

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).

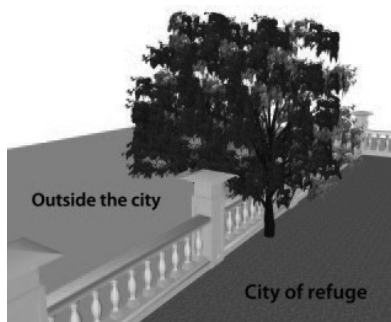
HALAKHA

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 – בבן בנו.

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

גמ' ורמינהו: 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:

רבי יהודה אומר: במערה – הולך אחר פתחה, באילן – הולך אחר נופו.

Rabbi Yehuda says: With regard to a cave, follow its entrance; if the entrance is inside the city, the status of the entire cave is that of part of the city, and one may partake of tithes in it. With regard to a tree, follow its boughs.^N The *baraita* that states that with regard to second tithe in Jerusalem and cities of refuge one follows the boughs is in accordance with the opinion of Rabbi Yehuda.

אימור דשמעת ליה לרבי יהודה גבי מעשר לחומרא: עיקרו בחוץ ונופו בפנים – כי היכי דבנופו לא מצוי פריק, בעיקרו נמי לא מצוי פריק; עיקרו מבפנים ונופו מבחוץ – כי היכי דבנופו לא מצוי אכיל בלא פדייה, בעיקרו נמי לא מצוי אכיל בלא פדייה.

The Gemara rejects that explanation. Say that you heard Rabbi Yehuda express this opinion with regard to second-tithe produce in a situation where his ruling is a stringency,^N as in the case where the trunk of a tree is outside Jerusalem and its boughs are inside Jerusalem, just as among its boughs, one may not redeem second-tithe produce,^N and he must partake of it in Jerusalem, so too at its trunk he may not redeem second-tithe produce, even though it stands outside of Jerusalem. So too in a case where the trunk of a tree is inside and its boughs outside, there is a stringency: Just as among its boughs, one may not partake of second-tithe produce without redemption, so too at its trunk he may not partake of second-tithe produce without redemption, even though it stands inside Jerusalem.

אלא גבי ערי מקלט, בשלמא עיקרו בחוץ ונופו בפנים – כי היכי דבנופו לא מצוי קטיל ליה, בעיקרו נמי לא מצוי קטיל ליה. אלא עיקרו בפנים ונופו בחוץ, כי היכי דבנופו מצוי קטיל ליה – בעיקרו נמי מצוי קטיל ליה? הא גואי קאני!

But with regard to cities of refuge, it may be otherwise: Granted, if its trunk is outside the boundary and its boughs are inside, just as among its boughs, the blood redeemer may not kill the unintentional murderer, so too at its trunk, he may not kill him. But if its trunk was inside and its boughs outside, would one say that just as among its boughs, the blood redeemer may kill him, at its trunk, he may also kill him? Isn't the unintentional murderer standing inside the city of refuge? How could one say that it is permitted for the blood redeemer to kill him inside the city?

אמר רבא: בעיקרו – דכולי עלמא לא פליגי דלא מצוי קטיל. קאי בנופו ויכול להורגו בחצים ובצורות – דכולי עלמא לא פליגי דמצוי קטיל ליה.

Rava said that it can be explained as follows: In the case where its trunk is inside the boundary and its boughs outside, and the unintentional murderer was standing at its trunk, everyone agrees that the blood redeemer may not kill him, and when Rabbi Yehuda said that the trunk follows the boughs, he did not intend to include that case. If the murderer is standing among the boughs of the tree, and the blood redeemer is able to kill him with arrows and pebbles, everyone, including the Rabbis, agrees that the blood redeemer may kill him, as the boughs are outside the city.

כי פליגי – במהו עיקרו דרגא לנופו, מר סבר: הוי עיקרו דרגא לנופו, ומר סבר: לא הוי עיקרו דרגא לנופו.

When they disagree is with regard to whether its trunk can become a step for its boughs, enabling the blood redeemer to gain access to the unintentional murderer there. One Sage, Rabbi Yehuda, holds: Its trunk can become a step for its boughs; the blood redeemer may gain access to the boughs extending outside the boundary and kill the unintentional murderer by climbing the trunk inside the city. It was in that context that Rabbi Yehuda says that the trunk follows the boughs. And one Sage, the Rabbis, holds: Its trunk cannot become a step for its boughs.

