abaye said: **It stands to reason that the halakha is in accordance with the opinion of the one who says: The Torah spoke in the language of people, and the blood redeemer is liable for killing an unintentional murderer who emerged from the city of refuge unwittingly, in order to ensure that the ultimate punishment of the unintentional murderer, when he emerges from the city of refuge, will not be more severe than his initial punishment, when he is sentenced in court. Just as with regard to his initial punishment for murder, if he killed intentionally he is executed, and if he killed unintentionally he is exiled, so too, with regard to his ultimate punishment, if he emerges from the city of refuge intentionally he is killed by the blood redeemer, and if he emerges unwittingly he is returned to exile in the city of refuge.**

תני תדא: אב שהרג – בנו נעשה לו גואל הדם, ותניא אידך: אין בנו נעשה לו גואל הדם. לימא הא רבי יוסי הגלילי והא רבי עקיבא?

§ **It is taught in one baraita:** In the case of a father who killed his son, his surviving son becomes his blood redeemer and may kill him. **And it is taught in another baraita:** His son does not become his blood redeemer.^H The Gemara suggests: **Let us say that this baraita, which states that his son does become his blood redeemer, is in accordance with the opinion of Rabbi Yosei HaGelili.** Since there is a mitzva for the blood redeemer to kill the murderer, this mitzva applies equally to a son. **And that baraita, which states that a son does not become a blood redeemer to kill his father, is in accordance with the opinion of Rabbi Akiva, who holds that the blood redeemer has only the option, not a mitzva, to kill the murderer.**

סנהדרין שראו אחד שהרג – An intentional murderer is not executed by witnesses and onlookers until he is taken to court for trial and sentenced to death. The halakha applies to all those liable to be executed (Rambam Sefer Nezikin, Hilkhot Rotze'ah UShmirat HaNefesh 1:5).

במויד נהרג – Intentionally is executed, unwittingly is exiled – בשוגג גולה: If an unintentional murderer intentionally leaves the city of refuge he thereby subjects himself to being killed. It is permitted for the blood redeemer to kill him, and anyone else who kills him is not liable. If he unwittingly leaves the city of refuge, anyone who kills him is liable to be exiled, in accordance with the opinions of Rabbi Akiva and Abaye (*Kesef Mishne*). See the commentaries on the Rambam, who discuss whether this is the *halakha* only with regard to one who kills him unintentionally or if it applies to one who kills him intentionally (Rambam *Sefer Nezikin, Hilkhot Rotze'ah UShmirat HaNefesh* 5:10).

אין בנו נעשה – His son does not become his blood redeemer – לו גואל הדם: In the case of a father who unintentionally killed his son, if his son had a son, that son is his blood redeemer and may kill his grandfather. If the murdered son had no sons, the victim's brothers do not assume the status of blood redeemers and may not kill their father. The father is judged in court and executed if found guilty (Rambam *Sefer Nezikin, Hilkhot Rotze'ah UShmirat HaNefesh* 1:3 and *Sefer Shofetim, Hilkhot Mamrim* 5:15).

NOTES

ההורגו במויד נהרג – One who kills him intentionally is executed – According to this version of the text, the reference is to one who killed an unintentional murderer who left his city of refuge. If he killed him intentionally he is killed; if he killed him unintentionally he is exiled, just as is the case involving any other person. The difficulty is that the *baraita* states explicitly that it is prohibited to kill one who left his city of refuge unwittingly. Abaye's statement at the conclusion of the discussion in the Gemara is not compatible with that explanation. Other versions omit the term: One who kills him; therefore, the text merely reads: Intentionally, he is executed (see Ritva; Gra). According to that version, the *baraita* is referring to the exiled murderer: If he left the city of refuge intentionally, the blood redeemer may kill him; if he emerged unwittingly, he is exiled, i.e., the unintentional murderer must return to the city of refuge, and the blood redeemer may kill him only if he forewarns him that if he fails to return to the city he will kill him (Riaz).

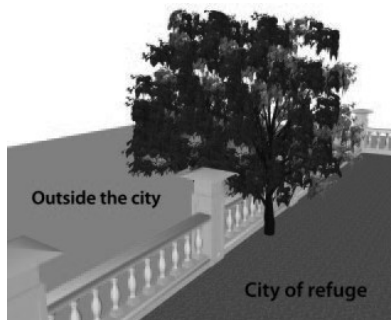
HALAKHA

A son does not become an agent to flog his father, etc. – אין הבן נעשה שליח לאביו להכותו וכו' – If one's father or mother violated a prohibition for which they are liable to receive lashes, and the son was employed as the attendant of the court, the son may not administer the lashes. Similarly, if it was determined that his parents are to be ostracized, the son may not act as an agent of the court to ostracize them, nor may he strike them or demean them as an agent of the court. This is the halakha even if they are unrepentant and were deserving of their punishment. The exception is one who incites others to engage in idol worship. In that case the son of the inciter may act as the agent of the court to administer punishment (Rambam Sefer Nezikin, Hilkhot Mamrim 5:14; Shulhan Arukh, Yoreh De'a 241:5).

