

HALAKHA

דָּר שְׂאֵבֶל – א non-priest who ate a bird killed by pinching – מְלִיקָה: A non-priest who ate from a bird sin-offering is liable to receive punishment on two counts, one as a non-priest who ate consecrated animals, and one for eating an unslaughtered animal carcass (Rambam *Sefer Avoda, Hilkhhot Ma'aseh HaKorbanot* 11:9).

NOTES

Pinching – מְלִיקָה: Turtledoves and young pigeons sacrificed as offerings in the Temple were killed not by ritually slaughtering them with a knife like other offerings, but rather by pinching their necks. This was considered an especially difficult activity to perform. The priest would hold the bird in his left hand with its legs and wings between his fingers, and the back of its neck stretched out and facing upward. With his right fingernail, which he grew especially long for this purpose, the priest would cut the bird's neck and spine from the back until he reached and severed its windpipe and gullet. If the bird was to be sacrificed as a burnt-offering, the priest would completely sever its head. If it was to be sacrificed as a sin-offering, he would leave the head partially attached. A bird killed by pinching and sacrificed as a sin-offering was permitted to be eaten by the priests, while a bird that was killed by pinching but not intended for sacrificial use was considered an unslaughtered carcass, and it was not permitted to eat it. The pinching could be performed only by a priest, whereas the slaughtering of animal offerings in the Temple could be performed by a non-priest.

זָר שְׂאֵבֶל מְלִיקָה, רַבִּי חִיָּיא אָמַר: חַיִּיב שְׁתֵּים, בַּר קַפָּרָא אָמַר: אִין חַיִּיב אֱלָא אַחַת. קַפְּזָר רַבִּי חִיָּיא וְנִשְׁבַּע: הָעֲבוּדָה! כִּךְ שְׁמַעְתִּי מֵרַבִּי: שְׁתֵּים קַפְּזָר בַּר קַפָּרָא וְנִשְׁבַּע: הָעֲבוּדָה! כִּךְ שְׁמַעְתִּי מֵרַבִּי: אַחַת.

They disagreed over a similar issue as well. This dispute is with regard to a non-priest who ate a bird sin-offering that was killed by pinching^H the back of its neck. It is permitted for priests to consume such an offering, but it is prohibited to consume any other bird killed in such a manner, since it was not ritually slaughtered. Rabbi Ḥiyya says: He is liable to receive punishment on two counts, both for being a non-priest who ate a priestly offering and for eating something that was not properly slaughtered. Bar Kappara says: He is liable on only one count. Rabbi Ḥiyya jumped up and swore: I swear by the Temple service that this I heard from Rabbi Yehuda HaNasi: He is liable on two counts. Bar Kappara jumped up and swore: I swear by the Temple service that this I heard from Rabbi Yehuda HaNasi: He is liable on one count.

הִתְחִיל רַבִּי חִיָּיא לְדוֹן: נִבְלָה לְכָל נְאֻסָּה, בְּשִׁהוּתָהּ בְּמִקְדָּשׁ – אֵצֶל כַּהֲנָנִים הוֹתֵרָה, לְכַהֲנָנִים הוֹתֵרָה וְלֹא לְיֹרָם. יֵשׁ כָּאֵן מִשּׁוּם זְרוּת, וְיֵשׁ כָּאֵן מִשּׁוּם מְלִיקָה. הִתְחִיל בַּר קַפָּרָא לְדוֹן: נִבְלָה לְכָל נְאֻסָּה, בְּשִׁהוּתָהּ בְּמִקְדָּשׁ – הוֹתֵרָה, אִין כָּאֵן אֱלָא מִשּׁוּם זְרוּת.

Rabbi Ḥiyya began to deliberate. An unslaughtered animal carcass was prohibited to all. When it was permitted in the Temple, it was permitted to priests alone. Since it was permitted to priests and not to non-priests, there is a transgression here due to his status as a non-priest who ate of the sin-offering and there is a transgression here due to eating an animal killed by pinching.^N Bar Kappara began to deliberate: An unslaughtered animal carcass was prohibited to all. When it was permitted in the Temple, it was permitted to all. Therefore there is a transgression here only for being a non-priest, since if he were a priest there would be no prohibition at all.

Perek III Daf 33 Amud a

בְּמַאי קָמִיפְלִיגִי? בְּאִיסוּר בּוֹלֵל, וְאֵלֵיבָא דְרַבִּי יוֹסֵי: רַבִּי חִיָּיא סָבַר, רַבִּי יוֹסֵי בְּאִיסוּר בּוֹלֵל מִיִּתְיִיב תְּרֵינִי; בַּר קַפָּרָא סָבַר, לֹא מִיִּתְיִיב אֱלָא חֲדָא.

