

וְהָא מְדַקְתָּנִי סִיפָא רַבִּי אֶלְעִזָּר
אָמַר: אֲנִדְרוּגִינוּס חֵיבִין עָלָיו
סְקִילָה בְּזִכְרָא, מְכַלְל דְּתַנָּא קַמָּא
סְפוּקֵי מְסַפְקָא לֵיהּ!

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 מְפֻשֵׁט פְּשִׁיטָא לֵיהּ,
אֵיכָא בִּינְיֵיהּ סְקִילָה מְשַׁנֵּי מְקוֹמוֹת:
דְּמַר סָבַר חֵיבִין עָלָיו סְקִילָה מְשַׁנֵּי
מְקוֹמוֹת, וְמַר סָבַר – בְּזִכְרָא.

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.

לֵיטָא לְמִתְנִיתִין מְקַמֵּי בְּרִיָּיתָא.
דְּתַנָּא, רַבִּי יוֹסֵי אָמַר: אֲנִדְרוּגִינוּס
בְּרִיָּה בְּפִנְי 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^N 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,^{HBN} 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 – לֵיטָא 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 בְּפִנְי 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*).

Protracted labor – קושי: In addition to the bleeding that occurs during labor, one of the signs of imminent childbirth is a bloody discharge from the uterus. Usually this occurs the day before birth, but it can happen as early as a week or more beforehand.

It is also possible for the placenta to develop a hole. In such a case the woman might bleed well before the time she gives birth, at different stages of the development of the fetus. The disagreement in the Gemara here might relate to the classification of this phenomenon. Should it be seen as part of the natural birth process, in which case the blood would be associated with the labor, or is it a sui generis pathological phenomenon, which would mean that halakhically it would be considered blood of ziva?

HALAKHA

One may not plant, etc. – אין נוטעין וכו' – Even nowadays it is prohibited 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* 3:11).

אדרבה, ליתא לבריייתא מקמי מתניתין!
מדשבקה רבי יוסי לבר זוגיה, שמע
מינה הדר ביה.

ושמואל אמר: ליתא לבריייתא מקמי
מתניתין. אדרבה, ליתא למתניתין מקמי
בריייתא, דהא שמעינן ליה לשמואל
דחייש ליחידא! הני מילי כי לא
מתקרא מתניתין, אבל כי מתקרא
מתניתין – לא חייש.

אמרי בי רב משמיה דרב: הלכה כרב
יוסי באגרוגינוס וברבא. ושמואל
אמר: בקושי ובקידוש.

אגרוגינוס – הא דאמרן, הרבא –
דתנן: אין נוטעין, ואין מברכין, ואין
מרכיבין ערב שבועית פחות משלשים
יום לפני ראש השנה. ואם נטע והבריך
והרכיב – יעקור. רבי יהודה אומר: כל
הרבא שאינה קולטת בשלשה ימים –
שוב אינה קולטת. רבי יוסי ורבי שמעון
אמרו: שתי שבטות.

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**,ⁿ 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 an 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 hermaphroditeⁿ 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^b and forfeiture.

The Gemara clarifies: The *halakha* of a hermaphrodite is that which we just said, that he is considered a creature unto himself (Rabbeinu Hananel). The *halakha* of grafting is as we learned in a *mishna* (*Shevi'it* 2:6): **One may not plant**,^h or sink the shoot of a vine into the ground, or graft a shoot onto a tree on the eve of the Sabbatical Year less than thirty days before Rosh HaShana, lest it take root in the seventh year. **And if he planted or sank or grafted, he must uproot it.** Rabbi Yehuda says: **Any graft that does not take root in three days will never take root**, and therefore it is prohibited to plant only for three days before the start of the Sabbatical Year. Rabbi Yosei and Rabbi Shimon say that it takes two weeks for a plant to take root.

