

It is possible and he does not intend – אָפּשָׁר וְלֹא מִיכּוּוּן: In this case the phrase: It is possible, means that it is possible for one to achieve the desired outcome in another way without much difficulty. It is not possible means that achieving the desired outcome differently would require a great deal of effort and trouble (Ritva; Maharam Halawa).

אָפּשָׁר וְקַא מִיכּוּוּן, לֹא אָפּשָׁר וְקַמִּיכּוּוּן – כּוּלִי עֲלֵמָא לֹא פְּלִיגִי דְאָסוּר. לֹא אָפּשָׁר וְלֹא מִיכּוּוּן – כּוּלִי עֲלֵמָא לֹא פְּלִיגִי דְשָׂרִי. כִּי פְּלִיגִי – דְאָפּשָׁר וְלֹא מִיכּוּוּן.

The Gemara explains: In a case where it is possible to avoid deriving benefit and he intends to derive benefit from the prohibited object, or where it is not possible to avoid it and he intends to derive benefit, everyone agrees that it is prohibited, because he intended to derive benefit that was prohibited. And when it is not possible to avoid it and he does not intend to derive benefit, everyone agrees that it is permitted, as one had no choice in the matter. Where they disagree is in a case where it is possible for him to avoid the prohibition, and he does not intendⁿ to derive benefit from it.

וְאֵלִיבָא דְרַבִּי יְהוּדָה, דְאָמַר "דְּבַר שְׂאִין מִתְּכּוּוּן – אָסוּר" – כּוּלִי עֲלֵמָא לֹא פְּלִיגִי דְאָסוּר. כִּי פְּלִיגִי – אֵלִיבָא דְרַבִּי שְׁמַעוֹן, דְאָמַר "דְּבַר שְׂאִין מִתְּכּוּוּן מוּתָר". אַבְיִי – דְרַבִּי שְׁמַעוֹן, וְרַבָּא אָמַר: עַד כַּאֵן לֹא קַא אָמַר רַבִּי שְׁמַעוֹן – אֵלֹא הֵיכָא דְלֹא אָפּשָׁר, אַבְּל הֵיכָא דְאָפּשָׁר – לֹא.

The Gemara limits the dispute further: And according to Rabbi Yehuda, who said that an unintentional prohibited act is prohibited, everyone agrees that it is prohibited, as Rabbi Yehuda maintains that one's action is more significant than his intent. Where they disagree is in accordance with the opinion of Rabbi Shimon, who said that an unintentional prohibited act is permitted. Apparently, Abaye holds in accordance with the opinion of Rabbi Shimon. And Rava would say: Rabbi Shimon stated his opinion only with regard to a case where it is not possible to avoid the prohibition. However, in a case where it is possible to avoid the prohibition, no, he did not permit one to derive benefit from such a prohibition even unintentionally. This is one version of the dispute.

אֵיכָא דְאָמַר: אָפּשָׁר וְלֹא מִיכּוּוּן – הֵינּוּ פְּלוּגְתִּיהוּ דְרַבִּי יְהוּדָה וְרַבִּי שְׁמַעוֹן. לֹא אָפּשָׁר וְלֹא קַא מִיכּוּוּן – כּוּלִי עֲלֵמָא לֹא פְּלִיגִי דְשָׂרִי, כִּי פְּלִיגִי – דְלֹא אָפּשָׁר וְקַא מִיכּוּוּן. וְאֵלִיבָא דְרַבִּי שְׁמַעוֹן דְאָוִיל בְּתַר כּוּוּנָה – כּוּלִי עֲלֵמָא לֹא פְּלִיגִי דְאָסוּר. כִּי פְּלִיגִי – אֵלִיבָא דְרַבִּי יְהוּדָה, דְאָמַר: לֹא שְׂנָא מִתְּכּוּוּן וְלֹא שְׂנָא שְׂאִין מִתְּכּוּוּן – אָפּשָׁר אָסוּר.

Some say that the dispute should be understood as follows: In a case where it is possible to avoid deriving benefit and he does not intend to derive benefit, this is the case of dispute between Rabbi Yehuda and Rabbi Shimon. Where it is not possible to avoid it and he does not intend to derive benefit from the prohibited item, everyone agrees that it is permitted to do so. Where they disagree is in a case where it is not possible to avoid deriving benefit and he intends to derive benefit from it. The Gemara limits the dispute further: According to the opinion of Rabbi Shimon, who follows one's intent, everyone agrees that it is prohibited. Where they disagree is in accordance with the opinion of Rabbi Yehuda, who said: There is no difference whether one intends or does not intend; the issue is whether he can avoid it or not. Therefore, if it is possible to avoid deriving benefit, it is prohibited.

אַבְיִי בְּרַבִּי יְהוּדָה,

Based on this understanding of the dispute, Abaye holds in accordance with the opinion of Rabbi Yehuda. In other words, in a case where it is not possible to avoid the situation completely, even if one has intent it is permitted.^N

NOTES

The dispute between Abaye and Rava – מְחִלּוֹקַת אַבְיִי וְרַבָּא

The Disputants		It is possible and he intends	It is not possible and he intends	It is possible and he does not intend	It is not possible and he does not intend
First Version	Abaye	Prohibited	Prohibited	Rabbi Yehuda: Prohibited Rabbi Shimon: Permitted	Permitted
	Rava	Prohibited	Prohibited	Rabbi Yehuda: Prohibited Rabbi Shimon: Prohibited	Permitted
Second Version	Abaye	Prohibited	Rabbi Yehuda: Permitted Rabbi Shimon: Prohibited	Rabbi Yehuda: Prohibited Rabbi Shimon: Permitted	Permitted
	Rava	Prohibited	Rabbi Yehuda: Prohibited Rabbi Shimon: Prohibited	Rabbi Yehuda: Prohibited Rabbi Shimon: Permitted	Permitted

Perek II
Daf 26 Amud a

וְרַבָּא אָמַר לָךְ: עַד כַּאֵן לֹא קַאמַר רַבִּי יְהוּדָה שְׂאִין מִתְּכּוּוּן בְּמִתְּכּוּוּן – אֵלֹא לְחֻמְרָא, אַבְּל מִתְּכּוּוּן בְּשְׂאִין מִתְּכּוּוּן לְקוּלָא – לֹא.

