

GEMARA It was taught in a *baraita*: If this one has witnesses that her husband died and also has children, and the other has neither witnesses nor children, they are both permitted to marry. This is because the woman who has children is exempt from levirate marriage, and the woman who has no children may rely upon the witnesses' testimony that her *yavam* died.

It was taught in the *mishna*: If they both entered into levirate marriage and then the *yevamin* they married died, they are prohibited from marrying. Rabbi Elazar says: Since they were permitted to marry the *yevamin*, they are permitted to any man.

Rava raised a dilemma: What is Rabbi Elazar's reasoning? Is it because he holds in general that one rival wife may testify for another rival wife about her husband's death, and he similarly holds that all of the five types of women who are presumed to have a conflict of interest with each other may testify for one another nonetheless? Or perhaps it is because she would not cause herself injury. Although she would be suspected of lying and saying that her husband died in order to harm her rival wife, if she herself enters into levirate marriage it can be assumed that she was telling the truth, because if she does so while her husband is actually alive, she would be committing incest with her brother-in-law. Consequently, her rival wife is also permitted to marry on the basis of her testimony.

The Gemara asks: What is the practical difference between the two reasons?

גמ' תנא: לזו עדים ובנים ולזו לא עדים ולא בנים - שהיה מותרות.

"נתייבמו ומתו היבמין - אסורין להנשא". רבי אלעזר אומר: הואיל והותרו ליבמין - הותרו לכל אדם.

בעי רבא: מאי טעמא דרבי אלעזר, משום דקסבר צרה מעידה לחברתה, או דלמא משום דהיא לא מקלקלא נפשה?

למאי נפקא מינה?

Perek XVI
Daf 120 Amud a

לאנסובי לצרה מקמי דידה. אי אמרת צרה מעידה לחברתה, אף על גב דלא אינסיב - מנסבין לה לצרה. אי אמרת משום דהיא לא מקלקלא נפשה, אינסיב - מנסבין לה לצרה. אי לא אינסיב - לא מנסבין לה.

מאי? תא שמע, רבי אלעזר אומר: הואיל והותרו ליבמין הותרו לכל אדם. אי אמרת בשלמא דהיא לא מקלקלא נפשה - היינו דכי אינסיב מנסבין לה.

The Gemara responds that Rabbi Elazar's reasoning could make a practical difference with regard to allowing the rival wife to marry before the woman herself, i.e., the woman who testified that her husband died, remarries. If you say that according to Rabbi Elazar, one rival wife may testify for another, then although the woman who testified that her husband died has not married, we allow her rival wife to marry. Since the woman's report is deemed credible with regard to herself, it is also deemed credible with regard to her rival wife. However, if you say that Rabbi Elazar's reasoning is due to the presumption that she would not cause herself injury, then if she has actually married we may allow her rival wife to marry, but if she has not married, we may not allow her rival wife to marry, in case she lied in order to cause harm to her rival wife.

What is the basis of Rabbi Elazar's ruling? The Gemara suggests: Come and hear a resolution based upon the wording of the *baraita* itself: Rabbi Elazar says: Since they were permitted to marry the brothers-in-law, they are now permitted to marry any man. Granted, if you say that his reason is because she would not cause herself injury, this is the reason that if she has actually married, as in this case, where each woman entered into levirate marriage, we may allow her rival wife to marry.

אֵלֶּא אִי אִמְרַת מְשׁוּם דְּצַרָּה מְעִידָה
לְחִבְרַתָּהּ, אִף עַל גַּב דְּלֵא אִינְסִיב נְמִי!
אֵלֶּא שְׁמַע מִינָּה: טַעְמָא דְּרַבִּי אֶלְעָזָר מְשׁוּם
דְּאִינְסִיב הוּא, וְלֵא מְקַלְקֵלָא נְפִשָּׁה.

But if you say the reason is because one rival wife may testify for another, then although she herself has not married, it should still be permitted for her rival wife to marry, and it would be unnecessary for Rabbi Elazar to state his opinion in a case where the women had already entered into levirate marriage. Rather, conclude from this that Rabbi Elazar's reason is because she has already married, and she would not cause herself injury by marrying if her original husband had not died.

רַבִּי אֶלְעָזָר לְדַבְרֵיהֶם קָאָמַר לְהוּ: לְדִינֵי צַרָּה
מְעִידָה לְחִבְרַתָּהּ, וְאִף עַל גַּב דְּלֵא אִינְסִיב –
מְנַסְבִּינָּן לָהּ. אֵלֶּא לְדִינְכּוֹ, אִוְדוּ לִי מִיְהִית
דְּהִיכָא דְּאִינְסִיב – מְנַסְבִּינָּן לָהּ, מְשׁוּם דְּהִיָּא
לֵא מְקַלְקֵלָא נְפִשָּׁה. וְרַבְנָן: "תְּמֹת נְפִשֵׁי עִם
פְּלִשְׁתִּים" הוּא דְּקַעְבְּדָה.

The Gemara rejects that and suggests that Rabbi Elazar stated his opinion to the Rabbis in accordance with their own statement, as follows: According to my own opinion, one rival wife may testify for another, and although she, herself, has not married, nevertheless we may allow her rival wife to marry. But even according to your own opinion, admit, in any event, that where she has actually married we may allow her rival wife to marry because she would not cause injury to herself. But the Rabbis, rejecting this, say that she acts upon the premise: "Let me die with the Philistines" (Judges 16:30), i.e., a woman may even harm herself by remarriage while her original husband is still alive, in order to harm her rival wife by causing her to remarry as well.