רב אשי אמר: מאי "אחר הנוף" – אף אחר הנוף.

Rav Ashi said: What is the meaning of Rabbi Yehuda's statement: Follow its boughs? It does not mean that the location of the boughs is the only determining factor; rather, it means that in addition to the trunk, follow the boughs as well^{NH} in a case where it is a stringency. Therefore, with regard to a city of refuge a tree whose trunk is inside the boundary and its boughs extend beyond the boundary, the halakhic status of the boughs is the same as what it would be were they inside the boundary.

Follow the boughs as well – אף אחר הנוף: If a tree is situated within the walls of Jerusalem and its boughs extend outside the walls, it is prohibited to partake of second-tithe produce under those boughs. Despite this, second-tithe produce that was

brought beneath those boughs may no longer be redeemed, as it is considered to have entered the city. The Rambam rules in accordance with the opinion of Rav Ashi, as he is a later authority and his opinion is logical, and one follows the boughs only

באילן הולך אחר – אף אחר הנוף: On this basis, the Gemara rejects its initial response that there is a difference between the *halakhot* of cities of refuge and the *halakhot* of tithes in this regard. Rather, the Gemara says that the mishna here and the mishna in tractate *Ma'asrot* (3:10) state that both in Jerusalem and in cities of refuge follow the boughs, in accordance with the opinion of Rabbi Yehuda. Meanwhile, the other mishna (*Ma'aser Sheni* 3:7), which states that the wall, not the boughs, is the determining factor, is in accordance with the opinion of the Rabbis (see Gra and Arukh LaNer).

Say that you heard...where his ruling is a stringency – אימור דשמעת...לחומרא: *Tosafot* ask: Why say that Rabbi Yehuda says follow the boughs only as a stringency? Perhaps he maintains that this is the *halakha* in all cases. They answer that the Gemara prefers to explain the dispute in a manner where the opinions of Rabbi Yehuda and the Rabbis are not diametrically opposed. Rather, fundamentally, Rabbi Yehuda agrees with the reasoning of the Rabbis, and he merely rules stringently with regard to the boughs.

Among its boughs one may not redeem second-tithe produce, etc. – בנופו לא מצוי פריק וכו': There are two aspects to the *halakhot* of second tithe in Jerusalem. One is that second-tithe produce may be eaten only in Jerusalem. The second is that any second-tithe produce that has not yet been taken into Jerusalem may be redeemed with money, but once it enters the city it may no longer be redeemed. Therefore, following the boughs can lead to a stringent ruling with regard to both aspects. If the boughs extend outside the city, one may not partake of second-tithe produce near its trunk. If the boughs extend into the city, one may not redeem second-tithe produce that reached the trunk of that tree.

Follow the boughs as well – אף אחר הנוף: Rashi says that Rav Ashi, like Rava, explains in accordance with the opinion of Rav Kahana that everything is based on the opinion of Rabbi Yehuda. Yet, while Rava holds that according to Rabbi Yehuda a blood redeemer may kill a murderer located under boughs outside the city even though the trunk of the tree is inside the city, as one follows the boughs, Rav Ashi holds that Rabbi Yehuda rules stringently in that case and follows the trunk. Therefore, the blood redeemer may not kill a murderer located under boughs outside the city. On the contrary, Rav Ashi understands that Rabbi Yehuda is saying that in general, the trunk alone is the determining factor, and it is only with regard to a city of refuge that the boughs are taken into account at all. Therefore, not only may the blood redeemer not kill the murderer under the boughs outside the city when the trunk is inside the city, but even if the trunk was outside the city and the boughs inside, the blood redeemer may not kill the murderer near the trunk outside the city, because one follows the boughs in that case. *Tosafot* question Rashi's explanation, and maintain that according to Rav Ashi, the boughs are never entirely disregarded, not even in the case of a stringency. Therefore, if the trunk was inside the city and the boughs outside, the blood redeemer may kill him under the boughs. The novel element in Rav Ashi's opinion is with regard to the trunk: One follows the boughs and rules stringently even if the murderer is standing near the trunk. The Ramban writes that in the Jerusalem Talmud in tractate *Ma'aser Sheni* (3:4) a similar conclusion is reached.

