

A piece of a ritually impure sin-offering is nullified – **התניב חטאת טמאה תעלה**: The commentaries raise a question with regard to this *halakha* that a piece of such a sin-offering is nullified in a mixture of one hundred to one. Even if this piece is not an item that is invariably counted, there would appear to be another reason why it cannot be nullified, i.e., the principle of: A piece fit to be served. The principle is that a piece that is fit to be served to guests is significant in its own right and cannot be nullified. The Rashba discusses at length the various solutions offered to this problem. He suggests that a piece that is fit to be served to guests that became intermingled with non-sacred food is not nullified, because were it nullified, it could later be served to guests. But in the case of such a piece that became intermingled with sacrificial meat, since it could not be served to guests even after nullification, as it may be eaten only by priests, it is not considered a piece fit to be served. The Ritva rejects this explanation in favor of the Ra'ah's suggestion that this refers to an uncooked piece of meat that is not fit to be served, or alternatively, that any item that is forbidden not in and of itself but only due to some external factor, e.g., impurity, is not subject to the *halakha* with regard to a piece that is fit to be served.

**In any event the first clause teaches – קתני מיהת רישא**: According to most commentaries, this difficulty concludes Rabbi Yohanan's proof from this *baraita* with regard to nullification, an objection raised against the opinion of Reish Lakish. The Razah maintains that the difficulty posed here relates to the opinions of both Rabbi Yohanan and Reish Lakish, as this piece is an item that is usually counted. According to his opinion, some of the subsequent answers are in accordance with Rabbi Yohanan's opinion while others follow that of Reish Lakish. The Ramban rejects this explanation and proves that the difficulty applies only to the opinion of Reish Lakish.

**One that had been crushed – נימוקה**: Most commentaries maintain that while the first clause of the *baraita* is referring to a crushed piece of meat, the latter clause applies to a whole piece as well. The Rashba claims that according to this answer the entire *baraita* is dealing with a crushed piece. How this dispute is understood depends to a certain extent on how the rest of the discussion is understood, according to the various opinions.

A type mixed with its own type cannot be nullified – **מין במינו לא בטיל**: The reason that the ruling is more stringent with regard to an item that became intermingled with its own type than with one that became mixed with a different type is that in the latter case the nullification is apparent, as the appearance and taste of the forbidden item have become imperceptible in the mixture. However, if an item became intermingled with its own type, it cannot be said that the unique essence of the prohibition has been canceled in the permitted substance.

**מאי חתיכה? דתניא: חתיכה של חטאת טמאה שנתערבה במאה חתיכות של חטאות טהורות, וכן פרוסה של לחם הפנים טמאה שנתערבה במאה פרוסות של לחם הפנים טהורות – תעלה. רבי יהודה אומר: לא תעלה.**

The Gemara further explains: **What is the case of a piece**, referred to by Rabbi Yohanan? **As it is taught in a *baraita*: If a piece of a ritually impure sin-offering became intermingled<sup>H</sup> with one hundred pieces of ritually pure sin-offerings, and similarly, if a slice of ritually impure shewbread became intermingled with one hundred slices of ritually pure showbread, the impure piece of a sin-offering or slice of shewbread is nullified in its respective mixture.<sup>N</sup> Rabbi Yehuda says: It is not nullified.**

**אבל חתיכה של חטאת טהורה שנתערבה במאה חתיכות של חולין טהורות, וכן פרוסה של לחם הפנים טהורה שנתערבה במאה פרוסות של חולין טהורות – דברי הכל לא תעלה.**

**However, if a piece of a ritually pure sin-offering became intermingled<sup>H</sup> with one hundred pieces of ritually pure non-sacred meat, and similarly, if a slice of ritually pure shewbread became intermingled with one hundred slices of ritually pure non-sacred bread, everyone agrees that the pure piece of sin-offering or slice of shewbread is not nullified in its respective mixture.**

**קתני מיהת רישא תעלה! אמר רבי חייא בריה דרב הונא: בממוחה.**

The Gemara asks: **In any event, the first clause of this *baraita* teaches<sup>N</sup> that a piece of ritually impure sin-offering can be nullified.** This poses a difficulty with respect to the opinion of Reish Lakish, as such a piece of meat is an item that is sometimes counted and considered important in its own right, and it is forbidden by Torah law, but nevertheless it can still be nullified. **Rabbi Hiyya, son of Rav Huna, said: This *baraita* is referring not to a whole piece of meat but to one that had been crushed<sup>N</sup> and broken into small parts. Once it is no longer a whole piece, it loses its importance and can be nullified.**

**אי הכי מאי טעמא דרבי יהודה?**

The Gemara asks: **If it is so that the piece has been crushed, what is the reason for Rabbi Yehuda's opinion that the piece is not nullified?**

#### HALAKHA

If a piece of a ritually impure sin-offering became intermingled – **חתיכה של חטאת טמאה שנתערבה**: If a piece of a ritually impure sin-offering became intermingled with one hundred pieces of ritually pure sin-offerings, or if a slice of ritually impure shewbread became intermingled with one hundred slices of ritually pure shewbread, the impure piece or slice is nullified in its respective mixture, in accordance with the opinion of the Rabbis (Rambam *Sefer Avoda*, *Hilkhot Pesulei HaMukdashin* 6:23).

If a piece of a ritually pure sin-offering became intermingled – **חתיכה של חטאת טהורה שנתערבה**: If a piece of a ritually pure sin-offering became intermingled with one hundred pieces of ritually pure non-sacred meat, or if a slice of ritually pure shewbread became intermingled with one hundred slices of ritually pure, non-sacred bread, the impure piece or slice is not nullified, and the entire mixture must be eaten by priests (Rambam *Sefer Avoda*, *Hilkhot Pesulei HaMukdashin* 6:24).

#### Perek VIII

#### Daf 82 Amud a

**רבי יהודה לטעמיה, דאמר: מין במינו לא בטיל.**

The Gemara answers: **Rabbi Yehuda conforms to his standard line of reasoning, as he stated a principle that if a particular type of food is mixed with food of its own type, it cannot be nullified<sup>N</sup> under any circumstances.**

**אבל לא נימות מאי, לא תעלה – אדתני: אבל חתיכה של חטאת טהורה שנתערבה במאה חתיכות של חולין טהורות לא תעלה – ניפלוג וניתני בדידה: במה דברים אמורים בשנימוחה, אבל לא נימוחה! לא תעלה!**

The Gemara asks further: **But had the piece of meat not been crushed, what would the *halakha* be?** Presumably, it would not be nullified. If so, there is a difficulty, as **instead of teaching a case involving non-sacred meat in the second half of the *baraita*, as follows: However, if a piece of a ritually pure sin-offering became intermingled with one hundred pieces of ritually pure non-sacred meat, the impure piece of a sin-offering is not nullified; let the *tanna* distinguish and teach it in the case involving only sacred meat, as follows: In what case is this statement said? It is in a case where the piece of meat has been crushed and broken into small parts, but if it has not been crushed, it is not nullified.**

And according to Reish Lakish, what is different – ולְרִישׁ לְקִישׁ מֵאֵי שְׁנָא: There are many different versions of the text here, each of which presents its own set of difficulties. See Rashi, who goes to great lengths to explain why this difficulty applies only to Reish Lakish and not to Rabbi Yoḥanan. The Rashba explains this version in accordance with his general approach: Rabbi Yoḥanan maintains that this is not a case of: That which is counted; rather, the question of nullification concerns the issue of a piece fit to be served. The difference between a piece intermingled with pure sacred food and a piece mixed with non-sacred food is that in the former case the mixture is not fit to be served to guests, as the entire mixture must be given to priests. Other early authorities cite the following version, citing the *ge'onim*: And according to Rabbi Yoḥanan, what is different between the first clause, etc. According to this version, Reish Lakish does differentiate between the first and latter clauses of the *baraita*, as a crushed piece is nullified whereas a piece that has not been crushed is not nullified. But according to Rabbi Yoḥanan, since both cases involve whole pieces, the question is: What is the reason for the difference in the *halakha* (see Rashba and Ritva)? Rabbi Avraham min HaHar cites a reading that omits any mention of either Rabbi Yoḥanan or Reish Lakish, which means the question applies equally to both.

The first clause is dealing with ritual impurity due to liquids, etc. – רִישׁא בְּטוּמְאָת מְשָׁקִין וכו' – The early authorities cite Rabbeinu Ḥananel's version, which omits the phrases: The first clause, and: The latter clause. According to this version, the entire *baraita* is referring to the impurity of liquids. Rabbi Yehuda maintains that the ritual impurity of liquids is by Torah law and therefore cannot be nullified, whereas the Rabbis contend that such impurity is merely rabbinic. This version also resolves the question raised by the *Arukh LaNer* as to why the Gemara uses the example of the impurity of liquids rather than that of some other type of ritual impurity that everyone agrees is of rabbinic origin.

## HALAKHA

An object whose prohibition is temporary – דְּבַר שֵׁשׁ לוֹ – מְתוּרִים: If a temporarily prohibited object, or one that can be permitted in some manner, became intermingled with permitted items, it is not nullified even in a mixture of one to one thousand, whether it is whole or crushed. This applies only if it became intermingled with its own type, but if it fell into a different type it is nullified in a mixture of one to sixty, like any other prohibited item (Rambam *Sefer Kedusha*, *Hilkhot Ma'akhalot Assurot* 15:6, 12; *Shulḥan Arukh*, *Yoreh De'ea* 102:1).

טהורות בטְהוּרוֹת עֲדִיף לִיה.

The Gemara answers: Even so, the *tanna* prefers to address the case of an intermingling of ritually pure items with other ritually pure items and thereby teach a novel *halakha*, notwithstanding the fact that he could have made a distinction within the case of a ritually impure piece itself.

וְלִישׁ לְקִישׁ, מֵאֵי שְׁנָא רִישׁא וּמֵאֵי שְׁנָא סִיפָא? אָמַר רַב שִׁישׁא בְּרִיה דְּרַב אִידִי: רִישׁא בְּטוּמְאָת מְשָׁקִין דְּרַבְנָן, סִיפָא דְּאִוּרֵיתָא.

The Gemara asks: And according to Reish Lakish, who establishes the *baraita* as referring to a piece of meat that has been crushed, what is different<sup>N</sup> in the first clause of the *baraita* and what is different in the latter clause? Why is nullification possible in the case of impure pieces, but not in the case of pure ones? Rav Sheisha, son of Rav Idi, said: The first clause is dealing with a piece of a sin-offering that contracted ritual impurity due to liquids,<sup>N</sup> which is imparted by rabbinic law. Since the sacred food contracted impurity that is only rabbinic in origin, it may be nullified rather than allowed to go to waste. The latter clause, on the other hand, deals with sacred food that became intermingled with ordinary non-sacred food. The sacred food is forbidden to non-priests by Torah law, and therefore it is not nullified.

אָבַל טוּמְאָת שְׂרָץ מֵאֵי, לֹא תַעֲלֶה.

The Gemara asks: But had the piece of meat mentioned in the first clause of the *baraita* contracted ritual impurity through contact with a creeping animal, which is imparted by Torah law, what would the *halakha* be? Presumably, it would not be nullified.

אֲדָתַי סִיפָא: אָבַל חֲתִיכָה שֶׁל חֲטָאֵת טְהוּרָה שְׁנֵתְעָרְבָה בְּמֵאָה חֲתִיכוֹת שֶׁל חוֹלִין טְהוּרוֹת לֹא תַעֲלֶה – נִפְלֹג וְלִישׁ בְּדִידָה: בְּמֵה דְּבָרִים אֲמוּרִים בְּטוּמְאָת מְשָׁקִין, אָבַל בְּטוּמְאָת שְׂרָץ לֹא! טְהוּרָה בְּטְהוּרוֹת עֲדִיף לִיה.

If so, there is a difficulty, as instead of teaching a case involving non-sacred meat in the latter clause of the *baraita*, as follows: However, if a piece of a ritually pure sin-offering became intermingled with one hundred pieces of ritually pure non-sacred meat, the impure piece of a sin-offering is not nullified; let the *tanna* distinguish and teach it in the case involving only sacred meat, as follows: In what case is this statement said? It is said in a case where the piece of meat contracted ritual impurity due to liquids, but where it contracted ritual impurity through a creeping animal it is not nullified. The Gemara answers: Even so, the *tanna* prefers to address the novel case of an intermingling of ritually pure items with other ritually pure items.

רַבָּה אָמַר: רִישׁא – אִיסוּר לָאוּ, סִיפָא – אִיסוּר בְּרַת.

Rabba said that an alternative explanation may be suggested for the difference between the two clauses of the *baraita*: In the first clause of the *baraita*, which deals with the intermingling of impure sacred meat with pure sacred meat, there is concern about the violation of a standard prohibition, i.e., the prohibition against eating impure sacred meat; therefore, the piece of meat is nullified. In the latter clause of the *baraita*, which deals with the intermingling of sacred meat and non-sacred meat, there is concern about the violation of a prohibition that bears the punishment of *karet*, which bars a non-priest from eating pure sacrificial food; therefore, the piece of meat is not nullified.

וְהָא רַבָּה הוּא דְּאָמַר: כָּל בְּדִאוּרֵיתָא – לֹא שְׁנָא אִיסוּר לָאוּ וְלֹא שְׁנָא אִיסוּר בְּרַת! קִשְׁיָא.

The Gemara asks: But wasn't it Rabba himself who said: With regard to the nullification of any item forbidden by Torah law that became intermingled with a permitted substance, there is no difference between that which is forbidden due to a standard prohibition and that which is forbidden due to a prohibition that entails the punishment of *karet*. The Gemara concludes: This is difficult for Rabba.

רַב אֲשִׁי אָמַר: סִיפָא – מִשּׁוּם דְּהוּי לִיה דְּבַר שֵׁשׁ לוֹ מְתוּרִין, וְכָל דְּבַר שֵׁשׁ לוֹ מְתוּרִין – אֲפִילוּ בְּאֶלְף לֹא בְּטִיל.

Rav Ashi said yet another explanation: In the latter clause, where ritually pure sacred meat became intermingled with ritually pure non-sacred meat, the sacred meat does not become nullified because it is an object whose prohibition is temporary.<sup>14</sup> The piece of sacred meat is not absolutely forbidden, as it is permitted for a priest to eat it. And the *halakha* is that any object whose prohibition is temporary cannot be nullified, no matter how great the amount of permitted substance, even in a mixture of one to one thousand.

Mistake [*beduta*] – בְּדוּתָא: The word *beduta* comes from the root *b-d-h*, meaning false. This word is used by the Sages to reject an unfounded tradition or *halakha*. It essentially means that the statement in question was never made by the Sage to whom it is attributed. Some read: *Baruta*, outside, meaning that the matter is unworthy of being included and discussed in the study hall.