תָּא שְׁמַע: הָאִשָּׁה שֶׁהִלְכָה הִיא וּבְעֵלָהּ
לְמִדְיַת הַיָּם, וּבָאָה וְאָמְרָה: "מֵת בְּעָלִי" –
תִּנְשָׂא וְתִטּוֹל כְּתוּבָתָהּ, וְצָרְתָה אֶסְוֶרָה. רַבִּי
אֶלְעָזָר אָמַר: הוּאִיל וְהוֹתֵרָה הִיא – הוֹתֵרָה
נְמִי צָרְתָה. אִימָא: הוּאִיל וְהוֹתֵרָה וְנִשְׂאָת.

The Gemara suggests another solution. Come and hear the following *baraita*: In the case of a woman who wentⁿ with her husband to a country overseas, and who later came and said: My husband died, she is permitted to marry and collect the widow's compensation from her marriage contract, but her rival wife is prohibited from doing so. Rabbi Elazar says: Since she is permitted to marry, her rival wife is also permitted. This indicates that Rabbi Elazar holds that the rival wife is permitted to marry because the wife who testified that her husband has died is permitted to do so, even if the latter has not actually remarried yet. The Gemara rejects this proof: Say that Rabbi Elazar means: Since she was permitted and has married.

וְלִיחֻשׁ דְּלָמָא בְּנִיטָא אֲתָאִי, וְהִיא דְּקָאָמְרָה
הִכִּי – לְקַלְקֵלָא לְצַרָּה הִיא מִכְּבוֹנָה?

The Gemara asks: If Rabbi Elazar's reason is that she would not cause herself injury, how can her rival wife be permitted to marry? Let us be concerned that perhaps she, i.e., the woman who claimed that the husband was dead, came with a bill of divorce and is therefore permitted to remarry though the husband is alive. And the fact that she says this, i.e., that her husband is dead, is intended only to injure her rival wife, who will remarry, thinking that the husband is dead, and will suffer the severe consequences of adultery.

אִי דְּאִינְסִיב לְיִשְׂרָאֵל הִכִּי נְמִי, הִכָּא בְּמֵאִי
עָסְקִינָּן – דְּאִינְסִיב לְכַהֵן.

The Gemara then validates this concern. If she actually married an Israelite, which is permitted for a divorced woman, then indeed one must consider the possibility that she is actually divorced and not widowed, and the rival wife is not permitted to marry. However, here we are dealing with a case where she married a priest, who is prohibited from marrying a divorced woman, and therefore she must actually be a widow, as she would not damage herself by entering into a forbidden marriage.

NOTES

תָּא שְׁמַע הָאִשָּׁה – תָּא שְׁמַע הָאִשָּׁה וְכוּ: This passage is found in the Jerusalem Talmud with certain differences. According to the *baraita* cited there, Rabbi Elazar does not disagree with the Rabbis in the case of woman who went overseas with her husband and returned claiming that he had died. Consequently, the rival wife is prohibited from marrying on the basis of the woman's report. It is then argued that this applies only until the wife who returned from overseas remarries, at which point the rival wife is also permitted to remarry. This indi-

cates that the basis of Rabbi Elazar's ruling in the mishna is that the woman would not cause herself injury. However, the conclusion in the Jerusalem Talmud is that the rival wife may not remarry even if the widow who issued the report remarries, because the latter may have actually been divorced. This is true even if she marries a priest, which a divorcée is prohibited from doing, because she may prefer to enter a forbidden marriage of this kind in order to provoke her rival wife to remarry in an adulterous fashion and produce children who have the status of a *mamzer*.

LANGUAGE

Countenance [*partzuf*] – פְּרָצוּף: The source of this word is the Greek πρόσωπον, *prosopon*, meaning mask, as well as facial appearance. It appears that the Sages used it to mean appearance or facial features.



Ancient Greek mask

Wax [*kira*] – קִירָא: This word comes from the Greek κηρός, *keros*, or from the Latin *cera*, meaning wax.

Recognize him [*bashakru*] – בִּשְׁקָרוּהוּ: The etymology of this word is not known with absolute certainty, but it probably derives from Iranian terms of hunting, such as the Persian *bišqar*. In Aramaic, this verb has the sense of recognizing, or searching, as one does in a hunt.

PERSONALITIES

Abba bar Marta – אָבָא בַר מַרְתָּא: He was a Babylonian *amora* who lived during the third and fourth generations of Babylonian *amora'im*. He was sometimes identified as the son of his mother, Marta, and sometimes as the son of his father, Minyumi. Apparently, he was a disciple of Rav Yehuda, but he also engaged in discussion with Abaye and Rava. He was a merchant but never became wealthy. Several stories are told in the Talmud about the debts he owed to the family of the Exilarch and others, as well as other events that happened to him. He was close with the Sages of his generation, but it seems that he was not considered a preeminent Sage in his own right.

BACKGROUND

Crucified – צָלוּב: Execution by crucifixion was one of the typical Roman forms of capital punishment. This bizarre and extremely painful form of execution was routinely used to punish slaves, captives, and rebels. The act of crucifixion, nailing the prisoner's hands and feet to a wooden cross, was not enough to kill the crucified person, whose death would actually be a result of blood loss and dehydration. There were cases where people were removed from the cross and managed to recuperate.

The Exilarch – רִישָׁא גְלוּתָא: The Exilarch, descended from the house of David, was recognized by the Jews as the heir to the throne of Judah and entrusted with broad official powers. He was the leader of the Jews of the Persian Empire and their representative to the authorities, who regarded him as a member of a royal dynasty. Consequently, he enjoyed a lofty position within the Persian court. During various periods, he was even considered third in the Persian royal hierarchy. The Exilarch was responsible for the collection of a major portion of the government taxes from the Jewish community, and he could appoint leaders and judges whose powers included the imposition of corporal, and sometimes capital, punishment.