And Rava could have said to you: Rabbi Yehuda stated that one who lacks intent has the same legal status as one who has intent only with regard to a stringency. In other words, a lack of intent does not negate the fact that the prohibited act has been performed and one is liable. However, to say that one who has intent has the same legal status as one who lacks intent such that it leads to a leniency, no. There is no evidence that Rabbi Yehuda would agree that it would ever be permitted for one who has intent to derive benefit from an otherwise prohibited object, even if he could not avoid the situation.^H

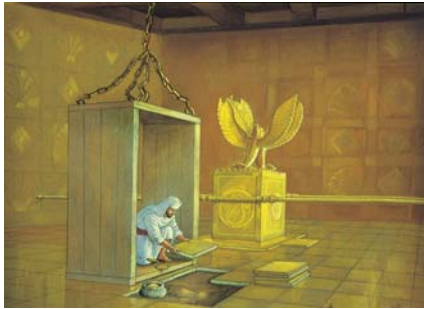
HALAKHA

הַנָּאָה בְּעַל – בְּנֵיחָו: If one derives benefit from a prohibited item against his will, yet he intends to derive benefit from it, then it is prohibited for him to do so. However, if he does not intend to derive benefit from it, it is permitted. This is in accordance with Rava's opinion in the second version of the Gemara, as the halakha generally follows the second version. The halakha is also generally in accordance with the opinion of Rava in his disputes with Abaye (Rambam Sefer Kedusha, Hilkhot Ma'akhalot Assurot 14:12).

The Sanctuary is different as it was constructed for its interior – שאני היכל דלתוכו עשוי – Some explain that this means that only the internal portion of the Sanctuary was consecrated, and therefore one would not be deriving benefit from consecrated property by utilizing its shade (Maharam Halawa). Others say that one who stands in this shade is deriving benefit from the Sanctuary in an unusual manner, which is permitted (see *Tosafot*). Some suggest that this case is lenient because it involves the mitzva of Torah study. However, it is also possible that the preference that one should not derive benefit even in an unusual manner is only when the object is part of another prohibition, such as a prohibition to eat it. However, since the prohibition against deriving benefit from the Temple is due to the Temple's sanctity, it is permitted to benefit in an unusual manner (*Me'iri*).

Renovations of the Temple – תקוני הקדש – Artisans who enter the Temple to perform repairs must enter in containers so they do not gaze upon the Sanctuary. If this is not possible, they may enter in an ordinary manner. According to the Rambam, they must enter even the outer Sanctuary in containers (Rambam *Sefer Avoda, Hilkhhot Beit HaBehira* 7:23).

The sight – מראה – Some explain that the visual benefit discussed here is that which is stated in tractate *Sukka*, which tells of women who would separate superior grains of wheat from inferior ones by the light of the torches in the Celebration of Drawing Water. By doing so, they would derive benefit from light that originated in the Temple; this is the sight described here (*Arukh*, based on the Jerusalem Talmud). Others claim that this refers to enjoying the beauty of the Temple (Rashi).



Artisan in the Holy of Holies

They established a higher standard – מעלה עשו – The prohibition against entering the Temple in an ordinary manner to perform repairs does not stem from the prohibition of misuse of consecrated property. Rather, this is a special decree to emphasize the sanctity of the Temple.

אמר אביי: מנא אמינא לה – דתנא: אמרו עליו על רבן יוחנן בן זכאי שהיה יושב בצילו של היכל ודורש כל היום כולו. והא הכא, דלא אפשו ומיבין – ושרי.

ורבא אמר: שאני היכל דלתוכו עשוי.

אמר רבא: מנא אמינא לה – (דתנא): לולין היו פתוחין בעליית בית קדשי הקדשים, שבהן משלשלין את האומנים בתיבות, כדי שלא יזונו עיניהם מבית קדשי הקדשים. והא הכא, דלא אפשו וקא מיבין – ואסור.

ותסברא?! והאמר רבי שמעון בן פזי אמר רבי יהושע בן לוי משום בר קפרא: קול ומראה וריח אין בהן משום מעילה! אלא: מעלה עשו בבית קדשי הקדשים.

איכא דאמרי: אמר רבא: מנא אמינא לה – דתנא. אמר רבי שמעון בן פזי. אמר רבי יהושע בן לוי, משום בר קפרא: קול ומראה וריח אין בהן משום מעילה. מעילה הוא דליכא. הא איסורא – איכא.

מאי לאו – לאותן העומדין בפנים, דלא אפשו וקא מיבין, ואסור – לא. לאותן העומדין בחוץ.

Abaye said: From where do I say my opinion? As it was taught in a *baraita*: They said about Rabban Yoḥanan ben Zakkai that he would sit in the street adjacent to the Temple Mount in the shade of the Sanctuary^H and expound to a large number of people all day long. And here, isn't it a case where it was not possible to act differently, as there was no other place where so many people could congregate, and he certainly intended to derive benefit from the shade of the Sanctuary, and yet it was permitted? Apparently, when it is not possible to avoid the situation and one intends to derive benefit, it is permitted to do so.

And Rava said in response: The Sanctuary is different, as it was constructed for its interior.^N It is prohibited to derive benefit only from the interior of the Sanctuary walls, because it was constructed for the use of its internal space; there is no prohibition at all to benefit from its shade when on the outside.