The Gemara asks: With regard to what principle do they disagree?^N The Gemara suggests that they disagree with regard to the issue of a more inclusive prohibition, and this dispute pertains to the status of a more inclusive prohibition specifically according to the opinion of Rabbi Yosei. Rabbi Ḥiyya holds that Rabbi Yosei is of the opinion that in the case of a more inclusive prohibition, one is liable on two counts. Bar Kappara holds that Rabbi Yosei is of the opinion that one is liable only on one count.

וּמַאי אִיסוּר בּוֹלֵל אֵיבָא הֵבָא? בְּשִׁלְמָא זָר, מְעִיקְרָא שְׂרִי בְּמִלְאכָה וְאִיסוּר בְּעֲבוּדָה, אֲתִיבָא לָהּ שַׁבַּת – מִגּוּ דְקָא מִיִּתְסַר בְּמִלְאכָה מִיִּתְסַר נְמִי בְּעֲבוּדָה.

The Gemara asks: And what more inclusive prohibition is there here in these cases? Granted, in the case of a non-priest who served in the Temple on Shabbat, initially he was permitted to perform labor every day and was prohibited from engaging in the Temple service. When Shabbat came, since he is now prohibited from engaging in prohibited labor in all contexts due to Shabbat, he is also prohibited from engaging in labors related to the Temple service due to Shabbat. Indeed, the additional prohibition of Shabbat was added to the previously existing prohibition against performing service in the Temple. This is a more inclusive prohibition since it also includes prohibited labor outside of the Temple.

NOTES

בְּמַאי קָמִיפְלִיגִי – Both the early and later commentaries ask: Why did the Gemara see fit to repeat this question when Rabbi Ḥiyya and bar Kappara explicitly stated the reasoning behind their positions? *Tosefot HaRosh* states that the Sages of the Talmud held a tradition that the root of the dispute was not based upon the previously suggested interpretation. The Rivan, however, states that this question is directed specifically toward bar Kappara, since his reasoning does not seem sufficient. Others say that because

the two Sages demonstrated that each of these issues could be viewed from two different angles, they would not have depended solely upon their explicit explanations (*Tosafot Yeshanim*). The Rashba writes that there must be an alternate rationale behind this dispute, as otherwise one of the Sages would be telling a falsehood. Moreover, the words: Began to deliberate, indicate that this was not their primary reasoning, but that they intended to present further proofs of their statements (see *Tosafot*).

Pinching...takes effect simultaneously – מליקה – *Tosafot ask*: Why is this case considered a case of prohibitions that take effect simultaneously, when the prohibition with regard to an unslaughtered animal carcass takes effect before the prohibition for a non-priest to eat consecrated food? Rabbi Avraham *Av Beit Din* explains that the case of eating a bird killed by pinching is also a case of a minor who grew two pubic hairs. He maintains that from that moment of maturity both prohibitions take effect at once. Indeed, the person in this case is both a non-priest and he is prohibited from eating from the pinched bird. This cannot, however, be said with regard to the case of ritual impurity, since the prohibition cannot apply unless one was actually rendered impure. The early commentaries discussed this opinion. Some rejected it (Rashba), while others showed how it could be supported (Ramban; Ritva).

A prohibition that takes effect simultaneously and according to Rabbi Yosei – ואליבא – *Tosafot*: All agree that it is more reasonable for two prohibitions to take effect in cases where the prohibitions take effect simultaneously, as opposed to cases where an additional prohibition takes effect after the first has already taken effect. *Tosefot HaRosh* adds, however, that there is still a certain deficiency in cases where two prohibitions take effect at once. He maintains that in these cases the less severe prohibition would not take effect together with a more severe prohibition. However, in cases of additional prohibitions that take effect one after another, one could maintain that any additional prohibition would take effect, no matter how minor.

Where he grew two pubic hairs, etc. – דאיייתי – *The Hazon Ish* says that one cannot explain the case of a brother's wife and a wife's sister as prohibitions that take effect simultaneously when one grows two pubic hairs. This is because there is a distinction between prohibitions that apply to a person himself, which apply immediately upon reaching adulthood, and prohibitions that apply to an object (see Ramban and Rashba).

Where he cut off his finger with a ritually impure knife – שחתך אצבעו בסכין טמא – *Tosafot* point out a difficulty with this explanation: While impurity is contracted immediately upon contact, the blemish appeared only afterward, and therefore this is not a case of simultaneous prohibitions. They resolve this by explaining that the situation is one where the finger was only loosely attached, so that by a single cut both the impurity was transferred and the blemish appeared at once. The Meiri adds that it must be that another individual cut one's finger off, for if one had himself wielded the knife, he would have been rendered impure already at the moment of contact with the knife. In contrast, *Tosafot Yeshanim* hold that since these two occurrences were so close in time, they are in fact considered a single act, and therefore both prohibitions took effect simultaneously.

HALAKHA

A prohibition that takes effect where another prohibition exists – איסור חל על איסור – There is a general principle of prohibitions in the Torah that states that a prohibition cannot take effect where another prohibition exists unless both of the prohibitions take effect simultaneously or one prohibition makes additions to the previous prohibition or if it comes to include other matters that were not in the original prohibition (Rambam *Sefer Kedusha*, *Hilkhot Issurei Bia* 17:8, *Hilkhot Ma'akhalot Assurot* 8:6, and *Sefer Korbanot*, *Hilkhot Shegagot* 4:1).

בעל מום, מעיקרא שרי באכילה ואסור בעבודה, איטמי ליה, מגו דקא מיתסר באכילה מיתסר נמי בעבודה, אלא מליקה – בבית אחת היא דמשפחת לה, באיסור כולל לא משפחת לה!

The same is true with regard to a **blemished priest** who served in the Temple while ritually impure: **Initially**, prior to his becoming ritually impure, **he was allowed to eat** from the consecrated animals **but was prohibited from performing the Temple service**, like all blemished priests. When he was rendered ritually impure, **since he is now prohibited from eating** of the consecrated items, **he is also prohibited from performing the Temple service** due to that same ritual impurity. There is, then, a more inclusive prohibition here. **However**, with regard to the case of a bird that was killed by **pinching**, you find that the prohibition against the eating of consecrated items by a non-priest and the prohibition against eating an unslaughtered animal carcass take effect **simultaneously**.^N **You do not**, however, find a **more inclusive prohibition** here as there was no original prohibition that took effect beforehand. Instead, this is a case of two prohibitions that take effect simultaneously.

אלא קמפילגי באיסור בבית אחת ואליבא דרבי יוסי: רבי חייא סבר, רבי יוסי באיסור בת אחת מיחייב תרתו, ובר קפרא סבר, לא מיחייב אלא חדא.

Rather, the previous explanation is rejected and the Gemara suggests instead that **they disagree with regard to an additional prohibition that takes effect simultaneously**, and this dispute pertains to the status of these prohibitions specifically according to the opinion of Rabbi Yosei.^N **Rabbi Hiyya holds that Rabbi Yosei is of the opinion that one is liable on two counts in cases of prohibitions that take effect simultaneously. And bar Kappara holds that Rabbi Yosei is of the opinion that one is liable only on a single count.**

והכא – מאי איסור בת אחת איבא הקא? ור שטימש בשבת, כגון דאיייתי שתי שערות בשבת, דהויא להו זרות ושבת בהדי הדדי.

The Gemara challenges this explanation: **But here**, in the first two instances, **what case of simultaneous prohibitions is there here?** In the two previous cases the prohibitions took effect one after the other, and not simultaneously. The Gemara answers that these cases can also be interpreted as occurring simultaneously as follows: With regard to **the non-priest who served on Shabbat**, **this would be in a case where a minor grew two pubic hairs**,^N signaling adulthood on Shabbat. Before that point he was considered a minor and therefore not liable for his actions. Therefore, **this is a case where the prohibition against serving as a non-priest and the prohibition against violating Shabbat took effect together.**

בעל מום נמי – כגון דאיייתי שתי שערות ואיטמי ליה, דהויא ליה בעל מום וטומאה בהדי הדדי. אי נמי: שחתך אצבעו בסכין טמא.

With regard to the case of **one who was blemished**, this can be explained as well: This is referring to a case where a minor **grew two pubic hairs and was immediately rendered ritually impure. This is a case where the prohibition with regard to a blemished priest and the prohibition with regard to ritual impurity took effect together. Alternatively**, it could be a case where **he cut off his finger with a ritually impure knife**.^{HN} Here, the cut and removal of his finger rendered him simultaneously blemished and ritually impure.

בשלמא לרבי חייא, בי אתנייה לדידיה – אליבא דרבי יוסי, בי אתנייה לבר קפרא – אליבא דרבי שמעון, אלא לבר קפרא – רבי חייא שקורי קא משקר?

Following this clarification of the dispute, the matter is now considered from a different angle: **Granted**, according to the opinion of Rabbi Hiyya, the dispute between his version of Rabbi Yehuda HaNasi's ruling and that of bar Kappara can be explained as follows: **When Rabbi Yehuda HaNasi taught Rabbi Hiyya**, he taught him according to the opinion of Rabbi Yosei, and Rabbi Yosei holds that there are cases where two prohibitions can both take effect. And **when Rabbi Yehuda HaNasi taught bar Kappara**, he did so according to the opinion of Rabbi Shimon who holds that a new prohibition can never take effect where another prohibition already exists. Therefore, Rabbi Hiyya could understand why bar Kappara insisted on his opinion. Rabbi Hiyya thought that bar Kappara was in fact relating an accurate statement of Rabbi Yehuda HaNasi, as Rabbi Yehuda HaNasi was relating to the opinion of Rabbi Shimon. Rabbi Hiyya assumed that bar Kappara did not understand that Rabbi Yehuda HaNasi's statement was not in accordance with Rabbi Yosei's opinion. **According to bar Kappara**, however, was **Rabbi Hiyya then telling a falsehood?** How would bar Kappara relate to Rabbi Hiyya's oath? Did he think that Rabbi Hiyya would swear that he heard words from Rabbi Yehuda HaNasi that were never said?

אָלָא: קְמִיפְלִגִי בְּאִיסוּר בֵּת אַחַת, וְאֵלִיבָא דְרַבִּי שְׁמַעוֹן. בְּשִׁלְמָא לְרַבִּי חֵיִיא, קָא מִישְׁתַּבַּע לְאַפּוֹקִי לְרַבִּי שְׁמַעוֹן מִחוּזְקֵיהּ, אָלָא לְבַר קַפְרָא – לְמַד לִיה לְאַשְׁתַּבּוּעִי? קְשִׁיא.

Rather, this must be explained differently: Rabbi Ḥiyya and bar Kappara **disagree** with regard to cases where two **prohibitions** take effect **simultaneously**, and this dispute pertains to the status of these prohibition specifically **according to** the opinion of **Rabbi Shimon**. It could be suggested that when the two prohibitions take effect simultaneously, Rabbi Shimon would concede that they both take effect. However, this explanation raises a difficulty as well: **Granted, according to Rabbi Ḥiyya** it is clear why **he was swearing**. He did so in order to **exclude** the understanding of **Rabbi Shimon's** opinion that was based on **his presumed** opinion. As it was known that Rabbi Shimon holds that a new prohibition cannot take effect where another prohibition exists; this is the default understanding of his opinion. Therefore, it was incumbent upon Rabbi Ḥiyya to take an oath in order to emphasize that despite Rabbi Shimon's general opinion, in cases where the prohibitions take effect simultaneously, he would concede that both prohibitions can take effect. **However, according to bar Kappara, why was it necessary to swear?** It would have sufficed for him simply to make his statement, as it concurs with the default understanding of Rabbi Shimon's opinion. The Gemara comments: Indeed, this is **difficult**.

בְּשִׁלְמָא לְבַר קַפְרָא, כִּי אֲתַנְיִיה רַבִּי לְדִידֵיהּ – אֵלִיבָא דְרַבִּי שְׁמַעוֹן, כִּי אֲתַנְיִיה לְרַבִּי חֵיִיא – אֵלִיבָא דְרַבִּי יוֹסֵי. אָלָא לְרַבִּי חֵיִיא, בַּר קַפְרָא שְׁקִירִי קָא מְשַׁקֵּר?

One can raise a difficulty with this explanation from a different angle as well: **Granted, according to bar Kappara, when Rabbi Yehuda HaNasi taught him**, he taught him **according to** the opinion of **Rabbi Shimon**, who holds that two prohibitions cannot take effect even in cases when they occur simultaneously, and **when he taught** the ruling to **Rabbi Ḥiyya** it was **according to** the opinion of **Rabbi Yosei**. Accordingly, Rabbi Ḥiyya did in fact swear that he heard that one is liable only on one count, but he wrongly understood that this was Rabbi Shimon's opinion. **However, according to Rabbi Ḥiyya**, who holds that Rabbi Shimon concedes that in cases where the prohibitions take effect simultaneously one is liable for both, was **bar Kappara lying?** His statement would accord neither with Rabbi Shimon nor with Rabbi Yosei.

אָמַר לָךְ רַבִּי חֵיִיא: כִּי אֲתַנְיִיה רַבִּי לְדִידֵיהּ – תַּרְתֵּי לְפִטוֹר אֲתַנְיִיה.

The Gemara answers: **Rabbi Ḥiyya** could have **said to you** that this is what transpired: **When Rabbi Yehuda HaNasi taught him**, bar Kappara, **he taught him two** cases involving **exemptions**, i.e., the cases of a non-priest who served in the Temple on Shabbat and that of the blemished priest who served while ritually impure. Both of these are cases of more inclusive prohibitions, and he was informing bar Kappara that Rabbi Shimon holds them liable on only one count, because Rabbi Shimon holds that a prohibition takes effect where another prohibition already exists only if the prohibitions take effect simultaneously, but not in cases of more inclusive prohibitions.