HALAKHA

in cases of stringency (Rambam *Sefer Zera'im, Hilkhot Ma'aser Sheni* 2:15 and *Kesef Mishne* there).

If an unintentional murderer unintentionally killed a person in the same city – הרג באותה העיר: If an unintentional murderer unintentionally killed a person in his city of refuge he is exiled from one neighborhood to another within that city, but he may not leave the city (Rambam *Sefer Nezikin, Hilkhoh Rotze'ah UShmirat HaNefesh* 7:5).

Levite who killed – בן לוי שהרג: If a Levite unintentionally killed a person inside the city of his residence, he is exiled to a different Levite city. If the unintentional murder occurred outside the city of his residence, he is admitted to that city, in accordance with the Rambam's explanation of the phrase: If he was exiled to his district (Rambam *Sefer Nezikin, Hilkhoh Rotze'ah UShmirat HaNefesh* 7:5).

A murderer whom the people of the city sought to honor – רוצע שרצו לכבודו: If the inhabitants of a city of refuge seek to honor an unintentional murderer upon his arrival, he must say to them: I am a murderer. If they respond: Nevertheless, we wish to honor you, he may accept the honor (Rambam *Sefer Nezikin, Hilkhoh Rotze'ah UShmirat HaNefesh* 7:7).

מתני' הרג באותה העיר – גולה משכונתו לשכונתו. וכן לוי גולה מעיר לעיר.

גמ' תנו רבנן: "ושמתי לך מקום" וגו', "ושמתי לך" – בחינה, "מקום" – ממקומך, "אשר ינוס שמה". מלמד שהיו ישראל מגלין במדבר, להיכן מגלין – למחנה לוי.

מכאן אמרו: בן לוי שהרג – גולה מפלך לפלך, ואם גלה לפלכו – פלכו קולטו. אמר רב אחא בריה דרב איקא: מאי קרא? "כי בעיר מקלטו ישב" – עיר שקלטתו כבר.

מתני' כיוצא בו רוצע שגלה לעיר מקלטו ורצו אנשי העיר לכבודו – יאמר להם "רוצע אני". אמרו לו "אף על פי כן" – יקבל מהן, שנאמר "וזה דבר הרוצח".

MISHNA If an unintentional murderer, exiled to a city of refuge, unintentionally killed a person in the same city,^h he is exiled from that neighborhood where he resided to another neighborhood within that city. And a Levite who is a permanent resident of a city of refuge and unintentionally killed a person is exiled from that city to another city.

GEMARA Apropos the halakha in the mishna that a Levite is exiled from one city to another city, the Gemara cites that which the Sages taught with regard to the verse: "And one who did not lie in wait... and I will appoint for you a place where he may flee" (Exodus 21:13). "And I will appoint for you"; God said to Moses: There will be a place that provides refuge for unintentional murderers already during your lifetime. "A place"; it will be from your place,ⁿ meaning the Levite camp served as the place that provided refuge in the wilderness. "Where he may flee"; this teaches that Israel would exile unintentional murderers in the wilderness as well, before they entered the land. To where did they exile unintentional murderers when they were in the wilderness? They exiled them to the Levite camp, which provided refuge.

From here the Sages said: A Levite who killed^h unintentionally is exiled from one district to another district, to a different Levite city in the other district. And if he was exiled to a city in his own district, he is admitted to the city in his district,ⁿ which provides him with refuge. Rav Aha, son of Rav Ika, said: What is the verse from which it is derived that a murderer who unintentionally killed in the city of refuge where he was exiled is exiled to another neighborhood in that same city? It is derived from a verse, as it is stated: "For in his city of refuge he shall dwell" (Numbers 35:28), indicating that it is a city in which he was already admitted, as the verse is referring to it as his city, and he shall continue to reside there as well.

MISHNA Similarly,ⁿ in the case of a murderer who was exiled to a city of refuge and the people of the city sought to honor him^h due to his prominence, he shall say to them: I am a murderer. If the residents of the city say to him: We are aware of your status and nevertheless, we wish to honor you, he may accept the honor from them, as it is stated: "And this is the matter [*devar*] of the murderer" (Deuteronomy 19:4), from which it is derived that the murderer is required to say [*ledabber*] to them that he is a murderer. He is not required to tell them any more than that.