Rava said: From where do I say this? As it was taught in a *baraita*: There were openings in the loft of the Holy of Holies through which they would lower artisans in containers into the Holy of Holies, so that their eyes would not gaze upon the Holy of Holies itself when they were renovating it.^N And here, isn't it a case where it was not possible to act differently? It was necessary to renovate the Holy of Holies periodically, and it is impossible to do so without entering the chamber. And since it is plausible that the artisan will intend to enjoy the appearance of the Holy of Holies, it should be prohibited.

The Gemara rejects this: And how can you understand the *baraita* as a proof? Didn't Rabbi Shimon ben Pazi say that Rabbi Yehoshua ben Levi said in the name of Bar Kappara: The sound of the musical instruments in the Temple, and the sight^{NH} and smell of the incense are not subject to the prohibition of misuse of consecrated property? This is because the prohibition of deriving benefit from a consecrated object applies only to its tangible use. Rather, they established a higher standard^N of stringency with regard to the Holy of Holies and decreed that one may not even gaze upon it. Therefore, no principle can be derived from the case.

Some say this statement differently. Rava said: From where do I say this? As it was taught in a *baraita*: Rabbi Shimon ben Pazi said that Rabbi Yehoshua ben Levi said in the name of Bar Kappara: The sound of the musical instruments in the Temple and the sight and smell of the incense are not subject to the prohibition of misuse of consecrated property. The implication is that there is no violation of the prohibition of misuse of consecrated property by Torah law in this case. However, there is a violation of the prohibition by rabbinic law.

What, is it not referring to those standing inside the Sanctuary, for whom it is not possible that they will not hear these sounds or they will not observe the sight and smell of the incense? And in such a case, if they intend to derive benefit, it is prohibited. The Gemara rejects this: No, it is referring to those who are standing outside. Since they are not required to be there at that time, it is a case where it is possible to avoid the situation and one intends to derive benefit, which is prohibited according to all opinions.

HALAKHA

The shade of the Sanctuary – יצל הקדש – One who sits in the shade of the Temple does not violate the prohibition of misuse of consecrated property, although he is deriving benefit from it, as stated in the Gemara here (Rambam *Sefer Avoda, Hilkhhot Me'ila* 5:5).

The sound and the sight – קול ומראה – One should not derive benefit from the sounds and sights of the Temple, *ab initio*. However, if one did derive benefit from the Temple in this way, he has not violated the prohibition of misuse of consecrated property (Rambam *Sefer Avoda, Hilkhhot Beit HaBehira* 5:16).

Incense – קטורת: The incense mixture used in the Temple was made from specific spices in set proportions. One who prepares the incense mixture using these spices and proportions violates the prohibition: “And the incense which you shall make, according to its composition, you shall not make for yourselves; it shall be to you sacred for the Lord” (Exodus 30:37). This prohibition applies only to one who prepares this mixture in order to smell its aroma, and not to one who prepares it for any other reason. If one smells the incense offered in the Temple he does not violate this prohibition, although he is punished for misuse of consecrated property.

The removal of ashes – תרומת הדָשָׁן: It is a positive mitzva to remove some of the ash from the altar each morning and bring it to the floor of the courtyard (Leviticus 6:3). This was the first of the daily services performed in the Temple. In addition, from time to time, when the ashes accumulated, they would be removed from the Temple to a place set aside outside Jerusalem called the Place of the Ashes.

HALAKHA

Preparing the incense – עֲשִׂיית קטורת: One who prepared the incense with the correct spices and in their exact proportions in order to smell it is liable to receive *karet*. If he did this unwittingly, he must bring a sin-offering. If he prepared it in order to practice mixing it properly or to transfer it to the public, i.e., to the Temple, he is exempt (Rambam *Sefer Avoda, Hilkhot Kelei HaMikdash* 2:9–10).

Smelling the incense – הִרְחַת קטורת: One who smells the incense in the Temple is not punished in the same way as one who prepares it for himself, although he is liable to receive punishment for misuse of consecrated property (Rambam *Sefer Avoda, Hilkhot Temidin UMusafin* 2:6).

Misuse of consecrated property with smell – מְעִילָה בְּרִיחַ: One who smells the incense after the pillar of smoke has risen is exempt. If he smells it before this point, he is liable to receive punishment for misuse of consecrated property (Rambam *Sefer Avoda, Hilkhot Me'ila* 5:16).

The removal of ashes – תרומת הדָשָׁן: It is prohibited to derive benefit from the ash removed from the altar, even after its mitzva has been completed (Rambam *Sefer Avoda, Hilkhot Temidin UMusafin* 2:15).

BACKGROUND

לפי שְׁאִין – לְמִימְרָא דְכָל הֵיכָא דְנַעֲשִׂית מִצְוֹתָו: Because they have no substance – **בְּהֵן מִמַּשׁ:** The Gemara distinguishes between sound and sight, which are lacking in substance, and taste and smell, which have substance. This distinction can be supported by scientific data. Both taste and smell are transferred by molecules that move from one place to another. Therefore, when one enjoys a prohibited taste or smell, he is deriving benefit from a minuscule portion of the object itself. On the other hand, sight and sound are created by waves, and no part of the prohibited object itself reaches the one enjoying them.

Apropos this *halakha*, the Gemara discusses the matter itself. **Rabbi Shimon ben Pazi said that Rabbi Yehoshua ben Levi said in the name of Bar Kapara: The sound of the musical instruments in the Temple and the sight and smell of the incense are not subject to the prohibition of misuse of consecrated property.** The Gemara asks: **Isn't smell subject to the prohibition of misuse of consecrated property? Wasn't it taught in a baraita: One who prepares the incense^{NH} mixture in order to teach himself how to prepare it or to transfer it to the community is exempt from punishment.** However, if one prepares it in order to smell it,^H he is liable to receive punishment, as it states in the Torah: “He who makes it in order to smell it shall be cut off from his people” (Exodus 30:38). **And one who actually smells the incense mixture is exempt from the punishment of *karet* and from bringing a sin-offering; however, he has misused consecrated property.** Apparently, the *halakha* of misuse of consecrated property applies to smelling.