מתני' אין מעידין אלא על פְּרָצוּף פְּנִים עִם הַחוּטָם, אִף עַל פִּי שֵׁשׁ סִימָנִים בְּגוּפוֹ וּבְכֵלָיו. אִין מְעִידִין אֲלָא עַד שֶׁתֵּצֵא נַפְשׁוֹ, וְאִפְּלוּ רְאוּהוּ מְגוּיִד וְצָלוּב וְהַחֲזִיה אֹכְלֵת בּוֹ. אִין מְעִידִין אֲלָא עַד שְׁלֹשָׁה יָמִים.

רַבִּי יְהוּדָה בֶּן בְּבָא אָמַר: לֹא כָּל הָאָדָם, וְלֹא כָּל הַמָּקוֹם, וְלֹא כָּל הַשָּׁעוֹת שׁוֹיִן.

גַּמְ' תֵּנוּ רַבְּנָן: פְּדַחַת וְלֹא פְּרָצוּף פְּנִים, פְּרָצוּף פְּנִים וְלֹא פְּדַחַת – אִין מְעִידִין, עַד שֶׁיְהִי שֵׁינֵיהֶם עִם הַחוּטָם. אָמַר אַבְיִי וְאִיתִימָא רַב פְּהָנָא: מַאי קָרָא? "הַפֶּרֶת פְּנֵיהֶם עֲנַתָּה בָּם."

אָבָא בַר מַרְתָּא דְהוּא אָבָא בַר מִנְיֻמִּי הָוָה מְסַקֵּי בֵיה דְבִי רִישָׁא גְלוּתָא זְוִי, אִיתִי קִירָא, דְּבַק בְּבִלְיִתָּא, דְּבַק בְּאַפּוֹתֵיהּ, חֲלַף קַמְפִּיְהוּ וְלֹא בִשְׁקָרוּהוּ.

MISHNA One may testify that a man died **only** if he can testify about seeing the countenance [*partzuf*]¹ of the faceⁿ with the nose,^h as this allows one to identify the individual with certainty. Although there are distinguishing marks [*simanim*] on his body and his personal belongings, which appear to indicate his identity, one may not rely on these as identification. Furthermore, one may not testify that a person died until his soul actually departs.^h And even if one saw him cut open and severely wounded, or crucified,^{BNH} or with a wild animal eating parts of him, he may not testify that he died. Additionally, one may testify to someone's death **only** when the body was witnessed up to three days^h following death and not after that, since the appearance may change due to decomposition.

Rabbi Yehuda ben Bava says: One cannot establish general guidelines for this matter because **not every person, nor every place, nor every hour is identical**. Decomposition is not uniform. It occurs at different rates in different situations.

GEMARA The Sages taught in a *baraita*: If the witnesses saw his forehead but not the countenance of the face, or if they saw the countenance of the face but not his forehead, they may not testify that it is he, until they see both of them with the nose. Abaye said, and some say it was Rav Kahana who said: What is the verse from which it is derived that one may testify that a man died only if one sees his face? The verse is: "The show of their face does witness against them" (Isaiah 3:9), which indicates that one clearly recognizes another only upon seeing his face.

The Gemara relates that Abba bar Marta,^p who is also known as Abba bar Minyumi, had been loaned money by members of the Exilarch's^b house. Since he did not want to be seen by these violent people, he brought wax [*kira*],¹ stuck it to a strip of worn-out fabric,ⁿ and stuck all of that to his forehead in order to alter his appearance. He passed before them and they did not recognize him [*bashakru*].¹ This shows how much a person's face changes when the appearance of his forehead is altered.

NOTES

The countenance of the face – פְּרָצוּף פְּנִים: In the Jerusalem Talmud, this is defined as the cheeks. This definition is accepted by the halakhic authorities (see Meiri).

One saw him...crucified – רְאוּהוּ...צָלוּב: It is explained in the Jerusalem Talmud that it takes time for one to die even when he is crucified. In the interim, it is possible that a Roman noblewoman might see him and, pitying him, command them to remove him from the crucifix. Likewise, it is recorded in the writings of Josephus that some of his relatives were removed from the crucifix by his request and survived.

He brought wax, stuck it to a strip of worn-out fabric – אִיתִי: A similar story is told in the Jerusalem Talmud about the people of Tzipori, who would do this in order to evade payment of government taxes. The authorities did not recognize them, until the scheme was revealed by informers. With regard to the story presented here in the Gemara, it is explained in the *Anaf Yosef* that Abba bar Minyumi was poor, and since he was a Torah scholar, the Exilarch certainly believed that he had no money to pay. But the Exilarch's servants were known for their wickedness and had no compassion for him, and therefore he used this method to avoid their notice until he could pay.

HALAKHA

The countenance of the face with the nose – פְּרָצוּף פְּנִים עִם הַחוּטָם: If one finds a corpse, and the countenance of the face, nose, and forehead are intact, and he recognizes the corpse as a particular person based on those features, he may testify this person has died (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 13:21; *Shulhan Arukh*, *Even HaEzer* 17:24).

Until his soul departs – עַד שֶׁתֵּצֵא נַפְשׁוֹ: One may not testify that a soul has died unless he sees that person's corpse (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 13:15; *Shulhan Arukh*, *Even HaEzer* 17:29).

Cut open or crucified – מְגוּיִד וְצָלוּב: If one sees someone crucified with birds eating his flesh or stabbed and shot with arrows, but the individual is not yet fully dead, he may not testify that the individual has died (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 13:18; *Shulhan Arukh*, *Even HaEzer* 17:31).