וְהָא דְרַב אֲשִׁי בְּדוּתָא הִיא. לְמַאֲן?  
אִי לְכַהֲנָן – מִיִּשְׂרָאֵל שְׂרִי, אִי לְיִשְׂרָאֵל –  
לְעוֹלָם אָסוּר. אֲלָא הָא דְרַב אֲשִׁי בְּדוּתָא  
הִיא.

The Gemara comments: **Now, that teaching ascribed to Rav Ashi is certainly a mistake** [*beduta*],<sup>1</sup> as the application of this principle to the case at hand can easily be shown to be erroneous. With regard to **whom** is the prohibition temporary? If one would say that it is **for a priest**, the sacred meat was always **permitted** to him, even before it became intermingled, as a priest may eat both sacred and non-sacred food, and therefore it was never a forbidden mixture with respect to him. And **if one would say that it is for an Israelite**, the meat will **always be forbidden** to him. **Rather, that teaching attributed to Rav Ashi is clearly a mistake.**

וְסָבַר רַבִּי יוֹחָנָן תְּרוּמָה בְּזִמְנָא הַזֶּה  
דְּאֻרְיִיתָא? וְהִתְנַחֵא: שְׁתֵּי קוּפוֹת, אַחַת  
שֶׁל חוּלִין וְאַחַת שֶׁל תְּרוּמָה, וְלִפְנֵיהֶם  
שְׁתֵּי סָאִין, אַחַת שֶׁל חוּלִין וְאַחַת שֶׁל  
תְּרוּמָה, וְנִפְלוּ אֵלָיו בְּתוֹךְ אֵלָיו – הֲרֵי  
אֵלָיו מוֹתְרִים, שְׂאֵנִי אֹמֵר: תְּרוּמָה לְתוֹךְ  
תְּרוּמָה נִפְלָה, וְחוּלִין בְּתוֹךְ חוּלִין נִפְלוּ.

The Gemara raises a question with regard to Rabbi Yoḥanan's opinion: **And does Rabbi Yoḥanan maintain that *teruma* in the present applies by Torah law? But isn't it taught in a *baraita*:** There were **two large baskets, one filled with non-sacred produce and the other one filled with *teruma*, and before them were two one-*se'a* vessels, one filled with non-sacred produce and the other one filled with *teruma*. And these, the contents of each of the *se'a* vessels, fell into those, each of the baskets.** It is possible that the *teruma* fell into the non-sacred produce, and it is prohibited for non-priests to eat a mixture of *teruma* and non-sacred produce. Nevertheless, the produce found in the basket containing the non-sacred produce is **permitted, as I say<sup>n</sup> that the *teruma* fell into the *teruma* and the non-sacred produce fell into the non-sacred produce.**<sup>h</sup>

וְאָמַר רֵישׁ לָקִישׁ: וְהוּא שְׂרַבּוּ חוּלִין עַל  
הַתְּרוּמָה. וְרַבִּי יוֹחָנָן אָמַר: אֵף עַל פִּי שְׂלֵא  
רַבּוּ חוּלִין עַל הַתְּרוּמָה.

And Reish Lakish said that **this is only the case if the non-sacred produce in the basket was greater<sup>n</sup> in quantity than the *teruma* in the one-*se'a* vessel**, so that even if the *teruma* fell into the non-sacred produce, it is nullified. **And Rabbi Yoḥanan said:** The mixture is permitted **even if the non-sacred produce was not greater in quantity than the *teruma***, as one may rely on the assumption that each type of produce fell into its own type.

בְּשִׁלְמָא לְרִישׁ לָקִישׁ – קָסַבַּר: בְּדַרְבְּנָן  
נִמְי רַבּוּיָא הוּא דְבַעֲיָנָן. אֲלָא לְרַבִּי יוֹחָנָן,  
קָשְׂיָא!

Granted, according to Reish Lakish, who maintains that *teruma* nowadays applies by rabbinic law, this is logical, as **he maintains that even with regard to *teruma* that is in effect only by rabbinic law, we also require the permitted portion of the mixture to be greater in quantity so that it can nullify the forbidden part. But according to Rabbi Yoḥanan, it is difficult** because if he maintains that even nowadays *teruma* is mandated by Torah law, how can one disregard the concern and permit the mixture based merely on the assumption that the events occurred in a way that preserves the produce in its permitted state?

הָא מִנִּי – רַבְּנָן הִיא,

The Gemara answers that Rabbi Yoḥanan can say: In accordance with **whose opinion is this *baraita* taught? It is in accordance with the opinion of the Rabbis**, who maintain that *teruma* nowadays is in effect only by rabbinic law.

## NOTES

As I say – שְׂאֵנִי אֹמֵר: The argument of: As I say, is applied in situations when an uncertainty exists as to whether there was ever an intermingling of forbidden and permitted substances, and so there is room to assume that there was never a mixture containing a forbidden substance. The rationale is based on the internal logic of the idea of an established presumption [*hazaka*]. Since the food had a prior presumption of fitness, proof is required to undermine this presumption (see *Tosafot*). Usually, the Gemara seeks to buttress this rationale with another justification.