Perek III
Daf 33 Amud b

וְאִיסוּר בּוֹלַל אֲתַנְיִיה, וְאֵלִיבָא דְרַבִּי שְׁמַעוֹן, וְחוּזֵי לְבַר קַפְרָא לְזוֹר שְׂאֵבֵל מְלִיקָה, וְאֵיִדִּי דְדַמְיָא לָהּ – עֵרְבָה בְּהַדְיָהוּ, וְעִינֵן בָּהּ, וְלֹא אֲשַׁבַּח אָלָא בְּבֵת אַחַת.

And he taught him the ruling with regard to a **more inclusive prohibition**, that in such cases there is an exemption, and this ruling is in accordance with the opinion of **Rabbi Shimon**. And bar Kappara then saw the case of a **non-priest who ate** a bird killed by **pinching**, and since it was similar to the previous cases, he **mixed them together**. Then, sometime later, it seemed to him as though he had in truth heard all of these cases together from Rabbi Yehuda HaNasi, but when he **examined this last case**, he found that it could exist **only** if the events occurred **simultaneously**.

וְסָבַר: מִדֵּהָא בְּבֵת אַחַת – הָא נִמְי
בְּבֵת אַחַת, וּמִדֵּהָנָךְ לְפָטוּר – הִנָּךְ
נִמְי לְפָטוּר.

And he concluded that since the case of a non-priest eating a bird killed by pinching can occur only in a scenario where the prohibitions take effect **simultaneously**, the other cases are instances of **simultaneous prohibitions as well**. And similarly, since he was taught to exempt one individual from a second prohibition in those cases, these cases were taught to exempt one individual from a second prohibition as well. Therefore, according to Rabbi Hiyya, bar Kappara did not knowingly speak falsely. Rather, he heard certain matters from Rabbi Yehuda HaNasi and then mistakenly merged with them other matters. As a result, he confused the issue.

מִיִּתְיָבִי: זֶר שְׂשִׁימֵשׁ בְּשַׁבָּת, וּבִעַל מוֹם
שְׂשִׁימֵשׁ בְּטוֹמְאָה – יֵשׁ בָּאֵן מְשׁוּם
זְרוּת, וּמְשׁוּם שַׁבָּת, וּמְשׁוּם בִּעַל מוֹם,
וּמְשׁוּם טוֹמְאָה, דְּבִרֵי רַבִּי יוֹסִי. רַבִּי
שְׁמַעוֹן אוֹמֵר: אֵין בָּאֵן אֶלְא מְשׁוּם
זְרוּת וּבִעַל מוֹם בְּלִבְדָּ. וְאִילוּ מְלִיקָה
שִׁירָה.

The Gemara raises an objection to the statement of bar Kappara from a *baraita*: In the case of a non-priest who served on Shabbat and the case of a blemished priest who served while ritually impure, there is liability here, due to the prohibition against serving as a non-priest; and due to the prohibition against desecrating Shabbat; and due to the prohibition against serving as a blemished priest; and due to the prohibition against serving after contracting ritual impurity. This is the statement of Rabbi Yosei. Rabbi Shimon says: There is liability here only due to the prohibition against serving as a non-priest and due to the prohibition against serving as a blemished priest. The Gemara notes: And yet the case of a non-priest who ate a bird killed by pinching was left out^N and not mentioned among the cases subject to this dispute.

לְמַאֵן שִׁירָה? אִילִימָא לְרַבִּי יוֹסִי –
הִשְׁתָּא רַבִּי יוֹסִי בְּאִיסוּר כּוֹלֵל מִיִּתְיָב
שְׁתִּים, בְּאִיסוּר בֵּת אַחַת מִיִּבְעִיָּא?
אֶלְא לָאוּ – לְרַבִּי שְׁמַעוֹן וּבְאִיסוּר
כּוֹלֵל הוּא דְפָטוּר – אֲבָל בְּאִיסוּר בְּבֵת
אַחַת מִיִּתְיָב, תִּיּוֹבְתָא דְבֵר קַפְרָא!
תִּיּוֹבְתָא.

The Gemara asks: According to whom was this left out? That is, according to the opinion of which *tanna* would this question arise? If we say that this was left out according to the opinion of Rabbi Yosei, it is difficult. Now that Rabbi Yosei holds, even in cases of a more inclusive prohibition, that one is liable on two counts,^N as was stated with regard to a non-priest who served on Shabbat, is it necessary to state that in the case where the additional prohibition takes effect simultaneously one would be liable on two counts? Rather, is it not according to the opinion of Rabbi Shimon that this case was left out, as Rabbi Shimon would concede that in this case one is liable on two counts? Therefore, Rabbi Shimon exempts one from liability for the second prohibition in cases of more inclusive prohibitions, but in cases of simultaneous prohibitions he would deem one liable on two counts. The Gemara summarizes: The refutation of the opinion of bar Kappara is indeed a conclusive refutation, and his statements are rejected.

זֶר שְׂשִׁימֵשׁ בְּשַׁבָּת, בְּמַאי? אִי
בְּשַׁחֲטָה – שַׁחֲטָה בְּזֶר שְׂשִׁימֵשׁ, וְאִי
בְּקַבְלָה וְהוֹלְכָה – טְלָטוּל בְּעֵלְמָא
הוּא.

The Gemara raises a question with regard to one of the laws mentioned above. The *baraita* mentioned the case of a non-priest who served on Shabbat. The Gemara wonders: In what form of service did he perform in the Temple? If this is referring to a case where a non-priest performed the slaughtering of the sacrificial animal, there would be no prohibition, as the slaughtering by a non-priest is valid. And if it is referring to receiving the blood and carrying the blood to the altar, while this is a case where he would be liable as a non-priest performing the service of a priest, insofar as Shabbat is concerned this is a case only of moving, and it does not entail a violation of any prohibited labor.

NOTES

And yet the case of a non-priest who ate a bird killed by pinching was left out – וְאִילוּ מְלִיקָה שִׁירָה: The question arises: How can evidence be derived from the fact that this *halakha* is absent? Must the *tanna* teach all of the cases? The commentaries answer that were the case of eating of a bird killed by pinching indeed included in this dispute, it would have been appropriate to state it here because it would teach the novel ruling that Rabbi Shimon dissents even in cases of simultaneous prohibitions. Moreover, if the dispute was indeed about simultaneous prohibitions, then in the case of a non-priest who served on Shabbat, Rabbi Shimon would hold that the more

severe prohibition of Shabbat would apply, not the prohibition against being a non-priest. The fact that Rabbi Shimon states that one would be liable only for serving as a non-priest indicates that the case is one of two prohibitions that take effect one after another, where one is liable only for the first prohibition (*Arukh LaNer*).

One is liable on two counts – מִיִּתְיָב שְׁתִּים: According to all opinions, this does not refer to two sin-offerings but rather the transgression of two prohibitions, each according to its own ruling (Ramban; Rashba).

If by burning – אי בהקטרה: Rashi and others explain that this refers to the burning of the sacrificial portions on the altar. However, the Ritva seems to hold that this refers to the burning of incense. It is stated in the Jerusalem Talmud, in tractate *Shabbat*, that Rabbi Yosei does not deem one liable for kindling but rather for cooking. Although this seems to support Rashi's understanding, it can also be interpreted according to the Ritva's opinion.

The slaughtering of the High Priest's bull – פרו של בהן גדול: *Arukh LaNer* notes that this phrase in the Gemara indicates that the term *Shabbat* here is not referring to actual *Shabbat* but rather *Yom Kippur*, which is also called *Shabbat*. This is not a certain proof, however, since it could also be referring to a *Yom Kippur* that occurred on *Shabbat*. The Rivan writes that this suggested resolution of the Gemara is inexact, for even if the slaughtering of the High Priest's bull by a non-priest is prohibited, it is still not a prohibition that incurs *karet*, nor is it a negative mitzva. It would seem that the Gemara itself did not raise this objection because the suggestion is not sustained in the end.

The High Priest's bull – פרו של בהן גדול: On *Yom Kippur*, the High Priest sacrifices a bull as a sin-offering for himself, his family, and all the members of the priesthood (see *Leviticus*, chapter 16).

Rather he merely enumerates the prohibitions – אלא: Rashi explains that according to this conclusion, Rabbi Yosei must be referring to receiving and carrying the blood. However, *Tosafot Yeshanim* explains that it is possible that he is even referring to burning. Although this does not entail the bringing of a sin-offering according to Rabbi Yosei, it is nevertheless prohibited by Torah law.

And if they were brothers, etc. – ואם היו אחין וכו': The commentaries note: If the mishna wanted to demonstrate cases where several prohibitions are violated by a single act, it could have enumerated more prohibitions. For example, it could have taught that these men were already married, and that the women that they inadvertently married were the daughters of their wives from a previous marriage. They therefore conclude that the mishna served to teach us only the different types of prohibitions that might be mutually applicable, each on the basis of the other's actions. Although according to this understanding it would have been unnecessary to mention the prohibition with regard to a menstruating woman, this case teaches a novelty in that it pertains to something that is presently prohibited but will eventually become permitted (*Tosefot HaRosh*).

אי בהקטרה – והאמר רבי יוסי:
הבערה ללא יצאתה!

אמר רב אחא בר יעקב: בשחיטת פרו של בהן גדול, ובדברי האומר: שחיטת פרו של בהן גדול בזר – פסולה. אי הכי מאי איריא זר, אפילו בהן הדיוט נמי שזר אצלו קאמר.