Up to three days – עַד שְׁלֹשָׁה יָמִים: One may testify that another individual has died based on visual identification only if one saw the corpse within three days of the person's death. If one saw the corpse after that time, he may not testify about the identity of the dead individual, as the appearance of a body changes after death (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 13:21; *Shulhan Arukh*, *Even HaEzer* 17:26).

מצאו קשור בכיס – If he found it tied to a purse, etc. – **וכי**: If one was transporting a bill of divorce and he lost it in a place where caravans frequently travel, and in the place where the bill of divorce was written there were two individuals with the name recorded in the bill, and he then found it, even after a long time, in a purse or tied to an object with a distinguishing mark, or he recognizes it by sight; and he knows that he did not lend that object, or that object is not one customarily lent out to others, he may deliver the bill of divorce to the woman and he need not be concerned that it might be a different one (Rambam *Sefer Nashim, Hilkhot Geirushin* 3:9; *Shulhan Arukh, Even HaEzer* 132:4).

עדות על פי שומא – Testimony based on a mole – If one does not recognize the face of a corpse, or if part of its face is missing, one may not testify about its identity. This is true even if there are distinguishing marks on the body, e.g., a moles, which are not considered unambiguous distinguishing marks. If there are unambiguous distinguishing marks, one may testify (Rambam *Sefer Nashim, Hilkhot Geirushin* 13:21; *Shulhan Arukh, Even HaEzer* 17:24).

סימנין דאורייתא – Distinguishing marks are recognized as valid identification by Torah law – According to Torah law, one may rely upon unusual distinguishing marks and make legal decisions based on them. It is explained in the *Kesef Mishne* that one may return lost objects based upon their identification via unusual distinguishing marks, and one may allow the wife of the dead man to remarry only if the man is identified via extremely unusual identifying marks. Marks that are less unusual may not be relied upon at all (Rambam *Sefer Nezikim, Hilkhot Aveda* 13:5; *Shulhan Arukh, Hoshen Mishpat* 267:4–5).

LANGUAGE

ארנקי – Money bag [*arnekei*] – This word comes from the Greek ἀρνάκις, *arnakis*, meaning a garment of leather or a pocket.



Roman-style leather money bag

אף על פי שיש סימנין וכו'. למימרא דסימנין לאו דאורייתא?

S We learned in the mishna that, although there are distinguishing marks on a dead person's body and clothing, one may not rely on these as identification. The Gemara asks: **Is this to say that distinguishing marks are not recognized as valid identification by Torah law**, and while a rabbinic ordinance allows one to rely upon them to remedy certain situations, for testimony about a person's death, the Sages require the stringencies of Torah law?

ורמינהי: מצאו קשור בכיס ובארנקי ובטבעת, או שנמצא בין בליו, אפילו לזמן מרובה, כשר!

But the Gemara raises a contradiction, based upon the following *baraita*: If an agent charged with delivering a bill of divorce to a woman lost it, and then he found it tied to a purse,^h or a money bag [*arnekei*],^l or a ring, or if it was found among his personal belongings, even after a long time, it is valid, i.e., one may rely upon the distinguishing marks on these objects to positively identify the document, and the agent may then deliver it to the woman. This indicates that distinguishing marks are sufficient to identify an object even by Torah law.

אמר אביי: לא קשיא, הא רבי אליעזר בן מהבאי, הא רבנן. דתנא: אין מעידין על השומא, רבי אליעזר בן מהבאי אומר: מעידין. מאי לאו בהא קמיפלגי, דמר סבר: סימנין דאורייתא, ומר סבר: סימנין דרבנן.

Abaye said: This is not difficult. That *baraita* is in accordance with the opinion of Rabbi Eliezer ben Mahavai, while this mishna is in accordance with the opinion of the Rabbis; as it is taught in a *baraita*: One may not testify about a person's identity based upon the position of a mole on his body. Rabbi Eliezer ben Mahavai says: One may testify based on a mole.^h What, is it not about this issue that they disagree: One Sage, Rabbi Eliezer ben Mahavai, holds that distinguishing marks are recognized as valid identification by Torah law, and one Sage, the anonymous first *tanna*, representing the majority of the Rabbis, holds that distinguishing marks are recognized as a means of identification only by rabbinic law and are therefore insufficient to permit a Torah prohibition?

אמר רבא: דכולי עלמא סימנין דאורייתא, הכא בשומא מצויה בבן גילו קמיפלגי: מר סבר שומא מצויה בבן גילו, ומר סבר אינה מצויה בבן גילו.

Rava said: It is possible that everyone agrees that distinguishing marks are recognized as valid identification by Torah law,^h and here they are disagreeing about whether such a mole is commonly found on his peer, i.e., anyone very similar to him, which would undermine its usefulness as a means of identification. One Sage, the anonymous first *tanna*, holds that such a mole is commonly found on his peer and therefore is not sufficient for identification. And one Sage, Rabbi Eliezer ben Mahavai, holds that it is not commonly found on his peer and is therefore an unambiguous distinguishing mark sufficient for identification.

ואיכא דאמרי: הכא בשומא העשויה להשתנות לאחר מיתה קמיפלגי: מר סבר עשויה להשתנות לאחר מיתה, ומר סבר אינה עשויה להשתנות לאחר מיתה.

And there are those who say otherwise: Here they are disagreeing about whether a mole is likely to change in appearance and size after death. One Sage, the anonymous first *tanna*, holds that it is likely to change after death. It is insufficient for identification because it may have looked different when the person was alive. And one Sage, Rabbi Eliezer ben Mahavai, holds that it is not likely to change after death and is reliable for identification. This marks the end of one version of the discussion about this issue.