NOTES

A place, from your place – מקום ממקומך: Rashi in *Zevahim* (117a) explains that this is derived from reading the verse "I will appoint for you a place" to mean: Your place. In other words, an unintentional murderer is admitted to Moses' place, the Levite camp where he lived.

He is admitted to the city in his district [*pilkho*] – פלכו קולטו: Rashi and the Rambam explain that *pelekh* here means district, and the *Bah* says that the reference is to the city. That was the understanding in *Tosafot* and it means that he is exiled within the city from one neighborhood to another. The early commentaries ask: How can it be said that he is admitted to his city after it was already stated that he is exiled from one city to another? They answer that one must be exiled from one city to another city *ab initio*. But if he moves from one neighborhood to another within the same city, it is effective after the fact (*Tosafot* on *Zevahim* 117a; see *Tosafot Rabbeinu Peretz*).

Similarly – כיוצא בו: Many commentaries question the use of this term, as there appears to be no connection between the matters discussed in this mishna and those discussed in the previous one. *Tosafot Yom Tov* and the Maharsha explain simply that this mishna appears in tractate *Shevi'it* as well, and in that context, there is a connection between the mishna and the one that precedes it. There, the mishna states that if one seeks to return a debt during the Sabbatical Year, the creditor must say to him: I forgive the debt. If the debtor says: Nevertheless, I wish to repay the debt, the creditor may accept repayment. In this mishna too, after the initial refusal, once the residents of the city say: Nevertheless, we wish to honor you, he may accept the honor.

NOTES

The murderers would pay – מעלים היו: Those exiled to a city of refuge would pay rent to the Levite or priestly homeowners in those cities (Rashi). *Tosafot* explain that this is not referring to rent, but to the exile's obligation to pay city taxes, as the Torah merely mandates that the Levites must accept the exiled murderers in their cities, not that they must pay the exiles' share of the tax burden.

מעלים היו שָׂכַר לְלוּיִם, דְּבָרֵי רַבִּי יְהוּדָה. רַבִּי מֵאִיר אָמַר: לֹא הָיוּ מַעֲלִים לְהֵן שָׂכַר. וְחֹזֵר לְשָׂרָרָה שְׁהִיָּה בָּהּ, דְּבָרֵי רַבִּי מֵאִיר. רַבִּי יְהוּדָה אָמַר: לֹא הָיָה חֹזֵר לְשָׂרָרָה שְׁהִיָּה בָּהּ.

The unintentional murderers would payⁿ a fee to the Levites^h as rent for their living quarters in the cities of refuge, which were Levite cities; this is the statement of Rabbi Yehuda. Rabbi Meir says: They would not pay a fee to them, but would reside rent free, as they are required to live there by Torah law. They also disagreed with regard to the status of the unintentional murderer when he returns home after the death of the High Priest. He returns to the same public office that he occupied prior to his exile; this is the statement of Rabbi Meir. Rabbi Yehuda says: He does not return to the office^h that he occupied.

גַּמְ' אָמַר רַב כְּהֵנָּא: מַחְלֻקָּת בְּשֵׁשׁ, דְּמִר סָבַר: "לְכֶם" – לְקַלְיָטָה, וְדָמַר סָבַר: "לְכֶם" – לְכָל צְרִיכֶם. אָבֵל בְּאַרְבָּעִים וּשְׁתַּיִם – דְּבָרֵי הַכֹּל הָיוּ מַעֲלִין לְהֵם שָׂכַר.

GEMARA Rav Kahana said: This dispute between Rabbi Yehuda and Rabbi Meir is with regard to payment of rent to the Levite landlords in the six cities of refuge designated in the Torah and in the book of Joshua, as one Sage, Rabbi Yehuda, holds that in the verse: "They shall be cities of refuge for you" (Numbers 35:11), the term "for you" means that the cities shall be for you only for providing refuge, and therefore they must pay rent to the Levites. And one Sage, Rabbi Meir, holds that the term "for you" means for all your needs; therefore, they are not required to pay rent. But with regard to the forty-two additional Levite cities, which also served as cities of refuge, everyone agrees that the unintentional murderers would pay rent to the Levite landlords.

