

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 כְּהָנָא: מַחְלֻקָּת בְּשֵׁשׁ, דְּמִר סָבַר: "לְכֶם" – לְקַלִּיטָה, וְדָמַר סָבַר: "לְכֶם" – לְכָל צְרִיכֶם. אֲבָל 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 מְשַׁמְעוּ! אֲלָא אָמַר רַבָּא: מַחְלֻקָּת בְּאַרְבָּעִים וּשְׁתַּיִם, דְּמִר סָבַר: "וְעִלִּיהֶם תִּתְּנֶנּוּ" בִּי הִנְךָ – לְקַלִּיטָה, וְדָמַר סָבַר: "וְעִלִּיהֶם תִּתְּנֶנּוּ" בִּי הִנְךָ, מַה הִנְךָ לְכָל צְרִיכֶם – אִף הֵנּוּ נָמִי לְכָל צְרִיכֶם, אֲבָל בְּשֵׁשׁ – דְּבָרֵי הַכֹּל לֹא הָיוּ מַעֲלִין 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.

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

מאי וכן בגולה? כדתנא: ”ישוב הרוצח 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.

הדרן עלך אלו הן הגולין

§ 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.

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.

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.

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.

Introduction to Perek III

If there will be a controversy between people, and they come unto judgment, and the judges judge them, and they justify the righteous and condemn the wicked. And it shall be, if the wicked man deserves to be flogged, that the judge shall cause him to lie down, and to be flogged before him, according to the measure of his wickedness, by number. Forty lashes he shall flog him, he shall not exceed; lest he exceed and flog him beyond those many lashes, and your brother shall be debased before your eyes. You shall not muzzle the ox when he threshes the grain.

(Deuteronomy 25:1–4)

From the Torah, it is learned that there are times that the court punishes the wicked by administering lashes. Yet, based on the Torah itself, the identity of the wicked person liable to receive lashes is not clear. Is it anyone who violates any of the mitzvot in the Torah? Alternatively, if it is only one who performed certain specific transgressions, what are the transgressions for which one is liable to receive lashes?

Based on the juxtaposition of the verses with regard to the punishment of lashes to the verse that prohibits the muzzling of an ox when it threshes, which is topically unrelated to the preceding and succeeding verses, the Sages derived that one is flogged only for transgression of prohibitions that are similar to the prohibition of muzzling, e.g., those that are explicit in the Torah.

The Gemara also explores what is done to a person who violates a prohibition that entails a punishment in addition to lashes, e.g., death, excision from the World-to-Come [*karet*], or monetary payment, and whether he receives both punishments or he receives just one, and if so, which one. Likewise, what is the ruling when one performs one action and violates several different prohibitions; is he flogged with only one set of lashes, or is he flogged with one set of lashes for each prohibition that he violates? Furthermore, is one who performs that same transgression a second time flogged for each time that he performs the transgression? The Gemara also must establish the *halakha* in cases of prohibitions where the Torah obligates the transgressor to fulfill a mitzva to rectify the violation. In those cases, is the transgressor flogged, or does fulfilling the mitzva suffice to remedy the prohibition?

Another aspect that requires clarification with regard to lashes is how the punishment is implemented. While the Torah established a clear, fixed number of lashes to be administered, the Gemara investigates if that is the number of lashes administered to every transgressor, even if it kills him. Furthermore, it is clear from the verses that the objective of the lashes is to debase the transgressor. The question arises: If in the course of the lashes he is debased in a different manner, is he exempted from the remainder of the lashes?

The answers to these questions, as well as clarification of practical details, e.g., who administers the lashes and how the lashes are administered, must be articulated and established.

Clarifying these matters is the focus of this chapter, and in the course of that clarification, the details of several of the transgressions mentioned in the mishna are clarified as well.

מתני' אלו הן הלוקין: הבא על אחותו, ועל אחות אביו, ועל אחות אמו, ועל אחות אשתו, ועל אשת אחיו, ועל אשת אחי אביו, ועל הנדה. אלמנה לכהן גדול, גרושה וחלוצה לכהן הדיוט, ממזרת ונתניה לישראל, בת ישראל לנתני ולממזר.

אלמנה וגרושה חייבין עליה משום שני שמות, גרושה וחלוצה אינו חייב אלא משום אחת בלבד.

הטמא שאכל את הקדש, והבא אל המקדש טמא, ואוכל חלב ודם ונתני, ופגול וטמא,

MISHNA After enumerating in tractate *Sanhedrin* those liable to be executed and in the previous chapter those liable to be exiled, the mishna proceeds to enumerate those liable to receive lashes. **These are the peopleⁿ who are flogged by Torah law for violating a prohibition: One who engages in intercourse with his sister,^h or with his father's sister, or with his mother's sister, or with his wife's sister, or with his brother's wife, or with the wife of his father's brother, or with a menstruating woman.** Likewise, one is flogged in the case of a **widow who married a High Priest,^h a divorcée or a *halutza* who married an ordinary priest, a *mamzeret*,^h i.e., a daughter born from an incestuous or adulterous relationship, or a Gibeonite woman^{nh} who married a Jew of unflawed lineage, and a Jewish woman of unflawed lineage who married a Gibeonite or a *mamzer*, i.e., a son born from an incestuous or adulterous relationship.**

The mishna elaborates: If a woman was both a **widow and a divorcée,^h** as after she was widowed she remarried and was divorced, a High Priest is **liable to receive two sets of lashes for marrying her due to the violation of two different prohibitions, that of his marrying a widow and that of his marrying a divorced woman.** If a woman was both a **divorcée and a *halutza*,^{nh}** from two different men, an ordinary priest who marries her is **liable to receive only one set of lashes, due to the violation of one prohibition alone.**

The mishna continues enumerating those liable to receive lashes: **A ritually impure person who ate^h sacrificial food and one who entered the Temple while ritually impure. And one who eats the forbidden fat of a domesticated animal; or blood; or *notar*, leftover flesh from an offering after the time allotted for its consumption; or *piggul*, an offering invalidated due to intent to sprinkle its blood, burn its fats on the altar, or consume it, beyond its designated time; or one who partakes of an offering that became impure, is flogged.**

HALAKHA

הבא על – One who engages in intercourse with his sister, etc. – אחרת וכו': One is flogged for violating any prohibition punishable by *karet* but not punishable by a court-imposed death penalty. These cases include one who engages in intercourse with his sister, his father's sister, his mother's sister, his wife's sister during the lifetime of his wife, his brother's wife, the wife of his father's brother, or a menstruating woman (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 1:7 and *Sefer Shofetim*, *Hilkhot Sanhedrin* 19:1).

אלמנה לכהן גדול וכו' – A widow who married a High Priest, etc. – In the case of either a High Priest who engaged in intercourse with a widow even if he did not betroth her, or any priest who betrothed a divorcée and engaged in intercourse with her, both the man and woman are flogged for violating a prohibition (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 17:2–3 and *Sefer Shofetim*, *Hilkhot Sanhedrin* 19:4).

ממזרת – Mamzeret – In the case of a *mamzer* who marries a Jewish woman or a *mamzeret* who marries a Jewish man, if they engage in intercourse they are liable to receive lashes by Torah law (Rambam *Sefer Nashim*, *Hilkhot Ishut* 1:7; *Sefer Kedusha*, *Hilkhot Issurei Bia* 15:2; and *Sefer Shofetim*, *Hilkhot Sanhedrin* 19:4).