ואיכא דאמרי, אמר רבא: דכולי עלמא סימנין דרבנן, והכא בשומא

And there are those who say that Rava said: Everyone agrees that distinguishing marks are relied upon by rabbinic law.ⁿ However, this is referring to ordinary distinguishing marks. Marks that are exceptionally unusual may be relied upon even according to Torah law. And here, in the dispute between the Rabbis and Rabbi Eliezer ben Mahavai, it is about whether a mole

NOTES

Everyone agrees that distinguishing marks are relied upon by rabbinic law – דכולי עלמא סימנין דרבנן – This matter is explained extensively in tractate *Bava Metzia*. One may rely upon distinguishing marks for returning lost objects, but it is possible that this is by rabbinic decree rather than Torah law. Although in certain circumstances this might lead to giving the object to the wrong person, in most cases it is much more convenient to rely on distinguishing marks than to seek witnesses to establish with certainty to whom an object belongs.

Tosafot expressed astonishment about Rava's statement, as it seems from the *baraita* that one may rely upon distinguishing

marks even to deem a bill of divorce valid, which releases the woman from a marriage relationship that had been binding by Torah law. The Radbaz, in his Responsa, conjectured that if distinguishing marks are accepted for identification by rabbinic law, here the Sages utilized their authority to revoke the marriage from its inception. Alternatively, it is proposed in *Shev Shemateta* that the case that the *baraita* is referring to is where the agent recognizes the bill of divorce by sight, and therefore the concern that it may not be the correct bill of divorce is itself a rabbinic decree. Consequently, even if distinguishing marks are sufficient for identification purposes by rabbinic law, the bill of divorce may be deemed valid.

HALAKHA

As we are concerned about borrowing – דְּחִישֵׁינָּהּ – לְשֵׂאֵלָה: If a corpse cannot be identified based on its facial features but witnesses notice unique distinguishing marks on its clothing, they may not testify that the owner of that clothing has died, as it is possible that the clothing's owner lent the clothing to someone else. According to the author of the *Be'er HaGola*, the *Shulhan Arukh* rules in accordance with the opinion that distinguishing marks are valid forms of identification by Torah law, yet there is a concern that one may have lent clothing to another. Some hold that according to this opinion, if ordinary distinguishing marks were found on his body, and unique distinguishing marks were found on his clothing, one may combine these pieces of evidence to permit his wife to remarry (Maharal; see *Beit Shmuel*; *Shulhan Arukh*, *Even HaEzer* 17:24).

Renders other people and objects impure only when his soul actually departs – אֵינוּ מְטַמָּא עַד – שֶׁתֵּצֵא נִפְשׁוֹ: One who is on his deathbed, one whose esophagus and trachea were sliced, or one who suffered many severe wounds does not render others impure until his soul actually departs. Nevertheless, a priest is prohibited from entering a house in which there is a person who is clearly about to die.

If his neck bone was broken along with most of the flesh there, or if his body was slit open lengthwise from the back, he is considered dead and renders others impure, even if he is still moving (Rambam *Sefer Tahara*, *Hilkhot Tumat Met* 1:15; *Shulhan Arukh*, *Yoreh De'a* 370:1).

NOTES

Do not borrow a saddle – לֹא שְׂוִילִי... אֹבֶכָּא – It seems that the *Arukh* had a version of the text that read: People do not lend a saddle. Also, sometimes the other donkey is broader than the width of the saddle, and placing the saddle on the donkey would hurt the donkey and bruise it.

Cut open [*meguyyad*] – מְגוּיָיִד: An alternate version of the text appears to have this word as *meguyyar*, a word deriving from the word arrow. This is apparently the source for the Rambam stating, in his presentation of this *halakha*, that they saw he was shot by arrows. Others have interpreted *meguyyad* as chopped or cut open (Rashi), or battered and cruelly beaten (see *Hazon Ish*). Others have reasoned that it is referring to a person whose sinews are cut but from whom no entire limb was cut off, such that he is not presumed to be fatally wounded.

Because his wound can be scorched and allow him to survive – מִפְּנֵי שְׂכִיבֵל לְכוּת וְלִחְיֹת – *Tosafot* and many other commentaries explain that the dispute is not as to whether the cut person will be totally healed, but rather whether it is presumed that he will die immediately or whether it can be presumed only that he will die within a year. The practical difference would be whether it is possible to testify that he has died before a year has passed. This understanding of the dispute is indicated in the Jerusalem Talmud as well (see *Tosefot Rid* and *Rashba*).

סִמְנָן מוֹבְהָקָא קָא מִיפְלִגִּי; מִרְ סָבֵר: סִמְנָן מוֹבְהָקָא, וְיִמְר סָבֵר: לֹא סִמְנָן מוֹבְהָקָא.

וְלִהְדָּךְ לִישְׁנָא דְאִמְר רַבָּא סִמְנָן דְאִוְרִייתָא, הָא קָתַנִּי אִף עַל פִּי שֵׁישׁ סִמְנָן בְּגוּפוֹ וּבְכִלְיוֹ!

גּוּפוֹ – דְאִוְרִי וְגוּזָא, בְּלִי – דְחִישֵׁינָּהּ לְשֵׂאֵלָה. וְאִי חִישֵׁינָּהּ לְשֵׂאֵלָה, חֲמוּר בְּסִמְנָנִי אֹבֶכָּא הֵיכִי מְהַדְרִינָּהּ?

לֹא שְׂוִילִי אֵינְשֵׁי אֹבֶכָּא, דְמִסְקִיב לִיה לְחִמְרָא. מִצָּא קְשׁוּר בְּכִיס וּבְאִרְנָקִי וּבְטַבַּעַת הֵיכִי מְהַדְרִינָּהּ?

טַבַּעַת חִישֵׁי לְזִוּיָּפִי, כִּיס וְאִרְנָקִי מִנְחָשֵׁי אֵינְשֵׁי וְלֹא מוֹשְׁלִי. וְאֵיבְעִית אִימָא: בְּלִי – בְּחִיּוּרִי וּסְפִמְקִי.

