

NOTES

He is not exiled – אינו גולה – Tosafot and apparently also the Rambam distinguish between the death penalty and exile (Sefer Nezikim, Hilkhot 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).

אָלָא מֵעַתָּה יְהִי גֹלָה עַל יָדוֹ, אֲלֵמָּה תִּנְיָא: שְׁחַט שְׁנַיִם, אִו רֹב שְׁנַיִם, הֲרִי זֶה אֵינוֹ גֹלָה! הָא אֵיתִּימַר עֲלֵהּ, אָמַר רַב הוֹשַׁעְיָא: חֲיִישִׁינן שְׂמָא דְרוּחַ בְּלַבְלָתוֹ, אִי נִמְי, שְׂמָא 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 – שְׁחַט 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, Hilkhot Rotze'ah UShmirat HaNefesh 5:2).

Perek XVI
Daf 121 Amud a

HALAKHA

One cut someone in a house of marble – שְׁחַטְיָה: שְׁחַטְיָה: 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, Hilkhot 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 מִיְתָתוֹ. 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?

דְּשַׁחְטִיָּה בְּבֵיתָא דְּיִשְׂרָאֵל וּפְרָכִים, אִי נִמְי: דְּשַׁחְטִיָּה בְּבָרָא וְלֹא פְרָכִים.

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 לְקוּלָּא פְּלִיג, אִו 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 שְׂמַע: דְּהָהוּא גְּבָרָא דְּטָבַע בְּכַרְמִי, וְאַסְקוּהוּ אַבִּי הֲדֵיָא לְבֵתָא יוֹמִין, וְאַנְסָבָה רַב דִּימִי מִנְהַרְדְּעָא לְדִבְתָּהּ. וְתוּ, הָהוּא גְּבָרָא דְּאָטְבַע בְּדַגְלָתָא, וְאַסְקוּהוּ אַגְוִישְׂרָא דְּשַׁבִּיסְתָּנָא, וְאַנְסָבָה רַבָּא לְדִבְתָּהּ. אַפּוּמָא דְּשׁוּשְׁבִינֵי לְבֵתָא 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 Hedya 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.**

Water is different since it contracts the body – שאני מֵיָא – דְּצִמְתֵי: This is also the ruling presented in the Jerusalem Talmud. There are those who restrict the acceptance of testimony to one who examined the body within five days after death, which is the time frame mentioned here in the Gemara (Rif). The Rashba and others note that in the Jerusalem Talmud it is related that testimony was accepted even from one who examined the body seventeen days after death, which indicates that the intention in the Gemara here is not to limit the allowance to one who examined the body within five days after death. That number was mentioned because it happened to be the case in the particular incident under discussion.

אי אמרת בשלמא לקולא פליג – אינהו דעביד כרבי יהודה בן בבא, אלא אי אמרת לחומרא פליג – אינהו דעביד כמאן? שאני מֵיָא, דְּצִמְתֵי.

Granted, if you say Rabbi Yehuda ben Bava disagreed with the intent to rule more leniently, these Sages who acted here, allowing these women to marry, acted in accordance with the opinion of Rabbi Yehuda ben Bava. But if you say he disagreed with the intent to rule more stringently, in accordance with whose opinion did these Sages act? The Gemara answers: Water is different, since it contracts the body,^h preventing it from bloating and changing shape.

והאמרת מֵיָא מְרוּז מִכָּה! הֲנֵי מִלֵּי – הִיכָא דְאִיכָא מִכָּה, אֲבָל הִיכָא דְלִיכָא מִכָּה – מִצְמַת צְמִית, וְהֵי מִלֵּי – דְכִי אֲסָקִיהָ תְּוִייהָ בְּשַׁעֲתֶיהָ, אֲבָל אִישְׁתְּהִי – מִיתְּפַח תְּפַח.

The Gemara wonders about this: But didn't you say (12ob) that water aggravates a wound^h by causing additional swelling? The Gemara answers: This applies when there is a wound, but when there is no wound, the water contracts the body and thereby prevents the shape of the face from changing. The Gemara comments: And this applies only in a case where they drew him out of the water and viewed him at that time. But if the viewing was delayed for some time after the body was drawn from the water, it certainly will have become very bloated,^h making it impossible to positively identify.

מתני' נפל למים, בין שיש להן סוף בין שאין להן סוף, אשתו אסורה. אמר רבי מאיר: מעשה באחד שנפל לבור הגדול ועלה לאחר שלשה ימים.

MISHNA If a man fell into the water^h and did not come out, whether the body of water has a visible end or does not have a visible end, his wife is prohibited from remarrying. There is no absolute proof that the man died, as it is possible that he emerged from the water some distance away. Rabbi Meir said: An incident occurred involving a certain person who fell into the Great Cistern and emerged only after three days. This is evidence that sometimes one may survive a fall into water, even when everyone assumes he is dead.

אמר רבי יוסי: מעשה בסומא שירד לטבול במערה, וירד מושבו אחריו, ושהו כדאי שתצא נפשם, והשיאו את נשותיהם. ושוב מעשה בעסאי באחד ששולשלוהו לים ולא עלתה בידם אלא רגלו, אמרו חכמים: מן הארובה ולמעלה – תנשא, מן הארובה ולמטה – לא תנשא.

Rabbi Yosei said: An incident occurred involving a blind man who descended to immerse for ritual purity in a cave, and his guide descended after him, and they disappeared there, and they remained there long enough for their souls to have departed, and the Sages permitted their wives to marry because they had disappeared into the water and not emerged. And there was another incident in Asya 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, and they were not certain whether he was alive or dead. The Sages said: If his leg was cut from the knee and above,^h his wife may marry, as he did not survive such a wound; if his leg was cut only from the knee and below, she may not marry.

HALAKHA

Water is different since it contracts the body – שאני מֵיָא – דְּצִמְתֵי: If someone drowned in water and the water swept him up onto dry land, those who recognize him may testify to his death, even several days after the drowning (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 13:22; *Shulhan Arukh*, *Even HaEzer* 17:26).

Water aggravates a wound – מֵיָא מְרוּז מִכָּה: If someone had a wound, and then drowned in water, and the water swept him up onto dry land several days later, those who see the body after it washes up on the land may not testify to the individual's death. This is because water aggravates the wound and causes the body to become bloated and distorted. The author of *Helkat Meḥokek* derives from here that even if the wound was on the individual's body and one recognizes his facial features, one may not testify about his death, as it is possible that his facial features were also distorted.

This ruling applies specifically to a case where one was wounded while still alive. If one was wounded after his death, e.g., if fish ate of his flesh, one may testify to his identity. Rabbi Akiva Eiger writes that even if one was wounded while still alive, if his body fell into the water when he was already dead, it is not assumed that his appearance was altered by the water, and one may testify about his death.

Rabbi Shmuel de Medina is quoted in the *Beit Shmuel* as stating that it is only a wound on the body that distorts one's appearance. Conversely, according to the *Derisha*, it is specifically a wound on the face that distorts one's appearance (*Shulhan Arukh*, *Even HaEzer* 17:26).

But if the viewing was delayed the body certainly will have become very bloated – אֲבָל אִישְׁתְּהִי מִיתְּפַח תְּפַח: The *halakha* that one may testify about the identity of a drowned man applies only when the witnesses saw the body immediately after it was drawn from the water. If they did not see the body at that time, it is assumed that the body became bloated in the interim, and one cannot identify it with certainty.

There are numerous opinions as to precisely how much time there is to identify a body after it is drawn from the water. Some hold that the body must be identified within an hour (Rif; *Nimmukei Yosef*). Others hold that it must be identified within two hours (*Kesef Mishne*). Some hold that the limit is twelve hours (Rambam). Still others hold that it may be identified for up to twenty-four hours (Ran).

The Rema writes that if the body was not examined immediately after it was drawn from the water it can no longer be positively identified, even if it was viewed within three days of the individual's death. This ruling is in accordance with the

opinion of the Ramban and the Rashba. It appears from the author of the *Shulhan Arukh* that even if one did not see the body immediately after it was drawn from the water, he can positively identify the body as long as he saw it within three days of the individual's death (see *Beit Yosef*, citing Rivash; Rambam *Sefer Nashim*, *Hilkhot Geirushin* 13:22; *Shulhan Arukh*, *Even HaEzer* 17:26).

If a man fell into the water – נפל למים: If someone fell into a body of water that has a visible end, where one can see the water's edge on every side, those who saw that he fell in and did not emerge from the water may testify to his death after they wait long enough for his soul to depart. But if he fell into a body of water with no visible end, they may not testify that he has died (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 13:16; *Shulhan Arukh*, *Even HaEzer* 17:32).

From the knee and above – מן הארובה ולמעלה: If people lowered someone into the water with a rope tied to his leg, but when they pulled him out only his leg came up, if the leg is cut from above the knee, his wife is permitted to marry twelve months after the incident (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 13:16; *Shulhan Arukh*, *Even HaEzer* 17:32).

PERSONALITIES

Rav Sheila – רב שילא: Rav Sheila was one of the first Babylonian *amora'im*. After the death of Rabbi Yehuda HaNasi, Rav Sheila became the spiritual leader of the Jews in Babylonia, a position known as the *Reish Sedra*, the head of the leading yeshiva in his day. He apparently lived in Neharde'a. Even the distinguished Sage Shmuel was officially subordinate to him.

When Rav came to Babylonia, Rav Sheila, not knowing who he was, enlisted him as his disseminator, a student who would repeat aloud to the other students the discourse of a Sage as the Sage declaimed it to him quietly. After he discovered who Rav was, Rav Sheila treated him with the utmost respect and even accepted his authority. However, Rav did not want to detract from the honor due to Rav Sheila, so he moved to the town of Sura and established his own yeshiva there.

Rav Sheila's yeshiva apparently continued for a while after his passing, and several teachings from that yeshiva are found in the Talmud.

The Talmud records several halakhic disputes between Rav and Rav Sheila and quotes several *halakhot* in Rav Sheila's name.

NOTES

A cave containing a pond of fish – מחילה של דגים: The Meiri writes that a cave containing a fishpond is only one example of areas that may be accessed from an endless body of water. Since such a body of water is so large, there may be other avenues of escape to save one who is drowning (see *Keren Ora*).

BACKGROUND

A cave containing a pond of fish – מחילה של דגים: This refers to a subterranean cave emerging from a body of water by the shore. Most often found by the seashores, the entrances to these caves are usually hidden by the waters of the sea. Sometimes these caves have quite high ceilings, with room enough for a man to stand in the water and breathe the air above the water level. They are called fish caves in Hebrew since they are generally unknown to people and only fish are found there.

גמ' תנו רבנן: נפל למים, בין שיש להם סוף בין שאין להם סוף אשתו אסורה, דברי רבי מאיר. וחכמים אומרים: מים שיש להם סוף – אשתו מותרת, ושאין להם סוף – אשתו אסורה.

היכי דמי מים שיש להם סוף? אמר אבוי: כל שעומד ורואה מארבע רוחותיו.

ההוא גברא דטבע באגמא דסמקי, אנסבה רב שילא לדביתהו. אמר ליה רב לשמואל: תא נשמתי! אמר ליה: נשלח ליה ברישא.

שלחו ליה: מים שאין להם סוף, אשתו אסורה או מותרת? שלח להו: אשתו אסורה. ואגמא דסמקי, מים שיש להם סוף או מים שאין להם סוף? שלח להו: מים שאין להם סוף הוא. ומר מאי טעמא עבד הכי?

מיטעא טעינא, אנא סברי: בין דקון וקיימי במים שיש להם סוף דמי. ולא היא, בין דאיכא גלי – אימור גלי אשפלו.

קרי שמואל עליה דרב: "לא יאונה לצדיק כל און". קרי רב עליה דשמואל: "ותשועה ברוב יועץ".

תניא, אמר רבי: מעשה בשני בני אדם מכמרון מכמורין בירדן, ונכנס אחד מהם למחילה של דגים, ושקעה חמה ולא ראה פתחה של מחילה, ושהה חברו כדי שתצא נפשו, ובא והודיע בתוך ביתו. למחר זרחה חמה והכיר פתחה של מחילה, ובא ומצא הספד גדול בתוך ביתו. אמר רבי: כמה גדולים דברי חכמים, שאמרו: מים שיש להם סוף – אשתו מותרת, שאין להם סוף – אשתו אסורה.

GEMARA The Sages taught: If a man fell into the water, whether the body of water has a visible end or does not have a visible end, his wife is prohibited from marrying; this is the statement of Rabbi Meir. And the Rabbis say: If he fell into a body of water with a visible end, his wife is permitted to marry, but if he fell into a body of water with no end, his wife is prohibited from marrying.

The Gemara asks: What are the circumstances defining a body of water with a visible end? Abaye said: Any body of water where one stands in one place and can see the shore in all four directions is considered water with a visible end, since anyone emerging from the water would be seen. However, if the body of water is so large that it is impossible to see its shore on all sides, the individual may have emerged at a place where he could not be seen by others standing at the place where he fell in.

There was a certain man who drowned in the lake in a place called Samkei. Rav Sheila⁹ allowed his wife to marry based on the testimony of witnesses who saw that he entered the water and did not emerge. Rav said to Shmuel: Come, let us excommunicate him for having issued this ruling. Shmuel said to him: Let us first send him a message and clarify whether he had a sufficient reason to issue this ruling.

They sent him the following question: When a man disappears in an endless body of water, is his wife a forbidden or a permitted woman, i.e., may she remarry? He sent back to them: His wife is forbidden. They asked him further: Is the lake of Samkei a body of water with a visible end or an endless body of water? He sent a response to them: It is an endless body of water, since one cannot see the water's edge on every side. They then asked him: If so, what is the reason that the Master, i.e., Rav Sheila, acted this way, allowing the wife to remarry?

He answered them: I erred in my reasoning. I thought: Since the waters are gathered and stagnant and not flowing like a river, they are considered as a body of water with a visible end. But that is not so. Since there are waves in this body of water, say that the waves carried him away from our sight, allowing him to emerge without being seen.

In light of this response, Shmuel recited this verse about Rav: "No mischief shall befall the righteous" (Proverbs 12:21). Since the righteous Rav waited and did not excommunicate Rav Sheila, he was prevented from causing him injustice. Rav Sheila had been mistaken and had not intentionally violated the decree of the Sages prohibiting a woman from remarrying on the basis of her husband having disappeared into an endless body of water. Rav recited this verse about Shmuel: "But salvation lies in much counsel" (Proverbs 11:14), since it was Shmuel's advice that caused Rav to wait.

It is taught in a *baraita* that Rabbi Yehuda HaNasi said: An incident occurred involving two people who were fishing with nets on the Jordan River, and one of them entered a cave containing a pond of fish^{NB} next to the shore. Meanwhile, the sun set and the one who had entered the cave could not see the cave's opening and did not exit, so his friend thought he had drowned. His friend waited long enough for his soul to have departed and came and notified the man's household that he had drowned. The following day the sun rose, and the man in the cave recognized the opening of the cave and exited through it. And he came and found profuse eulogizing in his house. Rabbi Yehuda HaNasi said about this: How great are the words of the Sages, who said: If a man fell into a body of water with a visible end, his wife is permitted to marry, but in a case of water with no end, his wife is prohibited from marrying.

If wicked people come upon a person, etc. – אָם יבואוּ רשעים על אדם וכו' וכו': The Maharsha explains that this serves as an elaboration upon the verse that speaks about one who suffers from wicked individuals: "All your breakers and your waves have passed over me" (Psalms 42:8). The Sages advised that one not challenge wicked individuals, but rather one should appear to agree with them. The Gemara addresses this issue directly in tractate *Megilla* (6b), and the conclusion there is that one should not provoke the wicked when they are powerful and successful, as only the absolutely righteous can triumph in that struggle (see *Arukh LaNer*).

אי הכי, מים שיש להם סוף נמי, ליחוש למחילה של דגים! במים שיש להם סוף מחילה של דגים לא שכיחא.

The Gemara asks: **If so, even in the case of a body of water with a visible end, let us also be concerned about a cave containing a pond of fish.** Even if the individual did not emerge for a long period of time, it is possible that he entered a cave and is still alive. The Gemara answers: **A cave containing a pond of fish is not common in a body of water with a visible end.**

אמר רב אשי: הא דאמר רבנן מים שאין להם סוף אשתו אסורה, הני מילי באיניש דעלמא, אבל צורבא מרבנן לא, אי דסליק – קלא אית ליה, ולא היא, לא שנא איניש דעלמא ולא שנא צורבא מרבנן, דיעבד – אין, לכתחלה – לא.

Rav Ashi said: **That which the Sages said, that if a man fell into an endless body of water, his wife is prohibited from remarrying, applies only to an ordinary person** who is not well known and could slip away secretly and live in anonymity, hiding the fact that he survived. **But it does not apply to a Torah scholar, because if he would emerge from the water, publicity would be generated and the news of his survival would spread.** The Gemara rejects this: **That is not so. It is no different for an ordinary man and it is no different for a Torah scholar. After the fact, i.e., if she remarried, yes, she may remain with her new husband, but she may not remarry *ab initio*.**

תנא, אמר רבן גמליאל: פעם אחת הייתי מהלך בספינה וראיתי ספינה אחת שגשבה, והייתי מצטער על תלמיד חכם שבה, ומנו – רבי עקיבא. וכשעליתי ביבשה בא וישב ודן לפני בהלכה. אמרתי לו: בני, מי העלך? אמר לי: דף של ספינה נודמן לי, וכל גל וגל שבא עלי נענעתי לו ראשי.

It is taught in a *baraita*: **Rabban Gamliel said: Once I was traveling on a boat, and from a distance I saw a boat that shattered and sank. And I was grieved over the apparent death of the Torah scholar who was on board. And who was it? Rabbi Akiva. But when I disembarked onto dry land, he came, and sat, and deliberated before me about *halakha*. I said to him: My son, who brought you up from the water? He said to me: A plank from the boat came to me, and I bent my head before each and every wave that came toward me. The waves did not wash me off of the board, and I reached the shore.**

מכאן אמרו חכמים: אם יבואו רשעים על אדם – יענע לו ראשו. אמרתי באותה שעה: כמה גדולים דברי חכמים, שאמרו: מים שיש להם סוף – מותרת, מים שאין להם סוף – אסורה.

From here the Sages stated: **If wicked people come upon a person,ⁿ he should bend his head before them.** That is, he should temporarily restrain himself and not fight them, and he will therefore be saved. After this parenthetical statement, the Gemara returns to Rabban Gamliel's story. **I said at that moment: How great are the words of the Sages, who said: If a man fell into a body of water with a visible end, his wife is permitted to remarry. But in a case of an endless body of water, his wife is prohibited from remarrying.**

תנא, אמר רבי עקיבא: פעם אחת הייתי מהלך בספינה וראיתי ספינה אחת שמתפרת בים, והייתי מצטער על תלמיד חכם שבה, ומנו – רבי מאיר. כשעליתי למדינת קפודקיא בא וישב ודן לפני בהלכה. אמרתי לו: בני, מי העלך? אמר לי: גל טרדני לחברו, וחברו לחברו, עד שהקיאני ליבשה. אמרתי באותה שעה: כמה גדולים דברי חכמים, שאמרו: מים שיש להם סוף – אשתו מותרת, מים שאין להם סוף – אשתו אסורה.

It is taught in a *baraita*: **Rabbi Akiva said: Once I was traveling on a boat, and I saw a certain boat sinking at sea, and I was grieved over the apparent death of the Torah scholar who was on board. And who was it? Rabbi Meir. But when I disembarked at the province of Cappadocia, he came, and sat, and deliberated before me about *halakha*. I said to him: My son, who brought you up from the water? He said to me: One wave carried me to another, and that other wave to another, until I reached the shore, and a wave cast me up onto dry land. I said at that moment: How great are the words of the Sages, who said: If a man fell into a body of water with a visible end, his wife is permitted to remarry. But in a case of an endless body of water, his wife is prohibited from remarrying.**

תנו רבנן: נפל לגוב אריות – אין מעידין עליו, לחפורה מלאה נחשים ועקרבים – מעידין עליו. רבי יהודה בן בתירא אומר: אף לחפורה מלאה נחשים ועקרבים אין מעידין עליו, חיישינן

The Sages taught: **If an individual fell into a lion's den,^h one may not testify about him that he died, since the lions might not have killed him. If he fell into a pit filled with snakes and scorpions, one may testify about his death, since it is certain that they killed him. Rabbi Yehuda ben Beteira says: Even if he fell into a pit filled with snakes and scorpions, one may not testify about him that he died, because we are concerned**

HALAKHA

If an individual fell into a lion's den – נפל לגוב אריות – אין מעידין עליו: If a person fell into a den of lions or leopards, one may not testify to his death, because it could be that the animals were not hungry and did not

eat him. However, if he fell into a pit filled with snakes or scorpions, one may testify to his death (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 13:7; *Shulhan Arukh*, *Even HaEzer* 17:29).

NOTES

נפל לתוך כבשן האש – If one fell into a blazing furnace – The Rashba explains that it is specifically when someone fell into a furnace that one may testify with certainty that he died, since it is narrow and there is no way out. But if he fell into a bonfire, one may not testify that he died because there are ways out on all sides.

אין מוזכרין – One does not mention miraculous acts – It seems from the discussion in the *baraita* and Gemara that Rabbi Meir is not proposing that one may never testify to the death of one who falls into a body of water with a visible end. Rather, he thinks that the time period that the Sages established is too short, and it is possible that one could survive without emerging from the water for a longer time, through a combination of circumstances that are not considered miraculous (Rashba; see Meiri).

HALAKHA

נפל לתוך כבשן האש – If someone fell into a fiery furnace or into a boiling cauldron of wine, oil, or water, one may testify that he died, since there is no possibility of survival (Rambam *Sefer Nashim, Hilkhot Geirusin* 13:17; *Shulhan Arukh, Even HaEzer* 17:30).

אין מוזכרין – One who takes on an oath not to sleep for three days – **נשבע שלא ישן שלשה ימים**: If one takes an oath to do something that he is incapable of doing, e.g., that he will not sleep for three days, he has taken an oath in vain. He is permitted to sleep and he receives lashes for taking an oath in vain (Rambam *Sefer Hafla'a, Hilkhot Shevuot* 5:20; *Shulhan Arukh, Yoreh De'a* 236:4).

שָׂמָא חָבַר הוּא. וְתַנָּא קָמָא אֲגַב אֵי צִצְא מִזְקֵי לֵיהּ.

תָּנוּ רַבֵּנּוּ: נִפְלַל לְתוֹךְ כְּבִשָּׁן הָאֵשׁ – מְעִידִין עָלָיו, לְיִזְרָה מְלֵאָה יַיִן וְשֶׁמֶן – מְעִידִין עָלָיו. מְשֻׁם רַבִּי אֲחָא אָמְרוּ: שֶׁל שֶׁמֶן – מְעִידִין עָלָיו, מִפְּנֵי שֶׁהוּא מְבַעֵיר. שֶׁל יַיִן – אִין מְעִידִין עָלָיו, מִפְּנֵי שֶׁהוּא מְכַבֵּה. אָמְרוּ לוֹ: תַּחֲלִתוֹ מְכַבֵּה וְסוֹפוֹ מְבַעֵיר.

אָמַר רַבִּי מֵאִיר מְעַשֶׂה בְּאֶחָד שְׁנַפְל לְבוֹר הַגָּדוֹל וְכוּ'. תַּנָּא, אָמְרוּ לוֹ לְרַבִּי מֵאִיר: אִין מְזַכְרִין מְעַשֶׂה נִסִּים. מֵאִיר מְעַשֶׂה נִסִּים? אֵילִימָא דְלָא אָכִיל וְלָא אִישְׁתֵּי – וְהִכְתִּיב 'וְצוּמוּ עָלַי וְאֵל תֹּאכְלוּ וְאֵל תִּשְׁתּוּ'!

אָלָא דְלָא נִיִּים. דְּאָמַר רַבִּי יוֹחָנָן: "שְׁבוּעָה שְׁלֵא אִישְׁן שְׁלִשָּׁה יָמִים" – מְלָקִין אוֹתוֹ, וַיִּישֶׁן לְאַלְתֵּר.

וְרַבִּי מֵאִיר מֵאִי טַעְמָא? אָמַר רַב כְּהֵנָּא: כִּיפִין עַל גַּב כִּיפִין הָווּ. וְרַבֵּנּוּ: דְּשִׁישָׁא הָווּ. וְרַבִּי מֵאִיר: אִי אֲפֻשֵׁר דְּלָא מְסַרִיךְ וְנִיִּים פּוֹרְתָא.

that perhaps he is a charmer [*habbar*]^B of snakes and scorpions who knows magic or some stratagem to keep them from harming him. And the first *tanna* holds that we need not be concerned about this possibility, as, due to the pressure of his body falling on top of them, they will harm him, even if he could control them under other circumstances.

The Sages taught: If one fell into a blazing furnace,^{NH} one may testify about him that he has died. If he fell into a boiling cauldron filled with wine or oil, one may also testify about him that he has died. In the name of Rabbi Aḥa, they said: If he fell into a cauldron of oil, one may testify about him that he has died, because this ignites the fire even more. Through the force of his fall, oil will splash into the fire and increase the heat of the cauldron. However, if he fell into a cauldron of wine, one may not testify about him that he has died, because when wine splashes into the fire it extinguishes the fire. They said to him: At first it partially extinguishes the fire but eventually it ignites it even more, and therefore it can be assumed that he has died.

S The mishna stated that Rabbi Meir said: An incident occurred involving a certain individual who fell into the Great Cistern^B and emerged after three days. It is taught in a *baraita*: They said to Rabbi Meir: One does not mention miraculous acts^N to teach general *halakha*. The Gemara asks: What about that story defines it as an example of miraculous acts? If we say the fact that he did not eat or drink for three days and still survived is miraculous, but isn't it written: "Fast for me, and neither eat nor drink three days, night or day" (Esther 4:16), demonstrating that one may survive this experience naturally?

The Gemara answers: Rather, the miraculous element is that he did not sleep during those three days, as Rabbi Yoḥanan said: If one says: I hereby take on an oath that I will not sleep for three days,^H the court flogs him for taking an oath in vain, and he may sleep immediately because it is impossible to remain awake for three consecutive days.

The Gemara asks: And according to Rabbi Meir, what is the reason this was not a miraculous incident? The Gemara answers that Rav Kahana said: There were several levels of arches built on top of other arches within the Great Cistern, and he supported himself on the arches and slept. And the Rabbis said that they were made of marble and it was impossible to hold onto them and sleep. And Rabbi Meir assumed that it is inconceivable that he didn't grasp some part of an arch for a short time and sleep a little, and therefore this incident does not qualify as a miracle.

BACKGROUND

Charmer [*habbar*] – **חָבַר:** *Ḥabbar* is the term generally used to refer to the Persian Zoroastrian fire priests. The origin of the word is not clear. However, the assumption is that its root is from the early Semitic *habbar*, meaning sorcerer, and from there it passed to Aramaic. With the rise of the Sassanid dynasty, the power of the Persian fire religion was also ascendant, and its priests negatively influenced the situation of the Jews of Babylonia.



Remains of Roman-era cistern with arches

הַבּוֹר הַגָּדוֹל – The Great Cistern: From the discussion here it seems that the Great Cistern was a specific cistern known to the Sages. Since it is also mentioned in the story of the daughter of Neḥunya the well digger, it is most likely one of the cisterns of Jerusalem. In the days of the Second Temple many wells and cisterns were built both within the city and adjacent to it. Some of these still exist today, and a few of them are built with multiple layers of arches and columns. It is Rabbi Meir's opinion that although the water was deeper than a man's height, one could still survive for quite a while by holding on to the arches and the protrusions of the columns.

Neḥunya the well digger – נְחֻנְיָא הוֹפֵר שִׁיחִין: Neḥunya the well digger was one of the officials in the Temple whose job it was to oversee the Jerusalem water supply, particularly for those visiting Jerusalem for the Festivals (see *Shekalim* 5:1). It is mentioned in the Gemara that he was an expert in his field and would dig wells along water arteries, so they would be filled from underground water sources as well as from rainwater. He is praised for procuring the wells so that they could be used for the benefit of the public.

NOTES

A male sheep, etc. – **זָכָר שֶׁל רְחֵלִים וְכוּ׳:** Rashi explains that the old man was Abraham, and the ram is an allusion to Abraham's ram from the binding of Isaac. The Maharsha explains that the merit of the binding of Isaac endures for Abraham's descendants to save them from evil and danger. He also cites *Tosafot*, based upon the Jerusalem Talmud, who explain that the old man was an angel who looked like Rabbi Ḥanina ben Dosa.

The Holy One, Blessed be He, is exacting with His surroundings – הַקְדוֹשׁ בְּרוּךְ הוּא מוֹקְדֵק עִם סְבִיבֵיו – The commentaries note that there is a difference between the derivations utilized by Rabbi Abba and Rabbi Ḥanina. According to the derivation of Rabbi Abba, God holds the righteous to a higher standard and punishes them for minor sins for which others would not be punished. According to the derivation of Rabbi Ḥanina, God punishes the righteous for these sins in order to sanctify His name in the world by causing people to be fearful of Him (see *Arukh LaNer*).

The concept that God is more exacting with the righteous derives from the outlook that a minor sin committed by a righteous individual can have a stronger impact than more severe sins committed by others, both in the upper spiritual worlds and in this physical world, because of the desecration of God's name involved (*lyyun Ya'akov*). Also, when God is very strict with the righteous, others infer that those who are not righteous will certainly be held accountable for their sins (Maharsha).

HALAKHA

אֲפִילוּ שָׁמַע מִן הַנְּשִׂים וְכוּ׳: Even if one heard from the women, etc. – **הַנְּשִׂים וְכוּ׳:** If one says that he heard from a woman that a certain man died, his testimony is accepted concerning a woman's ability to remarry, though it is hearsay (Rambam *Sefer Nashim, Hilkhoh Geirushin* 13:29; *Shulḥan Arukh, Even HaEzer* 17:3, 5).

One heard from the children – שָׁמַע מִן הַתִּינוּקוֹת – With regard to ascertaining a man's death in order to allow his wife to remarry, one may rely upon statements of individuals who are generally deemed unfit to offer testimony. This is the *halakha* when the statement was made by a rational individual. If it the statement was made by a minor or one who is not mentally competent, it may not be relied upon.

However, if one overheard children saying that they came from the eulogy of a particular individual, and they relate the names of the eulogizers and other details, he may testify to the man's death. The Rema adds that this applies specifically when the children relate the events immediately upon returning from the funeral. If they relate the events later, their statement is not relied upon. Similarly, if an adult reports about what he saw as a child, his report is not deemed credible (Rambam *Sefer Nashim, Hilkhoh Geirushin* 13:9; *Shulḥan Arukh, Even HaEzer* 17:13).

תָּנוּ רַבָּנֵי: מַעֲשֶׂה בְּבִתּוֹ שֶׁל נְחֻנְיָא הוֹפֵר שִׁיחִין שֶׁנִּפְלְאָה לְבוֹר הַגְּדוֹל, וּבָאוּ וְהוֹדִיעוּ לְרַבִּי חֲנִינָא בֶן דּוּסָא. שָׁעָה רִאשׁוֹנָה אָמַר לָהֶם: שְׁלוֹם. שְׁנִיָּה, אָמַר לָהֶם: שְׁלוֹם. שְׁלִישִׁית, אָמַר לָהֶם: עָלְתָהּ.

אָמַר לָהּ: בִּתִּי, מִי הֶעֱלָךְ? אָמְרָה לוֹ: זָכָר שֶׁל רְחֵלִים נִדְמָן לִי, וְזָקֵן מִנְהִיגוֹ. אָמְרוּ לוֹ: נְבִיאֵי אֲתָהּ? אָמַר לָהֶם: לֹא נְבִיאֵי אֲנִי וְלֹא בֶן נְבִיאֵי אֲנִי, אֲלֵא דָבָר שֶׁהַצְּדִיק מִתְעַסֵּק בּוֹ – יִכְשַׁל בּוֹ וְרַעוּ!?

אָמַר רַבִּי אַבָּא: אֵף עַל פִּי כַּן מִת בָּנוּ בְּצִמָּא, שֶׁנֶּאֱמַר "וּסְבִיבֵיו נִשְׁעָרָה מֵאֵד" – מִלְּמַד שֶׁהַקְדוֹשׁ בְּרוּךְ הוּא מוֹקְדֵק עִם סְבִיבֵיו כַּחוּט הַשְּׁעָרָה, רַבִּי חֲנִינָא אָמַר: מִהֶכָּא "אֵל נֶעְרַץ בְּסוּד קְדוּשִׁים רַבָּה וְנוֹרָא עַל כָּל סְבִיבֵיו".

מתני׳ אֲפִילוּ שָׁמַע מִן הַנְּשִׂים אוֹמְרוֹת: "מִת אִישׁ פְּלוֹנִי" – דִּי. רַבִּי יְהוּדָה אוֹמַר: אֲפִילוּ שָׁמַע מִן הַתִּינוּקוֹת אוֹמְרִים "הָרִי אָנּוּ הוֹלְכִין לְסָפוּד וְלִקְבוּרָתָא אֵת אִישׁ פְּלוֹנִי", בֵּין שֶׁהוּא מִתְבַּיֵּין וּבֵין שֶׁאִינוּ מִתְבַּיֵּין.

רַבִּי יְהוּדָה בֶּן בְּבָא אוֹמַר: בְּיִשְׂרָאֵל, אֵף עַל פִּי שֶׁהוּא מִתְבַּיֵּין, וּבְגוֹי אִם הָיָה מִתְבַּיֵּין – אֵין עֵדוּתוֹ עֵדוּת.

גמ׳ וְדַלְמָא לֹא אֲזִלֵּי? אָמַר רַב יְהוּדָה אָמַר שְׁמוּאֵל: דְּקָאֲמְרֵי "הָרִינוּ בְּאֵין מִלְּסָפוּד וּמִלְּקְבוּרָתָא אֵת אִישׁ פְּלוֹנִי".

וְדַלְמָא קִמְצָא בְּעֵלְמָא שְׂבִיב לֵיהּ, וְאִסְיָקוּ לֵיהּ עַל שְׁמִיָּהּ? דְּקָאֲמְרֵי: בְּן, וְכֵן רַבָּנֵי הָיוּ הִתָּם. בְּן, וְכֵן סְפָדְנֵי הָיוּ הִתָּם.

The Sages taught: An incident occurred involving the daughter of Neḥunya the well digger,^p who fell into the Great Cistern, and they came and notified Rabbi Ḥanina ben Dosa and asked that he pray for her. After the first hour, he said to them: She is at peace and unharmed. After the second hour, he said to them: She is at peace. After the third hour he said to them: She has ascended from the cistern.

When she came to Rabbi Ḥanina ben Dosa, he said to her: My daughter, who pulled you up from the cistern? She said to him: A male sheep,ⁿ i.e., a ram, happened by and sensed me in that cistern, and there was an old man leading him who pulled me out. They said to Rabbi Ḥanina ben Dosa: Are you a prophet with knowledge of what is happening far away? He said to them, using a figure of speech from the Bible: "I am not a prophet, nor the son of a prophet am I" (Amos 7:14). Rather, I reasoned as follows: Could it be that concerning the endeavor that the righteous Neḥunya is engaged in, i.e., digging for the benefit of the public, his offspring would stumble upon its fruits and thereby be killed? I therefore knew that God would certainly save her.

Rabbi Abba said: Even so, the son of Neḥunya the well digger died of thirst, and the merit of his father, who attended to the water supply, did not protect him, as is stated: "And around Him it storms [nisara] mightily" (Psalms 50:3), which teaches that the Holy One, Blessed be He, is exacting with His surroundings,ⁿ i.e., the righteous who are close to Him, up to a hairsbreadth [sa'ara], so that even slight deviations can elicit severe punishment. Rabbi Ḥanina said: This idea is derived from here: "A God dreaded in the great council of the holy ones, and feared by all that are about Him" (Psalms 89:8). This indicates that God is most feared by those that are nearest to Him, i.e., the righteous, because He is more exacting of them.

MISHNA Even if one heard from the women,^h who were saying: So-and-so died, this is sufficient in order to testify to his death. Rabbi Yehuda says: Even if one heard from the children,^h who were saying: We are going to eulogize and bury so-and-so, that is also sufficient. Furthermore, one may rely upon someone mentioning that a man died, regardless of whether the speaker intends to testify and thereby allow the man's wife to remarry or whether he does not intend to offer formal testimony.

Rabbi Yehuda ben Bava says: With regard to a Jew who offers this information, it may be relied upon even if he intends for his statement to be considered formal testimony. However, with regard to a gentile, if he intended to testify, his testimony is not considered valid testimony. His statement is relied upon only when he does not intend to state it as formal testimony.

GEMARA With regard to relying on what children said, that they are going to eulogize and bury so-and-so, the Gemara asks: Perhaps they will not go; perhaps they only assumed that the individual would die, but in the end he didn't. The Gemara answers: Rav Yehuda said that Shmuel said: It is referring to a situation where the children say: We are coming from eulogizing and burying so-and-so.

The Gemara asks: Since they are children, perhaps it was merely a grasshopper with which they played that died, and they brought it out as if to its funeral, calling it by the name of the individual suspected to be dead, and their statement should not be considered valid proof of his death. The Gemara answers: It is referring to a situation where the children say: Such and such rabbis were there; such and such eulogizers were there, so that it is clear that they were referring to an event that truly occurred.