Gibeonite woman – נתניה: There is no Torah prohibition forbidding a convert from the seven Canaanite nations to marry into the Jewish people. It is well known that of those nations only the Gibeonites converted. King David issued a decree that the Gibeonites may never marry into the congregation, and the prohibition is by rabbinic law. Other early commentaries disagree and maintain that it is prohibited by Torah law to marry the Gibeonites (Rambam *Sefer Nashim*, *Hilkhot Ishut* 1:7 and *Sefer Kedusha*, *Hilkhot Issurei Bia* 12:22–24; see *Shulhan Arukh*, *Even HaEzer* 4:1, 16:1).

אלמנה וגרושה וכו' – A widow and a divorcée, etc. – If a widow married and was divorced, a High Priest who engages in intercourse with her is flogged with two sets of lashes (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 17:9).

גרושה וחלוצה – A divorcée and a *halutza* – It is not prohibited by Torah law for a priest to marry a *halutza*; the prohibition is by rabbinic law. If a priest married a *halutza* and engaged in intercourse with her he is flogged with lashes for rebelliousness by rabbinic law. *Tosafot* maintain that if a divorcée married, and her husband then died and she performed *halutza* with her brother-in-law, a priest who then marries her is flogged with only one set of lashes (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 17:7 and *Mishne LaMelekh* there; see *Shulhan Arukh*, *Even HaEzer* 6:1).

הטמא שאכל את הקדש, etc. – A ritually impure person who ate, etc. – The following are liable to receive *karet* and to receive lashes: A ritually impure person who ate sacrificial food; a ritually impure person who entered the Temple courtyard; one who eats forbidden fats, blood, offerings disqualified due to *piggul*, leavened bread on Passover, or any food on Yom Kippur; one who performs labor on Yom Kippur; one who slaughters and sacrifices sacrificial animals outside the Temple; one who blends the anointing oil or the incense using the precise components and weights used by Moses; and one who applies the anointing oil on his skin. One who eats impure sacrificial meat receives lashes only and does not receive *karet*. One who eats *notar* is not flogged, as it is a prohibition that entails performance of a positive mitzva that rectifies it (Rambam *Sefer Avoda*, *Hilkhot Pesulei HaMukdashim* 18:9 and *Sefer Shofetim*, *Hilkhot Sanhedrin* 19:1, 4).

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These are the people – אלו הן: The commentaries note that this is not a comprehensive list of all those liable to receive lashes, which, according to the Meiri's calculation, number 207. The mishna lists only those prohibitions that contain a novel element, or that are similar to other prohibitions that were mentioned due to containing a novel element.

Gibeonite woman – נתניה: This refers to a member of the Gibeonite nation, inhabitants of Canaan who deceitfully entered into a covenant with Joshua, who then relegated them to labor as woodchoppers and water drawers. The early commentaries write that based on this mishna, marriage with them is prohibited by Torah law, like the others listed in the mishna. According to Rashi, this prohibition is derived from the verse: "You shall not marry them" (Deuteronomy 7:3), that is stated with regard to the inhabitants of Canaan. Other commentaries add that this indicates that the prohibition addresses marriage with them after their conversion, as marriage with gentiles does not take effect.

By contrast, the Rambam and Rashi (*Yevamot* 78b) hold that the prohibition to marry Gibeonites is not by Torah law, as by Torah law it is permitted to marry Canaanite converts, just as it is permitted to marry other converts apart from Egyptians, Edomites, Ammonites, and Moabites. Rather, Joshua and King David issued a decree prohibiting Gibeonites from entering the congregation and marrying a Jew. The Ritva writes that some versions of the text omit the case of a Gibeonite altogether (see *Mishne LaMelekh*).

A divorcée and a *halutza* – גרושה וחלוצה: Rashi explains that the reason a priest is not flogged with two sets of lashes for engaging in intercourse with a woman who is both a divorcée and a *halutza* is that the prohibition with regard to the *halutza* is derived by means of an amplification from the prohibition written with regard to the divorcée. Therefore, he violated only one prohibition. Most early commentaries maintain that the prohibition of a priest engaging in intercourse with a *halutza* is by rabbinic law, and that the derivation is a mere support, not a full-fledged derivation (*Tosafot*; Ramban).

האוכל נבלות וכי – רבי: One who eats unslaughtered animal carcasses, *tereifot*, repugnant creatures, creeping animals, second-tithe produce outside Jerusalem after it had already entered Jerusalem, or impure second-tithe produce in Jerusalem before it is redeemed is liable to receive lashes. Likewise, one who benefits from consecrated property before it is redeemed is liable to receive lashes. One who eats untithed produce from which *teruma* and the *teruma* of the tithe have not been separated is liable to be punished with death at the hand of Heaven and is flogged by the court (Rambam *Sefer Shofetim, Hilkhot Sanhedrin* 19:2, 4).

How much does one need to eat from untithed produce – כמה יאכל מן הטבל: One who intentionally eats an olive-bulk of untithed produce is liable to receive lashes, in accordance with the opinion of the Rabbis (Rambam *Sefer Kedusha, Hilkhot Ma'akhalot Assurot* 10:19, 24).

With regard to one who eats an ant of any size – כל שהוא: One who eats a non-kosher entity, e.g., an insect, regardless of its size, is liable to receive lashes by Torah law, provided that it is whole (Rambam *Sefer Kedusha, Hilkhot Ma'akhalot Assurot* 2:21).

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Repugnant creatures or creeping animals – שְׁקִצִים וְרִמְשִׁים: This expression includes all non-kosher animals.

Second-tithe produce or sacrificial food that was not redeemed – מַעֲשֵׂר שְׁנִי וְהַקֹּדֶשׁ שְׁלֵא נִפְדוּ: Second-tithe produce must be eaten in Jerusalem in a state of purity. Alternatively, one may redeem it and bring the redemption money to Jerusalem and purchase food to be eaten there. The mishna later (17a) states that with regard to second-tithe produce that had entered the city of Jerusalem, one who eats it outside of Jerusalem is flogged. The mishna here is referring to one who eats impure second-tithe produce, which must be redeemed before he is permitted to partake of it. It is mentioned here because this case is not clearly stated in the Torah.

וְהַשּׁוֹחֵט וּמַעֲלָה בַחוּץ, וְהָאוֹכֵל חֻמֵּץ בְּפֶסַח, וְהָאוֹכֵל וְהַעוֹשֶׂה מְלֶאכֶה בַיּוֹם הַכִּפּוּרִים, וְהַמְפִיט אֶת הַשֶּׁמֶן, וְהַמְפִיט אֶת הַקְטורת, וְהִסֵּךְ בְּשֶׁמֶן הַמִּשְׁחָה, וְהָאוֹכֵל נְבִילוֹת וְטֵרֵיפוֹת שְׁקִצִים וְרִמְשִׁים.

אֶכֶל טֶבֶל וּמַעֲשֵׂר רִאשׁוֹן שְׁלֵא נִטְלָה תְרוּמָתוֹ, וּמַעֲשֵׂר שְׁנִי וְהַקֹּדֶשׁ שְׁלֵא נִפְדוּ.

כִּמָּה יֵאָכֵל מִן הַטֶּבֶל וְיִהְיֶה חַיִּיב? רַבִּי שִׁמְעוֹן אוֹמֵר: כֹּל שֶׁהוּא. וְחַכָּמִים אוֹמְרִים: כַּזַּיִת. אָמַר לָהֶן רַבִּי שִׁמְעוֹן: אִי אַתֶּם מוֹדִים לִי בְּאוֹכֵל נִמְלָה כֹּל שֶׁהוּא שֶׁהוּא חַיִּיב? אָמְרוּ לוֹ: מִפְּנֵי שֶׁהֵיאָב בְּבְרִייתָהּ. אָמַר לָהֶן: אֵיךְ חִטָּה אַחַת בְּבְרִייתָהּ.

And one who slaughters a sacrificial animal or sacrifices it on an altar outside the Temple courtyard, and one who eats leavened bread on Passover, and one who eats on Yom Kippur and one who performs labor on Yom Kippur, and one who blends the anointing oil for non-sacred use, and one who blends the incense that was burned on the altar in the Sanctuary for non-sacred use, and one who applies the anointing oil, and one who eats unslaughtered animal or bird carcasses,¹¹ or *tereifot*, which are animals or birds with a condition that will lead to their death within twelve months, or repugnant creatures, or creeping animals,¹² is liable to receive lashes.

If one ate untithed produce,¹³ i.e., produce from which *terumat*¹⁴ and tithes were not separated; or first-tithe¹⁵ produce whose *teruma* of the tithe was not taken; or second-tithe¹⁶ produce or sacrificial food that was not redeemed;¹⁷ he is liable to receive lashes.

With regard to the measure for liability for eating forbidden food, the mishna asks: **How much does one need to eat from untithed produce¹⁸ and be liable to receive lashes?** Rabbi Shimon says: If one ate any amount of untithed produce he is liable to receive lashes. **And the Rabbis say:** He is liable only if he eats an olive-bulk,¹⁹ which is the minimum measure characterized as eating. **Rabbi Shimon said to them: Do you not concede to me with regard to one who eats an ant of any size²⁰ that he is liable to receive lashes?** The Rabbis said to Rabbi Shimon: He receives lashes for eating an ant of any size due to the fact that it is an intact entity in the form of its creation, and that is what the Torah prohibited. **Rabbi Shimon said to them: One kernel of wheat is also in the form of its creation, and therefore one should be liable to receive lashes for eating any intact entity.**

BACKGROUND

Untithed produce – טֶבֶל: This is produce from which *teruma* and tithes have not been separated. The Torah forbids consumption of untithed produce, and one who eats untithed produce is punished with death at the hand of Heaven. Once tithes are separated, even if they have not yet been given to the priest, Levite, or poor person for whom they are intended, the remaining produce no longer has the status of untithed produce, and it may be eaten.

Teruma – תְּרוּמָה: When the term *teruma* appears without qualification it refers to *teruma gedola*, the great *teruma*, which is given to a priest. The Torah commands that *teruma* be separated from grain, wine, and oil, and the Sages extended the scope of this mitzva to include all produce. This mitzva applies only in Eretz Yisrael.

After the first fruits have been set aside, a certain portion of the produce must be separated for the priests. The Torah does not specify the measure of *teruma* that must be separated; one fulfills his obligation by Torah law by separating even a single kernel of grain from an entire crop. The Sages established guidelines for separating *teruma*: One-fortieth of the produce for a generous gift, one-fiftieth for an average gift, and one-sixtieth for a miserly gift. One must separate *teruma* before he separates the other tithes.

Teruma is sacred and may be eaten only by a priest and his household, in a state of ritual purity (see Leviticus 22:9–15). To underscore that purity, the Sages obligated the priests to wash their hands before partaking of *teruma*; this is the source for the practice of ritually washing one's hands before eating bread. A ritually impure priest or a non-priest who partakes of *teruma* is subject to death at the hand of Heaven. If *teruma* contracts ritual impurity it is prohibited to partake of it and it must be burned. Nevertheless, it remains the property of the priest and he may benefit from its destruction, e.g., by using it as fuel.

Today one does not give *teruma* to the priests because they

have no definite proof of their priestly lineage. Nevertheless, the obligation to separate *teruma* remains, although only a small portion of the produce is separated.

First tithe – מַעֲשֵׂר רִאשׁוֹן: After *teruma* is separated, one-tenth of the remaining produce is separated to be given to the Levites. This produce is called first tithe, and the owner may give it to any Levite of his choice. A Levite who receives first tithe is obligated to separate one-tenth of it as *teruma* of the tithe and give it to a priest. The remaining first-tithe produce is the property of the Levite. It is non-sacred and may be eaten even by those who are neither priests nor Levites. Produce from which first tithe was not separated has the status of untithed produce and may not be eaten. As some people were insufficiently conscientious about separating first tithe, the Sages instituted that first tithe must be separated from doubtfully tithed produce as well. In that case, one need not give it to a Levite.

Second tithe – מַעֲשֵׂר שְׁנִי: Second tithe is one-tenth of the produce that remains after *teruma* was separated to be given to the priests and first tithe was separated to be given to the Levites. Second tithe is separated during the first, second, fourth, and fifth years of the Sabbatical cycle. After second tithe is separated, one brings it to Jerusalem and eats it there in a state of purity.

If the journey to Jerusalem is too long, rendering it difficult to transport the second-tithe produce there, or if the produce became ritually impure, one may redeem it for a sum equal to its value. If one redeems his own produce, he is obligated to add one-fifth of its value to the redemption money. The redemption money is taken to Jerusalem, where it is used to purchase food to be eaten in Jerusalem.

The Gemara teaches that one who eats second-tithe produce outside of Jerusalem is flogged only if that produce had previously entered the city. The mishna here is referring to one who eats impure second-tithe produce, which must be redeemed before one is permitted to partake of it.

Olive-bulk – כַּזַּיִת: An olive-bulk is one of the most significant halakhic units of volume, as by Torah law, the act of eating is defined as consuming one olive-bulk, and every mitzva or prohibition by Torah law that relates to eating is defined by this measure. The olive-bulk is measured in terms of the water displacement caused by a particular species of olive.

The precise measure of an olive-bulk is not clear. One talmudic passage indicates that it is almost half an egg-bulk, and another indicates that it is less than one-third of an egg-bulk. Based on that disparity, as well as the range of opinions with regard to the measure of an egg-bulk, the opinions with regard to the measure of an olive-bulk range from 5 cc to 50 cc.

Olives and olive trees are commonly found throughout Eretz Yisrael, and are an exceptionally long-lived species. Some olive trees from the time of the Sages are alive today and still bear fruit.



Ancient olive tree in Jerusalem

גמ' חייבי כריתות קא תני, חייבי מיתות בית דין לא קתני; מתניתין מני? רבי עקיבא היא. דתנא: אחד חייבי כריתות ואחד חייבי מיתות בית דין

GEMARA Apropos the list in the mishna of those liable to receive lashes, the Gemara notes: The *tanna* teaches those liable to receive excision from the World-to-Come [*karet*], as most of the cases enumerated at the beginning of the mishna include actions that not only entail violation of a prohibition but are also punishable by *karet*. But the *tanna* does not teach those liable to be executed with court-imposed death penalties among those liable to receive lashes. Apparently, lashes are not administered to those who violate a prohibition punishable by execution. The Gemara asks: **Whose opinion is expressed in the mishna? It is the opinion of Rabbi Akiva, as it is taught in a *baraita* that there is a tannaitic dispute: Both those liable to receive *karet* and those liable to be executed with court-imposed death penalties**

Perek III
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ישנו בכלל מלקות ארבעים, דברי רבי ישמעאל.

are included in the category of those liable to receive forty lashes for violating a Torah prohibition. This is the statement of Rabbi Yishmael.