Tree that stands...outside the boundary – אילן שהוא – עומד...חוץ לתחום: If a tree was situated within the boundary of a city of refuge and its boughs extended outside the boundary, once the murderer is standing beneath the boughs, the city of refuge affords him protection. If the tree was outside the boundary and its boughs extended within the boundary, once the murderer is standing at the base of the tree, the city of refuge affords him protection (Rambam Sefer Nezikin, Hilkhot Rotze'ah UShmirat HaNefesh 8:11, and see Kesef Mishne there).

BACKGROUND

Tree and its boughs – אילן ונופו:



Tree with its boughs leaning outside the city

ותסבירא. בין למאן דאמר מצודה בין למאן דאמר רשות, מי שרי? והאמר רבה בר רב הונא, וכן תנא דבי רבי ישמעאל: לכל אין הבן נעשה שליח לאביו להכותו ולקללתו, חוץ ממכסית, שהרי אמרה תורה לא תחמל ולא תכסה עליו!

אלא, לא קשיא: הא – בבגנו, והא – בבגן בנו.

מתני' אילן שהוא עומד בתוך התחום ונפו נוטה חוץ לתחום, או עומד חוץ לתחום ונפו נוטה בתוך התחום – הכל הולך אחר הנוף.

גמ' ורמינהי: אילן שהוא עומד בתוך הפנים ונוטה לחוץ, או עומד בחוץ ונוטה לפנים, מכנגד החומה ולפנים – בלפנים, מכנגד החומה ולחוץ – בלחוץ!

מעשר אערי מקלט קא רמית? מעשר בחומה תלה רחמנא, ערי מקלט בדירה תלה רחמנא, בגופו – מתדר ליה, בעיקרו – לא מתדר ליה.

ורמי מעשר אמעשר, דתנא: בירו שלם הולך אחר הנוף, בערי מקלט הולך אחר הנוף! אמר רב כהנא: לא קשיא: הא – רבי יהודה, והא – רבנן, דתנא.

The Gemara rejects that understanding. And how can you understand it in that manner? Both according to the one who says that there is a mitzva for the blood redeemer to kill the unintentional murderer and according to the one who says that it is optional, is it permitted for a son to do so? But doesn't Rabba bar Rav Huna say, and likewise the school of Rabbi Yishmael taught: With regard to all transgressions of the Torah, even if the father is liable to receive lashes or be ostracized, a son does not become an agent of the court to flog his father or to curse him, apart from the case of a father who acted as one who incites others to engage in idol worship, as the Torah states in his regard: "You shall neither spare nor conceal him" (Deuteronomy 13:9)?

Rather, the Gemara suggests that the apparent contradiction between the two baraitot is not difficult, as this baraita, which says that the son does not become a blood redeemer to kill his father, is referring to his son, and that baraita, which says that the son does not become a blood redeemer, is referring to the son of his son, who can become a blood redeemer to kill his grandfather, as the grandson is not required to honor his grandfather as he is required to honor his father.

MISHNA The previous mishna teaches that the halakhic status of the outskirts of the city is like that of the city itself in terms of the unintentional murderer being provided refuge there. The mishna adds: With regard to a tree that stands within the Shabbat boundary of a city of refuge, whose boughs extend outside the boundary,⁸ or a tree that stands outside the boundary⁹ and its boughs extend inside the boundary, the status of the tree, whether it is considered inside or outside the boundary, in all cases follows the boughs.

GEMARA And the Gemara raises a contradiction from a mishna (Ma'aser Sheni 3:7) taught with regard to second tithe. Second-tithe produce must be consumed within Jerusalem or redeemed outside of Jerusalem: With regard to a tree that stands within Jerusalem, and whose boughs extend outside the city wall, or a tree that stands outside the city wall and whose boughs extend inside the wall, the principle is: The halakhic status of any part of the tree that is above the wall and inward is that of an area within the wall and the halakhic status of any part of the tree that is above the wall and outward is that of an area outside the wall. Apparently, the trunk does not follow the boughs and the boughs do not follow the trunk. The status of each part of the tree is determined by its position relative to the wall.

The Gemara rejects the parallel between the cases. Are you raising a contradiction between the halakha of second tithe and the halakha of cities of refuge? With regard to the halakha of second tithe, the Merciful One made the status of the tree dependent on the wall, and with regard to cities of refuge, the Merciful One made the status of the tree dependent on dwelling. One can dwell in its boughs, but one cannot dwell in its trunk. Therefore, with regard to cities of refuge, the halakhic status of the tree is determined by the boughs.

And the Gemara raises a contradiction between the previous baraita with regard to the halakha of second tithe and another baraita with regard to the halakha of second tithe, as it is taught in a baraita (see Ma'asrot 3:10): In Jerusalem, follow the boughs in determining the status of the tree with regard to consuming second-tithe produce, and likewise, with regard to cities of refuge, follow the boughs in determining the status of the tree with regard to providing refuge for an unintentional murderer. Rav Kahana said: This apparent contradiction is not difficult, as this baraita is in accordance with the opinion of Rabbi Yehuda, and that baraita is in accordance with the opinion of the Rabbis. As it is taught in a baraita with regard to partaking of second tithe in Jerusalem: