

דבר טלי וטליא וליטיילו התם, דאי משבחי להו – מיייתי להו. אלמא קסבר: קטן אוכל נבלות אין בית דין מצווין להפרישו. לימא מסייע ליה: לא יאמר אדם לתינוק "הבא לי מפתח", "הבא לי חותם" אלא מניחו תולש, מניחו זורק.

אמר אביי: תולש – בעציץ שאינו נקוב, זורק – בכרמלית, דרבנן.

תא שמע: גוי שבא לכבות – אין אומרים לו "כבה" ו"אל תכבה", מפני שאין שביתתו עליהם. קטן הבא לכבות אומרים לו "אל תכבה", ששביתתו עליהם!

אמר רבי יוחנן: בעושה על דעת אביו. דכוותיה גבי גוי, דעושה על דעת ישראל, מי שריק גוי אדעתא דנפשיה עבד.

and lead boys and girls and let them walk there where the keys were lost, and if they find the keys they will bring them to you of their own accord, without you saying anything to them. The Gemara comments: **Apparently, Rabbi Pedat maintains that with regard to a minor who eats meat from unslaughtered animals<sup>n</sup> or violates other prohibitions, the court is not commanded to prevent him from doing so.<sup>h</sup>** The Gemara comments: **Let us say that the following source supports his opinion: A person may not tell a child on Shabbat: Bring me a key,<sup>n</sup> or: Bring me my seal from the public domain. However, he may allow the child to detach plants and allow him to throw in the public domain.** This shows that one need not be strict with a child who transgresses a prohibition, but one may not tell a child to transgress a prohibition.

The Gemara rejects this suggestion: **Abaye said that this is no proof, as it is possible that detaching plants is referring to an unperforated flowerpot,<sup>n</sup> as the prohibition against detaching plants from a vessel of this kind applies by rabbinic law. Similar, when it states: Throw, this can be referring to throwing in a karmelit rather than the public domain. A karmelit is an intermediate domain between public and private domains, which has the status of a public domain by rabbinic law. However, perhaps one is obligated to stop the child if he is transgressing a Torah prohibition.**

The Gemara further suggests: **Come and hear the following statement (Shabbat 121a): If a gentile comes to extinguish<sup>h</sup> a Jew's fire on Shabbat, one may not say to him: Extinguish, or: Do not extinguish, because responsibility for his rest is not incumbent upon the Jew. However, if a Jewish child comes to extinguish a fire on Shabbat, they do say to him: Do not extinguish, despite the fact that he is not yet obligated in mitzva observance, because responsibility for his rest is incumbent upon the Jew.** This shows that one must prevent a minor from violating a Torah prohibition.

**Rabbi Yohanan said: This is referring to a minor who is acting with his father's consent.** Even if the father did not tell him explicitly what to do, the child is aware of his father's wishes, and acts on his behalf. The Gemara asks: **The same reasoning can be applied with regard to a gentile, that he acts with the Jew's consent, and yet in this case is it permitted for him to perform labor on behalf of a Jew?** The Gemara answers: **A gentile acts in accordance with his own wishes. As an adult he is responsible for his own decisions and is not considered to be following the instructions of others.**

HALAKHA

**A minor who eats meat from unslaughtered animals – קטן אוכל נבלות:** If a minor is eating meat from unslaughtered animals, the court is not commanded to separate him from the forbidden food. However, his father is commanded to reprimand him and stop him. Furthermore, it is prohibited to feed forbidden food to a minor directly, even if the prohibitions apply by rabbinic law. Likewise one may not let a minor become accustomed to desecrating Shabbat and Festivals, even with respect to an action prohibited by rabbinic law. The *halakha* is in accordance with the opinion of Rabbi Pedat, not that of Abaye, who maintains that this obligation to warn children does not apply to rabbinic prohibitions. Some claim that if the minor has reached the suitable age for education,

the court is obligated to prevent him from transgressing (Rema, based on *Tosafot*), while others say that the mitzva of education applies to the father alone. Apparently, the Rambam rules in accordance with the opinion of Abaye (see *Kesef Mishne*; Rambam *Sefer Zemanim, Hilkhot Shabbat* 12:7, 24:11 and *Sefer Kedusha, Hilkhot Ma'akhalot Assurot* 17:27; *Shulhan Arukh, Yoreh De'a* 373:1).

**A gentile comes to extinguish – גוי שבא לכבות:** If a gentile wants to extinguish a fire on Shabbat, one need not prevent him from doing so. However, if a minor tries to do so, one should object, as he does not act of his own accord but with his father's approval (Rambam *Sefer Zemanim, Hilkhot Shabbat* 12:7; *Shulhan Arukh, Orach Hayyim* 334:25).

NOTES

**קטן – אוכל נבלות:** The early commentaries and later commentaries analyze this issue at length. Since the Gemara does not arrive at a clear conclusion, there are various opinions in this regard. One problem concerns the option of actively feeding a minor food that is forbidden by rabbinic law, with some authorities maintaining that it is permitted for one to do so (Rashba). Another issue is the possible difference between a court and the father of a minor. Some maintain that there is no distinction in this regard, as in any case when the court is not obligated to prevent a minor from eating the forbidden food, his father is not commanded to do so either (*Tosefot Rid*). Conversely, others indicate that the obligation of a father is greater than that of a court, due to reasons that go beyond the mitzva of education in the narrow sense of the term (Rambam). The underlying reasoning for this claim is that the Sages have said that a father must accustom his minor child to the performance of positive mitzvot, and therefore a minor cannot eat animal carcasses and at the same time practice the mitzvot of ritual fringes and prayer (*Ritva*). The commentaries add that this difference is not surprising, as a father is obligated to educate his son in the performance of mitzvot, while the function of the court in general is to prevent minors from transgressing (*Yam shel Shlomo*).