NOTES

מדשבקה רבי – From the fact that Rabbi Yosei left his colleague – יוסי לבר זוגיה: 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 *Tosefta*, compiled by Rabbi Hiyya, and therefore the teaching of the *baraita* must be the later one (*Tosafot Yeshanim; Tosefta HaRosh*). 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).

The *halakha* is in accordance with Rabbi Yosei with regard to a hermaphrodite – הלכה כרבי יוסי באגרוגינוס: The commentaries disagree about the meaning of Rav's statement, specifically with regard to whether he rules in accordance with Rabbi Yosei's opinion as stated in the *mishna* or the *baraita*. Most early authorities (Rabbeinu Hananel; Rif; Rid; Ritva) maintain that Rav accepts Rabbi Yosei's view in the *baraita*, as his statement is placed alongside the latter source. By contrast, Rashi, *Tosafot*, and Rabbi Yehuda al-Madani claim that Rav is referring to the *mishna*. Their proof is that his grouping of the *halakha* of a hermaphrodite with that of grafting shows that Rav does not come to rule in accordance with Rabbi Yosei in general, but only in rulings with regard to which Rabbi Yosei agrees with Rabbi Shimon, and so Rav must be referring to the *mishna*. The Ramban accepts Rabbeinu Hananel's opinion, but he combines the explanations and says that Rav was certainly speaking of those cases where Rabbi Yosei and Rabbi Shimon issued a combined ruling; however, the very fact that he states that the *halakha* is in accordance with Rabbi Yosei, and not in accordance with Rabbi Yosei and Rabbi Shimon, proves that he wishes to rule in accordance with Rabbi Yosei's sole dissenting opinion.

Protracted labor – קושי: 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 *ziva*. 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 *halakha* apply?

ואמר רב נחמן אמר רבה בר אבוא:
לדברי האומר שלשים – צריך
שלשים ושלשים, לדברי האומר
שלשה – צריך שלשה ושלשים,
לדברי האומר שתי שבטות – צריך
שתי שבטות ושלשים.

ושמואל אמר: בקושי וקידוש.
קושי – דתנן:

כמה יהא קישויה? רבי מאיר אומר:
או ארבעים או חמשים יום, רבי
יהודה אומר: דעיה חדשה, רבי יוסי
ורבי שמעון: אומרים אין קישוי יותר
משתי שבטות.

קידוש – דתנן: המסכך גפנו על גבי
תבואתו של חברו הרי זה קדש,
וחייב באחריותו, דברי רבי מאיר.
רבי יוסי ורבי שמעון אומרים:

And Rav Nahman said that Rabba bar Avuh 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?^N As we learned in a mishna (*Nidda* 36b): 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 *halakhot* of a woman after childbirth.

The *tanna'im* disagree about the question: How long is a woman's period of protracted labor?^H For what period of time prior to her giving birth is the bleeding attributed to her labor? Rabbi Meir says: It is up to forty or fifty days before she delivers. Rabbi Yehuda says: Her month suffices for her, i.e., it is from the beginning of the month in which she gives birth. Rabbi Yosei and Rabbi Shimon say: Protracted labor does not last for more than two weeks. Shmuel rules in accordance with Rabbi Yosei in this case.

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,^H 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:

HALAKHA

How long is her protracted labor – כמה יהא קישויה: Any bleeding experienced by a woman during labor is considered to be the result of her labor. If the bleeding occurs during the period of time in which she would ordinarily expect to menstruate, she is ritually impure as a menstruating woman; if it occurs at any other time, she is ritually pure. The period of protracted labor begins fourteen days before childbirth, provided that she gives birth to a viable child. Any bleeding that occurs beforehand is considered *ziva* blood and is impure. If she subsequently gives birth she is governed by the *halakhot* applying to a woman who gives birth while in a state of *ziva*, in accordance with the opinion of Rabbi Yosei and Rabbi Shimon, against that of Rabbi Meir (Rambam *Sefer Kedusha, Hilkhot Issurei Bia* 7:1).

One who causes his grapevine to overshadow the grain of another – מסכך גפנו על גבי תבואת חברו: One cannot render produce forbidden as food crops in a vineyard if it does not belong to him. Therefore, if one causes his grapevine to overshadow the grain of another, the fruit of his vine is forbidden but the other individual's produce remains permitted, in accordance with the opinion of Rabbi Yosei and Rabbi Shimon. Although it would appear that Rav ruled against this opinion, and the *halakha* follows the opinion of Rav rather than Shmuel in matters of ritual law, since there is a dispute with regard to Rav's own teaching in this case Shmuel's clear ruling is followed. Furthermore, the Jerusalem Talmud indicates that even Rav agrees with Rabbi Yosei, and the mishna explicitly states that they ruled in practice in accordance with this opinion (Rambam *Sefer Zera'im, Hilkhot Kilayim* 5:8 and *Kesef Mishneh* there; *Shulhan Arukh, Yoreh De'a* 296:4).

אין אדם אוסר דבר שאינו שלו.

A person cannot render forbidden an item that is not his.^N 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.

איבעיא להו: באגרוגינוס מה לי אמר שמואל? תא שמע, דאמר שמואל לרב ענן: ליתא לברייתא מקמי מתניתין.

A dilemma was raised before the Sages: As for a hermaphrodite, what did Shmuel say?^N 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.

הרבבה מה לי אמר שמואל? תא שמע, דאמר ליה שמואל לרב ענן: תני כמאן דאמר שלשה ושלשים.

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.

קושי מה לי אמר רב? תיקו.

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.

קידוש מה לי אמר רב? אמר רב יוסי: תא שמע, דאמר רב הונא אמר רב: אין הלכה ברבי יוסי. אמר ליה אביי: מאי חזית דסמכת אהא, סמוך אהא דאמר רב אדא אמר רב הלכה ברבי יוסי! אמרי בי רב מנו – רב הונא, ורב הונא אמר: אין הלכה.

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.

רבי יהודה אומר טומטום וכו'. אמר רבי אמי: מאי עביד ליה רבי יהודה לטומטום דבירי דאותבוא אביי פורסיה ואיקרע, ואליד שבע בגין? ורבי יהודה אמר לך: חזר על בניו מאין הם.

It is taught in the mishna that **Rabbi Yehuda says: If a tumtum, whose external sexual organs are indeterminate, was torn 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,^B who was placed in a seat^N 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.

תנא, רבי יוסי ברבי יהודה אומר: טומטום לא יחלוץ, שמא יקרע ונמצא סרים חמה. אטו כל דמקרע זכר הוי? דכי קאמר: שמא יקרע ונמצא נקבה, ואפילו נמצא זכר – שמא ימצא סרים חמה.

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 a 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 – אין אדם אוסר דבר שאינו שלו – *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 Yeshanim* 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 appears to be the opinion of Rabbi Shimshon 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 *Kovetz He'arot*).

מה לי אמר שמואל – 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 (*Arukh LaNer*).

דאותבוא אביי פורסיה – 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.

BACKGROUND

The *tumtum* of Biri – טומטום דבירי – This was one of uncertain gender who was torn open and discovered to be a man whose genitals were covered by a layer of skin. This is why it was permitted for him to marry a woman, as he was evidently a man, similar to a *tumtum* whose sexual organ is concealed but whose testicles are visible. The chances that such an individual, whose testicles were covered for many years, could eventually impregnate a woman are slim, as even if he could have intercourse with a woman his sperm cells would likely be incapable of fertilization. All the more so is this true of a full-fledged *tumtum*, who suffered a hormonal delay in the development of his sex organs over many years, as even if this situation were to change he would still be unable to father a child.

