A hermaphrodite is a creature unto himself – אף יהוות מפלים כי ברא לו: 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.

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 Yehanan’s opinion.

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 relations with a hermaphrodite only if he penetrated him anally, as if he were a male.

Rav said:

The mishna here, which states that according to Rabbi Yosei a priest who is a hermaphrodite enables his wife to eat teruma, is not 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; 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.

A creature unto himself –parer צבי ובא חכם: 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 Ramban’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).
The Gemara asks: On the contrary, say that the baraita is not to be relied upon in the presence of the mishna here, as baraitot are generally considered less authoritative than mishnayot. The Gemara answers: From the fact that Rabbi Yosei left his colleague, Rabbi Shimon, as the mishna’s ruling is attributed to both Rabbi Yosei and Rabbi Shimon whereas the teaching of the baraita is reported only in the name of Rabbi Yosei, learn from this that Rabbi Yosei retracted his original opinion that he had maintained together with Rabbi Shimon and reached a different conclusion.

And Shmuel said the reverse: The baraita is not to be relied upon in the presence of the mishna here. The Gemara asks: On the contrary, say that the mishna here is not to be relied upon in the presence of the baraita, as we have heard that Shmuel takes into consideration even individual dissenting opinion appearing in a baraita. The Gemara answers: This applies only when the mishna itself is not thereby uprooted, as the baraita merely adds to it. But when the mishna is uprooted by a contrary statement taught in a baraita, he does not take it into consideration.

The Sages of the school of Rav said in the name of Rav that the halakha is in accordance with the opinion of Rabbi Yosei, both with regard to the halakha of a hermaphrodite and with regard to the halakha of grafting. And Shmuel says: The halakha is in accordance with his opinion with regard to the laws of protracted labor and forfeiture.

The Gemara clarifies: The halakha of a hermaphrodite is that which we just said, that he is considered a creature unto himself (Rabbenu Hananel). The halakha of grafting is as we learned in a mishna (Shabbat 22b): One may not plant, or sink the shoot of a vine into the ground, or graft a shoot onto a tree on the eve of the Sabbath Year less than thirty days before Rosh HaShana of the Sabbath Year. The time for taking root is two weeks, in accordance with the opinion of Rabbi Yosei and Rabbi Shimon (Rambam Sefer Zera’im, Hilkhot Shemitta 3:10).

One may not plant, etc. – It is also possible for the placenta to develop a hole. In such a case the woman might bleed well before the time of the birth. This bleeding might be seen as part of the normal birth process, in which case the blood would be considered part of the labor, or it is a sui generis pathological phenomenon, which would mean that halakhically it would be considered blood of Ave?

Protracted labor – It is possible to plant, sink, or graft trees shortly before the start of the Sabbatical Year. There must be sufficient time for the plant to take root and still leave thirty days before Rosh HaShana of the Sabbatical Year. The time for taking root is two weeks, in accordance with the opinion of Rabbi Yosei and Rabbi Shimon (Rambam Sefer Zera’im, Hilkhot Shemitta 3:10).

The halakha is in accordance with Rabbi Yosei with regard to a hermaphrodite — The early authorities discuss the following question: Why couldn’t one say just the opposite, i.e., that Rabbi Yosei changed his mind with regard to his lone dissenting opinion and accepted Rabbi Shimon’s opinion? Several explanations have been suggested. One suggestion is that the Mishna, redacted by Rabbi Yehuda HaNasi, preceded the Tosafot, compiled by Rabbi Hiyya, and therefore the teaching of the baraita must be the later one (Tosafot Yeshanim, Tosafot HaRash). Alternatively, the phrase: And the Sages did not determine, indicates that the scholars had already discussed this case, with some of them claiming that a conclusion can be reached. Therefore, when Rabbi Yosei disagrees with them, it can be assumed that his objection is referring to Rabbi Shimon’s opinion as well (Tosafot Yeshanim). Furthermore, if the baraita came before the mishna it should also have mentioned Rabbi Shimon’s dissenting view. Its omission of the latter indicates that the baraita seeks to dispute the mishna’s earlier ruling (Ritva).

From the fact that Rabbi Yosei left his colleague – One may not plant, etc. — The early authorities discuss the following question: Why couldn’t one say just the opposite, i.e., that Rabbi Yosei changed his mind with regard to his lone dissenting opinion and accepted Rabbi Shimon’s opinion? Several explanations have been suggested. One suggestion is that the Mishna, redacted by Rabbi Yehuda HaNasi, preceded the Tosafot, compiled by Rabbi Hiyya, and therefore the teaching of the baraita must be the later one (Tosafot Yeshanim, Tosafot HaRash). Alternatively, the phrase: And the Sages did not determine, indicates that the scholars had already discussed this case, with some of them claiming that a conclusion can be reached. Therefore, when Rabbi Yosei disagrees with them, it can be assumed that his objection is referring to Rabbi Shimon’s opinion as well (Tosafot Yeshanim). Furthermore, if the baraita came before the mishna it should also have mentioned Rabbi Shimon’s dissenting view. Its omission of the latter indicates that the baraita seeks to dispute the mishna’s earlier ruling (Ritva).
Protracted labor – ṣafak ha’iyya. The following halakhot apply to the monthly cycle of a menstruating woman. Any blood that she sees during the first seven days from the start of the bleeding is considered menstrual blood; the halakhot of which are written explicitly in the Torah. This is followed by eleven days during which any bleeding she experiences is considered blood of zava. If she sees blood on three consecutive days during that period she becomes a zava, whose halakhot differ from those of a menstruating woman. Although a woman does not typically experience bleeding during pregnancy, she continues counting this cycle as before, and if she experiences bleeding on a day on which she could have expected to see menstrual blood were she not pregnant, she has the status of a menstruating woman. If bleeding occurs on the other days of the cycle, she is a zava. However, she has the status of a zava only if the bleeding is spontaneous and not due to some external factor. Consequently, if the bleeding occurs near childbirth, during protracted labor, it is treated as the blood of childbirth, which does not impart ritual impurity. The question discussed here is: How long before childbirth does this halakho apply?

And Rav Nahman said that Rabba bar Avun said: According to the first tanna, who says thirty days, he means that thirty days are required for the tree to take root and another thirty days are required for the addition to the Sabbatical Year, as the prohibitions of the Sabbatical Year apply already during the last thirty days of the sixth year. It is consequently prohibited to plant sixty days before Rosh HaShana. And similarly, according to Rabbi Yehuda, who says three days, he means that three days are required for the tree to take root and another thirty days are required for the addition to the Sabbatical Year. And so too, according to Rabbi Yosei and Rabbi Shimon, who say two weeks, they mean that two weeks are required for the tree to take root and another thirty days are required for the addition to the Sabbatical Year. Rav rules on this matter in accordance with the opinion of Rabbi Yosei.

And Shmuel said that the halakha is ruled in accordance with the opinion of Rabbi Yosei with regard to protracted labor and proscription as well. The Gemara explains: What is the case of protracted labor? As we learned in a mishna (Nidda 16b): Ordinarily a woman who experiences a flow of blood on three consecutive days during a time of the month when she does not expect to experience menstrual bleeding is rendered ritually impure as a zava. However, if she experiences such bleeding while she is in protracted labor, the bleeding is attributed to her labor, and she is governed by the halakha of a woman after childbirth.

What is this halakha of proscription? As we learned in a mishna (Kilayim 7:4): If one causes his grapevine to overshadow the grain of another, he has proscribed it, rendering it forbidden as a food crop in a vineyard, and he bears financial responsibility for it, i.e., he must compensate the other individual for the loss of the produce that has been rendered forbidden. This is the statement of Rabbi Meir. Rabbi Yosei and Rabbi Shimon say:
A person cannot render forbidden an item that is not his. Since the grain does not belong to him, he cannot render it forbidden. According to Shmuel, the halakha is in accordance with Rabbi Yosei in this case as well.

A dilemma was raised before the Sages: As for a hermaphrodite, what did Shmuel say? It was stated in the name of Rav that the halakha is ruled in accordance with the opinion of Rabbi Yosei with regard to a hermaphrodite, but no ruling was attributed to Shmuel concerning this case. The Gemara suggests: Come and hear, as Shmuel said to Rav Anan: The baraita is not to be relied upon in the presence of the mishna. This indicates that Shmuel rejects Rabbi Yosei’s opinion as stated in the baraita that a hermaphrodite is considered a creature unto himself.

The Gemara asks further: Concerning grafting, what did Shmuel say? The Gemara suggests: Come and hear, as Shmuel said to Rav Anan that he should teach in accordance with the opinion of the one who said that it is prohibited to plant for thirty-three days before Rosh HaShana of the Sabbatical Year. Evidently, he ruled on this matter in accordance with the opinion of Rabbi Yehuda, and not that of Rabbi Yosei.

