

BACKGROUND

A corpse with no one to bury it [met mitzva] – מת מצוה: It is an important mitzva to tend to a corpse, so that it is not left unburied in a degrading state. This mitzva, based on the ideal of human dignity, is so important that even a High Priest and a nazirite, for whom it is prohibited to become ritually impure, are obligated to become impure for a met mitzva.

NOTES

If one calls and others would answer him – קורא ואחרים עונים אותו: Several explanations of this phrase have been suggested that affect the rest of the discussion. Some commentaries, based on the Jerusalem Talmud, claim that it is the one who discovers the body who calls out for help, to no avail (Rambam). Others maintain that the sick man cried out unanswered before his death, either because no one was present, or because the relatives who would take care of him were absent (Ramban).

She would call and they would not answer her – קריאה ולא ענו לה: Even if she had no inheritance at all, her relatives would presumably tend to her burial. Here, however, since her inheritance was actively transferred from them to the husband they have no wish to care for her (Tosefot HaRosh). Others similarly explain that as the relatives will not handle her burial she is a full-fledged met mitzva (Ramban). The reason is that in all such cases the priest could theoretically hire workers to care for the dead, but the Torah did not obligate him to do so. Here too, the husband does not have to go to the trouble of finding others to bury her (Rashba; see Tosafot).

“ומיטמא לה”, והא הכא דמדאורייתא אביה מיטמא לה, ומדרבנן מיטמא לה בעל! משום דהויא לה מת מצוה.

It was stated that the husband of a minor becomes impure for her, even if he is a priest. The Gemara asks: **But here is a case where by Torah law her father, not the man she married, is obligated to become impure for her**, as the latter is not his wife by Torah law, and yet by rabbinic law her husband defiles himself for her. The Gemara answers: This is because she is considered like a corpse with no one to bury it [met mitzva],^B for which even a priest must become impure. Once she is married, her relatives from her father’s family no longer care for her welfare, which means her husband is the only one who is entrusted with her burial.

ומי הוי מת מצוה? והתניא: אי זהו מת מצוה – כל שאין לו קוברין. קורא ואחרים עונים אותו – אין זה מת מצוה! הכא נמי, כיון דלא ירתי לה קריאה ולא ענו לה.

The Gemara asks: **And is she in fact a met mitzva? But isn’t it taught in a baraita: Which corpse is a met mitzva? Any corpse that does not have anyone to bury it.** If it was in a place where if one calls and others would answer him,^N this is not a met mitzva. In contrast, this girl does have relatives who can bury her, if necessary. The Gemara answers: **Here too, since the members of her father’s family do not inherit from her, she would call and they would not answer her,^N as they have no desire to go to any trouble for her.** Since her husband inherits from her, it is his duty to tend to her burial, and he must therefore become impure for her, as she has the status of a met mitzva.

HALAKHA

Which is a met mitzva – אי זהו מת מצוה: A met mitzva is a corpse found on the wayside or in a city of gentiles, in a place where no one is available to bury it, and where the finder cannot call on other Jews to come and help him tend to it. A corpse in this state may not be moved. Rather, the finder himself must take care of it and bury it in its place, provided that it will be preserved there (see Eiruvim 17b). Even if the finder is a priest he must become ritually impure in this situation (Rambam Sefer Shofetim, Hilkhot Evel 3:8; Shulhan Arukh, Yoreh De’a 374:3).

Perek X Daf 90 Amud a

LANGUAGE

Sumakhos – סומכוס: From the Greek σωμακχος, sumakhos, meaning ally.

ואוכלת בגינו תרומה! בתרומה דרבנן. תא שמע: אכל תרומה טמאה משלים חולין טהורים, שילים חולין טמאים, סומכוס אומר משום רבי מאיר: בשוגג – תשלומיו תשלומין, במזיד – אין תשלומיו תשלומין. וחכמים אומרים: אחד זה ואחד זה תשלומיו תשלומין, וחזיר ומשלים חולין טהורין.