One is liable on account of a hermaphrodite as if he had relations with a male – אַנְדְרוֹגִינוֹס חֵיבֵין עָלָיו כּוֹכֵר – If a man had sexual relations with a hermaphrodite in the manner of homosexual intercourse, he is liable to be stoned. However, if he had intercourse with him by way of his female organ, he is exempt. The *halakha* follows the opinion of Rabbi Eliezer, in accordance with the Gemara's clarification that this is the opinion of the Rabbis, against that of Rabbi Simai (Rambam *Sefer Kedusha, Hilkhot Issurei Bia* 1:15).

PERSONALITIES

Bar Hamedurei – בַּר הַמְדוּרֵי: 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 heats cauldrons [*dudei*], 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 – שְׁנֵי מִשְׁכָּבוֹת – 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, as even if he engaged in relations through his female organ he was still a male at the time of intercourse. The Rashba inquires as to why this view is not considered equivalent to Rabbi Yosei's opinion in the mishna, as 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 [*ve'et zakhar*]" (Leviticus 18:22). The term "et" 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 Ritva).

מאי בינייהו? אמר רבא: לפסול במקום אחיו, ולחלוץ שלא במקום אחיו, איכא בינייהו.

אמר רב שמואל בר יהודה אמר רבי אבא אחיה דרבי יהודה בר יבדי אמר רב יהודה אמר רב: אנדרוגינוס חייבין עליו סקילה משתי מקומות. מיתבי, רבי אליעזר אמר: אנדרוגינוס חייבין עליו סקילה כבזכר, במה דברים אמורים בזכרות שלו, אבל בנקבות שלו – פטור!

הוא דאמר כי האי תנא, דתנא, רבי סימאי אומר: אנדרוגינוס חייבין עליו סקילה משתי מקומות. מאי טעמא דרבי סימאי? אמר רבא: בר המדורי אסברא לי: "ואת זכר לא תשכב משכבי אשה", אי זהו זכר שיש בו שני משכבות – הוי אומר זה אנדרוגינוס.

ורבנן? אף על גב דאית ביה שני משכבות, את זכר בתבי.

ורבנן, זכר גרידא מנא להו? מ"אשה. באשה שלא כדרכה מנא להו? מ"אשה."

אמר רב שזבי אמר רב חסדא: לא לכל אמר רבי אליעזר אנדרוגינוס זכר מעליא הוא, שאם אתה אומר כן – במוקדשין יקדש.

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.

§ Rav Shmuel bar Yehuda said that Rabbi Abba, brother of Rabbi Yehuda bar Zavdi, said that Rav Yehuda said that Rav said: With regard to a hermaphrodite, one is liable to receive the punishment of stoning on his account for intercourse at two places, whether one penetrated him anally, in the manner of homosexual intercourse, or through his female organ. The Gemara raises an objection against this from the following teaching. **Rabbi Eliezer said: If one had intercourse with a hermaphrodite, he is liable to be punished with stoning on his account as if he had relations with a male.¹⁴ In what case is this statement said?** It is if he had relations with him through his male organ, i.e., in the manner of homosexual intercourse, but if he engaged in intercourse with him through his female organ, he is exempt.

The Gemara answers that Rav stated his opinion in accordance with the opinion of this *tanna*, as it 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 Hamedurei¹⁵ 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 [*mishkevei isha*]" (Leviticus 18:22). The phrase *mishkevei isha*, referring to lying with a woman, appears in the plural. Now, **what male has two manners of lying?**¹⁶ **You must say that this is referring to a hermaphrodite, and the plural form *mishkevei*, meaning: Lyings, 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."

§ Rav Shezvi said that Rav Hisda said: **Not in all regards did Rabbi Eliezer say that a hermaphrodite is a proper male. As, if you say so, that a hermaphrodite is a proper male in every aspect, then with regard to consecrated animals an animal that is a hermaphrodite should become sacred if one consecrated it.**

A bird used for sexual relations, and one set aside, etc. – **הַרְבֵּעַ וְהַמְיֻקָּה וְכוּ**: 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 Eliezer (Rambam *Sefer Avoda, Hilkhot Pesulei HaMukdashin* 7:1–4).