אָמַר לִיָּה רַבָּא: הָא וְדָאֵי "לְכֶם" – לְכָל צְרִיכֶם מְשֻׁמְעוּ! אֲלֵא אָמַר רַבָּא: מַחְלֻקָּת בְּאַרְבָּעִים וּשְׁתַּיִם, דְּמִר סָבַר: "וְעִלְיָהֶם תִּתְּנֶנּוּ" בִּי הִנְךָ – לְקַלְיָטָה, וְדָמַר סָבַר: "וְעִלְיָהֶם תִּתְּנֶנּוּ" בִּי הִנְךָ, מָה הִנְךָ לְכָל צְרִיכֶם – אִף הִנְי נִמְי לְכָל צְרִיכֶם, אָבֵל בְּשֵׁשׁ – דְּבָרֵי הַכֹּל לֹא הָיוּ מַעֲלִים לְהֵן שָׂכַר.

Rava said to him: But the term "for you" certainly indicates for all your needs; therefore, the dispute cannot be as Rav Kahana explains it. Rather, Rava said: The dispute is only with regard to the forty-two Levite cities, as one Sage, Rabbi Yehuda, holds that from the verse: "They shall be the six cities of refuge... and beside them you shall give forty-two cities" (Numbers 35:6), it is derived that the forty-two cities are like these original six cities, only insofar as with regard to the unintentional murderer being admitted. And one Sage, Rabbi Meir, holds that from the verse: "They shall be the six cities of refuge... and beside them you shall give forty-two cities," it is derived that the forty-two cities are like these original six cities in every sense: Just as those six cities were given to you, i.e., the unintentional murderers, for all your needs, so too, these forty-two cities were given to you, i.e., the unintentional murderers, for all your needs. But with regard to the six cities specifically designated as cities of refuge, everyone agrees that unintentional murderers would not pay the Levites a fee.

HALAKHA

The murderers would pay a fee to the Levites – מעלים היו שָׂכַר לְלוּיִם: An unintentional murderer who resides in a city of refuge does not pay rent to the Levites. If he fled from one Levite city to another, he pays rent. The *halakha* is in accordance with the opinion of Rabbi Yehuda in his dispute with Rabbi Meir, based on Rava's explanation of the mishna, as Rava is a later authority (Rambam *Sefer Zera'im, Hilkhhot Rotze'ah UShmirat HaNefesh* 8:10).

He does not return to the office – לֹא הָיָה חֹזֵר לְשָׂרָרָה: Although the transgression of the unintentional murderer is atoned for by the death of the High Priest, he does not reassume his previous prominent office but must assume a less prominent position all his life, due to the heinous nature of the incident in which he was involved. The *halakha* is in accordance with the opinion of Rabbi Yehuda in his dispute with Rabbi Meir (Rambam *Sefer Nezikin, Hilkhhot Rotze'ah UShmirat HaNefesh* 7:14; see *Shulhan Arukh, Oraḥ Hayyim* 153:22 and commentaries there).

NOTES

What is the meaning of: And likewise with regard to an exile – מאי וכן בגולה – The Ritva explains that the question is: Is this part of the statement of Rabbi Meir, or is this stated even according to the opinion of Rabbi Yehuda?

HALAKHA

He does not return to that status that his ancestors held – אינו שב למה שהחזיקו אבותיו – One who was sold as a Hebrew slave does not reassume his previous prominent position, as the halakha is in accordance with the opinion of Rabbi Yehuda in his dispute with Rabbi Meir (Rambam Sefer Kinyan, Hilkhot Avadim 3:8).

”חוזר לשדרה שהיה בה” כו. תנו רבנן: ”ושב אל משפחתו ואל אחוזת אבותיו ישוב” – למשפחתו הוא שב, ואינו שב למה שהחזיקו אבותיו, דברי רבי יהודה. רבי מאיר אומר: אף הוא שב למה שהחזיקו אבותיו, אל אחוזת אבותיו” – באבותיו.

§ The mishna teaches that there is a dispute as to whether the unintentional murderer returns to the same public office that he occupied prior to his exile. On a related note, the Sages taught with regard to a Hebrew slave liberated during the Jubilee Year, about whom it is written: “And he returns to his family, and to the estate of his fathers he shall return” (Leviticus 25:41): He returns to his family, but he does not return to that status of prominence and honor that his ancestors held; this is the statement of Rabbi Yehuda. Rabbi Meir says: He even returns to that status of prominence and honor that his ancestors held. From the phrase “to the estate of his fathers he shall return,” it is derived that he returns to be like his fathers.

– וכן בגולה, כשהוא אומר ”ישוב” – לרבות את הרוצח.