Rather, Rav Pappa said: Sound and sight are not subject to the prohibition of misuse of consecrated property, because they have no substance.⁸ And with regard to the smell of the spices themselves, the following distinction applies: The smell of the incense that is emitted when the spices are placed on the coals is subject to the prohibition, since this is the way the mitzva is performed; however, the smell that is emitted after the flame catches and the column of smoke rises is not subject to the prohibition of misuse of consecrated property, since its mitzva has already been performed.^H

The Gemara asks: **Is that to say that in any case where its mitzva has already been performed, the object is not subject to the prohibition of misuse of consecrated property? And the daily removal of ashes^{NH} of the offerings from the altar occurs after its mitzva has been performed, and the ashes are subject to the prohibition of misuse of consecrated property, as it is written: “And the priest shall put on his linen garment, and his linen breeches shall he put upon his flesh; and he shall take up the ashes of what the fire has consumed of the burnt-offering on the altar, and he shall put them beside the altar” (Leviticus 6:3).** The Sages derive from the phrase: “And he shall put them” **that he may not scatter these ashes; rather, they should be placed gently.** “**And he shall put them**” also indicates **that one may not derive benefit from these ashes.**

The Gemara answers: This case does not prove a principle, **because the *halakhot* of removal of ashes from the altar and of the priestly garments worn by the High Priest on Yom Kippur are two verses that come as one.** The principle is that **two verses that come as one do not teach a principle.** In other words, if a *halakha* is stated twice, with regard to two individual cases in the Torah, the understanding is that this *halakha* applies only to those cases. Had this *halakha* applied to all other relevant cases as well, it would not have been necessary for the Torah to teach it twice. The fact that two cases are mentioned indicates that they are the exceptions rather than the rule.

The Gemara delineates the two cases: The *halakha* of the **removal of ashes is that which we said.** Where is this *halakha* stated with regard to the priestly garments? **As it is written: “And Aharon shall come into the Tent of Meeting, and shall take off the linen garments, which he put on when he went into the sacred place, and he shall leave them there” (Leviticus 16:23).** The phrase: “**And he shall leave them**” **teaches that they require burial.** Although their use for the mitzva has been completed, it is prohibited to derive benefit from them.

The Gemara comments: **It works out well that there are two cases according to the opinion of the Rabbis, who say that this verse teaches that they require burial. However, according to the opinion of Rabbi Dosa, who disagrees with them and says: These priestly clothes may no longer be used by the High Priest on Yom Kippur, but they are fit for use by a common priest, since these garments are similar to those worn by common priests every day. And what is the meaning of: “And he shall leave them there”?** This indicates **that the High Priest may not use them on another Yom Kippur.** According to this opinion, **what can be said?** According to the opinion of Rabbi Dosa, there is only one verse that teaches about misuse of consecrated property with an item that has already been used for performing its mitzva. Therefore, it should be possible to derive a principle from the verse dealing with the removal of ashes.

גופא, אָמַר רַבִּי שְׁמוּעוֹן בֶּן פִּזִּי, אָמַר רַבִּי יְהוֹשֻׁעַ בֶּן לֵוִי, מִשּׁוּם בַּר קַפְרָא: קוֹל וּמִרְאָה וְרִיחַ אֵין בְּהֵן מִשּׁוּם מְעִילָה? וְהָא תַנָּיָא: הַמִּפְטֵם אֶת הַקְטוֹרֶת לְהַתְלַמֵּד בָּהּ אוֹ לְמוֹסְרָה לְצִיבוּר – פֶּטוּר, לְהִרְיחַ בָּהּ – חַיִּיב. וְהִמְרִיחַ בָּהּ – פֶּטוּר, אֲלָא שְׁמַעְלָא.

אֲלָא אָמַר רַב פַּפְּא: קוֹל וּמִרְאָה – אֵין בְּהֵן מִשּׁוּם מְעִילָה, לְפִי שְׁאִין בְּהֵן מִמַּשׁ. וְרִיחַ, לְאַחַר שֶׁתַּעֲלֶה תְמָרוֹתוֹ – אֵין בּוֹ מִשּׁוּם מְעִילָה, הוֹאִיל וְנַעֲשִׂית מִצְוֹתָו.

לְמִימְרָא דְכָל הֵיכָא דְנַעֲשִׂית מִצְוֹתָו אֵין בּוֹ מִשּׁוּם מְעִילָה? וְהִרִי תְרוּמַת הַדָּשָׁן, דְנַעֲשִׂית מִצְוֹתָהּ וַיֵּשׁ בָּהּ מִשּׁוּם מְעִילָה, דְכַתִּיב: “וַיִּשְׂמוּ אֶצֶל הַמִּזְבֵּחַ” – שְׂלֵא יְפוּר, “וַיִּשְׂמוּ” – שְׂלֵא יִהְיֶה!

מִשּׁוּם דְהוּוּ תְרוּמַת הַדָּשָׁן וּבְגָדֵי כְהוֹנֵה שְׁנֵי כְתוּבִין הִבְאִין כְּאַחַד, וְכָל שְׁנֵי כְתוּבִין הִבְאִין כְּאַחַד אֵין מְלַמְדִין.

תְרוּמַת הַדָּשָׁן – הָא דְאָמְרוּ, בְּגָדֵי כְהוֹנֵה – דְכַתִּיב: “וְהִנִּיחָם שָׁם” – מְלַמְד שְׁטַעֲוִין גְּנִיזָה.