A tumtum and a hermaphrodite with regard to the offerings – טומטום ואַנְדְרוֹגִינוֹס בְּקִדְשִׁים: 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 a female. This is in accordance with the opinion of the Rabbis, against that of Rabbi Eliezer (Rambam *Sefer Avoda, Hilkhot Issurei Mizbe'ah* 3:3).

NOTES

They render garments ritually impure when they come into contact with his throat – **מְטַמְּאִין בְּגָדִים אֲבִית הַבְּלִיעָה**: A special *halakha* applies to the carcass of a clean bird. Although it is impure, it does not impart 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.

BACKGROUND

Delivered through the abdominal wall – **וְיֻצָא דוֹפָן**: 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*.

וּמִנֵּלן דְּלֹא קִדֵּשׁ – דְּתַנּוּ רַבֵּנן: הַרְבֵּעַ, וְהַמְיֻקָּה, וְהַנֶּעֱבָד, וְהָאִתָּן, וּמַחֲרִיר, וְטוֹמְטוֹם, וְאַנְדְרוֹגִינוֹס מְטַמְּאִין בְּגָדִים אֲבִית הַבְּלִיעָה.

And from where do we derive that it does not become sacred? As the Sages taught in a *baraita*: With regard to a bird used for sexual relations with a human being, and one set aside^H for idolatrous purposes, and one that itself was worshipped as an idol, and one given as payment to a prostitute (see Deuteronomy 23:19), and one that was the price of a dog received in exchange for the sale of a dog (see Deuteronomy 23:19), and similarly, a bird that is 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.^{HN} 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.

רַבִּי אֱלִיעֶזֶר אוֹמֵר: טוֹמְטוֹם וְאַנְדְרוֹגִינוֹס אֵין מְטַמְּאִין בְּגָדִים אֲבִית הַבְּלִיעָה. שְׁהֵיָה רַבִּי אֱלִיעֶזֶר אוֹמֵר: כֹּל מְקוֹם שֶׁנֶּאֱמַר זָכָר וְנִקְבָּה – אֵתָהּ מוֹצִיא טוֹמְטוֹם וְאַנְדְרוֹגִינוֹס מִבִּינֵיהֶם, וְעוֹף, הוֹאִיל וְלֹא נֶאֱמַר בּו זָכָר וְנִקְבָּה – אֵי אֵתָהּ מוֹצִיא טוֹמְטוֹם וְאַנְדְרוֹגִינוֹס מִבִּינֵיהֶם.

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.

אָמַר רַב נַחֲמָן בַּר יִצְחָק: אִף אֲנִי נִמְיָא דְּתַנּוּ, רַבִּי אֱלִיעֶזֶר אוֹמֵר:

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

Perek VIII
Daf 84 Amud a

הַכִּלָּאִים וְטִרְפָּה, וְיֻצָא דוֹפָן, טוֹמְטוֹם וְאַנְדְרוֹגִינוֹס – לֹא קְדוּשִׁין וְלֹא מְקִדְשִׁין.

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

HALAKHA

Forbidden crossbred livestock and a *tereifa*, etc. – **הַכִּלָּאִים וְטִרְפָּה וְכוּ**: If one attempted to substitute for an animal that had been designated as an offering a crossbred animal, an animal with a condition that will cause it to die within twelve months [*tereifa*], an animal delivered through the abdominal wall, or an animal that is a *tumtum* or a hermaphrodite, the substituted

animal does not become sacred, and it is as though one had tried to transfer the sanctity of the offering to a camel or a donkey. The *halakha* follows the opinion of Rabbi Eliezer, in accordance with Shmuel's explanation (Rambam *Sefer Korbanot, Hilkhot Temura* 1:17).

NOTES

They do not become sacred – **לֹא קְדוּשִׁין**: Why is it necessary to cite Shmuel's explanation that the phrase: They do not become sacred, is referring 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.