The Gemara continues to ask along these lines: With regard to the case of protracted labor, what did Rav say? Does he accept Rabbi Yosei’s opinion, as does Shmuel? No resolution was found for this question, and the Gemara concludes that this dilemma shall stand unresolved.

The Gemara further inquires: With regard to proscription, what did Rav say? Rav Yosef said: Come and hear, as Rav Huna said that Rav said that the halakha is not in accordance with the opinion of Rabbi Yosei. Abaye said to him: What did you see that led you to rely on that source? Rely on this source; as Rav Adda said that Rav said that the halakha is in fact in accordance with the opinion of Rabbi Yosei. There is, then, a tradition that Rav accepted Rabbi Yosei’s view. The Gemara responds: When it is stated that the Sages of the school of Rav said a teaching, to whom is it referring? The reference is to Rav Huna. And it was Rav Huna who said that the halakha is not in accordance with the opinion of Rabbi Yosei. It may be presumed, then, that Rav Adda’s version of Rav’s ruling is in error, as preference is given to the report of Rav’s preeminent disciple, Rav Huna.

It is taught in the mishna that Rabbi Yehuda says: If a tumtum, whose external sexual organs are indeterminate, was born open so that his genitals were exposed, and he was found to be a male, he must not perform halitza because he is treated like a eunuch. Rabbi Ami said: What would Rabbi Yehuda do with the tumtum living in the town of Biri, who was placed in a seat4 for an operation, and the tissue covering his genitals was torn open and he later fathered seven children? Evidently, a tumtum who was torn open is not necessarily sexually impotent. The Gemara answers that Rabbi Yehuda could have said to you: Go and inquire about his children and find out from where they came. He did not believe that they were fathered by this man but rather by someone else.

It is taught in a baraita: Rabbi Yosei, son of Rabbi Yehuda, says: A tumtum must not perform halitza, as perhaps he will be torn open and found to be a eunuch by natural causes. The Gemara asks: Why did he formulate his teaching in this manner? Is that to say that every tumtum who is torn open is a male? It is certainly possible for a tumtum to be found to be female. The Gemara explains: This is what he said: A tumtum must not perform halitza, as perhaps he will be torn open and found to be a female, who certainly cannot perform halitza, and even if he is found to be a male, perhaps he will be found to be a eunuch by natural causes.

NOTES
A person cannot render forbidden an item that is not his – التまとめ: Tosafot raise a basic question: Does it follow from this principle that even if one actively mingled his forbidden substance with someone else’s permitted food that the mixture remains permitted? To answer this question, they explain that this principle applies only to cases in which one’s thoughts and intentions are a determining factor. They attempt to prove that this is true of food crops in a vineyard as well. Continuing the line of thought of Tosafot, Rabbi Avraham min HaHar contends that there is a difference between a prohibition performed with the object itself, e.g., cooking meat with milk, and a case when the prohibition applies without any physical change occurring to the item, as in the case of food crops in a vineyard, where no change occurs to either the produce or the grapes. He further explains that this is connected to the amoraic dispute over whether or not one can render forbidden an item that does not belong to him if he performs an action that affects the object. Tosafot Yehezkan claim that food crops in a vineyard is a special case, as the verse states: “Your field” (Leviticus 19:19), implying that the prohibition takes effect only with respect to the owner of the field. This also applies to the opinion of Rabbi Shimson of Saens, who follows the Jerusalem Talmud and says that it is due to a biblical decree concerning food crops in a vineyard that one cannot render the produce forbidden if it is not in his possession (see Kivetz He’erot).

What did Shmuel say – התまとめ: Doesn’t the very fact that Shmuel did not say the same as Rav prove that he disagrees with his ruling? One explanation is that the question is whether Shmuel’s statement was originally issued as a response and in opposition to Rav, or if he was merely adding to Rav’s words. It is likewise possible that Rav does not disagree with Shmuel, but he felt that in the cases mentioned by Shmuel there was no need to state that the halakha is ruled in accordance with the opinion of Rabbi Yosei and Rabbi Shimon, as theirs is the majority opinion (Avot 2:6).