In addition, the Sages were concerned about habit-forming behavior, and they therefore prohibited minors from certain actions, so they should not be used to them when they mature. Consequently, although it is not obligatory by Torah law to separate a minor from forbidden items, one must do so by rabbinic law (*Tosefot Rid*; Rashba; see also the comments of the Rashba in his Responsa). This reason for separating a minor from prohibitions applies solely to children. Because a deaf-mute and an imbecile typically remain in that condition permanently, the concern of habituation does not apply to them.

**הבא לי מפתח וכו' – קטן אוכל נבלות:** The commentaries note the change in the mishna, which initially says that an adult may not say to the minor: Bring me a key, etc. Subsequently, it states that he may allow him to pluck plants and throw in the public domain, which is apparently an entirely different case (Rashba). The Rashba explains that the *halakha* is stated in this fashion because if a father says: Bring me the key, this can be performed in a manner that does not constitute a prohibition by Torah law, e.g., he can carry it a distance of less than four cubits each time. This is not the case for plucking plants or throwing. Consequently, in the first clause the *tanna* is teaching that a father may not instruct his son in this manner even if he will not definitively perform a transgression. In the latter clause, he is stating that the adult does not have to interfere with the minor's behavior even when he is violating a prohibition that applies by Torah law.

**תולש בעציץ – אומר אביי: תולש – בעציץ שאינו נקוב, זורק – בכרמלית, דרבנן:** Abaye does not necessarily dispute Rabbi Pedat's *halakha* in practice. This is because there is a difference between a case where the father is present and the son believes he is performing his father's will, and the incident involving Rabbi Pedat, where the children went alone and returned the keys of their own accord (*Tosefot Rid*).

They were lenient with regard to doubtfully tithed produce – בדמאי הקילו – The commentaries analyze this issue in the following terms: The Sages may have been lenient in the case of doubtfully tithed produce simply because this prohibition applies by rabbinic law. Alternatively, perhaps one is usually stringent even with regard to rabbinic laws, but because doubtfully tithed produce involves an additional stringency, the *halakha* is more lenient here than in cases of other rabbinic prohibitions (see *Kovetz He'arot*).

A child may...suckle from a gentile woman – יונק...מגויה: Some commentaries hold that there is a prohibition against breastfeeding from a gentile woman, which is compared here to breastfeeding from a non-kosher animal (Rabbeinu Hananel). By contrast, most early commentaries maintain that breastfeeding from a gentile woman does not constitute a prohibition any more than breastfeeding from a Jewish woman. Furthermore, the prohibition is not due to any sort of ritual impurity nor due to promiscuity. Rather, the practice not to breastfeed from a gentile woman is a pious ascetic custom, as cited in Gemara and *midrashim* concerning the young Moses, our teacher (*Tosefot Rosh*; *Rashba*).

תא שמע: בן חבר שרגיל לילך אצל אבי אמו עם הארץ – אין חוששין שמא יאכילנו דברים שאינם מתוקנים, מצא בידו פירות – אין וקוק לו! אמר רבי יוחנן: בדמאי הקילו.

אלא, טעמא – דדמאי, הא ודאי – בעא לעשורי, והאמר רבי יוחנן: בעושה על דעת אביו! אלא, רבי יוחנן ספוקי מספקא ליה, קאי הקא – מדחי, קאי הקא – מדחי.

תא שמע: בן חבר בהן שרגיל לילך אצל אבי אמו בהן עם הארץ אין חוששין שמא יאכילנו תרומה טמאה. מצא בידו פירות – אין וקוק לו! בתרומה דרבנן.

תא שמע: יונק תינוק והולך מגויה ומבהמה טמאה ואין חוששין ביונק שקץ. ולא יאכילנו נבלות וטרפות שקצים ורמשים, ומבולן יונק מהם ואפילו בשבת, ובגדול אסור. אבא שאול אומר: נוהגין היינו שיונקים מבהמה טהורה ביום טוב.

קתני מיהא: אין חוששין ביונק שקץ! התם משום סבנה. אי הכי גדול נמי!

גדול בעי אומדנא. קטן, נמי ליבעי אומדנא! אמר רב הונא בריה דרב יהושע: סתם תינוק מסוכן אצל חלב.

Come and hear: The son of a *haver*, one who is devoted to the meticulous observance of mitzvot, especially the *halakhot* of ritual purity, *teruma*, and tithes, is accustomed to going to his mother's father, who is an ignoramus and therefore is not known to be as careful to separate *teruma* and tithes. In this case, the son need not be concerned lest his grandfather feed him food items that are not tithed. If the father found fruit in the child's hand, and he does not know where the fruit is from, he is not bound to separate tithes from the fruit. This indicates that one need not prevent a minor from eating forbidden food. Rabbi Yohanan said: The Sages were lenient with regard to doubtfully tithed produce [*demai*].<sup>NH</sup> Since the prohibition against eating this produce applies only due to doubt, and most ignoramuses do separate tithes, the Sages were lenient in uncertain cases of this kind.

The Gemara infers: Rather, the reason that the Sages were lenient is that it is *demai*, from which it may be inferred that if it was definitely untithed, the father would be required to tithe the fruit. But didn't Rabbi Yohanan himself say that one need stop a minor only when he is acting with his father's consent? Rather, Rabbi Yohanan is uncertain with regard to this *halakha*, and therefore in this case he refutes it, and in that case he refutes it. In other words, he reached no definite conclusion about this matter, and therefore he treats each case on its own merits.