If it was greater – וְהוּא שְׂרַבּוּ: By Torah law, even a bare majority of a permitted substance nullifies a forbidden substance. This principle may be combined with the argument of: As I say. If the permitted part was not larger in quantity, there is an equal chance that the mixture is forbidden in such a manner that it is not nullified by Torah law (Rashba).

## HALAKHA

Two baskets and two *se'a* – שְׁתֵּי קוּפוֹת וּשְׁתֵּי סָאִין: If there were two baskets, one filled with non-sacred produce and the other with *teruma*, and before them were two one-*se'a* containers, one filled with non-sacred produce and the other with *teruma*, and the contents of each container fell into a different basket, it

is assumed that the non-sacred produce fell into the basket of non-sacred produce and the *teruma* into the *teruma*, even if the non-sacred produce is not greater in quantity than the *teruma*, in accordance with the opinion of Rabbi Yoḥanan (Rambam *Sefer Zera'im, Hilkhot Terumat* 13:14; *Shulḥan Arukh, Yoreh De'a* 111:1).

BACKGROUND

*Seder Olam* – סדר עולם: *Seder Olam* is a book that deals with the chronology of biblical times and continues its chronological outline until the destruction of the Second Temple. Woven into its thirty chapters are various *halakhot* and *aggadot*. The work is based on verses and ancient traditions. The Gemara here and elsewhere states that the *tanna* who taught *Seder Olam* is Rabbi Yosei.

The book is also called *Seder Olam Rabba* in order to distinguish it from a similar book composed in a later period, called *Seder Olam Zuta*. *Seder Olam* has been published over the generations in several editions, some with various commentaries.

וְאֵנָּא דְאָמְרֵי כְרַבִּי יוֹסֵי,

But I, Rabbi Yoḥanan, said what I said in accordance with the opinion of Rabbi Yosei that a priest who is a hermaphrodite enables his wife to eat *teruma*, and Rabbi Yosei himself maintains that even nowadays the *halakha* of *teruma* is in effect by Torah law. Accordingly, I argued that a hermaphrodite enables his wife to eat not only *teruma*, but even the breast and thigh of peace-offerings.

דְּתַנָּא בְּסֵדֶר עוֹלָם "אֲשֶׁר יִרְשׁוּ  
אֲבוֹתֶיךָ וְיִרְשׁוּהָ" – יְרוּשָׁה רִאשׁוֹנָה  
וּשְׁנִיָּה יֵשׁ לָהֶן, וּשְׁלִישִׁית אֵין לָהֶן.

As it is taught in a *baraita* in the anthology called *Seder Olam*,<sup>b</sup> with regard to a verse that speaks of the Jewish people's return to Eretz Yisrael following their exile: "And the Lord your God will bring you into the land that your fathers inherited, and you shall inherit it" (Deuteronomy 30:5). These two expressions of inheritance teach that they had a first inheritance of Eretz Yisrael in the days of Joshua and a second inheritance<sup>n</sup> at the time of the return from the Babylonian exile. That is to say, since the sanctity of the land had lapsed when the First Temple was destroyed and the Jewish people exiled to Babylonia, a second sanctification was necessary when they returned to their land. But they will not have a third inheritance. In other words, it will never be necessary to sanctify the land for a third time, as the second sanctification was permanent.

וְאָמַר רַבִּי יוֹחָנָן: מֵאֵן תִּנָּא סֵדֶר  
עוֹלָם – רַבִּי יוֹסֵי.

And Rabbi Yoḥanan said: Who is the *tanna* who taught *Seder Olam*? It is Rabbi Yosei. Since Rabbi Yosei maintains that the second sanctification of Eretz Yisrael never lapsed even after the destruction of the Second Temple, he also holds that *teruma* nowadays is in effect by Torah law.

NOTES

**קְדוּשַׁת רִאשׁוֹנָה וּשְׁנִיָּה** – The first and second sanctifications: The nature of the sanctity of Eretz Yisrael in the aftermath of the destruction of the Temple, or, according to certain opinions, following the fall of the kingdom of Israel, is a subject of dispute among the *tanna'im* and *amora'im*. The early authorities likewise differ over the *halakha* in this regard, without reaching a consensus.

The sanctity of the land impacts a variety of *halakhot*. It is clear that the essential sanctity of Eretz Yisrael as the chosen land is permanent, in that sanctity can rest only on this land. The issue is whether further conditions are necessary for this sanctity to be halakhically relevant. The additional condition might be the existence of the Temple, the presence of a majority of the world's Jews in the land, or an independent Jewish government.

According to many authorities the sanctity of the land for the Sabbatical Year ceased with the cessation of the observance of the Jubilee Year, after the exile from Samaria, which means that even during the Second Temple period the Sabbatical Year was kept only by rabbinic law. The main dispute apparently concerns the status of *terumot* and tithes. The Rambam maintains that even in this regard the sanctity of the land was rabbinic from the beginning of the Second Temple period, and all the more so after its destruction. However, the Ra'avad and others assert that the land is sacred by Torah law from the time of the second inheritance (see *Yam shel Shlomo*). There is also a difference between these *halakhot* and those which govern *halla*, the fruit that grows in the first three years after a tree has been planted [*orla*], and the prohibition of diverse kinds.