הִנִּיחָא לְרַבְנָן, דְאָמְרוּ: מְלַמְד שְׁטַעֲוִין גְּנִיזָה, אֲלָא לְרַבִּי דוֹסָא דְפְלִיג עֲלֵיהוּ, דְאָמַר: אֲבָל רְאוּיִן הֵן לְכַהֵן הַדְּיוֹט, וּמֵאֵי “וְהִנִּיחָם שָׁם” – שְׂלֵא יִשְׁתַּמֵּשׁ בְּהֵם בְּיוֹם כְּפוּרִים אַחֵר, מֵאֵי אִיבָא לְמִימְרָא?

NOTES

The heifer whose neck is broken – עגלה – ערופה: When a murder victim's corpse is found outside a town and it is not known who caused his death, the following procedure is followed (Deuteronomy 21:1–9): First, judges who are members of the Great Sanhedrin come to measure the distance between the corpse and the nearest town, to determine which town must perform the rite of the heifer whose neck is broken. This measurement is carried out even if it is obvious which town is closest to the corpse. Afterward, the elders of that town bring a heifer that has never been used for any labor, and they break its neck in a riverbed that is not tilled. The elders wash their hands and make a statement absolving themselves of guilt. If the murderer is discovered before the heifer has been killed, the rite is not performed.

If one brought the heifer into a cow pen – פסולה לרבקה: According to the *Arukh*, the expression means that the heifer is taken into a pen where it eats, and it threshes some grain as it eats and moves around.

משום דהווי תרומת הדשן ועגלה ערופה שני בתובין הבאין באחד, וכל שני בתובין הבאין באחד אין מלמדין.

הניחא למאן דאמר אין מלמדין, אלא למאן דאמר מלמדין, מאי איכא למימר? תרי מיעוטי בתבי, בתבי 'ושמו', ובתבי 'הערופה'.

תא שמע: הכניסה לרבקה ודשה – כשיירה, בשביל שתניק ותדוש – פסולה.

והא הכא, דלא אפשר וקא מיפוי, וקתני פסולה! שאני התם דבתבי: 'אשר לא עבד בה' – מפל מקום.

אי הכי, אפילו רישא נמי!

The Gemara answers: A principle cannot be based on this verse, **because removal of ashes and the heifer whose neck is broken,**^N from which one may not derive benefit after the ceremony, **are two verses that come as one. And two verses that come as one do not teach a principle.**

The Gemara asks: **It works out well according to the one who said that they do not teach a principle, i.e., according to the Rabbis. However, according to the one who said that they do teach a principle, i.e., Rabbi Yehuda in tractate *Sanhedrin*, what can be said?** The Gemara answers: **Two phrases indicating exclusions are written** with regard to these *halakhot*, limiting this rule to them. With regard to the removal of ashes **it is written: "And he shall put it."** The word "it" limits the *halakha* to this particular circumstance. With regard to the heifer whose neck is broken **it is written: "The heifer which had its neck broken"** (Deuteronomy 21:6). The word "the" indicates that this *halakha* applies only to this type of heifer and not to any other similar case.

After this tangential discussion of the laws of misuse of consecrated property, the Gemara returns to Abaye and Rava's dispute about the status of unintended benefit, seeking to prove one side or the other. **Come and hear a proof based on what was taught: If one brought the heifer whose neck is to be broken or the red heifer into a cow pen,^N and it threshes grain while walking with other cows, then it is valid.** Under normal circumstances, had one used the heifer for work, it would be disqualified from use in its ceremony. However, in this case, the red heifer may still be burned, and the heifer is still fit to have its neck broken in the ritual. Apparently, the verses "Upon which a yoke has not been placed" (Numbers 19:2) and "Which has not been used for work" (Deuteronomy 21:3) still apply to it, because the owner did not intend for it to work. If he brought it in **so that it may nurse from its mother and so it will thresh grain, then it is disqualified** from use in these rituals.

And here, isn't it a case where it was not possible to act differently, as the heifer needs to nurse, and he intended that it thresh the grain? And it is teaching that the heifer is disqualified from use. This proves that when one intends to derive benefit, even if there is no other way to act, it is prohibited to derive benefit. The Gemara rejects this: **It is different there, as it is written: "Which has not been used for work" in any case.** Therefore, while the heifer is disqualified from use even if the situation was unavoidable, no general conclusion can be drawn from this case.

The Gemara challenges: **If so, that this verse means that it has not performed any work at all, then it should apply even to the first clause.** Even when it threshes the grain against the will of the owner, it has still done work and should be rendered disqualified.

Perek II
Daf 26 Amud b

HALAKHA

If a bird landed on the red heifer – שכן עליה: If a bird landed on a red heifer then it remains valid. However, if a male mounted it to mate then it is rendered unfit (Rambam *Sefer Tahara, Hilkhhot Para Aduma* 1:7).

NOTES

If a male animal mounted it – עלה עליה זכר: Some say that this applies even if the male did not lean on the red heifer at all; once this action takes place, it is rendered unfit (*Me'ir*).

הא לא דמיא אלא להא: שכן עליה עוף – כשיירה, עלה עליה זכר – פסולה. מאי טעמא?

אמר רב פפא: אי בתבי "עבד" וקרנין "עבד" – עד דעביד בה איהו. אי בתבי "עובד" וקרנין "עובד" – אפילו ממילא נמי.

The Gemara answers. **This case is comparable only to that other case:** If a **bird landed on the red heifer**^H it remains **valid**, since this is not considered to be like bearing a yoke. If a **male animal mounted it**^N to mate with it, **it is unfit** and may not be used for the ritual. The same applies in this case: When the owner moves the heifer into a pen and it threshes, since the owner is uninterested in this action, it is like the case of the bird and the heifer remains valid. The Gemara asks: **What is the reason** for the difference between the case where a bird lands on it and where a male animal attempts to mate with it?