NOTES

אבל – But if he merely intended to testify, etc. – נְתָבוּן לְהַעֲדֵד וְכוּ: The underlying idea is that a gentile's testimony is not considered testimony at all, as he is not trusted to tell the truth. An exception to this is the professional assessment of an expert in his field or a government announcement about an event that occurred. The halakhic authorities have deliberated upon the details of this matter at length. However, when a gentile makes an offhanded comment without any intention of testifying as a witness, his statement may be relied upon to allow a widow to remarry, just as other sources that are generally not accorded credibility may be relied upon in such a case. Some commentaries write that if the gentile makes an offhanded comment revealing that a man has died, he may then be cross-examined in court. This is not considered testimony, since the essence of the incident was already public knowledge via his initial statement. The court then clarifies that he referred to the individual under discussion (see *Yam shel Shlomo*).

HALAKHA

גוי המסית לפי – A gentile who speaks offhandedly – תומו: If a gentile spoke offhandedly and said that a particular man died, e.g., if he related a story about how a certain Jew that he knew died suddenly, the man's wife is permitted to remarry on the basis of the gentile's statement. The *halakha* is in accordance with the opinions of Rabbi Yehuda ben Bava and Rabbi Yoḥanan.

The Rema holds that if the gentile said only that a particular man died and nothing further, he is still considered to have been speaking offhandedly. Conversely, it is argued in the *Beit Yosef* that if the gentile does not add further information, he is intending to testify to the man's death, and his statement may not be relied upon (Rambam *Sefer Nashim, Hilkhot Geirushin* 13:25; *Shulḥan Arukh, Even HaEzer* 17:14).

An endless body of water, his wife is prohibited from remarrying... *ab initio* – מים שאין להם סוף – אשתו אסורה... לכתחילה: If someone drowned in an endless body of water, his wife may not remarry, even if a long time has passed. However, if she did remarry, she need not get divorced from her new husband (Rambam *Sefer Nashim, Hilkhot Geirushin* 13:19; *Shulḥan Arukh, Even HaEzer* 17:34).

”ובגוי אם היה מתבין” וכו’. אמר רב יהודה אמר שמואל: לא שנו אלא שנתבין להתיר, אבל נתבין להעיד – עדותו עדות. היכי דיענין? אמר רב יוסף: בא לבית דין ואמר “איש פלוני מת, השיאו את אשתו” – זהו נתבין להתיר: “מת” סתם – זהו נתבין לעדות.

איתמר נמי, אמר ריש לקיש: לא שנו אלא שנתבין להתיר, אבל נתבין להעיד – עדותו עדות. אמר ליה רבי יוחנן: לא כך היה מעשה באושעיא ברבי, שהתירם עם שמינים וחמשה וקנים? אמר להם: לא שנו אלא שנתבין להתיר, אבל נתבין להעיד – עדותו עדות, ולא הודו לו חכמים.

אלא מתניתין דקתני “ובגוי אם היה מתבין – אין עדותו עדות” היכי משקחת לה? במסית לפי תומו. כי ההוא דההוה קאמר ואויל: “מאן איבא בי חיאי, מאן איבא בי חיאי? שכיב חיאי!” ואנסבה רב יוסף לדביתהו. ההוא דההוה קאמר ואויל: “זוי ליה לפי שאו זרייא דההוה במומבדיתא דשכיב!” ואנסבה רב יוסף ואיתמא רבא. לדביתהו.

ההוא דההוה קאמר ואויל: “מאן איבא בי חסא, טבע חסא?” אמר רב נחמן: האלקים! אכלו פורי לחסא. מדיבוריה דרב נחמן אויל דביתהו דחסא ואינסבא, ולא אמרו לה ולא מידי. אמר רב אשי: שמע מינה, הא דאמור רבנן מים שאין להם סוף אשתו אסורה – הני מיילי לכתחלה, אבל אי נסיב – לא מפיקינן לה מיניה.

איבא דאמרי: אנסבה רב נחמן לדביתהו. אמר: חסא גברא רבה איתיה, אם איתא דסליק – קלא אית ליה למילתא. ולא היא. לא שנו גברא רבה לא שנו לאו גברא רבה, דיעבד – אין, לכתחלה – לא.

It was taught in the mishna: **With regard to a gentile, if he intended to testify, his testimony is not considered valid testimony.** Rav Yehuda said that Shmuel said: **They taught this only in a case where he intended to permit the woman to remarry through his testimony, but if he merely intended to testifyⁿ about the man's death, his testimony is considered testimony.** The Gemara asks: **How do we know the intention of the gentile?** Rav Yosef said: **If he came to the court and said: So-and-so died, allow his wife to marry, this is an instance of intending to permit her to remarry.** If he said simply: **He died, this is an instance of merely intending to testify.**

This was also stated by other *amora'im*. Reish Lakish said: **They taught this only when one intended to permit the woman to remarry, but if he merely intended to testify about the man's death, his testimony is considered valid testimony.** Rabbi Yoḥanan said to him: **Didn't such an incident occur involving Rabbi Oshaya the Distinguished, who permitted women to marry based upon the testimony of gentiles while he was with eighty-five Elders?** He said to the Elders: **They taught that one may not rely upon a gentile's testimony only when he intended to permit the woman to remarry, but if he merely intended to testify about the man's death, his testimony is considered valid testimony. But the Rabbis did not concur with him on this, and they maintained that one may not rely upon the testimony of a gentile at all.**

The Gemara asks: **But, if that is so, what about that which is taught in the mishna: With regard to a gentile, if he intended to testify, his testimony is not considered valid testimony, which implies that if the gentile does not intend to testify, his statement may be relied upon?** How can you find a case where one would rely on his statement? The Gemara answers: One may rely on a gentile's statement **when he speaks offhandedly^h**, without any intention to testify. Like that gentile who was going around saying: **Who is from the house of Hivvai; who is from the house of Hivvai? Hivvai has died.** And based upon this report, Rav Yosef allowed Hivvai's wife to marry. There was also a certain gentile who was going around saying: **Alas for the brave horseman who was in Pumbedita, for he is dead.** And Rav Yosef, and some say Rava, allowed his wife to marry.