סָבַר רַבִּי יוֹחָנָן בְּדַרְבָּנָן לֹא בְעֵינָן רַבּוּאָא?  
וְהָא תַנְּנָן: מִקְוֵה שְׂיֵשׁ בּוֹ אַרְבַּעִים סָאָה  
מְכוּוֹנוֹת, נִתְּן סָאָה וְנִטְלָה סָאָה כְּשׁוֹר, וְאָמַר  
רַבִּי יְהוּדָה בַּר שִׁילָא אָמַר רַבִּי אֲסִי אָמַר  
רַבִּי יוֹחָנָן: עַד רַבּוּאָ.

The Gemara raises another objection to Rabbi Yoḥanan's opinion: **But does Rabbi Yoḥanan maintain that with regard to a mixture containing an item that is forbidden by rabbinic law, we do not require the permitted portion of the mixture to be greater in quantity so that it can nullify the prohibited part? Didn't we learn otherwise in a mishna (Mikvaot 7:2): With regard to a ritual bath<sup>N</sup> that contains exactly forty *se'a*<sup>BH</sup> of water, the minimal measure of a fit ritual bath, and one added to it a *se'a* of liquid other than water, and then removed from it a *se'a*<sup>N</sup> of the mixture, the ritual bath remains fit, as the liquid that was added was nullified in the forty *se'a* of water, so that when one *se'a* of the mixture was removed there still remained the requisite forty *se'a* of fit water. And Rabbi Yehuda bar Sheila said that Rabbi Asi said that Rabbi Yoḥanan said that this *halakha* applies up to the greater part<sup>N</sup> of the ritual bath.**

מֵאֵי לָאוּ – דְּנִשְׁתַּיִיר רַבּוּאָ? לָאוּ, דְּלֹא  
נִשְׁקוּל רַבּוּאָ.

The Gemara clarifies the opinion of Rabbi Yoḥanan: **What, is it not that its greater part must remain, i.e., that most of the original forty *se'a* of water must remain in the ritual bath? In other words, up to nineteen *se'a* of other liquids may be added to the ritual bath, with an equal quantity of the mixture then removed from it, and these other liquids are nullified by the ritual bath water. But if twenty *se'a* are removed, so that fit water no longer constitutes the majority, the ritual bath is no longer fit for use. Since certain liquids are unfit for a ritual bath only by rabbinic law, this shows that even with respect to rabbinic prohibitions the permitted portion of a mixture must be greater in quantity, so that it can nullify the prohibited part. The Gemara refutes this proof: No, it means that its greater part must not be removed, but if the water and other liquids are present in equal proportion, the ritual bath remains fit.**

וְאִיבְעִית אֵימָא: שְׂאֵנִי הֲכָא, דְּאֵיכָא  
לְמִמַּר "שְׂאֵנִי אוּמַר".

**And if you wish, say an alternative explanation of Rabbi Yoḥanan's opinion: It is different here, with regard to the case of two baskets, one of which contains *teruma*, since it may be said: As I say that the *teruma* fell into the *teruma* and the non-sacred produce fell into the non-sacred produce, it is therefore assumed that that is what actually took place, and therefore the permitted portion need not be the greater part of the mixture.**

תַּנְּנָן: "אֲנִידְרוּגִינוּס נִוְשִׂא" תַּנְּנָן: "אִם נִוְשִׂא".

**We learned in the mishna: A hermaphrodite may marry a woman. This formulation indicates that he may do so *ab initio*, as he is considered a full-fledged male. Accordingly, a hermaphrodite who is a priest should enable his wife to eat the breast and thigh of peace-offerings, as is maintained by Rabbi Yoḥanan, and against the opinion of Reish Lakish. The Gemara rejects this argument and suggests that the text be emended: Teach in the mishna: **If he married.** That is to say, if he married a woman, the marriage is valid and a bill of divorce is required, as it is possible that he is a male. But even if he married, he does not enable his wife to eat *teruma*, as he may be a female.**

וְהָא "נִוְשִׂא" קָתַנְנָן! וְלִיטַעְמֵיךְ, מֵאֵי "אֲבָל  
לֹא נִוְשִׂא"? אָלֵא מֵאֵי "נִוְשִׂא" דִּיעֲבַד –  
"נִוְשִׂא" נִמְוֵי דִיעֲבַד.

The Gemara raises a difficulty: **But doesn't the mishna teach that he may marry a woman, which indicates that he may do so *ab initio*? The Gemara rejects this argument: And according to your reasoning, what is the meaning of the next clause: But he may not be married to a man? This teaching is certainly referring to a case after the fact, as, if he is a full-fledged male there would be no reason to say that he may not be married to a man *ab initio*. Rather, what is the meaning of: He may not be married to a man? It means that even after the fact the marriage is not valid. This being the case, when the mishna states that a hermaphrodite may marry a woman, it is also speaking after the fact.**

אָמַרִי: לָאוּ, "נִוְשִׂא" – לְכַתְּחִלָּה מִשְׁמַע,  
"אֲבָל לֹא נִוְשִׂא" – דִּיעֲבַד נִמְוֵי לָאוּ.