It was further taught: **And she eats teruma on his account.** The Gemara explains: This is referring to teruma that applies by rabbinic law, not by Torah law. The Gemara attempts to offer a proof for this claim. **Come and hear a baraita:** If a non-priest ate ritually impure teruma of a priest, he must pay him with ritually pure, non-sacred produce. In a case where he paid with impure, non-sacred food, Sumakhos^L says in the name of Rabbi Meir that if he did so unwittingly, his payment is considered payment,^N but if he acted intentionally, his payment is not payment at all. **And the Rabbis say: Both in this case and that one his payment is a valid payment,** and the food has the sanctity of teruma, although it is ritually impure, and he must also go back and pay him again with pure, non-sacred food.

NOTES

If he did so unwittingly his payment is payment – בשוגג: There is a dispute among the early authorities with regard to the meaning of this statement (see Tosafot). Most commentaries maintain that the terms unwitting and intentional refer solely to the payment, whereas the eating itself was unwitting, as whenever a non-priest eats teruma by accident his repayment to a priest, both the principal and the added fifth, is consecrated as teruma. However, some explain

that the issue here is whether he ate the teruma unwittingly or intentionally (Rivan). If a non-priest ate teruma intentionally, then even though he must compensate the priest, like anyone who damages the property of another, the payment is not consecrated. According to this second opinion, the Gemara’s comment that he should be blessed if he repays him with impure, regular produce is understandable, as this food is fit for a priest. However, according to Rashi’s interpretation this

is difficult, as noted by Rashi himself: If this produce becomes impure teruma upon his repayment, why is he praised? Tosafot and other early authorities explain that he is worthy of a blessing because he himself forfeits more than the value of impure teruma. Others state, as explained in the commentary to the text, that when he set aside this produce it was suitable for the priest, and it is only after it reached the latter’s possession that it became unfit for him (Ritva).

והוינן בה: במזיד בין אין תשלומיו תשלומין?
תבא עליו ברכה, דאכל מיניה מידי דלא
קחזי ליה בימי טומאתו וקא משלם מידי
דקחזי ליה בימי טומאתו!

And we discussed this *baraita* with regard to the following question: Why is it that according to the opinion of Rabbi Meir, when the non-priest pays the priest with ritually impure, ordinary food **intentionally, his payment is not considered payment?** On the contrary, the non-priest should be blessed, as he ate something of his that is not fit for him even during the priest's days of impurity, as impure *teruma* must be burned, and he pays him with impure, ordinary food, which is something that is fit for him during his days of impurity. Admittedly, once he gives it to him, the produce becomes impure *teruma*, but at the time of his payment the food was available to be eaten.

ואמר רבא, ואמרי לה כדן: חסורי מיחסקא
והכי קתני: אכל תרומה טמאה – משלם כל
דהו, אכל תרומה טהורה – משלם חולין
טהורין, שילם חולין טמאים, סומכוס אומר
משום רבי מאיר: בשוגג – תשלומיו תשלומין,
במזיד – אין תשלומיו תשלומין, וחכמים
אומרים: בין בשוגג בין במזיד – תשלומיו
תשלומין, וחזר ומשלם חולין טהורין.

And Rava said, and some say this statement unattributed to any particular Sage: The *baraita* is incomplete, and this is what it is teaching: If he ate ritually impure *teruma*,^h he pays with anything, even impure, non-sacred produce. If he ate pure *teruma*^h he pays with pure, non-sacred food, and if he paid with impure, non-sacred produce, the Sages disagreed about this case: Sumakhos says in the name of Rabbi Meir: If done unwittingly, his payment is payment; if intentionally, his payment is not payment. And the Rabbis say: Whether unwittingly or intentionally, his payment is payment, and he must go back and pay with pure, non-sacred produce.

והא הכא דמדאורייתא תשלומי מעליא
הוי, דאי מקדש בהו בהן אשה – תפסו לה
קידושין ואמור רבנן אין תשלומיו תשלומין,
וקשרינן אשת איש לעלמא!

The Gemara returns to the issue at hand, whether the court can stipulate to uproot something prohibited by Torah law. And here it is a case where by Torah law the produce he gave him is proper payment, and is fully owned by the priest, to the extent that if a priest betroths a woman with them, the betrothal with her is valid. And yet the Sages said, i.e., it is a rabbinic law, according to Sumakhos in the name of Rabbi Meir, that his payment is not payment. And this means that we permit a married woman to all men, as she is betrothed by Torah law but in practice she is treated as an unmarried woman. Evidently, a rabbinical prohibition overrides a betrothal that is effective by Torah law.