מתקיף לה רב אשי: מידי חטאות קתני, או לאוי קתני? אלא: איסורי בעלמא קא חשיב. למאי נפקא מינה – לקוברו בין רשעים גמורים.

מתני' שנים שקידשו שתי נשים, ובשעת בניסתן לחופה החליפו את של זה לזה ואת של זה לזה – הרי אלו חייבין משום אשת איש. ואם היו אחין – משום אשת אח, ואם היו אחיות – משום אשה אל אחותה, ואם היו נדות – משום נדה.

If he served by **burning^N** the sacrificial portions on the altar, then this discussion follows the opinion of Rabbi Yosei, **but didn't Rabbi Yosei say that the prohibition against kindling on Shabbat was singled out to teach that one who lights a fire on Shabbat merely violates a prohibition?** This is as opposed to the other prohibited labors, which incur death penalties when violated willfully and entail the bringing of a sin-offering when violated unintentionally. Why, then, would Rabbi Yosei deem one liable for two sin-offerings?

Rav Aha bar Yaakov said: The service referred to in this case is **the slaughtering of the High Priest's bull^N** on *Yom Kippur*, and this is in accordance with the statement of the one who says that **the slaughtering of the High Priest's bull^N** is disqualified if performed by a non-priest, for this service is designated specifically for the High Priest alone. The Gemara asks: **If so**, that this is referring to the slaughtering of the High Priest's bull, then **why specifically state a non-priest?** The same would hold true even for a common priest as well. The Gemara answers: **This is referring to one who is as a non-priest in relation to the High Priest and not to an actual non-priest.** The Hebrew word *zar* literally means foreigner, and this type of service is considered foreign to a common priest as well as a non-priest.

Rav Ashi strongly objects to this: The previous rejection that was based on the idea that the act of burning was not a full-fledged prohibited labor is in fact groundless. **Is the tanna teaching how many sin-offerings would be incurred, or is he teaching how many negative mitzvot are being violated?** Rather, he merely enumerates **the prohibitions^N** violated by a certain action, without detailing their severities, and therefore the desecration of *Shabbat* involved in the Temple service can be any *Shabbat* violation. The Gemara asks: **What practical difference does it make** how many prohibitions are involved? The Gemara answers: It affects the decision whether or not to **bury him among the completely wicked.** If he violated two prohibitions, he is considered wicked on two counts and consequently must be buried accordingly.

MISHNA In the case of two men who betrothed two women, and at the time that they entered the wedding canopy, after the betrothal, the men switched^N this wife with that wife and that one with this one, then these two men are liable for engaging in forbidden sexual relations with a married woman, since each of them had intercourse with his fellow's wife. The act of betrothal is sufficient to prohibit a woman to all other men as a married woman. Therefore, when the women were switched, both men transgressed this violation. **And if they were brothers,^N** then they are also liable for forbidden sexual relations with a brother's wife. **And if these women were sisters,** then they are liable for taking a wife and her sister as well. **And if they were menstruating women,** they would be liable for intercourse with a menstruating woman as well.

HALAKHA

Switched women – נשים שהחליפו: If two men betrothed two women, who were then switched when they entered the wedding canopy, they are liable for having intercourse with a married woman. If they are brothers, they are also liable for intercourse with a brother's wife. If the women are sisters,

they are also liable for intercourse with a wife's sister. If the women were menstruating, they are also liable for intercourse with a menstruating woman (*Rambam Sefer Korbanot, Hilkhot Shegagot* 4:1).

We separate them for three months – מפרישין אותן – שולשה חדשים: In cases where a woman was mistakenly married in a forbidden manner, if she engaged in sexual intercourse, she is then separated for three months to check if she became pregnant. This is in order to distinguish between an illegitimate child and one who was conceived lawfully. If she was a minor, she is not separated, since the Sages did not make decrees for impossible eventualities (Rambam *Sefer Nashim, Hilkhot Geirushin* 11:18; *Shulhan Arukh, Even HaEzer* 13:8).

After rape a woman is permitted to return to an Israelite – ואונס בישראל מישרא שרי – איבא קרבן: If the wife of an Israelite was raped, she is permitted to her husband but forbidden to priests, such that if she is widowed, she is prohibited from marrying a priest (Rambam *Sefer Kedusha, Hilkhot Issurei Bia* 18:7–8; *Shulhan Arukh, Even HaEzer* 6:11).

NOTES

איבא קרבן – מידי ברישע וכו': Although there are several *halakhot* in the Mishna that deal with cases of wicked individuals such as these, were the reference here to an intentional act, this particular mishna would not have taught anything especially novel. The only novel teaching would be the need to bury them among the completely wicked. If, however, the mishna is referring to a case where the men acted unintentionally, the novel element is the number of sin-offerings that they are obligated to bring (Rashash).