There was also a certain gentile who was going around saying: **Who is from the house of Ḥasa? Ḥasa has drowned.** Rav Naḥman said: **By God! The fish have eaten Ḥasa.** The Gemara relates: **Due to Rav Naḥman's statement, although he did not issue a court ruling permitting it, Ḥasa's wife went and married, and no one said anything to her to protest this action.** Rav Ashi said: **Learn the following from this incident: That which the Sages said, that if a man fell into an endless body of water, his wife is prohibited from remarrying, this applies only *ab initio*,^h but if someone married her, we do not take her away from him.**

There are those who say that Rav Naḥman actually issued a ruling and allowed his wife to marry. He said: **Ḥasa is a great man; if it was so that he emerged from the water the incident would have generated publicity.** Since nothing was heard from Ḥasa in a long while, it can be assumed that he died. The Gemara comments: **That is not so. It is not different if he is a great man and it is not different if he is not a great man.** If a woman remarried based on testimony that her husband drowned in an endless body of water, **after the fact, yes, she may remain married, but she may not remarry *ab initio*.**

PERSONALITIES

Ḥasa – חסא: This Sage is mentioned only a few times in the Talmud. Elsewhere, mention is made of a different halakhic problem also caused by his sudden death (*Ketubot* 85b). There we see that Rav

Naḥman knew Ḥasa well. He was not wealthy, but was an honorable and faithful man. Rava quotes traditions in his name (e.g., *Bava Metzia* 57a), and Rav Naḥman also discusses his statements.

הוא – היה גוי דהוה קאמר...like I killed so-and-so – A statement made by a gentile is deemed credible only when he spoke offhandedly. However, if there was any plausible reason to suspect that the gentile intended something else, e.g., terrorizing a Jew by telling him that he will kill him just as he killed another Jew, the gentile's statement may not be relied upon in order to permit the deceased's wife to remarry (Rambam *Sefer Nashim, Hilkhoh Geirushin* 13:12; *Shulhan Arukh, Even HaEzer* 17:14).

הוא גוי דהוה קאמר ליה לישראל: קטול אספסתא ושדי לחיואי בשבתא, ואי לא – קטילנא לך בדקטילנא לפלוני בר ישראל, דאמרי ליה: בשיל לי קדירה בשבת, ולא בשיל לי, וקטילתיה. שמעה דביתהו, ואתאי לקמיה דאביי. שהיתא דביתהו, ואתאי לקמיה דאביי. שהיתא

The Gemara relates that a certain gentile said to a Jew: **Harvest the fodder and give it to my animals on Shabbat, and if not, I will kill you like I killed so-and-so^h the Jew, for I said to him: Cook me a pot of food on Shabbat, and he didn't cook it for me, so I killed him.** The wife of the missing Jew heard the gentile say that he killed her husband, and she came before Abaye to ask if she was permitted to remarry. He deferred the ruling in her case

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Daf 122 Amud a

תלתא ריגלי. אמר לה רב אדא בר אהבה: זיל לקמיה דרב יוסף, דחרין סבינא.

for three pilgrim Festivals, on which the Sages gather together to study, but he could not resolve this uncertainty on any of those occasions. **Rav Adda bar Ahava said to her: Go before Rav Yosef, whose knife is sharp, i.e., he has keen insight into halakhic matters, and ask him to decide your case.**

אזלה קמיה, פשט מהא מתניתין: גוי שהיה מוכר פירות בשוק, ואמר: "פירות הללו של ערלה הן", "של עזיקה הן", "של גטע רבעי הן", לא אמר בלום, לא נתבונן אלא להשביח מקחו.

She went before him and he resolved the case based on this baraita: With regard to a gentile who was selling fruit at the market and said: **These fruits are from the first three years of the tree's growth [orla]; or they are from Azeka,ⁿ i.e., land tilled on the Sabbatical Year, the produce of which it is prohibited to eat; or they are fourth-year produce, which it is prohibited to eat outside of Jerusalem, he has said nothing of consequence.** His statement is not deemed credible, since it is possible that he intended only to enhance the reputation of his goods, as he thought that his produce would fetch a higher price if he described it in that fashion. Rav Yosef derived from this *baraita* that in the case of the missing Jew, the gentile's statement could not be relied upon, as he may have stated it only to promote his own agenda.

אבא יודן איש צידון אמר: מעשה בישראל וגוי שהלכו בדרך, ובא גוי ואמר: "חבל על יהודי שהיה עמי בדרך שמת בדרך וקברתיו" – והשיאו אשתו.

Abba Yudan of Sidon said: An incident occurred involving a Jew and a gentile who traveled on the road,^h and later the gentile came and said: Alas for the Jew who was with me on the road, for he died, and I buried him. And the Sages relied upon this statement and allowed his wife to marry.

NOTES

They are from Azeka – של עזיקה הן: In his initial explanation of this term, Rashi interprets Azeka as a place guarded during the Sabbatical Year. He himself challenges this interpretation, but *Tosafot* defend it, in accordance with their view that it is prohibited to eat the produce of land that was guarded during the Sabbatical Year. Rashi's second explanation is that Azeka is a city in Eretz Yisrael mentioned in the Bible (Joshua 10:10–11). The gentile, who was located outside of Eretz Yisrael, was saying that the produce was imported from Azeka. Although he said this because he thought that produce from Azeka would fetch a higher price, he thereby also indicated that the produce was forbidden for consumption unless it was tithed.

The Ramban explains that Azeka refers to land that was worked and tilled on the Sabbatical Year, in which case its produce is forbidden. Alternatively, the term Azeka means simply that the trees had been cultivated. According to this interpretation, the gentile stated that the fruit was from trees within their first three years, and that the trees had been cultivated in order to enhance their fruit.

HALAKHA

ישראל וגוי – A Jew and a gentile who traveled on the road, etc. – ש: שהלכו בדרך ובי: If a Jew and a gentile took a journey together, and the gentile came and said that the Jew who was with him died on the way, the Jew's wife is permitted to remarry, even if the gentile does not know who the man was, just as in the story told by Abba Yudan in the Gemara. The gentile's statement that he buried the Jew is merely part of retelling the story as it occurred, and the woman would be permitted to remarry even if he left out the details of his burial and merely said that the Jew died. However, some say that she may remarry only if, as was reported in that story, the gentile said that he buried him.

According to the Rema, whose opinion is based on the *Maggid Mishne*, the requirement that the gentile say that he buried him applies only if he was not acquainted with the Jew who was with him. If he knew him, there is no need for this. Furthermore, it is not necessary for the gentile to specifically say that he buried the Jew, as long as he provides other details that indicate that he was absolutely certain of the Jew's death and was not merely assuming that he was dead (*Beit Yosef*, citing Ran; Rambam *Sefer Nashim, Hilkhoh Geirushin* 13:25; *Shulhan Arukh, Even HaEzer* 17:17).