Rav Pappa said that the verse says: "And the elders of that city shall take a heifer of the herd, which has not been used for work, and which has not drawn in the yoke" (Deuteronomy 21:3). **If it were written: "He worked [avad]," and we read: "He worked [avad],"** this word choice would indicate that the heifer could still be used **until he**, the owner of the heifer himself, **used it** willingly for labor. **If it were written: "It was worked [ubbad]," and we read: "It was worked [ubbad],"** it would indicate that **even** if it performed labor **on its own it is also prohibited** to use it, since some form of labor had been done with it.

Avad and ubbad – עֵבֵד וְעִבְד: This type of exposition appears in several places in the Talmud, where the Sages expound upon both the way a word is pronounced and the way it is written. Sometimes this method is employed even when the word is pronounced in a manner consistent with the way it is written, but it is written in a way that could be read differently. Although there is general agreement about the accepted way to read the word in such a case, the Sages use the way that the word is written as a basis for additional expositions and as a way to understand the meaning of the verse.

Frame – מְגוּד: Some say that this refers to a vessel on which clothes are placed after they have been washed (*Arukh*).

Modest people – צְנוּעִים: Some explain that this is referring to upright people who seek to avoid any suspicion of improper conduct (Rashi). Others say that this is referring to people who are especially stringent with themselves (Rabbi Shimshon of Saens) or to those who sanctify themselves by refraining even from that which is permitted (*Me'iri*).

HALAKHA

Use of a lost object – שְׂמוּשׁ בְּאֵיבִידָה: It is prohibited for one who finds a lost object to use it, even to spread it out, for his own purposes. However, if he must spread out the garment in order to preserve it, then it is permitted to do so, provided it is done when no guests are present (*Shulhan Arukh, Hoshen Mishpat 267:17*).

Merchants who sell garments of diverse kinds – מוֹכְרֵי שְׂעֵטָנוּ: Merchants who sell to gentiles garments made of a prohibited mixture of wool and linen may place these garments on their backs in the manner that garment merchants generally carry their wares, provided they do not intend to derive benefit from the garments. Those who are fastidious about performing mitzvot suspend the garments behind them on a stick (*Shulhan Arukh, Yoreh De'a 301:6*).

An oven that one lit with objects from which one may not derive benefit – תַּנּוּר שֶׁהִסִּיקוּ בְּאִיסוּרֵי הַנֶּאֱמָר: With regard to an oven that was lit with wood from which it is prohibited to derive benefit, whether it is a new oven or an old oven, it may be cooled down, and then one may light it again and use it. This follows the lenient *baraita*, as the Gemara concludes that it is in accordance with the opinion of the Rabbis (*Shulhan Arukh, Yoreh De'a 142:4*).

Bread baked in an oven lit with prohibited wood – פֶּתַח – שְׂנֵאֲפֹתָהּ בְּתַנּוּר שֶׁהוּסַק בְּעֵצִים הָאֲסוּרִים: With regard to bread baked in an oven that had been lit with prohibited wood, if it was baked after the prohibited wood was consumed, it is permitted to eat the bread. However, if the bread was baked when the wood was still burning, it is prohibited to eat it (*Shulhan Arukh, Yoreh De'a 142:6*).

BACKGROUND

An oven that one lit – תַּנּוּר שֶׁהִסִּיקוּ: Many ovens in late antiquity were made of clay. Fire was kindled inside to heat the oven until the fuel turned to ash. The ash was then swept away to make room for dough that had been rolled out flat, which was pasted to the walls of the oven or to the heated base.



Clay oven from late antiquity

הַשְּׂתָא דְכִתְיֵב "עֵבֵד" וְקָרִינַן "עִבְד" – עִבְד דּוּמְיָא דְעֵבֵד. מָה עֵבֵד דְנִתְחָא לֵיהּ – אִף עִבְד דְנִתְחָא לֵיהּ.

Now that it is written: "He worked [*avad*]," but we read this word as: "It was worked [*ubbad*],"^N both meanings are intended: It is prohibited if it is worked in a similar manner to the way he works. In other words, just as the owner works the animal in a way that is beneficial to him, so too, the animal becomes prohibited only when it is worked in a way that causes him to derive benefit from this labor. Therefore, it still may be used if a bird lands on it, because the owner does not derive benefit from this in any way. However, if a male bull mates with this heifer it is rendered unfit, since the owner generally has an interest in this occurring.

תָּא שְׂמַע: אֲבִידָה, לֹא יִשְׁתַּחֲנֶה לֹא עַל גְּבִי מִטָּה וְלֹא עַל גְּבִי מְגוּד לְצוּרְכוֹ, אֲבָל שׁוֹטְחָה לְצוּרְכָה עַל גְּבִי מִטָּה וְעַל גְּבִי מְגוּד. נִזְדַּמְנוּ לוֹ אוֹרְחִין – לֹא יִשְׁתַּחֲנֶה לֹא עַל גְּבִי מִטָּה וְלֹא עַל גְּבִי מְגוּד, בֵּין לְצוּרְכָה בֵּין לְצוּרְכוֹ!

The Gemara cites an additional proof. Come and hear from that which is taught: If one finds a lost item, he may not spread it out over a bed or over a frame^N for his own purposes, since this is deriving benefit from an object that does not belong to him. However, he may spread it out over a bed or a frame for its own sake if it requires airing. If guests happen to come to him, he may not spread it out, neither for its sake nor for his own purpose. Apparently, the benefit is unavoidable and intended, as there is no other way for him to care for the lost object, and he benefits from having his guests see the item; nonetheless, it is still prohibited.^H This seems to prove that Rava's opinion is correct.