איבא קרבן – מי איבא קרבן: Although it could be suggested that the husbands acted intentionally while the women were unaware and therefore acted unwittingly, such an explanation is not reasonable as the Mishna does not generally refer to two different types of behavior within a single case (Ramban).

HALAKHA

A prohibition takes effect where another prohibition already exists – איסור תל על איסור: A prohibition takes effect where another prohibition already exists only if both prohibitions take effect simultaneously, or if the second prohibition is a more inclusive prohibition or an expanded prohibition (Rambam *Sefer Korbanot, Hilkhot Shegagot* 4:1).

ומפרישין אותן שולשה חדשים, שמה מעוברות הן, ואם היו קטנות שאינן ראויות לילד – מתזוירים אותן מיד, ואם היו פהגות – נפסלו מן התרומה.

And following these forbidden sexual relations, we separate these women from their husbands for three months,¹⁴ lest they were impregnated by that forbidden act of intercourse. Doing so makes it possible to distinguish a child born of these relations, so that he could be rendered a *mamzer*. And if they were female minors and unable to bear children, then we immediately return them to their original husbands. And if they were daughters of priests, they are thereby disqualified from eating of *teruma*. By engaging in illicit sexual acts, they were rendered forbidden to priests and disqualified from eating *teruma*.

גמ' "החליפו" מידי ברישע עסקינן? ותו: הא דתני רבי חייא: הרי כאן שש עשרה חטאות. אי במזיד – מי איבא קרבן? אמר רב יהודה, תני: הוחלפו.

GEMARA In the mishna it states: They switched this one with that one. Are we dealing with such wicked individuals^N that they would intentionally switch their wives? And furthermore, consider that which Rabbi Hiyya taught on this subject: There are sixteen sin-offerings here, four sin-offerings for each of the men and four for each of the women. Yet, if they had acted intentionally would there be an offering?^N Sacrifices are brought only for unintentional acts. Rav Yehuda said: Teach instead they were switched, which indicates that the switching was not done intentionally; rather, the women were accidentally mixed up.

הכי נמי מסתברא, דקתני סיפא: אם היו קטנות שאינן ראויות לילד – מתזוירין אותן מיד. ואי במזיד – מי שריא? הא לא קשיא: פיתוי קטנה – אונס נהגו, ואונס בישראל מישרא שרי.

The Gemara comments: This, too, stands to reason from the fact that the latter clause teaches: If they were female minors and unable to bear children, then we immediately return them. And if this had been done intentionally, would it be permitted to return a woman who had engaged in illicit sexual acts to her husband? The Gemara comments: This is not difficult and does not disprove the notion that the act was intentional. Even if the act was intentional, these women would be permitted to return to their husbands. This is because the seduction of a minor girl is considered rape, and after rape a woman is permitted to return to an Israelite^H husband.

אלא דקתני: מפרישין אותן שולשה חדשים שמה מעוברות הן, הא לא מעוברות – שריין, ואי במזיד – מי שרי? אלא לאו שמע מינה: הוחלפו, שמע מינה.

However, this can be derived from a different point that the mishna teaches: We separate these women from their husbands for three months, as perhaps they became pregnant. From here it can be deduced: Were it to become clear after three months that they are not pregnant, they are permitted to return to their husbands. And if they had acted intentionally, would this be permitted? Rather, must one not conclude from here that the mishna is referring to a case where they were switched inadvertently? The Gemara summarizes: Indeed, conclude from here that this is the case.

Perek III
Daf 34 Amud a

ומאן האי תנא דאית ליה איסור בולל ואיסור מוסף ואיסור בת אחת?

The Gemara asks: According to Rabbi Hiyya, who teaches that this case incurs sixteen sin-offerings, who is this *tanna* who holds that a prohibition takes effect where another prohibition already exists^H for a more inclusive prohibition, an expanded prohibition, and a simultaneous prohibition? If these men are brothers, the moment that one betrothed a woman, that woman was immediately rendered forbidden to the second brother both as a married woman and as his brother's wife. When the second brother betrothed her sister, this added the prohibition pertaining to his wife's sister. This is a more inclusive prohibition because, as a result of this betrothal, the second brother is prohibited from engaging in sexual intercourse not only with his wife's sister, who is his brother's wife, but also with all of her other sisters. When this woman becomes a menstruating woman, she is forbidden to her husband as well, which is an expanded prohibition. Consequently, the mishna includes examples of all three types of prohibitions and asserts that they all take effect in this case. Therefore, the Gemara wonders which *tanna* holds that in each of these cases the prohibition takes effect even where another prohibition exists.