Who was placed in a seat – התまとめ: Rabbi Avraham min HaHar explains that this expression is a reference to marriage, as they sat him on the special chair prepared for a bridegroom. In other words, after it was decided that he would take a wife, he underwent the necessary operation.
The Gemara asks: What is the practical halakhic difference between the opinions of Rabbi Yehuda and Rabbi Yosei? Rava said: There is a practical difference between them as to whether the halitza performed by a tumtum disqualifies the brothers in a case where there are other brothers in addition to the tumtum. According to Rabbi Yehuda, a tumtum is regarded as definitely sexually impotent, and therefore his halitza is of no consequence. Therefore, if the tumtum went ahead and performed halitza, he has not disqualified the other brothers from performing levirate marriage. According to Rabbi Yosei, however, he is only doubtfully sexually impotent, and therefore he has disqualified the other brothers from performing levirate marriage. And there is also a difference between them as to whether the tumtum must perform halitza where there are no other brothers besides him. According to Rabbi Yehuda he need not do so, whereas according to Rabbi Yosei he must perform halitza owing to his uncertain status.

Excerpts from the Talmud:

**Bar Hamedurei**

This Sage, about whom almost nothing is known, was a disciple of Shmuel who transmitted halakhot in his master's name. He lived during the period of Rava as well, and Rava cites several teachings in his name, almost all of them introduced with the phrase: The Sage bar Hamedurei explained the matter to me.

The Arukh reads his name as bar Hamedudei, and he explains that Hamedudei means one who hears cautions ([דאול], i.e., a cook. Based on this, it is possible that bar Hamedurei, who is never mentioned by any proper name or title, was an ordinary man who was never counted among the ranks of the Sages, but because he spent time in the presence of scholars, he heard words of Torah from their mouths and even merited to contribute of his own knowledge to their discussions.

**Notes**

Two manners of lying – מיתפו ושובכו: Some early authorities maintain that the dispute is whether a hermaphrodite is a full-fledged male with an additional organ that does not affect his essential nature, or whether he merely resembles a male. Accordingly, the opinion that he is a full-fledged male renders one liable for two manners of lying with him, and even if he engaged in relations through his female organ he was still a male at the time of intercourse. The Rashi inquires as to why this view is not considered equivalent to Rabbi Yosei's opinion in the mishna, and if he, too, claims that a hermaphrodite is a full-fledged male. He answers that Rabbi Yosei and Rabbi Shimon in the mishna do follow this opinion, but the Gemara wished to cite a proof from an explicit teaching to this effect.

It has been pointed out that the Rambam's ruling that a hermaphrodite is of doubtful status, but that nevertheless a man is liable to be stoned for sexual relations with him, is based on the assumption that a hermaphrodite is a unique being, whose prohibition to engage in homosexual intercourse is derived from the inclusive term: "And … a male..." (Leviticus 18:22). The term "מיסקינא" is understood as indicating one who is similar to, but not exactly the same as, a male. However, this does not mean that he is actually a male (see Rashba and Riva).

The Gemara answers that Rav stated his opinion in accordance with the opinion of this tanana, as is taught in the following baraita: Rabbi Simai says: With regard to a hermaphrodite, one is liable to be punished with stoning on his account for intercourse at two places. The Gemara asks: What is the reasoning of Rabbi Simai? Rava said: The Sage bar Hamedurei explained the matter to me, based on an allusion to this halakha found in the Bible. The verse states: "And you shall not lie with a male as with a woman [mishekevi isha]" (Leviticus 18:22). The phrase mishekevi isha, referring to lying with a woman, appears in the plural. Now, what male has two manners of lying? You must say that this is referring to a hermaphrodite, and the plural form mishekevi, meaning: Lying, indicates that there is liability for both manners of intercourse with him.

The Gemara asks: And how do the Rabbis who disagree with Rabbi Simai counter this argument? The Gemara explains: Although he has two manners of lying, it is nevertheless written: "With a male," indicating that one is liable to be stoned on a hermaphrodite's account only if he had relations with him in the manner of a male.