It may be said in response: **No; the words: May marry, indicate that a hermaphrodite may marry a woman *ab initio*, whereas the words: But he may not be married, mean that his marriage to a man is not valid even after the fact. Accordingly, the difficulty raised against Reish Lakish remains.**

**Didn't we learn: A ritual bath – וְהָא תַנְּנָן מִקְוֵה:** Rashi and other commentaries explain the difficulty that this poses to Rabbi Yoḥanan's opinion on the basis of the assumption, at least in the first answer, that Rabbi Yoḥanan's ruling does not rest on the argument of: As I say. For they understand that he in fact permits all such mixtures since he does not require a majority of permitted substance for the nullification of a rabbinic prohibition. The Gemara questions this opinion based on the mishna in tractate *Mikvaot*, which indicates that a majority is needed even for prohibitions of rabbinic origin. This interpretation raises several problems from other issues with regard to the *halakhot* of nullification of rabbinic prohibitions, which are discussed at length by the early authorities (see Ramban's *Kuntres Aḥaron* and Rashba). The Ritva explains that the difficulty is based on the argument of: As I say, as one can also say in the case of the ritual bath that the *se'a* he removed is the same one that he added. According to this opinion, the second answer is that in the case of the baskets it might in fact be the exact same *se'a*, whereas with regard to a ritual bath the waters intermingle and therefore he cannot possibly take out the very same liquid he added.

**Added a *se'a* and removed a *se'a* – נִתְּן סָאָה וְנִטְלָה סָאָה:** According to Rashi and *Tosafot* this is referring to liquid other than water, but which does not have a particular coloring, such as fruit juice. The Rambam, Ra'avad, and others contend that this *halakha* applies solely to drawn water, which only invalidates the ritual bath according to rabbinic law. It is possible that the Meiri maintains that the mishna refers to both fruit juice and drawn water.

**Up to the greater part – עַד רַבּוּאָ:** Many early authorities struggle to explain this clause in accordance with Rashi's opinion that the mishna is referring to fruit juice. The problem is that it is unanimously agreed that one cannot immerse in fruit juice, even by Torah law, which means this is not a rabbinic prohibition at all. The answer given is that by Torah law each drop of the liquid is nullified as it enters the mixture, and it is the Sages who decreed that it is not nullified (*Tosefot HaRosh*); alternatively, they declared the ritual bath unfit in this particular case because they wanted it to be noticeable that the water is the majority. The Ramban suggests that if the fruit juice leaves the color of the water unchanged, then it invalidates the fit water only by rabbinic law.

#### BACKGROUND

**Forty *se'a* – אַרְבַּעִים סָאָה:** Forty *se'a* is the equivalent of eighty *hin* or 5,760 egg-bulks, which is the minimum quantity of water necessary for a ritual bath. The forty-*se'a* measure is the basis of all modern calculations of the various measures of volume. The Talmud states that the dimensions of a ritual bath must be three cubits by one cubit by one cubit, and that its volume must be forty *se'a*. Therefore, according to the calculation of Rabbi Ḥayyim Na'e, a ritual bath must contain 332 ℓ of water, and, according to the calculations of the Ḥazon Ish, 573 ℓ.

#### HALAKHA

**A ritual bath that contains...forty *se'a*, etc. – מִקְוֵה:** If a *se'a* of drawn water was added to a ritual bath that contained precisely forty *se'a* of fit water, and a *se'a* of the mixture was subsequently removed, even if this process is repeated many times the ritual bath remains fit, in accordance with the opinion of Rabbi Yoḥanan, who establishes the mishna as referring to drawn water. Some (*Shulḥan Arukh*) say that this is referring to a *se'a* of fruit juice or other liquids, rather than water (Rambam *Sefer Tahara, Hilkhot Mikvaot* 4:7; *Shulḥan Arukh, Yoreh De'a* 201:24).

וְהָא מְדַקְדָּנֵי סִיפָא רַבִּי אֱלִיעֶזֶר  
אָמַר: אֲנִדְרוּגִינוּס חֵיבִין עָלָיו  
סְקִילָה בְּזֹכֵר, מְכַלְל דְּתַנָּא קַמָּא  
סְפוּקֵי מְסַפְקָא לִיהּ!

The Gemara challenges this understanding: **But from the fact that the mishna teaches in the latter clause: Rabbi Eliezer says that if a man had intercourse with a hermaphrodite, he is liable to receive the punishment of stoning on his account as if he had relations with a male, this proves by inference that the first tanna is uncertain** as to whether or not a hermaphrodite is considered a full-fledged male, and this presents a difficulty to Rabbi Yohanan's opinion.

בֵּין לְמַר בֵּין לְמַר מְפָשֵׁט פְּשִׁיטָא לִיהּ,  
אִיכָא בִּינְיֵיהּ סְקִילָה מְשֻׁנֵי מְקוּמוֹת:  
דְּמַר סָבֵר חֵיבִין עָלָיו סְקִילָה מְשֻׁנֵי  
מְקוּמוֹת, וְמַר סָבֵר – בְּזֹכֵר.