מאי אין תשלומיו תשלומין דקאמר רבי
מאיר – דבעי למיהדר שלומי חולין טהורין?
אי הכי סומכוס היינו רבנן!

The Gemara answers: What is the meaning of the phrase: His payment is not payment, that Rabbi Meir said? It means that he is required to go back and pay with ritually pure, non-sacred produce. However, the food he initially gave is also consecrated. The Gemara asks: If so, the opinion of Sumakhos is the same as that of the Rabbis.

אמר רב אחא בריה דרב איקא: קנסו שוגג
אטו מזיד איכא בניניהו.

The Gemara answers that Rav Aha, son of Rav Ika, said: The practical difference between them is whether they decreed against an unwitting sinner due to an intentional sinner. According to Sumakhos, if he unwittingly paid with impure, non-sacred produce his payment is valid and the Sages did not penalize him with a second payment, whereas the Rabbis maintain that even if his sin was accidental he must repay the priest, as the Sages issue the decree in a case of a mistaken transgression due to the case of one who sinned intentionally.

תא שמע: דם שנטמא וזרקו, בשוגג – הורצה,
במזיד – לא הורצה.

The Gemara further suggests: Come and hear another proof. With regard to blood that became ritually impure, and a priest sprinkled it^h on the altar, the following distinction applies: If he did so unwittingly, the offering is accepted. If he sprinkled the blood intentionally, the offering is not accepted.

HALAKHA

If he ate ritually impure *teruma* – אכל תרומה טמאה: If a non-priest ate ritually impure *teruma* he must give the priest either pure or impure non-sacred food (Rambam *Sefer Zera'im, Hilkhot Terumat* 10:20).

If he ate pure *teruma* – אכל תרומה טהורה: A non-priest who ate pure *teruma* must repay the priest with non-sacred, pure food. If he gave him non-sacred, impure produce, whether unwittingly

or intentionally, his payment is valid, but he must pay him again with non-sacred, pure food. The *halakha* is in accordance with the opinion of Rava, who says that the Sages penalized one who acted unwittingly due to one who sinned intentionally (Rambam *Sefer Zera'im, Hilkhot Terumat* 10:20).

Blood that became ritually impure and a priest sprinkled it – דם שנטמא וזרקו: If ritually impure blood was sprinkled on the

altar intentionally, the offering does not facilitate atonement; if this was performed unwittingly it does facilitate atonement. Some commentaries resolve the apparent contradiction in the rulings of the Rambam by explaining that the frontplate atones only for bodily impurities *ab initio*, but after the fact it also atones for the impurity of the food itself (Rambam *Sefer Avoda, Hilkhot Biat HaMikdash* 4:7; *Sefer Korbanot, Hilkhot Korban Pesah* 4:2 and *Lehem Mishna* there).

NOTES

The atonement effected by the frontplate – יצייו: The High Priest's frontplate atones for ritual impurities that occurred in the Temple, as derived from the verse: "And Aaron shall bear the iniquity of the sacred things that the children of Israel consecrate, for all their sacred gifts" (Exodus 28:38). The Sages derived that certain impure offerings are accepted due to the frontplate, and their owners attain atonement, even if the sacrificial rites were improperly performed. Although the frontplate does not enable these offerings to be eaten, it renders effective their atonement.

This teaches that the priests eat – מלמד שהכהנים: This comment appears to add nothing to the argument, according to the version of the Gemara accepted by Rashi, as the difficulty is due not to the atonement but to the uprooting of the mitzva of eating. Consequently, the verse itself should have been enough. Some state that the verse might have been explained as saying that the priests merely have the option of eating the meat. The addition that the eating of the priests is linked to the atonement indicates that their consumption of the meat is a mitzva, which leads to the question of how the Sages could uproot this Torah law (Yosef Lekah).

והא הכא דמדאורייתא ארצווי מרצה, דתנא: על מה הציץ מרצה – על הדם, ועל הבשר, ועל החלב שנטמא בין בשוגג בין במזיד, בין באונס בין ברצון, בין ביהוד בין בצבור, ואמרי רבנן לא הורצה, וקא הדר מעייל חולין לעזרה!