The Gemara asks: And the Rabbis, who explain this entire verse as referring to a hermaphrodite, from where do they derive that a man is prohibited from engaging in relations with an ordinary male? The Gemara answers: They derive it from the words "a woman." The Gemara asks further: And from where do the Rabbis derive that one is liable to be punished for engaging in intercourse with a woman who is forbidden to him even if he engaged in relations in an unnatural manner, i.e., anal intercourse? The Gemara responds: They derive it from the inclusive "and" in "...and... with a woman."
A bird used for sexual relations, and one set aside, etc. – אַבָּרָהָמִים. A bird offering that was killed by pinching is not considered an unslaughtered carcass with respect to the halakhot of ritual impurity. This halakha applies only if the bird was fit for sacrifice, but if it was used for sexual relations with a human being, or set aside for idolatrous purposes, or was itself worshipped as an idol, or was given as payment to a prostitute, or was the price of a dog, or was a tumtum or a hermaphrodite, it is considered an unslaughtered carcass in all regards. Consequently, it renders one and the garments he is wearing ritually impure when it is eaten and comes into contact with one's throat. The halakha is ruled in accordance with the opinion of the Rabbis, against that of Rabbi Ekezor (Rambam Sefer Avoda, Hilkhot Pesurah, Hilkhot Ma'akhalot 7:1-4).

A tumtum and a hermaphrodite with regard to the offerings. An animal that is a tumtum or a hermaphrodite is considered to be blemished, so that the sanctity of the altar does not apply to it. Even a bird that is a tumtum or a hermaphrodite is unfit for the altar, as there is a doubt as to whether it is a male or female. This is in accordance with the opinion of the Rabbis, against that of Rabbi Ekezor (Rambam Sefer Avoda, Hilkhot Issurei Mizbea'ah 5:3).

They render garments ritually impure when they come into contact with their throat – הדקתיות. A special halakha applies to the carcass of a clean bird. Although it is impure, it does not impair ritual impurity via touching or carrying, as does the carcass of an animal, but only via eating. When a piece of the carcass enters one's esophagus, he contracts ritual impurity that affects not only himself but also the clothes he is wearing at the time.

Perek VIII

Daf 84 Amud a

Forbidden crossbred livestock, an animal with the condition that will cause it to die within twelve months [terefah], an animal delivered through the abdominal wall, and an animal that is a tumtum or a hermaphrodite, do not become sacred and do not render another animal sacred in their place.

Rav Nahman bar Yitzhak said: We too learned this explicitly in a baraita that states: Rabbi Eliezer says:

"The Gemara therefore cites Shmuel’s teaching that although a blemished animal becomes sacred through substitution, a hermaphrodite does not."

**BACKGROUND**

Delivered through the abdominal wall – דּוֹפֶן. An animal that was delivered through the abdominal wall is one that was not born naturally but by means of a caesarean section. The animal is called by this name because it was delivered through the abdominal wall of its mother. Various halakhic matters apply only in cases of natural birth, and animals delivered through the abdominal wall are governed by different halakhot.

**HALAKHA**

A tumtum or a hermaphrodite, if one killed any of these birds by pinching their necks in the manner of an offering rather than by ritual slaughter, the birds render him and the garments he is wearing ritually impure, when the birds are eaten and come into contact with his throat. The reason is that pinching is valid only for sacrificial birds; any other bird that is killed by pinching is deemed an unslaughtered carcass. Since none of these birds are fit to be sacrificed, pinching their necks renders them unslaughtered carcasses, and the unslaughtered carcass of a clean bird imparts ritual impurity when it is eaten and reaches the individual’s throat.

Rabbi Eliezer says: If one pinched the neck of a bird that is a tumtum or a hermaphrodite, it does not render him and the garments he is wearing ritually impure when it is eaten and comes into contact with his throat, as the sanctity of an offering does in fact apply to it. As Rabbi Eliezer would say: Wherever it is explicitly stated in the Torah “male” and “female,” you are to remove a tumtum and a hermaphrodite from among them, as their gender status is in doubt. This is true of animal offerings, with regard to which the Torah uses the terms male and female. In the case of a bird-offering, however, since male and female are not stated with regard to it, but instead the Torah simply mentions turtledoves and young pigeons, you are not to remove a tumtum and a hermaphrodite from among them, as they are fit for the altar. It is evident then that Rabbi Eliezer maintains that a hermaphrodite is not considered a proper male with respect to offerings.

**NOTES**

They do not become sacred – אַבָּרָהָמִים. It is necessary to cite Shmuel’s explanation that the phrase: They do not become sacred, is referencing to substitution? Even if one would claim that: They do not become sacred, is referring to the initial consecration of an offering this still proves that a hermaphrodite is not a male. The Arukh LaNer answers that were it not for Shmuel’s statement, one might have said that a hermaphrodite does not become sacred because it is considered a male with a blemish. The Gemara therefore cites Shmuel’s teaching that although a blemished animal becomes sacred through substitution, a hermaphrodite does not.