Come and hear: With regard to the son of a *haver* priest who is accustomed to going to his mother's father, a priest who is also an ignoramus, one need not be concerned lest his grandfather feed him ritually impure *teruma*. If the father found fruit in the child's hand, he is not bound to take it from him. This shows that even when the concern involves ritually impure *teruma*, which is a Torah prohibition, one is not required to ensure that a minor does not sin. The Gemara rejects this: This is no proof, as this is referring to *teruma* that is separated by rabbinic law, not a doubt concerning a Torah prohibition.

Come and hear: A child may regularly suckle from a gentile woman;<sup>N</sup> and a child may suckle from a non-kosher animal. And in both cases one need not be concerned that he might be considered one who suckles from a detestable creature. But one may not feed a child unslaughtered animal carcasses, or animals with wounds that will cause the animals to die within twelve months [*tereifot*], or repugnant creatures, or creeping animals. A child may suckle from all these, including the non-kosher creatures, even on Shabbat, but in the case of an adult, it is prohibited for him to suckle on Shabbat even from a kosher animal. Abba Shaul says: We were accustomed to suckle from a kosher animal on a Festival, rather than milk it by hand, in the usual way.

In any event, this *tanna* teaches that one need not be concerned that he might be considered one who suckles from a detestable creature, which indicates that a child may be left to eat forbidden food. The Gemara rejects this: There, permission is granted due to a danger, because a child must eat. The Gemara asks: If so, it should also be permitted for an adult, as saving a human life supersedes these prohibitions.

The Gemara answers: An adult requires consultation, i.e., doctors or other experts must examine him and establish that he is dangerously ill. The Gemara retorts: A minor should also require consultation as to whether he is in danger. Rav Huna, son of Rav Yehoshua, said: There is no need for a special consultation, as in an unspecified case a child is in danger with regard to milk. It can be assumed that a child needs milk, and if he does not get it, he will be in danger.

## HALAKHA

They were lenient with regard to doubtfully tithed produce [*demai*] – בדמאי הקילו – Although the Sages decreed that one who buys produce from an ignoramus must separate second tithe and

the *teruma* of the tithes from it, he does not recite a blessing upon this separation, as it is performed only due to an uncertainty (Rambam *Sefer Zera'im*, *Hilkhot Ma'aser* 9:4).

Suckling from an animal on Shabbat and Festivals – וְיִיקָה מִבְּהֵמָה בְּשַׁבָּת וְיָגוּ: If someone was groaning and coughing, it is permitted for him to suckle milk from an animal on Shabbat, as the Sages did not enact their decree in a case involving suffering. The *halakha* is not in accordance with the ruling of Abba Shaul, but rather in accordance with the opinion of Rabbi Marinus in tractate *Ketubot* 60a. Others maintain that a minor may suckle from an animal on Shabbat only if he is ill, but not if he is suffering from hunger or similar pains (Rabbeinu Tam). However, it is permitted for a minor to do so on a Festival (*Magen Avraham*), as stated by Abba Shaul (*Shulḥan Arukh, Orah Hayyim* 328:33).

An adult may not feed a minor by direct action – לֹא לְיִסְפוּ לֵיהּ בְּיָדַיִם: It is prohibited to feed a minor forbidden foods, even if the food is only prohibited by rabbinic law (Rambam *Sefer Kedusha, Hilkhot Ma'akhalot Assurot* 17:27; *Shulḥan Arukh, Orah Hayyim* 343).

Ritual impurity of minor priests – טוּמְאָת כֹּהֲנִים: Just as adult priests are warned not to become ritually impure by contact with a corpse, they must protect minors from ritual impurity. This prohibition refers to positive action on the part of the adults; however, if a minor seeks to render himself impure, there is no obligation to prevent him from doing so (Rambam *Sefer Shofetim, Hilkhot Evel* 3:12; *Shulḥan Arukh, Yoreh De'a* 373:1).

“אָבָא שְׂאוּל אָמַר נוֹהֲגִין הָיִינוּ שְׂיוֹנְקִים מִבְּהֵמָה טְהוֹרָה בְּיוֹם טוֹב,” הֵיכִי דְמַי: אִי דְאִיכָא סַכְנָה – אֲפִילוּ בְּשַׁבָּת נְמִי, וְאִי דְלִיכָא סַכְנָה – אֲפִילוּ בְּיוֹם טוֹב אָסוּר! לֹא צְרִיכָא, דְאִיכָא צְעָרָא.

וְקָסְבְּר: מְפָרַק בְּלֹאֲחֵר יָד הוּא. שַׁבָּת דְאִיסוּר סְקִילָה – גְּזוּר רַבְנָן, יוֹם טוֹב דְאִיסוּר לֹא – לֹא גְזוּר בְּיַד רַבְנָן.

תָּא שְׁמַע: “לֹא תֹאכְלוּם כִּי שִׂקְץ הֵם” – לֹא תֹאכְלוּם, לְהַזְהִיר הַגְּדוּלִים עַל הַקְּטַנִּים. מֵאִי לֹא דְאָמַר לְהוּ “לֹא תֹאכְלוּ”? לֹא, דְלֹא לְיִסְפוּ לֵיהּ בְּיָדַיִם.