וְאִפְלוּ רְאוּהוּ מְגוּיָיִד וְכוּ' לְמִימְרָא דְמְגוּיָיִד חִישֵׁי? וְרַמְזֵיהּ: אָדָם אֵינוּ מְטַמָּא עַד שֶׁתֵּצֵא נִפְשׁוֹ, אִפְלוּ מְגוּיָיִד וְאִפְלוּ גּוֹסֵס. טַמְוּי לֹא מְטַמָּא, הָא מִיחִתִּיא – לֹא חִישֵׁי!

אִמְר אַבְיָי: לֹא קְשׁוּא, הָא רַבִּי שְׂמַעוֹן בֶּן אֶלְעָזָר, הָא – רַבְנָן, דְתַנָּא: מְעִידִין עַל הַמְגוּיָיִד, וְאִין מְעִידִין עַל הַצֵּלוּב. רַבִּי שְׂמַעוֹן בֶּן אֶלְעָזָר אָמַר: אִף עַל הַמְגוּיָיִד אִין מְעִידִין, מִפְּנֵי שְׂכִיבֵל לְכוּת וְלִחְיֹת.

is an unambiguous distinguishing mark that they disagree. One Sage, Rabbi Eliezer ben Mahavai, holds that a mole is an unambiguous distinguishing mark and may be relied upon by Torah law. Consequently, if a man's corpse was identified in this manner, his wife may remarry. And one Sage, the anonymous first *tanna*, holds that a mole is not an unambiguous distinguishing mark.

The Gemara asks: According to the first version, that Rava said that distinguishing marks are recognized as valid identification by Torah law, there is a question: Isn't it taught in the mishna: Although there are distinguishing marks on his body and his personal belongings, one may not rely on these as identification, implying that distinguishing marks are not valid identification by Torah law?

The Gemara answers: The mishna's intent is that ordinary distinguishing marks on one's body, which constitute only weak evidence to a person's identity, e.g., that he was tall or short, are not valid identification. Additionally, one cannot rely upon distinguishing marks on his personal belongings, as we are concerned about borrowing,¹¹ i.e., perhaps the deceased had borrowed the clothes he was wearing from someone else. The Gemara asks: But if we are concerned about borrowing, then, with regard to returning lost property, how can we return a donkey based solely upon distinguishing marks on the saddle? Why don't we consider the possibility that the saddle was borrowed?

The Gemara answers: People do not normally borrow a saddle¹² because it bruises the donkey, as the saddle must fit exactly to the donkey's measurements. The Gemara raises further objections based upon the *baraita* cited earlier: If he found the lost bill of divorce tied to a purse, or a money bag, or a ring, he may rely upon the distinguishing marks on those items and deliver the bill of divorce to the woman. But how can we return it and not be concerned that these belongings may have been lent to someone else whose bill of divorce is tied to them?

The Gemara answers: The case of the ring is referring to a signet ring, which one does not lend, because he is concerned about forgery, i.e., that the borrower might use it to forge his consent on documents without his knowledge. With regard to a purse or a money bag, people consider it a bad omen to lend them out and do not lend them to others. And if you wish, say that the reason not to permit a woman to remarry and not to accept that her husband is dead based upon the distinguishing marks found on his personal belongings is that the distinguishing marks referred to are only general ones, e.g., he wore white or red clothing, but they are not unambiguous distinguishing marks.

S We learned in the mishna: And even if one saw him cut open [*meguyyad*]¹³ and severely wounded, one may not testify that he died. The Gemara asks: Is this to say that a person who is cut open is fit to live for much time afterward? The Gemara raises a contradiction from what was taught in a mishna (*Oholot* 1:6): A dead person renders other people and objects impure only when his soul actually departs,¹⁴ even if he is cut open and severely wounded, and even if he is clearly dying. From this we may deduce that he does not yet render others ritually impure, as he still has some life in him, but he is not fit to live for much time afterward.

Abaye said: The contradiction raised is not difficult: This mishna here is in accordance with the opinion of Rabbi Shimon ben Elazar, while that mishna from tractate *Oholot* is in accordance with the opinion of the Rabbis, as it is taught in a *baraita*: One may testify about the death of a person who is cut open, but one may not testify about a crucified person. Rabbi Shimon ben Elazar says: Even concerning a person who is cut open, one may not testify that he is dead because his wound can be scorched, and this cauterization of the wound may stop the flow of blood and allow him to survive.¹⁵

Asya – עֲסָא: This word, which is sometimes spelled with an *alef* and sometimes with an *ayin*, refers to the Roman province of Asia consularis, which included the western part of Asia Minor.

His sword [safseira] – סַפְסֵירָא: This word is derived from the Middle Persian *šafšēr*, a sword.



Persian sword

NOTES

The mishna is referring to a case with a white-hot knife – **מתניתין בסכין מלובנת** that interpreting the mishna as referring to an unusual circumstance is not incongruous because this type of injury would not usually occur by accident. Rather, like crucifixion, these wounds were frequently inflicted as a punishment by the authorities. In such cases, they would try not to kill the condemned person immediately, but rather preferred to prolong his suffering as long as possible in order to instill terror in others. Consequently, they did what they could to prevent him from dying immediately from the wound.

Or a wild animal was eating parts of him – והחיה אוכלת – בו: It is noted in the Jerusalem Talmud that it is always possible that the injured person was granted Divine mercy, and that the animals devouring him eventually left him alone and did not kill him.