אמר רבי יוסי בר חנינא: מאי לא הורצה דקאמר – להתייר בשר באכילה, אבל בעלים נתכפרו בו.

סוף סוף קמתקרא אכילת בשר, ובתיב ואכלו אתם אשר כפר בהם מלמד שהכהנים אוכלים ובעלים מתכפרים! אמר ליה שב ואל תעשה שאני.

And here it is a case where by Torah law the blood effects acceptance, as it is taught in a *baraita*: For what does the High Priest's frontplate effect acceptance?^N For blood, for meat, and for fat that became impure, whether unwittingly or intentionally, whether by unavoidable accident or willingly, whether in the case of an individual offering or an offering of the community. And the Sages said that if a priest sprinkled impure blood intentionally the frontplate does not effect acceptance, and its owner must bring another offering. The Gemara infers: Since he is not obligated to bring this extra offering by Torah law, in essence he subsequently brings in a non-sacred animal to the Temple courtyard.

Rabbi Yosef bar Hanina said that there is no proof from here, as what is the meaning of the phrase: Does not effect acceptance, that the *tanna* of the *baraita* said? It means that it does not effect acceptance in the sense that it permits the meat of the offering to be eaten. However, the owners themselves attain atonement through it, and they do not have to bring another offering.

The Gemara raises a difficulty: Ultimately, the Torah mitzva of eating the meat of this offering is uprooted, and it is written: "And they shall eat those things with which atonement was made" (Exodus 29:33). This verse teaches that the priests eat^N the offering and the owner thereby gains atonement. He said to him: The case of sit and refrain from action [*shev ve'al ta'aseh*] is different. In other words, the Sages can uproot a Torah mitzva by instructing one to sit and refrain from action, i.e., to remain passive and do nothing. They cannot, however, uproot a mitzva by telling him to perform an action.

Perek X
Daf 90 Amud b

NOTES

I wanted to raise a difficulty against you – בעאי ל'אותובך: In fact, it can be claimed that it would have been more appropriate to cite these sources, which are mostly from *mishnayot*, than the previous difficulties raised from *baraitot*. Some commentaries suggest that in all these later cases the Sages had the power to enact their decree to prevent the transgression of mitzvot by Torah law, whereas the earlier difficulties involve decrees that establish mitzvot that apply by rabbinic law, without that justification (*Arukh LaNer*).

A cloak with ritual fringes – סדין בציצית: Some commentaries ask: This case does involve the nullification of a mitzva by means of positive action, as when one wears such a cloak, on which he is obligated to place fringes by Torah law, he thereby actively violates the mitzva, not merely through omission (*Tosafot*). See *Tosafot* for a discussion on when exactly the obligation to prepare fringes goes into effect. Others continue this debate by suggesting that the main obligation is that the garment itself must have fringes placed on it, not that a man must avoid wearing a garment that lacks ritual fringes (*Tosefot HaRosh*). No proof can be derived in this regard from the formula of the blessing: To wrap ourselves with ritual fringes, as this is simply a reflection of the fact that the proper time to recite the blessing is just before the mitzva is fulfilled in the complete manner, which is when the article is worn. Yet others write that the Torah does not in fact render it prohibited for a man to wear a garment without ritual fringes, but simply commands him to place fringes on his clothing. If the Sages exempt him from preparing ritual fringes, he is not considered to be actively nullifying the mitzva when he later dons the garment (*Keren Ora*).

אמר ליה: בעאי ל'אותובך ערל, הזאה,

ואזמל, סדין בציצית,

וכבשי עצרת, ושופר,

Rav Hisda said to Rabba: I wanted to raise a difficulty against you^N from the *halakha* of an uncircumcised man. The Sages decreed that one who converts on the eve of Passover may not partake of the Paschal lamb, due to his ritual impurity. According to Beit Hillel, one who separates from the foreskin by being circumcised is ritually impure like one who separates from the grave (*Pesahim* 92a). This is the *halakha* despite the fact that by Torah law he is obligated to bring the offering. Rav Hisda continued: And I also thought of asking from the case of sprinkling the waters of a purification offering for one who became ritually impure through contact with a corpse, as the Sages rendered it prohibited for one who is impure to receive the sprinkling on the eve of Passover that occurred on Shabbat, although this prevents him from partaking of the Paschal lamb.