שְׂאֵנִי הֵתָם דְקָלִי לָהּ; אִי מִשּׁוּם עֵינָא בִישָׂא, אִי מִשּׁוּם גְּנָבִי.

The Gemara rejects this conclusion: It is different there, as he risks damaging it, either due to the evil eye that he casts upon it or due to the thieves who will now know that this valuable item is in his possession and will attempt to steal it. It is not prohibited because of the benefit; rather, it is prohibited due to the concern that he may damage the item.

תָּא שְׂמַע: מוֹכְרֵי כְסוּת מוֹכְרִין כְּדָרְכָן, וּבְלִבְדָּ שְׂלָא יִתְכַּוֵּין בַּחֲמָה מִפְּנֵי הַחֲמָה וּבְגִשְׂמִים מִפְּנֵי הַגִּשְׂמִים. וְהַצְנוּעִין מִפְּשִׁילִין לְאַחֲרֵיהֶם בְּמִקְלָא.

The Gemara offers a final proof. Come and hear a proof based on the following mishna: Clothing merchants who sell garments made of diverse kinds,^H a prohibited mixture of wool and linen, may sell them as they normally would to gentiles. A merchant may place the garments he is selling on his shoulders and need not be concerned about the prohibition against wearing diverse kinds, provided he does not intend to benefit from the garments in the sun as protection from the sun, or in the rain as protection from the rain. However, the modest people,^N those who are meticulous in their performance of mitzvot, suspend the wool and linen garments on a stick behind them.

וְהָא הֵכָא, דְאֶפְשָׁר לְמַעַבְדַּי בְּצַנּוּעִין, וְכִי לֹא מִכּוּוֵין – שְׂרִי! תִּיּוֹבְתָא לְמָאן דְמִתְנִי לִישְׁנָא קָמָא דְרָבָא, תִּיּוֹבְתָא.

And here, isn't it a case where it is possible for all clothing merchants to act like the modest people and not derive benefit from the mixture of wool and linen? Nonetheless, the mishna states that when one does not intend to benefit from the prohibited item, it is permitted to do so. This presents a conclusive refutation to he who taught the first version of Rava's statement. According to this version, one is prohibited from deriving benefit when it is possible to avoid doing so and he does not intend to derive benefit. The Gemara concludes: Indeed, it is a conclusive refutation.

וְלֹא יִסִּיק בּוֹ וכו'". תַּנּוּ רַבְנָן: תַּנּוּר שֶׁהִסִּיקוּ בְּקִלְפֵי עֵרְלָה אוּ בְּקִשְׁיִן שֶׁל כְּלָאֵי הַפָּרֶם, חֲדָשׁ – יוֹתֵץ, יִשָּׁן – יוֹצֵן.

It was taught in the mishna that one may not even light the oven with leavened bread. The Sages taught in a *baraita*: With regard to an oven that one lit^B with the peels of *orla* fruit, or with straw of grain that was planted in a prohibited mixture of diverse kinds in a vineyard, if it was a new oven, and by lighting it he hardened the oven and made it stronger for use in the future, then it must be shattered. Since prohibited items were used in the process of forming the oven, one may not derive benefit from the use of the prohibited items. However, if it was an old oven, it may be cooled, and it is prohibited to use the oven only while it is still hot.^H

אָפֶה בּוֹ אֵת הַפֶּתַח, רַבִּי אֹמֵר: הַפֶּתַח אֲסוּרָה, וְהַכְּמִים אוֹמְרִים: הַפֶּתַח מוֹתָר. בִּישְׁלָה עַל גְּבִי גְחָלִים – דְּבָרֵי הַכֹּל מוֹתָר.

With regard to one who baked bread in the oven while it was heated or strengthened by the prohibited items,^H Rabbi Yehuda Ha-Nasi says: It is prohibited to eat or derive benefit from the bread, since prohibited items were involved in the process of preparation. And the Rabbis say: It is permitted to eat and derive benefit from the bread. If he cooked the bread over the coals that remained from prohibited wood, everyone agrees that it is permitted.

NOTES

Improvement from the wood in the bread – שִׁבַּח עֵצִים – בִּפְתַּת: The Gemara here makes a distinction between two similar topics: The improvement from the wood, on the one hand; and both this and that cause, on the other hand. The difference between these concepts is that improvement from the wood indicates that a small portion of the wood itself is actually present in the bread through the burning of the wood or through other processes with different prohibited items. Therefore, when the bread is improved by the wood in this way, it becomes prohibited. However, this is not the case with regard to the concept of: Both this and that cause, where the prohibited item is not present in the bread at all and instead only plays a role in achieving a certain result. Therefore, since baking bread in an oven that was strengthened using *orla* falls into this second category, there is no reason to shatter the oven.

וְהָא תַּנְיָא: בֵּין חֲדָשׁ, וּבֵין יָשָׁן – יוֹצֵן!
לֹא קִשְׂיָא, הָא – רַבִּי וְהָא רַבְנָן.

אֵימור דְּשִׁמְעַת לִיה לְרַבִּי – מִשּׁוּם
דִּישׁ שִׁבַּח עֵצִים בִּפְתַּת, זֶה זֶה גּוֹרֵם –
מִי שִׁמְעַת לִיה?! אֶלֶּא לֹא קִשְׂיָא:
הָא – רַבִּי אֱלִיעֶזֶר, הָא – רַבְנָן.