BACKGROUND

With a white-hot knife – בסכין מלובנת: White-hot knives were used in medical procedures even many generations ago. The major advantage to the knife being extremely hot is that the heat cauterizes the blood vessels opened during the operation and averts dangerous blood loss. The great heat also sterilizes the knife, preventing possible infection from the knife itself. Even today there are medical techniques, though much more sophisticated, which are based on the same principles.

ומי מצית לאוקומי כרבי שמעון בן אלעזר? והא קתני סיפא: מעשה בעסאי באחד ששילשלוהו לים, ולא עלתה בידם אלא רגלו, ואמרו חכמים: מן הארכובה ולמטה – תנשא, מן הארכובה ולמטה – לא תנשא!

The Gemara challenges this: **But can you establish the mishna to be in accordance with the opinion of Rabbi Shimon ben Elazar? Isn't it taught in the latter clause (121a): An incident occurred in Asya¹ in which they lowered a certain man into the sea on a rope, and when they pulled the rope back to land only his leg came up in their hands.** They were not certain whether he was alive or dead. **The Sages said:** If his leg was cut from the knee and above, his wife may marry, as he would not survive such a wound; if his leg was cut only from the knee and below, she may not marry. This indicates that someone cut open in the first manner is assumed to be dead. If this follows Rabbi Shimon ben Elazar's opinion, why doesn't it say that there is a concern that he might be alive even if the leg was cut from the knee and above?

שאני מיא דמרוז מכה.

The Gemara answers: **Water is different, as it aggravates the wound.** Since he was in the water, it can be assumed that such a wound will certainly lead to death.

והאמר רבה בר בר חנה: לדידי חזי לי ההוא טייעא, דשקיל ספסירא וגידיה לגמליה, ולא אפסיקתיה לנערוותיה! אמר אביי: ההיא כחישא הויא.

The Gemara asks: **But didn't Rabba bar bar Hanna say: I myself saw an Arab who took his sword [safseira]¹ and cut open his camel, and the camel died so quickly that it could not even cease its braying before it died?** This indicates that a living being that is cut open has no chance of surviving. **Abaye said:** That camel was emaciated and weak, causing it to die immediately, but a normal camel would not have died so quickly.

רבא אמר: בסכין מלובנת, ודברי הכל.

Rava said a different resolution to the apparent contradiction between the mishna here and the mishna in tractate *Oholot*: The mishna here is referring to a case where the man was cut open with a white-hot knife,^{NB} and everyone agrees that one may not testify to the death of a person wounded in such a manner, as the wound would close due to the heat.

”והחיה אוכלת” וכו'. אמר רב יהודה אמר שמואל: לא שנו אלא במקום שאין נפשו יוצאה, אבל במקום שנפשו יוצאה – מעידין.

It was taught in the mishna: **Or even if one saw that a wild animal was eating parts of him,^{NH} one may not testify that he died.** Rav Yehuda said that Shmuel said: **They taught this only where the animal was eating from a place on his body that does not cause his soul to depart, i.e., does not inevitably lead to death, such as his hand or foot. But if the animal was eating from a place on his body that does cause his soul to depart, one may testify to his death.**

ואמר רב יהודה אמר שמואל: שחט בו שנים או רוב שנים וברח – מעידין.

And Rav Yehuda said that Shmuel said: **If someone cut a man's two passageways,^H the trachea and the esophagus, or most of the way through the two passageways, and the maimed person fled, one may testify to his death.**

איני? והאמר רב יהודה אמר שמואל: שחט בו שנים או רוב שנים ורמו ואמר: כתבו גט לאשתי – הרי אלו יכתבו ויתנו! חי הוא, וסופו למות.

The Gemara challenges that conclusion: **Is that so? But didn't Rav Yehuda say that Shmuel said: If someone cut a man's two passageways, or most of the way through the two passageways, and the maimed person gestured and thereby communicated: Write a bill of divorce for my wife,^H then these onlookers should write it and deliver it to her.** Since only a living person may give a bill of divorce, this indicates that the maimed man is considered alive. The Gemara answers: **He is still alive at the moment, but he will eventually die from the wound.** Consequently, he may appoint an agent to deliver a bill of divorce to his wife, but after a while one may testify that he is dead.

HALAKHA

A wild animal was eating parts of him – והחיה אוכלת בו: If one saw that another individual was crucified or shot and birds were eating his body, he may not testify that this person has died. However, if one saw birds or animals eating from an organ whose removal results in death, e.g., the brain or heart, he may testify that this person has died (Rambam *Sefer Nashim, Hilkhot Geirushin* 13:18; *Shulhan Arukh, Even HaEzer* 17:31).

If someone cut a man's two passageways, etc. – שחט בו שנים: If a person's trachea and esophagus have been cut most of the way through, others may testify that he has died, as he will certainly die from the wound. This is true even if the injured

individual stood up and fled. This *halakha* applies to all injuries for which it is clear that the injured party will die within a short time (Rambam *Sefer Nashim, Hilkhot Geirushin* 13:17; *Shulhan Arukh, Even HaEzer* 17:30).

He gestured and communicated: Write a bill of divorce for my wife – רמו ואמר כתבו גט לאשתי: If one whose trachea and esophagus have been cut, or one who was cut open, crucified, or fell from a roof, gestured or said that people should write a bill of divorce for his wife, they should write it and deliver it as long as he is alive (Rambam *Sefer Nashim, Hilkhot Geirushin* 2:13; *Shulhan Arukh, Even HaEzer* 121:8).

NOTES

He is not exiled – אינו גולה – Tosafot and apparently also the Rambam distinguish between the death penalty and exile (Sefer Nezikim, Hilkhoh Rotze'ah UShmirat HaNefesh 5:2). The death penalty is administered to one who intentionally wounded another in this manner in order to kill him, even if the victim did not die immediately. Conversely, one is not exiled for unintentionally killing someone by causing these wounds (see Ra'avad and Kesef Mishne).