רבי עקיבא אומר: חייבי כריתות ישנו בכלל מלקות ארבעים, שאם עשו תשובה בית דין של מעלה מוחלין להן. חייבי מיתות בית דין אינו בכלל מלקות ארבעים, שאם עשו תשובה אין בית דין של מטה מוחלין להן.

Rabbi Akiva says: Those liable to receive *karet* are included⁴ in the category of those liable to receive forty lashes, because if they repented, the heavenly court absolves them of the punishment of *karet*. Therefore, *karet* does not absolve them of the punishment of lashes. Those liable to be executed with court-imposed death penalties are not included in the category of those liable to receive forty lashes, as even if they repented, the earthly court does not absolve them of execution; and one is not punished by the court twice for performing the same transgression.

רבי יצחק אומר: חייבי כריתות בכלל היו, ולמה יצאת כרת באחרות – לדונן בכרת ולא במלקות.

Rabbi Yitzhak says that like those liable to be executed, those liable to receive *karet* are not flogged. Those liable to receive *karet* for incest were included in the generalization: “For anyone who performs any of these abominations, the souls who do so shall be excised [*venikhretu*] from among their people” (Leviticus 18:29). Included in that category is one who engages in intercourse with his sister. And why then did the *halakha* of *karet* with regard to intercourse with one’s sister emerge from the generalization and receive specific mention: “And a man who takes his sister... and they shall be excised before the eyes of the children of their people” (Leviticus 20:17)? It is in order to sentence one who engages in intercourse with his sister with *karet*, and not with lashes.⁵ This is the source for the opinion that those liable to receive *karet* are not flogged.

מאי טעמא דרבי ישמעאל? דכתיב “אם לא תשמור לעשות את כל דברי התורה הזאת” וכתיב “והפלאה ה’ את מכתך”, הפלאה זו אינו יודע מה היא, כשהוא אומר “והפילו השפט והכהו לפניו” הוי אומר: הפלאה זו – מלקות היא, וכתיב “אם לא תשמור לעשות את כל” וגו’.

The Gemara elaborates: What is the reason for the opinion of Rabbi Yishmael, who holds that even those liable to be executed are liable to receive lashes? It is as it is written: “If you will not observe to perform all the matters of this Torah” (Deuteronomy 28:58), and it is written immediately thereafter, with regard to the punishment of one who violates that verse: “And God will make your plagues wondrous [*vehifla*]” (Deuteronomy 28:59). The Sages interpreted that verse: This term, *hafla’a*, I do not know what its meaning is. When the verse states concerning those liable to receive lashes: “And the judge shall cause him to lie down [*vehippilo*] and to be beaten before him” (Deuteronomy 25:2), you must say that this *hafla’a* is a term referring to lashes, and it is written that this *hafla’a* is administered in any case where one does not fulfill the verse “if you will not observe to perform all the matters of this Torah,” including those prohibitions punishable by death.

HALAKHA

חייבי – Those liable to receive *karet* are included, etc. – כריתות ישנו וכו’: Anyone who violates a prohibition punishable by *karet* but not by court-imposed death penalty is flogged, provided there are witnesses to his transgression and he is forewarned. One is not flogged for violating a prohibition that serves as a mandate for court-imposed capital punishment, e.g., labor on Shabbat and adultery. This is in accordance with the opinion of Rabbi Akiva, as explained by Rava (Rambam *Sefer Kedusha, Hilkhot Issurei Bia* 1:7 and *Sefer Shofetim, Hilkhot Sanhedrin* 18:1).

NOTES

לדונן – To sentence one with *karet* and not with lashes – בכרת ולא במלקות *halakha* concerning all prohibitions punishable by *karet*, based on the hermeneutical principle: Any matter that was included in a generalization, but emerged to teach, emerged to teach not just about itself but to teach about the entire generalization.

אי הכי תיבי עשה נמי! "אם לא תשמר" כתיב, וכדרכי אבין אמר רבי אילעי, דאמר רבי אבין אמר רבי אילעי: כל מקום שנאמר "השמר" "פן" ו"אל" – אינו אלא לא תעשה.

The Gemara objects: **If so**, and Rabbi Yishmael interprets the verses in that manner, **those liable** for failing to perform positive mitzvot should **also** be flogged, as those mitzvot too are included in "all the matters of this Torah." The Gemara answers: Positive mitzvot are not included in this phrase, because "if you will not observe" is written, and this is in accordance with the principle that Rabbi Avin says that Rabbi Elai says, as Rabbi Avin says that Rabbi Elai says: **Wherever it is stated in the Torah the terms: Observe, lest, or do not, it is nothing other than a prohibition.** Since in this verse "if you will not observe" is written, only those who violate prohibitions are liable to receive lashes.

אי הכי לאו שאין בו מעשה נמי! "לעשות" כתיב.

The Gemara objects: **If so**, one should also be flogged for violating a prohibition that does not involve an action, but the *halakha* is that one is not flogged in that case. The Gemara rejects that contention: "If you will not observe to perform" is written, and in violating a prohibition that does not involve an action, one performed no action.

לאו שמתק לעשה נמי! דומיא דלאו דחסימה.

The Gemara objects: One should also be flogged for violating a prohibition that entails fulfillment of a positive mitzva, where the Torah provides the means to rectify the transgression through performance of a positive mitzva, as it does involve an action. Yet the *halakha* is that one is not flogged for violating that type of prohibition. The Gemara rejects that contention: One is not flogged in that case because lashes are administered only for violation of prohibitions similar to the prohibition of muzzling an ox while it is threshing grain (see Deuteronomy 25:4). The Torah juxtaposed that prohibition to the *halakhot* of lashes in the same passage, from which it is derived that lashes are administered only for violations similar to muzzling, i.e., a prohibition that does not entail fulfillment of a positive mitzva.

השתא דאתית להכי – כולהו נמי דומיא דלאו דחסימה.

The Gemara comments: **Now that you have arrived at this understanding**, all the previous objections can also be resolved in the same manner: No lashes are administered for failure to fulfill a positive mitzva or for violation of a prohibition that does not entail an action, because one is flogged for violation only of prohibitions similar to the prohibition of muzzling, which is a prohibition and involves an action.

ורבי עקיבא מאי טעמא? "כדי רשעותו" משום רשעה אחת אתה מחייבו, ואי אתה מחייבו משום שתי רשעות.

The Gemara continues its analysis of the opinions cited in the *baraita*: **And with regard to Rabbi Akiva, what is the reason** he maintains that those liable to be executed are not flogged? It is written: "And the judge shall cause him to lie down and to be beaten before him, according to the measure of his wickedness" (Deuteronomy 25:2), from which it is derived with regard to one who commits one transgression: **For one evildoing you can render him liable, but you cannot render him liable for two evildoings**, i.e., one cannot receive two punishments for the same act. Therefore, execution suffices and he is not flogged.

ורבי ישמעאל: הני מילי מיתה וממו, או מלקות וממו, אבל מיתה ומלקות – מיתה אריכתא היא.