And likewise, the same is true with regard to an exile sent to a city of refuge, as when the verse states: “To the estate of his fathers he shall return,” the term “he shall return” is redundant and it serves to include the unintentional murderer.

מאי וכן בגולה? כדתנא: ”ישוב הרצח אל ארץ אחוזתו” – לארץ אחוזתו הוא שב, ואינו שב למה שהחזיקו אבותיו, דברי רבי יהודה. רבי מאיר אומר: אף הוא שב למה שהחזיקו אבותיו; גמר שיבה שיבה מהתם.

The Gemara asks: What is the meaning of: And likewise, the same is true with regard to an exile?ⁿ The Gemara explains: It is as it is taught in a baraita with regard to the verse: “The murderer shall return to his ancestral land” (Numbers 35:28), from which it is derived that he returns to his ancestral land, but he does not return to that status of prominence and honor that his ancestors held;^h this is the statement of Rabbi Yehuda. Rabbi Meir says: He even returns to that status of prominence and honor that his ancestors held. Rabbi Meir derives this by means of a verbal analogy from there, i.e., between the term of “return” written with regard to the unintentional murderer, and the term of “return” written with regard to the Hebrew slave. The verbal analogy teaches that just as a Hebrew slave returns to his father’s estate and the status of prominence held by his ancestors, so too, the unintentional murderer returns to his ancestral land and to the status of prominence held by his ancestors.

הדרן עלך אלו הן הגולין

Summary of Perek II

Anyone who unintentionally and without negligence killed a Jew, a Canaanite slave, a Samaritan, and some say a *ger toshav*, is exiled to a city of refuge. One is exiled for unintentionally killing his relative or student unless he was sanctioned to strike him.

One who unintentionally kills in a case where his action is considered to be bordering on circumstances beyond his control is exempt from punishment. If he unintentionally killed another in a case where his action borders on the intentional, the city of refuge does not provide him with protection from the blood redeemer, and, due to the severity of his crime, the atonement provided by exile is insufficient to atone for his sin.

As a rule, if the killing act took place in a downward motion, whether it was the murderer himself who was descending, or whether an implement that he was holding was wielded in a downward motion, e.g., an ax used to chop wood, the murderer is exiled. Because it is understood that objects tend to fall, it was his negligence that led to the object striking and killing another. If the killing act took place in an upward motion, the killing is considered to be bordering on circumstances beyond his control. The status of a downward motion performed for the purpose of an upward motion or an upward motion performed for the purpose of a downward motion is that of an upward motion. One is liable only if the murder was perpetrated by the force of his action and not if it was perpetrated by a force generated by the force of his action. If one was chopping a tree and the blade of the ax was displaced from the force of striking the tree and killed another, he is not exiled.

There are six cities of refuge, three on the eastern side of the Jordan River, which were designated by Moses, and three in Eretz Yisrael, which were designated by Joshua. Beyond the cities of refuge mentioned explicitly in the Bible, the forty-two Levite cities also served as cities of refuge. In the Levite cities, the unintentional murderer is protected only if he entered the city with the intention of seeking protection from the blood redeemer there.

The authorities would tend to the roads leading to the cities of refuge to ensure easy access, and they would ensure a steady supply of food and water to those cities. The cities of refuge were not large cities, and products that would attract many visitors to the city were not manufactured there.

Initially, all murderers are exiled to the cities of refuge, after which they are summoned to the court for trial in their cities of residence. After one who murdered unintentionally is sentenced to exile, two Torah scholars accompany him to the city of refuge. Not only does the city itself protect the unintentional murderer, but even the area surrounding the city provides protection. Nevertheless, the unintentional murderer must reside within the city itself. As long as he is in the city or in

the surrounding area, or if he left the city unwittingly, the blood redeemer may not kill him. If the blood redeemer killed him, he is liable to be sentenced as a murderer.

The unintentional murderer who resides in the city of refuge may not leave it for any purpose, whether for his own needs or for the needs of the public. Others tend to their needs, e.g., a husband supports his exiled wife. The unintentional murderer does not pay rent in the city of exile. If he dies there, he is buried there.

With the death of the High Priest who filled that position when the unintentional murderer was sentenced to exile, the murderer leaves the city of refuge and returns home. Even then, if he filled a position of prominence before the murder, he is not restored to that position when he returns.