הֵי רַבִּי אֱלִיעֶזֶר? אֵילִמָּא רַבִּי אֱלִיעֶזֶר
דְּשִׁאֹר, דְּתַנֵּן: שִׁאֹר שֶׁל חוֹלִין וְשֶׁל
תְּרוּמָה שֶׁנִּפְלוּ לְתוֹךְ עִיסָה, וְאִין בּוֹהַ
בְּדִי לְהַחֲמִיץ וְאִין בּוֹהַ בְּדִי לְהַחֲמִיץ,
וְנִצְטְרְפוּ וְחִמְצוּ, רַבִּי אֱלִיעֶזֶר אוֹמֵר:
אַחַר אַחֲרוֹן אֲנִי בָּא. וְחֻכְמִים
אוֹמְרִים: בֵּין שֶׁנִּפְלַ אִיסוּר לְכַתְּחִלָּה,
וּבֵין שֶׁנִּפְלַ אִיסוּר לְבִסּוֹף – לְעוֹלָם
אֵינוֹ אוֹסֵר

The Gemara asks. **Wasn't it taught** in a *baraita*: **Whether it was an old oven or a new oven it may be cooled**; there is never a need to shatter the oven. The Gemara answers: This is **not difficult**. This *baraita*, which states that one is required to shatter the oven, is in accordance with the opinion of **Rabbi Yehuda HaNasi**. **And that baraita**, which states that it is sufficient to let the oven cool, is in accordance with the opinion of the **Rabbis**. Since the prohibited objects merely strengthen the oven, the Rabbis hold that it is enough to let the oven cool. By cooling the oven one no longer derives benefit from the prohibited items used to light it, and there is no need to shatter the oven.

The Gemara challenges this answer: **Say that you heard that Rabbi Yehuda HaNasi prohibits one from deriving benefit from bread baked using the prohibited objects as kindling because there is improvement from the wood used to light the oven in the bread,**^N and therefore, it is prohibited. However, in a different case, namely, when **both this and that cause it**, i.e., both permitted and prohibited items contribute to the result, such as when one subsequently bakes in this oven and benefit is derived both from the prohibited wood that strengthened the oven and from permitted wood that is used in subsequent baking, **did you hear him** say that it is prohibited as well? **Rather**, reject this explanation and say: This is **not difficult**. This stringent *baraita* is in accordance with the opinion of **Rabbi Eliezer**, who says that in a case where both this and that cause it, it is prohibited. And **that lenient baraita** is in accordance with **the Rabbis**, who disagree with regard to that principle.

The Gemara asks: **Which statement of Rabbi Eliezer serves as the basis for this explanation?** **If you say** that it is the opinion of **Rabbi Eliezer** with regard to **leaven**, as we learned in a mishna: In a case where **non-sacred leaven and leaven of teruma fell into non-sacred dough, and neither one alone is potent enough to cause the dough to become leavened bread, and they were joined together and caused the dough to become leavened bread**, there is a dispute as to whether this dough is considered to be *teruma* or non-sacred bread. **Rabbi Eliezer says: I follow the final element that fell into the dough.** If the *teruma* fell in last, the dough is prohibited to non-priests. **And the Rabbis say: Whether the prohibited item, i.e., the teruma, fell in first or the prohibited item fell in last, it never renders the dough prohibited**

Perek II
Daf 27 Amud a

NOTES

Both this and that cause – יְהוּה גּוֹרֵם: Some explain that the principle: Both this and that cause, applies only when both items perform the same action, e.g., both provide heat. However, if the two items have different effects, then even if they both play a role in attaining a certain outcome, the resulting object is prohibited. Nonetheless, most authorities reject this distinction (Ritva).

I follow the final element – אַחַר אַחֲרוֹן אֲנִי בָּא: It is possible to understand Rabbi Eliezer's opinion differently. With regard to the leavening of dough, it is the last substance that completes that process, causing it to rise. Since the first amount of leaven was insufficient, it is considered as though it were not present, and the result is attributed completely to the latter amount.

עַד שֶׁיֵּהָא בּוֹ בְּדִי לְהַחֲמִיץ. וְאָמַר
אֲבַיִי: לֹא שָׁנוּ אֶלֶּא שֶׁקִּדְּם וְסִילַק
אֶת הָאִיסוּר, אֲבָל לֹא קִדְּם וְסִילַק
אֶת הָאִיסוּר – אָסוּר. אֵלִמָּא: זֶה זֶה
גּוֹרֵם אָסוּר.

until there is enough of the prohibited leaven to cause the dough to become leavened bread. **And Abaye said:** Rabbi Eliezer taught that when the permitted leaven fell in last, the mixture is permitted **only** when he first removed the prohibited leaven before the permitted leaven fell into the dough and made it rise. **However, if he did not first remove the prohibited leaven, the dough is prohibited** even if the permitted leaven fell in last. **Apparently, when both this and that cause^N the dough to become leavened bread, it is prohibited.**

וּמִמָּא דְּטַעֲמָא דְּרַבִּי אֱלִיעֶזֶר בְּאֲבַיִי?
דִּילְמָא טַעֲמָא דְּרַבִּי אֱלִיעֶזֶר מִשּׁוּם
דְּאַחַר אַחֲרוֹן אֲנִי בָּא, לֹא שָׁנָא קִדְּם
וְסִילַק אֶת הָאִיסוּר לֹא שָׁנָא לֹא
קִדְּם וְסִילַק אֶת הָאִיסוּר. אֲבָל בִּבְתַּ
אַחַת – הֲכִי נִמְי דְּשִׁרְי!

The Gemara rejects this statement: **And from where** is it apparent that the reason for **Rabbi Eliezer's** opinion is in accordance with **Abaye's** explanation? **Perhaps the reason for Rabbi Eliezer's opinion is due** to the following, which **Rabbi Eliezer** said explicitly: **I follow the final element.**^N **And it is no different if he first removed the prohibited item and it is no different if he did not first remove the prohibited item.** **However, if they both fell in at once it should be permitted**, because where both this and that cause the dough to become leavened bread **Rabbi Eliezer** rules that the mixture is permitted.