And Rabbi Yishmael holds that **this matter** applies only with regard to one transgression punishable by both **death and monetary restitution**, or punishable by both **lashes and monetary restitution**. But **death and lashes** are not considered two separate punishments, rather both forms of physical punishment are together considered an **extended death**, with the lashes followed by the execution.

ולרבי עקיבא, אי הכי תיבי כריתות נמי! מאי אמרת, שאם עשו תשובה? השתא מיהת לא עבדי!

The Gemara asks: **And according to Rabbi Akiva, if that is so**, that one does not receive two punishments for one transgression, **those liable** to receive *karet* too should not be flogged. **What did you say** in response, **that if they repented** they are exempt from *karet*, and therefore they are flogged instead? **Now, in any event**, at the point when they are flogged they have not yet done so, i.e., repented.

אמר רבי אבהו: בפירוש ריבתה תורה חיובי כריתות למלקות, דגמר "לעיני" מ"לעיניך". מתקיף לה רבי אבא בר ממל: אי הכי חיובי מיתות בית דין נמי, נגמר "מעני" מ"לעיניך"!

Rabbi Abbahu says: The Torah explicitly included with regard to lashes those liable to receive *karet*, as is derived by means of a verbal analogy: "And they shall be excised [*venikhretu*] before the eyes of [*le'einei*] the children of their people" (Leviticus 20:17), from: "Forty he shall flog him... and your brother shall be dishonored before your eyes [*le'einekha*]" (Deuteronomy 25:3). Rabbi Abba bar Memel objects to this: If so, the inclusion of those liable to be executed with court-imposed death penalties should also be learned by means of a verbal analogy: "If from the eyes of [*me'einei*] the assembly it was performed unwittingly" (Numbers 15:24) stated with regard to idol worship, for which one is liable to be executed, from: "Before your eyes," stated with regard to lashes. On that basis, one should derive that those liable to be executed with a court-imposed death penalty should also be flogged.

דנין "לעיני" מ"לעיניך", ואין דנין "מעני" מ"לעיניך".

The Gemara rejects that objection: **One derives** by means of a verbal analogy *le'einei* from *le'einekha*, due to the similar prefix, **but one does not derive** *me'einei* from *le'einekha*.

ומאי נפקא מינה? והא תנא דבי רבי ישמעאל: "ושב הכהן" ו"בא הכהן" – זו היא שיבה זו היא ביאה!

The Gemara asks: **And what significant difference is there** between them that prevents derivation by means of a verbal analogy? **But didn't the school of Rabbi Yishmael teach** a verbal analogy with regard to leprosy of houses? The verse states: "And the priest shall return [*veshav*] on the seventh day" (Leviticus 14:39), and another verse with regard to the priest's visit seven days later states: "And the priest shall come [*uva*] and look" (Leviticus 14:44). **This returning and this coming** have the same meaning, and one can therefore derive by verbal analogy that the *halakha* that applies if the leprosy had spread at the conclusion of the first week applies if it had spread again by the end of the following week. Obviously, the less pronounced difference between *me'einei* and *le'einekha* should not prevent the teaching of a verbal analogy.

ועוד, לגמר "מעני" מ"לעיני", דהא גמור "לעיני" מ"לעיניך"!

And furthermore, why not derive by means of a verbal analogy *me'einei* written with regard to court-imposed death penalties from *le'einei* written with regard to *karet*, since those two terms are more similar, just as a verbal analogy of *le'einei* from *le'einekha* was derived.

קבלה מינה רבי שמואל בר רב יצחק: כדבי רשעתו – משום רשעה אחת אתה מחייבו ואי אתה מחייבו משום שתי רשעיות – ברשעה המסורה לבית דין הכתוב מדבר.

The Gemara answers: **Rabbi Shmuel bar Rav Yitzhak received** a tradition from Rabbi Abbahu that the reason those liable to receive *karet* are flogged and it is not considered two punishments for one transgression is that when the verse states: "According to the measure of his wickedness" (Deuteronomy 25:2), from which it is derived: **For one evildoing you can render him liable, but you cannot render him liable for two evildoings, the verse is speaking with regard to an evildoing that is given to the jurisdiction of the court**, not to an act of wickedness punishable at the hand of Heaven.

רבא אמר: אתרו ביה לקטלא – בולי עלמא לא פליגי דאין לוקה ומת. כי פליגי – דאתרו ביה למלקות, רבי ישמעאל סבר: לאו שניתן לאזהרת מיתת בית דין – לוקין עליו, ורבי עקיבא סבר: לאו שניתן לאזהרת מיתת בית דין – אין לוקין עליו.

§ Rava says with regard to the dispute between Rabbi Yishmael and Rabbi Akiva: If the witnesses or other onlookers forewarned him that if he performs the transgression he will be sentenced to death, everyone, even Rabbi Yishmael, agrees that he is not both flogged and executed. When they disagree, it is in a case where they forewarned him that he will be sentenced to lashes. Rabbi Yishmael maintains that with regard to a prohibition in the Torah that potentially serves as a mandate for court-imposed capital punishment,^N one is flogged for its violation in a case where there is no actual death penalty, and Rabbi Akiva maintains that with regard to a prohibition in the Torah that potentially serves as a mandate for court-imposed capital punishment, one is not flogged for its violation even if no death penalty is imposed, as that prohibition is punishable only by death.

NOTES

That serves as a mandate for court-imposed capital punishment – שניתן לאזהרת מיתת בית דין: There is a principle that one administers punishment only if the Torah stated a prohibition with regard to that action. According to the opinion of Rabbi Akiva, in cases where the punishment stated in the Torah is a court-imposed death pen-

alty, the prohibition relates specifically to that punishment, not the punishment of lashes. Therefore, even if the witnesses forewarn the transgressor that he will be flogged, and do not forewarn him of the possibility that he will receive a court-imposed death penalty, the transgressor is not flogged.

NOTES

Forewarning [*hatra'a*] – התראָה: The commentaries note that the text should in fact read: A prohibition [*azhara*], not: Forewarning [*hatra'a*].

Paschal offering and circumcision – פסח ומילה: Although the Torah contains a command to fulfill these mitzvot, and based on that command one who fails to fulfill them is liable to receive *karet*, they are positive mitzvot and are not formulated as prohibitions.

That all the mitzvot in the entire Torah are juxtaposed – דאיתקש כל התורה כולה: It is stated with regard to one who unwittingly worships idols: “There shall be one law for you and for one who acts unwittingly” (Numbers 15:29). From that verse it is derived that the *halakha* of all those who unwittingly perform transgressions are likened to the *halakha* of one who worships idols unwittingly. Therefore, one is liable to bring a sin-offering only for performing a transgression similar to idol worship. Accordingly, even if one is liable to receive *karet* for intentionally failing to fulfill certain positive mitzvot, he is not liable to bring a sin-offering for unwitting failure to fulfill them.

HALAKHA

For the positive mitzvot of the Paschal offering and circumcision...one does not bring an offering – פסח – ומילה...לא מביית קרבן: In the case of one who failed to bring the Paschal offering or was not circumcised, even though he is punished with *karet* if he did so intentionally, he is not liable to bring a sin-offering if he did so unwittingly, as one is liable to bring a sin-offering only for the unwitting violation of a prohibition (Rambam *Sefer Korbanot, Hilkhot Shegagot* 1:2).