תָּא שְׁמַע: “כֹּל נֶפֶשׁ מִכֶּם לֹא תֹאכַל דָּם” – לְהַזְהִיר הַגְּדוּלִים עַל הַקְּטַנִּים. מֵאִי לֹא דְאָמַר לְהוּ: “לֹא תֹאכְלוּ!” לֹא, דְלֹא לְיִסְפוּ לְהוּ בְּיָדַיִם.

תָּא שְׁמַע: “אָמַר וְאָמַרְתָּ” – לְהַזְהִיר הַגְּדוּלִים עַל הַקְּטַנִּים. מֵאִי לֹא דְאָמַר לְהוּ “לֹא תִטְמוּ”? לֹא, דְלֹא לְיִטְמוּ לְהוּ בְּיָדַיִם.

וְצְרִיכֵי, דְאִי אֲשַׁמְעִינן שְׂקָצִים,

The Gemara analyzes the last opinion in the above *baraita*. Abba Shaul says: We were accustomed to suckle from a kosher animal on a Festival. The Gemara inquires: What are the circumstances? If there is imminent danger to a person, even on Shabbat it should also be permitted. And if there is no danger, even on a Festival it should be prohibited.<sup>4</sup> The Gemara answers: No, it is necessary in a case where there is suffering, i.e., they suffer from thirst but no danger is involved.

The Gemara explains: And Abba Shaul holds that sucking directly from an animal is considered the prohibited labor of extracting performed in an unusual manner.<sup>5</sup> It is prohibited to remove food from a source that is not fit for consumption. However, in this case he does not do so in the usual way of milking, but by sucking, and therefore it is prohibited by rabbinic law. Consequently, on Shabbat, when it is a prohibition punishable by stoning, the Sages issued a decree in this case, even if the milking is done in an unusual manner. Conversely, with regard to a Festival, when labor is a negative prohibition that is not punishable by stoning, the Sages did not issue a decree in a situation that involves suffering. In any case, this source offers no proof with respect to how to treat a child who transgresses.

Come and hear: The verse states, with regard to creeping animals and other non-kosher animals: “You shall not eat them [*tokhlum*] for they are a detestable thing” (Leviticus 11:42). The Sages interpret this verse as though it said *ta’akhilum*, do not feed them to others. The verse comes to warn adults concerning minors,<sup>6</sup> i.e., not only is it prohibited for adults to eat these items themselves, they may also not feed them to minors. What, is it not the case that this means adults must say to children: Do not eat, and prevent them from transgressing? The Gemara rejects this explanation: No, it means that an adult may not feed the minor non-kosher food directly by direct action,<sup>7</sup> but this does not prove that one must stop a child from eating non-kosher food of his own accord.

Come and hear, as the verse states: “No soul of you shall eat blood” (Leviticus 17:12). This serves to warn adults concerning minors. What, is it not the case that this means adults must say to children: Do not eat blood? The Gemara responds: No, here, too, it means that an adult may not feed minors by direct action.

Come and hear, as the verse states: “Speak to the priests, the sons of Aaron, and say to them: None shall become impure for the dead among his people” (Leviticus 21:1). This reiteration of “speak” and “and say” comes to warn adults concerning minors. What, is it not the case that this means adults must say to children: Do not become impure? The Gemara rejects this: No, it is possible to interpret that an adult should not render children impure by direct action.<sup>8</sup>

The Gemara adds: And all these three cases are necessary, despite the fact that they apparently teach the same *halakha*, i.e., that adults may not feed minors forbidden food. As, had the *tanna* taught us only the case of repugnant creatures,

## NOTES

Extracting in an unusual manner – מְפָרַק בְּלֹאֲחֵר יָד: By Torah law, a labor is prohibited on Shabbat only if it is performed in its usual manner. With regard to the definition of the labor of extracting, which is not listed among the primary categories of labor prohibited on Shabbat, the opinions vary: According to Rashi the labor of extracting is a subcategory of the primary labor of threshing, whereas others maintain that it is a subcategory of smoothing (Rabbeinu Tam). Yet others hold that it is a subcategory of the prohibited labor of shearing (Rashi, according to *Tosefot HaRosh*).

לְהַזְהִיר הַגְּדוּלִים עַל הַקְּטַנִּים: The commentaries analyze a basic issue here: Is it correct to say that by Torah law minors are warned and obligated to observe mitzvot like adults, but due to their lack of intellectual capacity they cannot be punished for their transgressions? Or is it, perhaps, that Torah prohibitions do not apply at all to minors or people who lack legal competence (*Keren Ora*)? Some commentaries cite proofs from several sources indicating that even minors who eat forbidden foods are subject to a prohibition and reproach (*Gilyonei HaShas*).

משום דאיסורן במשהו. אבל דם, דעד דאיכא רביעית, אימא לא. ואי אשמעינן דם – משום דאיכא כרת, אבל שרצים – אימא לא.

we would have said that the *halakha* is stringent in this case **because they are prohibited by any amount**,<sup>N</sup> i.e., a creeping animal or insect is prohibited on pain of lashes even if it is very small, provided that it is a whole creature (*Tosafot*). **However**, with regard to eating **blood, which** is not a Torah prohibition **unless there is** at least the volume of a **quarter-log**,<sup>N</sup> one might say that there is **no** prohibition against directly feeding minors, as this prohibition is more lenient. **And** had the *tanna* **taught us** only the case of **blood**, we would have said that they were stringent with regard to blood **because there is** the punishment of *karet* for eating blood. **However, for creeping animals**, whose consumption does not entail *karet*, one might say that this *halakha* does **not** apply.