אֵלֶּא מֵעַתָּה יִהְיֶה גֹּלָה עַל יָדוֹ, אֲלֵמָה תִּנְיָא: שָׁחַט שְׁנַיִם, אוֹ רוֹב שְׁנַיִם, הֲרִי זֶה אֵינוֹ גֹּלָה! הָא אֵיתִימַר עֲלֵהּ, אָמַר רַב הוֹשַׁעְיָא: חֲיִישִׁינן שָׂמָא דְרוּחַ בְּלַבְלַתּוֹ, אִי נִמְי, שָׂמָא אִיהוּ

The Gemara asks: **If that is so**, that such a wound is definitely fatal, one who unintentionally wounds another in this manner **should be exiled on his account**, in accordance with the halakha of one who unintentionally kills another. **Why is it taught** in a baraita: **If one unintentionally cut the two passageways of another person, or most of the thickness of the two, he is not exiled?**^{NH} The Gemara answers: **But it was stated with regard to that baraita that Rav Hoshaya said: We are concerned that perhaps the wind aggravated his condition and actually caused his death**, in which case the perpetrator is not culpable for the death and should not be exiled. **Alternatively, perhaps he**, the maimed person,

HALAKHA

If one unintentionally cut the two passageways of another person...he is not exiled – אינו גולה...שָׁחַט שְׁנַיִם: One who killed unintentionally is not exiled unless the person he killed dies immediately. If someone wounded a person unintentionally and the victim later died, even if it was clear from the beginning that his wounds would prove fatal, the perpetrator is not exiled, because

it is possible that the victim hastened his own death or wind entered the wound and hastened his death. Consequently, even if one unintentionally cut another's trachea and esophagus, if the victim did not die immediately, the perpetrator is not exiled on his account (Rambam Sefer Nezikim, Hilkhoh Rotze'ah UShmirat HaNefesh 5:2).

Perek XVI
Daf 121 Amud a

HALAKHA

One cut someone in a house of marble – שָׁחַטִיָּה: If one unintentionally cut another's trachea and esophagus, and the wounded man did not convulse at all, or if one cut his victim in a place without wind, e.g., a house of marble closed on every side, the perpetrator is exiled even if the victim did not die immediately (Rambam Sefer Nezikim, Hilkhoh Rotze'ah UShmirat HaNefesh 5:2).

BACKGROUND

The Bridge of Shabistana – יִשְׂרָאֵל דְּשַׁבִּיסְתָּנָא: Shabistana is a city situated on a tributary of the Tigris River, apparently in the area of Meishan. The Bridge of Shabistana is mentioned as a landmark indicating where the Tigris was first diverted for irrigation. The name Shabistana comes from the Middle Persian šabestān, literally night place, but often is used in the general sense of lodging.

קִירָב מִיתָתוֹ. מַאי בִּינְיָהוּ?

hastened his own death. For instance, if the maimed man convulsed intensely, injuring himself, the perpetrator is not culpable for the death and should not be exiled. The Gemara asks: **What is the practical difference between these two considerations**, that the wind or the victim himself hastened his death?

דְּשָׁחַטִיָּה בְּבֵיתָא דְּיִשְׂרָאֵל וּפְרִיכִים, אִי נִמְי: דְּשָׁחַטִיָּה בְּבָרָא וְלֹא פְרִיכִים.

The Gemara explains: There is a practical difference between them in a case where one cut someone in a house of marble^H that was closed on every side, in which there was no wind, and the victim convulsed. Alternatively, there is a difference in a case where one cut the victim outside, where there is wind, and the victim did not convulse at all.

”רַבִּי יְהוּדָה אָמַר: לֹא כָּל וְכוּ, אִיבַעֲיָא לְהוּ: רַבִּי יְהוּדָה בֶּן בְּבָא לְקוּלָא פְּלִיג, אוֹ לְחוּמְרָא פְּלִיג?

It was taught in the mishna that one may testify to someone's death only when he saw the corpse within three days of the individual's death. However, **Rabbi Yehuda ben Bava says: Not every person, nor every place, nor every hour is identical. A dilemma was raised before the Sages: Did Rabbi Yehuda ben Bava disagree with the Rabbis with the intent to rule more leniently and hold that sometimes one may testify to the identity of one who died even if he did not see the body within three days of his death? Or, did he disagree with the intent to rule more stringently and hold that sometimes one may not testify even if he saw the body within three days of the individual's death?**

תָּא שָׁמַע: דְּהָהוּא גְּבָרָא דְּטָבַע בְּכַרְמִי, וְאַסְקוּהוּ אַבִּי הֲדִיא לְבַתַּר תְּלַתָּא יוֹמִין, וְאַנְסָבָה רַב דִּימִי מִנְהַרְדְּעָא לְדִבְתָּהּ. וְתוּ, הָהוּא גְּבָרָא דְּאָטְבַע בְּדַגְלַת, וְאַסְקוּהוּ אַגְוִישְׂרָא דְּשַׁבִּיסְתָּנָא, וְאַנְסָבָה רַבָּא לְדִבְתָּהּ אוּפּוּמָא דְּשׁוּשְׁבִינֵי לְבַתַּר חֲמִשָּׁה יוֹמִי.

Come and hear a solution: **A certain man drowned in a place called Carmi, and they drew him out of the water near Bei Hedyā after three days, and Rav Dimi from Neharde'a allowed his wife to marry. And furthermore, a certain man drowned in the Tigris River, and they drew him out of the river onto the Bridge of Shabistana,^B and Rava allowed his wife to marry based upon his friends' testimony, although the body was seen only five days after death.**