ורבי עקיבא, אי הכי חייבי כריתות נמי, לאו שניתן לאזהרת כרת הוא! אמר ליה רב מרדכי לרב אשי, הכי אמר אבימי מהגרוניא משמיה דרבא: חייבי כריתות לא צריכי התראה, שהרי פסח ומילה ענש אף על פי שלא הזהיר.

ודלמא אזהרה לקרבן, דהא פסח ומילה דלית בהו אזהרה לא מביית קרבן!

התם לאו היינו טעמא, אלא משום דאיתקש כל התורה כולה לעבודה זרה: מה עבודה זרה – שב ואל תעשה, אף כל – שב ואל תעשה, לאפוקי הני דקום עשה.

The Gemara asks: **And** according to Rabbi Akiva, if so, with regard to those liable to receive *karet* as well, they violated a prohibition in the Torah that serves as a mandate for *karet* and not for lashes. Rav Mordekhai said to Rav Ashi: This is what Avimi from Hagronya said in the name of Rava: Those liable to receive *karet* do not require forewarning,^N as in the case of one who fails to fulfill the positive mitzvot of the Paschal offering and circumcision^N the Torah punished them with *karet* even though it did not warn that it is prohibited to fail to fulfill the mitzva. Therefore, the prohibitions written in cases punishable with *karet* are written to teach that one can receive lashes for their violation, not to mandate the punishment of *karet*.

The Gemara asks: **But perhaps** the prohibition is written concerning those liable to receive *karet* with regard to liability to bring an offering for unwitting violation of the prohibition, not to teach that the transgressor will receive lashes, as for failure to fulfill the positive mitzvot of the Paschal offering and circumcision, for which there is no biblical prohibition, one does not bring an offering.^H

The Gemara rejects that suggestion: **There**, with regard to the Paschal offering and circumcision, that is not the reason that one does not bring an offering. **Rather**, it is due to the fact that all the mitzvot in the entire Torah whose unwitting violation requires the transgressor to bring a sin-offering are juxtaposed^N to and likened to idol worship. Just as idol worship is a prohibition about which the Torah commands: Sit and do not perform the transgression, and one who unwittingly performs the transgression is liable to bring a sin-offering, so too, with regard to any prohibition about which the Torah commands: Sit and do not perform the transgression, one who unwittingly performs the transgression is liable to bring a sin-offering. This serves to exclude these mitzvot of the Paschal offering and circumcision, concerning which the Torah commands: Arise and perform the mitzva, and one violates the mitzva by refraining from action. In those cases, one who unwittingly fails to perform these mitzvot is not liable to bring a sin-offering.

רביןא אמר: לעולם Ravina says: Actually, the reason Rabbi Akiva rules that those liable to receive *karet* are flogged is

Perek III
Daf 14 Amud a

כדאמרין מעיקרא, שאם עשו תשובה – בית דין של מעלה מוחלין להן. מאי אמרת, הא לא עבוד תשובה? לא פסיקא מילתא לכרת.

רבי יצחק אומר: חייבי כריתות בכלל היו, ולמה יצאת כרת באחותו – לדונן בכרת ולא במלקות.

as we stated initially, that if they repented the heavenly court absolves them of the punishment of *karet*, and therefore this is not a case of two punishments for one transgression, and there is no exemption from lashes. **What do you say** in response, that they did not yet repent? Nevertheless, since the matter is not clear-cut with regard to *karet*, as perhaps they repented, they are therefore not exempt from lashes.

§ It is taught in the *baraita* that Rabbi Yitzhak says: Those liable to receive *karet* in cases of incest were included in the principle: “For anyone who performs any of these abominations, the souls who do so shall be excised from among their people” (Leviticus 18:29). **And why** was the punishment of *karet*, when administered to one who engages in intercourse with his sister, excluded from this verse and mentioned independently (Leviticus 20:17)? It is to sentence him to be punished with *karet* and not to be punished with lashes.

ורבנן, ברת באחותו למה לי? לתלק, וכדברי יוחנן. דאמר רבי יוחנן: שאם עשאן בולם בהעלם אחד - חייב על כל אחת ואחת.

The Gemara asks: **And** according to the Rabbis, i.e., Rabbi Yishmael and Rabbi Akiva, who maintain that those liable to receive *karet* are flogged, **why do I need *karet*** to be written in the case of one who engages in intercourse with his sister; what does it teach? The Gemara answers: It teaches to divide the various prohibitions of sexual intercourse with forbidden relatives, and is in accordance with the statement of Rabbi Yohanan, as Rabbi Yohanan says that if one performed all the transgressions described in the passage in the Torah enumerating forbidden relatives during one lapse of awareness,^h he is liable to bring a separate sin-offering for each and every one, as one is liable to receive *karet* for each and every one.

ורבי יצחק, לחלק מנא ליה? נפקא ליה מ'ואל אשה בנדת טמאתה', לחייב על כל אשה ואשה.

The Gemara asks: **And** concerning Rabbi Yitzhak, who derives the *halakha* that one who is liable to receive *karet* is not flogged from the fact that *karet* for one who engages in intercourse with his sister emerged from the generalization, **from where does he derive the concept to divide** the various prohibitions? The Gemara answers: **He derives it from** the verse written with regard to a menstruating woman: **"And to a womanⁿ in the separation of her impurity you shall not approach"** (Leviticus 18:19). From the superfluous expression "and to a woman," Rabbi Yitzhak derives that one is liable for intercourse with each and every forbidden woman.

ורבנן נמי, תיפוק ליה מהא! אין הכי נמי. ואלא ברת דאחותו למה לי? לחייבו על אחותו ועל אחות אביו ועל אחות אמו.

The Gemara asks: **And** with regard to the Rabbis as well, **let them derive** the division of the prohibitions from this verse, rather than from the fact that *karet* for one who engages in intercourse with his sister emerged from the generalization. The Gemara answers: **Yes, it is indeed so**, they derive division from the verse with regard to a menstruating woman; **but rather**, the question again arises: **Why do I need *karet*** to be written in the case of one who engages in intercourse with his sister; what does it teach? The Gemara answers: It teaches to render him liable to bring three separate sin-offerings for engaging in intercourse with his sister, and with his father's sister,ⁿ and with his mother's sister, during a single lapse of awareness.

פשיטא, הרי גופין מוחלקין, הרי שמות מוחלקין! אלא, לחייבו על אחותו שהיא אחות אביו שהיא אחות אמו. והכי משקחת לה - ברשיעא בר רשיעא.

The Gemara asks: Isn't the fact that he is liable to bring three sin-offerings obvious? The actions were performed with separate bodies, i.e., three different women, and those actions violated the names of three separate prohibitions; no derivation is required. **Rather**, it is to render him liable to bring three separate sin-offerings for engaging in intercourse with his sister who is^h also his father's sister and who is also his mother's sister. The Gemara inquires: **And how can you find these** circumstances? The Gemara answers: It is found in the case of a wicked person, son of a wicked person. How so? If a man engages in intercourse with his mother, and she bears him two daughters, and he then engages in intercourse with one of the daughters and fathers a son, that son could engage in intercourse with the other daughter, who is his half sister through his father, as well as being his father's half sister and his mother's half sister.