ואי אשמעינן הני תרתי – משום דאיסורן שוה בכל, אבל טומאה – אימא לא. ואי אשמעינן טומאה – כהנים שאני, משום דריבה בהן מצות יתרות, אבל הני – אימא לא, צריכא.

**And** had the *tanna* **taught us** only **these two** cases, we would have said it is **because their prohibitions apply equally to all Jews**. **However**, in the case of **ritual impurity**, which is a mitzva for priests alone, one might say that there is **no** prohibition against directly rendering minors ritually impure. **And** had the *tanna* **taught us** only the case of **ritual impurity**, we would have said that the case of **priests is different** and more stringent, **because** the Torah **includes** extra mitzvot **for them**. **However**, with regard to **these** prohibitions of creeping animals and blood, one might say that there is **no** prohibition against directly feeding minors. Therefore, it was **necessary** to state all these cases.

תא שמע: שני אחיו, אחד פקח ואחד חרש, נשואין שתי אחיות פקחות, מת חרש בעל פקחת, מה יעשה פקח בעל פקחת – תצא משום אחות אשה.

§ The Gemara cites another relevant source with regard to a minor who eats the meat of unslaughtered animals. **Come and hear: If two brothers, one of whom is a deaf-mute and the other one halakhically competent, were married to two halakhically competent sisters, and the deaf-mute married to the halakhically competent sister died, what should the halakhically competent brother married to the halakhically competent sister do?** His brother's wife is released without levirate marriage or *ḥalitza*, **due to** the prohibition with regard to **a wife's sister**.

מת פקח בעל פקחת, מה יעשה חרש בעל פקחת – מוציא את אשתו בגט, ואשת אחיו אסורה לעולם.

If the halakhically **competent** brother **married to the halakhically competent sister died, what should the deaf-mute brother married to the halakhically competent sister do?** **He divorces his wife with a bill of divorce**, which is as valid as their original marriage. **And his brother's wife is forbidden to him forever**. He must divorce his wife, as the levirate bond applies by Torah law, whereas his marriage is valid by rabbinic law. However, in practice he is unable to consummate levirate marriage with the *yevama* or perform *ḥalitza* with her.

NOTES

Prohibited by any amount – דאיסורן במשהו: Rashi states that their prohibition applies even to an amount the size of a lentil, which is the smallest size that imparts ritual impurity. Other commentaries are puzzled by this interpretation (*Tosafot*). Some maintain that Rashi's explanation is in accordance with his opinion in tractate *Beitza*, where he says that even when an item of food is smaller than the minimal measure for a certain prohibition of eating, but it is larger than the minimum amount for that item in a different area of *halakha*, e.g., ritual impurity, then it is also prohibited to partake of that smaller amount. The reason for this is that the fact that the Torah takes that smaller amount into consideration with respect to a different issue is an indication that it is also significant with respect to eating.

However, one is not liable to receive lashes for eating this smaller amount (*Arukh LaNer*).

עד דאיכא רביעית – Unless there is a quarter-log: This claim is puzzling, as in all other places the Gemara states that the prohibition against eating blood applies to the amount of an olive-bulk. It cannot be claimed that the quarter-log measurement refers to liquid blood while the olive-bulk is for congealed blood, as even for liquid blood it is an established *halakha* that the measurement is an olive-bulk (see *Rashash*). One answer is that the prohibition against eating blood applies only to a creature that contains a quarter-log of blood from the outset (*Arukh LaNer*).

אִמָּאֵי מוֹצִיא אֶת אִשְׁתּוֹ בְּגִטָּה? תִּיתֵב גְּבִיָּה, קָטָן אוֹכֵל נְבִלּוֹת הוּא! מִשּׁוֹם אִיסוּרָא דִּידָהּ.

The Gemara inquires: **Why should he divorce his wife with a bill of divorce? Let her continue to live with him**, as a deaf-mute is in the same category as a minor who eats the meat of unslaughtered animals, for he is not legally competent. Consequently, even if he were to engage in sexual relations with her, this would not be considered a transgression. The Gemara answers: If the matter concerned the deaf-mute alone, this would be the case. However, here he must divorce her **due to the prohibition** that applies to her, as his wife is legally competent, and just as she is forbidden to him, he is also forbidden to her.

תָּא שְׁמַע: שְׁנֵי אַחֵין פְּקַחִין נְשׂוּאִין שְׁתֵּי אַחֵיות, אַחַת פְּקַחַת וְאַחַת חֲרָשָׁת, מִת פְּקַח בַּעַל חֲרָשָׁת, מִה יַעֲשֶׂה פְּקַח בַּעַל פְּקַחַת – תִּצָּא מִשּׁוֹם אַחוֹת אִשָּׁה. מִת פְּקַח בַּעַל פְּקַחַת, מִה יַעֲשֶׂה פְּקַח בַּעַל חֲרָשָׁת – מוֹצִיא אֶת אִשְׁתּוֹ בְּגִטָּה וְאִשְׁתּוֹ אַחֵיו בְּחֵלְצָהּ.

**Come and hear:** If two halakhically competent brothers were married to two sisters, one of whom is a deaf-mute and the other one halakhically competent, and the halakhically competent brother married to the deaf-mute sister died, what should the halakhically competent brother married to the halakhically competent sister do? The deaf-mute is released due to the prohibition with regard to a wife's sister. If the halakhically competent brother married to the halakhically competent sister died, what should the halakhically competent brother married to the deaf-mute sister do? **He divorces his wife with a bill of divorce**, as the halakhically competent sister came before him for levirate marriage, and the legal status of her levirate bond is higher than that of his marriage to his wife, a deaf-mute. **And he releases his brother's wife**, who is not a deaf-mute, by means of *halitza*, as they are both competent and can therefore perform *halitza*.