The Gemara answers: No, it is **obvious both to this Master and to that Master** that a hermaphrodite is deemed a full-fledged male. The practical difference **between them** relates to the question of whether one is liable to receive the punishment of stoning for intercourse with him at only one place or at **two places**. As **one Sage**, the first *tanna*, **holds that one is liable** to be punished with **stoning on a hermaphrodite's account** for intercourse at **two places**, whether he penetrated him anally, in the manner of homosexual intercourse, or through his female organ. Since the hermaphrodite is deemed a male, one is liable to be punished with stoning for intercourse at either place. **And one Sage**, Rabbi Eliezer, **holds that one is liable** to be punished with stoning for relations with a hermaphrodite only if he penetrated him anally, **as if he were a male**.

אָמַר רַב: Rav said:

Perek VIII  
Daf 83 Amud a

HALAKHA

A hermaphrodite is a creature unto himself – אֲנִדְרוּגִינוּס בְּרִיָּה: If a *tumtum* or hermaphrodite betrothed a woman or was betrothed by a man, the validity of the betrothal is in doubt and therefore a bill of divorce is required owing to the uncertainty. The *halakha* is ruled in accordance with Rabbi Yosei's opinion as recorded in the *baraita*.

The Rema, based on Rashi, *Tosafot*, and the Rosh, maintains that a hermaphrodite is considered a definite male, as the ruling of the mishna is followed rather than that of the *baraita* (Rambam *Sefer Nashim*, *Hilkhot Ishut* 2:24; *Shulhan Arukh*, *Even HaEzer* 44:5).

BACKGROUND

A hermaphrodite is a creature unto himself – אֲנִדְרוּגִינוּס בְּרִיָּה: Modern medicine distinguishes between two different kinds of hermaphrodite: The more common case of a pseudo-hermaphrodite, who only appears to be a hermaphrodite, and a true hermaphrodite. A true hermaphrodite has both male and female gonads, i.e., testicles and ovaries. A pseudo-hermaphrodite, however, has the gonads of a single gender, although he has the external sex organs of both genders.

Due to this dual identity a hermaphrodite cannot be regarded as male or female, unlike a *tumtum*, whose sexual identity remains concealed due to a developmental defect. For this reason, the Sages regarded a hermaphrodite as a third gender, a male-female, who does not belong to either sex.

לִיָּתָא לְמִתְנִיתִין מְקַמֵּי בְּרִיָּיתָא.  
דְּתַנָּא, רַבִּי יוֹסֵי אָמַר: אֲנִדְרוּגִינוּס  
בְּרִיָּה בְּפָנֵי עֲצָמָה הוּא, וְלֹא הִכְרִיעוּ  
בּו חֲכָמִים אִם זָכָר אִם נְקֵבָה.

The mishna here, which states that according to Rabbi Yosei a priest who is a hermaphrodite enables his wife to eat *teruma*, is **not<sup>N</sup> to be relied upon in the presence of a *baraita* that teaches otherwise. As it is taught in a *baraita* that Rabbi Yosei says: A hermaphrodite is a creature unto himself,<sup>HBN</sup> and the Sages did not determine whether he is a male or a female. He is consequently prohibited from marrying a woman, and if he does so he does not enable her to eat *teruma*.**

NOTES

The mishna is not – לִיָּתָא לְמִתְנִיתִין: The Gemara assumes that the *halakha* governing a hermaphrodite is part of the statement of Rabbi Yosei and Rabbi Shimon, although this is not obvious from the mishna itself, as Rabbi Yehuda's comments intervene. Rabbi Avraham min HaHar explains that since only Rabbi Yosei and Rabbi Shimon deal with a hermaphrodite in the mishna, it is clear that the last *halakha* is also theirs, despite the fact that the teaching of a different *tanna* is parenthetically inserted in the middle of their statement. In the Jerusalem Talmud, on the other hand, this *halakha* of a hermaphrodite is understood as a continuation of Rabbi Yehuda's statement. This opinion removes many of the difficulties arising from the Babylonian Talmud's understanding.

A creature unto himself – בְּרִיָּה בְּפָנֵי עֲצָמָה: The early authorities note that the phrase: A creature unto himself, has more than one meaning. Subtle differences in the way this phrase should be understood lead to conflicting opinions with regard to the definition of a hermaphrodite. According to *Tosafot*, a hermaphrodite is called: A creature unto himself, because he remains in a permanent state of uncertainty that can never be clarified. The Rambam's ruling concerning a hermaphrodite indicates a similar understanding. In contrast, the Ramban, in his *Kuntres Aḥaron*, maintains that a hermaphrodite is literally a separate type of being, neither a male nor a female but a third gender. The early and later authorities include intermediate opinions that lie between these two extreme views. Some contend that a hermaphrodite is half male and half female, or else comprised of two elements, the status of each of them being in doubt. Other possibilities are also suggested (see *Einayim LaMishpat*).