ורבי יצחק, הא מנא ליה? נפקא ליה מקל וחומר. דתניא, אמר רבי עקיבא: שאילתי את רבן גמליאל ורבי יהושע באיטליו של עימאוס, שהלכו ליקח בהמה למשתה בנו של רבן גמליאל: הבא על אחותו שהיא אחות אביו שהיא אחות אמו, מהו? [אינו] חייב על כולן אלא אחת, או חייב על כל אחת ואחת?

The Gemara asks: **And** with regard to Rabbi Yitzhak, **from where does he derive this? He derives it by means of an a fortiori** inference, as it is taught in a *baraita* that Rabbi Akiva says: I asked Rabban Gamliel and Rabbi Yehoshua a question in the meat market [itliz]¹ of the town of Emmaus,² where they went to purchase an animal for the wedding feast of Rabban Gamliel's son. Rabbi Akiva asked: In the case of one who engages in intercourse with his sister who is also his father's sister and who is also his mother's sister, what is the *halakha* with regard to bringing a sin-offering? Is he liable to bring only one sin-offering for engaging in intercourse that violated all of the prohibitions, or is he liable to bring a sin-offering for each and every prohibition that he violated when he engaged in intercourse with that woman?

That if one performed all the transgressions during one lapse of awareness – שאם עשאן בולם בהעלם אחד – One who performs multiple transgressions during one lapse of awareness is liable to bring a sin-offering for each and every transgression (Rambam *Sefer Korbanot, Hilkhot Shegagot* 4:1).

To render him liable for engaging in intercourse with his sister who is, etc. – לחייבו על אחותו שהיא וכו' – One who unwittingly engages in intercourse with his sister who is also his father's sister and his mother's sister is liable to bring three sin-offerings (Rambam *Sefer Korbanot, Hilkhot Shegagot* 4:5).

NOTES

From the verse: And to a woman – מואל אשה – This phrase is superfluous, as the verse could have simply been formulated: And to one in the separation of her impurity. From the superfluous phrase: And to a woman, it is derived that he is liable for intercourse with each and every woman (Rashi).

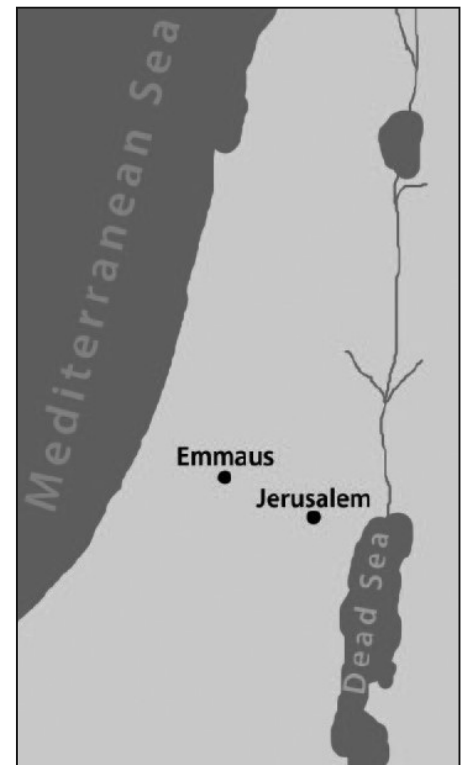
With his sister and with his father's sister, etc. – על אחותו ועל – לחייבו על אחותו ועל אחות אביו וכו': The logic behind this question is: Since all these prohibitions are based on sibling ties, one could understand that they are all details of a single prohibition (Rashi on *Karetot* 2b).

LANGUAGE

Meat market [itliz] – איטליו: This word is used in modern Hebrew to mean butcher. Most scholars attribute the derivation to the Greek *κατάλυσις, katalusis*, meaning, among other things, quarters, lodging, a place to rest, and the like. Some claim that it derives from the Greek *ἀτελής, atelēs*, meaning tax-free zone, and by extension, a fair, where people engaged in commerce and often enjoyed tax-exempt status.

BACKGROUND

Emmaus – עימאוס: An ancient Judean town approximately 30 km northwest of Jerusalem, near modern-day Latrun. Emmaus marks the border between the Judean hills and the plains, and was already mentioned in the books of the Hasmoneans. Over the years, it developed into a resort town, with hot springs and baths.



Location of Emmaus

One who engages in intercourse with five menstruating women – **הִבָּא עַל חֲמֵשׁ נָשִׁים נְדוּת** – One who engages in intercourse with numerous women who are forbidden to him in one lapse of awareness is liable to be punished for having engaged in intercourse with each and every one of them. Even in a case where the prohibition with regard to all of them is the same, since they are separate entities one is liable for the act of intercourse with each woman. In this case, one who engaged in intercourse with five menstruating women in one lapse of awareness is liable to bring five sin-offerings (Rambam *Sefer Korbanot, Hilkhhot Shegagot* 5:3).

אָמְרוּ לוֹ: זֶה לֹא שְׂמֵעָנּוּ, אֲבָל שְׂמֵעָנּוּ: הִבָּא עַל חֲמֵשׁ נָשִׁים נְדוּת בְּהֶעֱלִם אֶחָד – שְׂחִיב עַל כָּל אַחַת וְאַחַת, וְנִרְאִין דְּבָרִים מְקַל וְחוֹמֶר: וּמָה נִדָּה שֶׁהִיא שִׁם אֶחָד חִיב עַל כָּל אַחַת וְאַחַת, בְּאֵן שְׂשִׁלְשָׁה שְׂמוֹת – לֹא כָּל שְׂבָן?

Rabban Gamliel and Rabbi Yehoshua said to him: We did not hear the *halakha* in that case. But we heard the *halakha* in a similar case: **One who engages in intercourse with five menstruating women¹¹ during one lapse of awareness is liable to bring a sin-offering for each and every one** of the women with whom he engaged in intercourse, **and it appears with regard to the matter** of your inquiry that he is liable to bring a sin-offering for each and every prohibition, **by means of an *a fortiori* inference.** How so? **If in the case of a menstruating woman, which involves violation of the name of one prohibition, he is liable for intercourse with each and every one, here, where the woman is forbidden due to the names of three prohibitions, is it not all the more so** logical that he is liable to bring three sin-offerings?

וְאִידֶךָ, קַל וְחוֹמֶר פְּרִיכָא הוּא: מַה לְנִדָּה, שְׂבָן גּוֹפִין מִיחְלָקִין.

The Gemara explains: **And according to the other opinion of the Rabbis, who maintain that liability for intercourse with each and every one is derived from an explicit verse, it is a refuted *a fortiori* inference:** **What is notable about the case of a menstruating woman?** It is notable **in that** the actions were performed with **separate bodies, i.e.,** different women, while in the case in question, the person engaged in intercourse with one woman.

וְלֵאדֶךָ נִמְי, הָאִי וְדָאִי קַל וְחוֹמֶר פְּרִיכָא הוּא! אֵלֵא נִפְקָא לִיה מִ"אַחַת" דְּסִיפָא.

The Gemara asks: **And according to the other opinion of Rabbi Yitzhak too, this is certainly a refuted *a fortiori* inference,** from which no *halakha* can be derived. **Rather,** as for the *halakha* that a person is liable to bring three sin-offerings for engaging in intercourse with his sister who is also his father's sister and who is also his mother's sister, **Rabbi Yitzhak derives it from the phrase "his sister" written in the latter clause** of that verse. The verse begins: "And a man who takes his sister, the daughter of his father or the daughter of his mother... and they shall be excised... the nakedness of his sister he has revealed, he shall bear his transgression" (Leviticus 20:17). From the repetition of the term sister, it is derived that he is liable to bring a sin-offering for each and every prohibition that he violated.