וְאִמָּאֵי מוֹצִיא אֶת אִשְׁתּוֹ בְּגִטָּה? תִּיתֵב גְּבִיָּה, קָטָן אוֹכֵל נְבִלּוֹת הוּא! מִשּׁוֹם אִיסוּרָא דִּידָהּ.

The Gemara again asks: **But why should he divorce his wife with a bill of divorce? Let her continue to live with him**, as a deaf-mute is in the same category as a minor who eats the meat of unslaughtered animals. The Gemara answers as above: He must divorce her **due to the prohibition** that applies to him.

אָמַר רַבָּא, תָּא שְׁמַע: שְׁנֵי אַחֵין, אֶחָד חֲרָשׁ וְאֶחָד פְּקַח, נְשׂוּאִין לְשְׁתֵּי אַחֵיות, אַחַת פְּקַחַת וְאַחַת חֲרָשָׁת, מִת חֲרָשׁ בַּעַל חֲרָשָׁת, מִה יַעֲשֶׂה פְּקַח בַּעַל פְּקַחַת – תִּצָּא מִשּׁוֹם אַחוֹת אִשְׁתּוֹ. מִת פְּקַח בַּעַל חֲרָשָׁת, מִה יַעֲשֶׂה חֲרָשׁ בַּעַל חֲרָשָׁת – מוֹצִיא אֶת אִשְׁתּוֹ בְּגִטָּה וְאִשְׁתּוֹ אַחֵיו אִיסוּרָה לְעוֹלָם.

**Rava said:** Come and hear: If two brothers, one of whom is a deaf-mute and the other one halakhically competent, were married to two sisters, one of whom is a deaf-mute and the other one halakhically competent, and the deaf-mute brother married to the deaf-mute sister died, what should the halakhically competent brother married to the halakhically competent sister do? The deaf-mute woman is released due to the prohibition with regard to a wife's sister. If the halakhically competent brother married to the halakhically competent sister died, what should the deaf-mute brother married to the deaf-mute sister do? **He divorces his wife with a bill of divorce**, and his brother's wife is forbidden to him forever.

וְהָא הֵבֵא, דְּלֵאוּ אִיסוּרָא דִּידָהּ אֵיבָא וְלֵאוּ אִיסוּרָא דִּידָהּ אֵיבָא, וְקַתְּנֵי מוֹצִיא אֶת אִשְׁתּוֹ בְּגִטָּה! אָמַר רַב שְׁמַעְיָה: גְּזִירָה מִשּׁוֹם הַתֵּרֵת יְבָמָה לְשׂוּקָה.

Rava elaborates: **But here is a case where there is no prohibition** that applies to her and there is no prohibition that applies to him, as they are both deaf-mutes who are not prohibited to each other, and yet it is taught that **he divorces his wife with a bill of divorce**. Rav Shemaya said: This is a rabbinic decree due to the danger of permitting a *yevama* to a member of the public. Since people might think that the deaf-mute sister is his full-fledged wife, they are likely to conclude that it is permitted for this *yevama* to marry someone other than the *yavam*, like any other sister of the wife of the *yavam*. However, in actual fact she is not the sister of the wife of her *yavam*, as the deaf-mutes are not married by Torah law, and she may not marry any other man because she is a *yevama* whose *yavam* cannot marry her or perform *halitza*. For this reason, the Sages decreed that this deaf-mute husband must divorce his wife. In sum, this source too does not provide conclusive proof with regard to the question of a minor who eats meat from unslaughtered animals.

הדרן עלך חרש

**מתני'** האשה שהלכה היא ובעלה למדינת הים, שלום בינו לבינה ושלום בעולם, ובאה ואמרה: "מת בעלי" – תנשא: "מת בעלי" – תתייבם.

שלום בינו לבינה ומלחמה בעולם, קטטה בינו לבינה ושלום בעולם, ובאתה ואמרה: "מת בעלי" – אינה נאמנת. רבי יהודה אומר: לעולם אינה נאמנת אלא אם כן באתה בוכה ובגדיה קרועין. אמרו לו: אחת זו ואחת זו תנשא.

**גמ'** תנא שלום בינו לבינה – משום דקבעי למיתני קטטה בינו לבינה, תנא שלום בעולם משום דקבעי למיתני מלחמה בעולם.

אמר רבא: מאי טעמא דמלחמה – משום דאמרה בדרמי, סלקא דעתא בכל הני דאיקטול הוא פליטי? אם תימצא לומר כיון דשלום בינו לבינה – נטרא עד דחויא, זימנין דמחו ליה בגירא או ברומחא, וסברא ודאי מת, ואיכא דעבד סמטרי וחייה.

סבר רבא למימר: רעבון אינו כמלחמה, דלא אמרה בדרמי. הדר אמר רבא: רעבון הרי הוא כמלחמה. דההיא דאתת לקמיה דרבא, אמרה ליה: בעלי מת ברעב. אמר לה: שפיר עבדת דשיובת נפשויך? סלקא דעתך דבההוא פורתא דנפמיתא דשבת ליה הוה חיי? אמרה ליה: מר נמי ידע דכי האי גוונא לא חיי.

הדר אמר רבא: רעבון גריעה ממלחמה. דאילו מלחמה, כי אמרה "מת בעלי במלחמה" – הוא דלא מהימנא. הא "מת על מטתו" – מהימנא. ואילו גבי רעבון, עד דאמרה "מת וקברתי".

**MISHNA** With regard to a woman who went, she and her husband, overseas, if there was peace between him and her,<sup>n</sup> i.e., the couple were not fighting at the time, and there was also peace in the world, i.e., there was no war at that time, and the woman came back by herself and said: My husband died, she may marry on the basis of her own testimony. Likewise, if she said: My husband died,<sup>h</sup> and they did not have children, but her husband had a brother, she may enter into levirate marriage.

If there was peace between him and her when they left but there was war in the world, or if there was a quarrel between him and her and peace in the world, and she came and said: My husband died, she is not deemed credible, as she may be mistaken or lying. Rabbi Yehuda says: She is never deemed credible when she testifies that her husband died, unless she came crying and her clothing was torn, in which case it is apparent that she is speaking the truth. They said to him: This is an incorrect distinction. Rather, both this woman who cries and this woman who does not cry may marry on the basis of their own testimony.

**GEMARA** The tanna of the mishna taught the clause: Peace between him and her, because later he wanted to teach the clause: A quarrel between him and her. Likewise, he taught: Peace in the world, because he wanted to teach afterward: War in the world. In other words, the fact that there was peace between them or peace in the world is of importance only because the opposite is the case in other situations dealt with in the mishna. Therefore, the tanna emphasized the lack of disruptions in the first case cited by the mishna.

Rava said: What is the reason that one does not rely on her testimony when there is war? It is because she says what she imagines to be the case: Can it enter one's mind that among all these people who were killed, her husband alone is saved? If you say: Since there was peace between him and her, she guards herself and waits until she actually sees that he died; even so, at times it might happen that his enemies strike him with an arrow or spear and she thinks that he is certainly dead due to the wound, and yet this is no proof that he is dead, as there are instances when someone prepares medicine [samterei]<sup>b</sup> for the wounded person and he survives, despite his apparently fatal wound.

Rava thought to say that famine is not like war, as in the case of a famine she will not say and infer based on what she imagines to be the case. Rava then retracted and said: Famine is like war. Why did he change his mind? This happened because a certain woman came before Rava, and said to him: My husband died in a famine. Seeking to cross-examine her, Rava said to her: Did you do well to save yourself, by running away and leaving him? Did it enter your mind that with that small amount of sifted flour<sup>n</sup> that you left him he could have survived? She said to him: The Master also knows that in a case like this he could not survive. Rava understood from her comment that she did not actually see her husband die, but merely saw that he was weak from hunger, and yet she testified with certainty that he died.

Rava then retracted again and said: Famine is worse than war in this respect. As in wartime, it is only if she said: My husband died in the war, that she is not deemed credible. This indicates that if in a time of war she says: He died upon his bed,<sup>nh</sup> or in some other unrelated manner, she is deemed credible, as she would not err in this case, whereas with regard to a famine<sup>h</sup> she is deemed credible only if she says: He died and I buried him. In other words, during a famine it must be clear that she is testifying about his actual death, and is not basing her claim on an assumption.

NOTES

**שלום בינו לבינה** – This does not mean it is absolutely clear that there was peace between them or peace in the world. Rather, provided that the court is not aware that there was a quarrel between them or a war, it is considered as though there was peace between them and in the world. This is indicated by Rava's comment in the Gemara, as he says that the reason she is not deemed credible in a time of war is because she says what she imagines to be the case. For her account to be undermined in this manner it must be positively shown that there is a war (Rashba).

**פורתא דנפמיתא** – The *ge'onim* suggest an entirely different interpretation of this expression: Shortness of breath. In other words, Rava asked: Did you leave him and run away because he had only a few short breaths left in him and was about to die of hunger?

**מת על מטתו** – Some commentaries claim that she does not necessarily have to say that he died upon his bed. Rather, she is deemed credible even when she testifies to an incident that must have undoubtedly resulted in his death, e.g., if she says that she saw him beheaded (Rashba).

HALAKHA

**האשה** – The woman who said my husband died – **שאמרה מת בעלי**: A wife who comes and says that her husband died is deemed credible when there was peace between the husband and wife and peace in the world (Rambam *Sefer Nashim, Hilkhot Geirushin* 12:15; *Shulhan Arukh, Even HaEzer* 17:43, 48).

**מת על מטתו** – **במלחמה**: If a woman comes and says that her husband died during a time of war, she is not deemed credible even if she says that she herself buried him, as it is not the custom to bury the dead during a war (Rambam). However, some say that she is deemed credible (Rashba; see *Lehem Mishne*). If she says he died upon his bed, all agree that she is deemed credible. The Mordekhai writes that any woman who says her husband died far away from the war, or even that he was killed, is deemed credible (Rambam *Sefer Nashim, Hilkhot Geirushin* 13:2; *Shulhan Arukh, Even HaEzer* 17:43, 48, and in the comment of Rema).

**מת ברעב** – If a woman says in a year of famine that her husband died of hunger or thirst (Rema), she is not deemed credible. However, if she says: He died and I buried him, she is deemed credible (Rambam *Sefer Nashim, Hilkhot Geirushin* 13:5; *Shulhan Arukh, Even HaEzer* 17:53).

BACKGROUND

**Samterei** may be an extract from the bark of the *Dracaena cinnabari* tree, or the *D. draco* plant. Both are commonly referred to as the dragon's blood tree or plant, respectively. These flora, native to islands off the coast of Africa, produce a red sap which was used by doctors in the past as an important medicine. Its main function was to induce tissue contraction and thereby prevent bleeding.