וְאִידֶךָ, "אַחַת" דְּסִיפָא לָמָּה לִי? לְחִיבּוֹ עַל אַחַת בֵּית אָבִיו וּבֵית אִמּוֹ, לֹא מִרְשָׁאִין עוֹנְשִׁין מִן הַדִּין.

The Gemara asks: **And according to the other opinion of the Rabbis, who derive this *halakha* from the term "sister" at the beginning of the verse, why do I need the phrase "his sister" to be written in the latter clause of that verse; what does it teach?** The Gemara answers: It teaches to **render him liable** for engaging in intercourse with his **sister who is also the daughter of his father and the daughter of his mother, which comes to say that one does not administer punishment based on an *a fortiori* inference.**¹² Although the Torah specified liability for one who engaged in intercourse with his paternal sister and for one who engaged in intercourse with his maternal sister, an independent derivation is necessary for liability for one who engaged in intercourse with a woman who is both his paternal and his maternal sister.

NOTES

To say that one does not administer punishment based on an *a fortiori* inference – לֹא מִרְשָׁאִין עוֹנְשִׁין מִן הַדִּין – From Rashi and other commentaries it appears that the Gemara is explaining that a verse is required in this case, because one does not administer punishment based on a derivation from an *a fortiori* inference. The *Arukh LaNer* explains that the term: To say, is difficult according to this explanation. He explains that this verse is the very source for the principle that one does not administer punishment based on an *a fortiori* inference.

Although the *a fortiori* inference is one of the hermeneutical principles by means of which the Torah is interpreted, and is based on fundamental logic, one does not rely on that inference when

determining whether to administer corporal punishment. With regard to the rationale for this principle, if the assumption is that it is not a Torah edict, for which one does not know a reason, the commentaries write that since this type of inference is based on logic, the possibility always exists that a flaw may be discovered in the logic and the inference will be refuted (*Halikhot Olam*). Alternatively, since the various punishments are designed to atone for specific transgressions, if one commits a severe transgression and receives a less severe punishment that was derived *a fortiori*, he will not achieve the requisite atonement for his transgression (Maharsha).

He derives the punishment from the prohibition – **נָמַר עֹנֵשׁ מֵאִהָרָה**: Rashi explains that the term “your sister” in the prohibition in Leviticus, chapter 17, is superfluous, and therefore from that term it is derived that a full-fledged sister who shares with him both a common father and a common mother is also included in the prohibition. Subsequently, it is derived either by means of the hermeneutical principle: What do we find, or by means of a verbal analogy, that when the verse in Leviticus, chapter 20, mentions a sister with regard to punishment, a sister who shares with him both a common father and a common mother is also included (see Ritva).

HALAKHA

For one who blends anointing oil or for one who applies anointing oil to receive *karet* – **כֶּרֶת לְמַפְטֵם**: With regard to one who blends the anointing oil using the components and the weights used by Moses with no deviation, if he does so in order to use it for anointing, he is liable to receive *karet* if he did so intentionally, and he is liable to bring a sin-offering if he did so unwittingly. Similarly, one who applies on his skin the anointing oil prepared by Moses is liable to receive *karet* if he did so intentionally, and to bring a sin-offering if he did so unwittingly (Rambam *Sefer Avoda, Hilkhot Kelei HaMikdash* 1:4–5).

וְאִידֶךָ, אֵיבָעִית אִימָא: גָּמַר עֹנֵשׁ מֵאִהָרָה.
וְאֵיבָעִית אִימָא: נִפְקָא לִיה

The Gemara asks: **And** according to the other opinion of Rabbi Yitzhak, who derives another matter from the term “sister” in the latter verse, from where does he derive liability for one who engaged in intercourse with a woman who is both his paternal and his maternal sister? The Gemara answers: **If you wish, say he derives the punishment from the prohibition;**^N just as the prohibition includes intercourse with a woman who is both his paternal and his maternal sister, the same applies to the punishment. **And if you wish, say instead that he derives it**

Perek III

Daf 14 Amud b

מֵאִהָרָהוּ דְרִישָׁא.

from the term “his sister” at the beginning of the verse (Leviticus 20:17), as the verse could have been formulated: And a man who takes the daughter of his father or the daughter of his mother, and there is no need to mention a sister at all. Liability for intercourse with a woman who is the daughter of both his father and his mother is derived from the term “his sister.”

וְאִידֶךָ: הֵהוּא מִיבְעִי לִיה לְחֵלֶק כֶּרֶת לְמַפְטֵם
וְלִסְדָּךְ.

And according to the other opinion of the Rabbis, since nothing relevant to the topic of intercourse with one’s sister is derived from the term “sister,” **that term is necessary** in order to derive an unrelated matter, i.e., **to divide** the various prohibitions and establish liability for either **one who blends** anointing oil or for **one who applies** anointing oil to receive *karet*,^H if he performed either intentionally, and to bring a sin-offering if he performed either unwittingly, even though only a single punishment of *karet* is written in the verse: “A man who blends a mixture like it and who places any of it upon a non-priest, and he shall be excised from his people” (Exodus 30:33).

וְאִידֶךָ: סִבַּר כְּרַבִּי אֶלְעָזָר אָמַר רַבִּי הוֹשִׁיעָא.
דְּאָמַר רַבִּי אֶלְעָזָר אָמַר רַבִּי הוֹשִׁיעָא: כָּל
מְקוֹם שֶׁאֵתָּה מוֹצֵא שְׁנֵי לְאוּיָן וְכֶרֶת אֶחָד –
חֵלְקִין הֵן לְמַרְבָּן.

And the other, Rabbi Yitzhak, holds in this regard in accordance with that which Rabbi Elazar says that Rabbi Hoshaya says, as Rabbi Elazar says that Rabbi Hoshaya says that there is a principle: **Any place where you find two different prohibitions and one punishment of *karet* stated concerning them, they are distinct with regard to liability to bring an offering;** if he performed both unwittingly, he is liable to bring two sin-offerings. According to Rabbi Yitzhak, there is no need for an additional derivation to render one who unwittingly blends and applies anointing oil liable to bring two sin-offerings.

וְאִי בְעִית אִימָא: לָא סִבַּר לָהּ כְּרַבִּי אֶלְעָזָר.
וְנִפְקָא לִיה מֵאִישׁ אֶשְׁרֵי יִשְׁכַּב אֶת אִשְׁה
דְּוָה׃

And if you wish, say instead that he does not hold in accordance with that which Rabbi Elazar says that Rabbi Hoshaya says in this regard, **and he derives** liability to bring two sin-offerings for one who unwittingly blends and applies anointing oil from a superfluous term elsewhere: “**And a man who lies with a woman who is afflicted**, and ... both of them shall be excised” (Leviticus 20:18). Intercourse with a menstruating woman is already included in the verse: “For anyone who performs any of these abominations, the souls who do so shall be excised from among their people” (Leviticus 18:29). Since this verse does not introduce any nuance concerning the punishment of *karet* for one who engages in intercourse with a menstruating woman, an unrelated matter is derived, which establishes liability for one who blends anointing oil and for one who applies anointing oil to receive *karet* if he performed either act intentionally, and to bring a sin-offering if he performed either act unwittingly.