BACKGROUND

An outbreak of snakes and scorpions – שילוח נחשים – עקרבאים: Large groups of animals will often move from place to place as a result of a natural disaster, e.g., floods and fires, or as a result of a population explosion. Often this phenomenon is accompanied by a behavioral change in the animals, as they grow more aggressive. In an outbreak of this kind, animals that would normally avoid humans have been known to attack and bite them.

NOTES

We rely on that which people say – סמכי אדאמרי אינשי – Some commentaries explain that as she believes that even in a time of plague people do not die before their time, she would not be afraid to remain with him, but would stay by her husband's side until his death. Therefore, her claim is deemed credible (Arukh LaNer).

מפולת – הרי הוא כמלחמה, דאמרה בדדמי. שילוח נחשים ועקרבאים – הרי הן כמלחמה, דאמרה בדדמי.

דבר, אמרי לה: הרי הוא כמלחמה, ואמרי לה: אינו כמלחמה. אמרי לה: הרי הוא כמלחמה – דאמרי בדדמי, ואמרי לה: אינו כמלחמה, דסמכי אדאמרי אינשי: שב שגון הוה מותנא ואינש בלא שני לא אייל.

איבעיא להו: החזיקה היא מלחמה בעולם מהו? מי אמרינן מה לה לשקר.

Similarly, a rockslide is like war,<sup>h</sup> as she will say what she imagines to be the case, and she might not meticulously examine the facts to see if he was possibly saved. Furthermore, an outbreak of snakes and scorpions<sup>hh</sup> is like war, as she will say what she imagines to be the case.

In a case of pestilence<sup>h</sup> or a similar plague, some say it is like war, and some say it is not like war. The Gemara explains: Some say it is like war, as she will say what she imagines to be the case, because she assumes that if most everyone died in the plague her husband could not have survived. Conversely, some say it is not like war, because we rely on that which people say<sup>n</sup> in the common expression: For seven years there was pestilence and not a person left, i.e., died, before his time. In other words, with regard to natural disasters of this kind it is known sometimes that one can avoid harm, and therefore if a woman testifies that her husband died she certainly witnessed his death.

§ A dilemma was raised before the scholars: If she maintains that there is a war<sup>h</sup> in the world, i.e., if the court was not aware of a war in that place, but the wife comes and claims that there was a war, and she went on to say that her husband died in this war, what is the halakha in this case? Do we say: Why should she lie? In other words, if she was lying she would have issued a more advantageous claim. Since she herself informed the court that there was a war, which undermines her claim that her husband died, there is no legitimate reason to suspect her of lying.

HALAKHA

A rockslide is like a war – מפולת הרי הוא כמלחמה: A woman who says that her husband died in a rockslide is not deemed credible, as a rockslide is considered like a war with regard to this halakha (Rambam Sefer Nashim, Hilkhot Geirushin 13:4; Shulhan Arukh, Even HaEzer 17:51).

An outbreak of snakes or scorpions – שילוח נחשים ועקרבאים: The Rema, citing Beit Yosef, says that if there was an attack of snakes or scorpions and a woman says her husband died of a snakebite or a scorpion's sting, she is not deemed credible, as this is considered like a time of war (Rambam Sefer Nashim, Hilkhot Geirushin 13:4; Shulhan Arukh, Even HaEzer 17:51).

Pestilence in the world – דבר בעולם: If at a time of pestilence a

wife said that her husband died of that plague, she is deemed credible (Rambam Sefer Nashim, Hilkhot Geirushin 13:7; Shulhan Arukh, Even HaEzer 17:55).

She maintains there is a war – החזיקה היא מלחמה: The Rema, citing Tur and the Rosh, holds that if a wife comes and says there was a war in another region and her husband died in that war, but the court had no knowledge of that war taking place, she may not remarry ab initio. However, if she did remarry she need not leave her new husband. Others claim that she must leave her new husband, as when she married him she was a woman with regard to whom there was uncertainty whether she was married (Rambam Sefer Nashim, Hilkhot Geirushin 13:3; Shulhan Arukh, Even HaEzer 17:49).

Perek XV  
Daf 115 Amud a

דאי בעיא אמרה שלום בעולם, או דלמא: בין דאיחזיקה – אמרה בדדמי, ולא אתי "מה לי לשקר" ומרע חזקתיה?

Because if she wanted to lie she would have said: There was peace in the world, and the court would have accepted her testimony. Or perhaps it can be argued: Since she has maintained that there was a war and this claim of hers has already been accepted, with regard to her report concerning her husband, she will say what she imagines to be the case, and the argument of: Why would I lie, does not come<sup>n</sup> and undermine the established presumption that there was a war.

NOTES

Why would I lie, does not come – ל'א אתי מה לי לשקר: The Gemara is apparently discussing the question of whether the argument that a liar would have issued a more advantageous claim can override the factual presumptions accepted by the court. This question is discussed elsewhere in the Gemara (see Tosafot). However, in this context the entire argument of: Why would she lie, is problematic. This is because according to most commentaries there is no suspicion in these cases that the wife is attempting to lie. Instead, the difficulties with her testimony arise because she is prone to error, either as a result of innocent mistakes or due to her hatred of her husband.

Evidently, the argument: Why would she lie, has a different meaning in this case than in other areas of halakha. The idea is that as she speaks so precisely and relates the whole event as it happened, she is presumably also speaking accurately when she says her husband died (Rashba; Ritva). Likewise, the presumption mentioned here does not mean there is a presumption that there was a war. Rather, it is a presumption that people often do not speak accurately in situations of this kind (see Tosafot Rid).