And I was likewise going to raise a question from the case of a circumcision knife, which the Sages decreed may not be carried on Shabbat, despite the fact that this entails the neglect of a Torah mitzva. And I also wanted to raise a question from the case of a linen cloak, on which the Sages did not allow one to place ritual fringes^N made of wool. This is a decree that was issued lest he do the same with a garment worn only at night, which is exempt from fringes, and therefore this would be a mixture of wool and linen that is forbidden, although this means that he is unable to fulfill the mitzva of ritual fringes.

And likewise I wanted to mention a difficulty from the case of the lambs sacrificed on *Shavuot*. When the festival of *Shavuot* occurs on Shabbat, the Sages rendered it prohibited to sprinkle the blood of its sacrificial lambs if the offerings had not been slaughtered with the proper intention, despite the fact that the sprinkling itself is not prohibited by Torah law. And similarly, there is a difficulty with regard to the *halakha* of the *shofar*, which is sounded on Rosh HaShana, and yet the Sages rendered it prohibited for it to be blown on Shabbat, lest one carry it four cubits in the public domain.

ולולב, השתא דשנית לן "שב ואל תעשה" לא מעקר הוא – בוליה נמי "שב ואל תעשה" מנהו.

And finally I wished to raise a difficulty from the case of a *lulav*, which may not be carried on the first day of *Sukkot* that occurred on Shabbat, for the same reason the Sages rendered it prohibited to sound the *shofar* on Rosh HaShana that occurs on Shabbat. However, **now that you have resolved for us that an action defined as a case of: Sit and refrain from action, is not considered uprooting,^N all these are also cases of sit and refrain from action.**

תא שמע: "אליו תשמעון" אפילו אומר לך עבור על אחת מכל מצות שבתורה, כגון אליהו בהר הכרמל, הכל לפי שעה – שמע לו.

The Gemara suggests: **Come and hear** another proof. The verse states with regard to a true prophet: **"To him you shall listen"** (Deuteronomy 18:15). From here it is derived that **even if the prophet says to you: Transgress one of the mitzvot of the Torah, for example, as in the case of Elijah at Mount Carmel, who brought an offering to God on that mountain during a period when it was forbidden on pain of *karet* to sacrifice offerings outside the Temple, with regard to everything that he permits for the requirement of the hour, you must listen to him.**^{NH} This indicates that a Torah mitzva can indeed be uprooted in an active manner.

שאני התם, דכתיב "אליו תשמעון". וליגמר מיניה! מיגדר מילתא שאני.

The Gemara answers: **There it is different, as it is written: "To him you shall listen,"** which means that it is a positive mitzva to obey a prophet, and a positive mitzva overrides a prohibition. The Gemara asks: **And let him derive from this case^N** a principle that the Sages have the same power as a prophet. The Gemara answers: **Safeguarding a matter is different.** Since Elijah acted with the aim of preventing the Jewish people from worshipping idols, it was temporarily permitted for him to override a mitzva, in order to strengthen Torah observance with regard to a particular matter in which the people are lax.

תא שמע: בטלו מבוטל דברי רבי, רבן שמעון בן גמליאל אומר: אינו יכול לא לבטלו ולא להוסיף על תנאו אם כן מה כח בית דין יפה.

The Gemara suggests another proof. **Come and hear:** The Sages rendered it prohibited for a man who has sent a bill of divorce to his wife to cancel it in the presence of a court without her knowledge after he has given the bill of divorce to his messenger but before she gets the document. The prohibition was instituted to prevent a situation where the messenger, who is unaware of the cancellation, gives her the bill of divorce and she marries another man under the mistaken impression that she is divorced. If he proceeded to **nullify it** regardless, it is **nullified;**^H this is the **statement of Rabbi Yehuda HaNasi. Rabban Shimon ben Gamliel says: He cannot nullify or add to its condition** in a case where the bill of divorce included a stipulation. For **if so**, i.e., if he has the ability to cancel the bill of divorce, **what good is the power of the court** in their decree that one may not do so?

והא הכא, דמדאורייתא בטל גט, ומשום "מה כח בית דין" קא שרינן אשת איש לעלמא! מאן דמקדש – אדעתא דרבנן מקדש ואפקעינהו רבנן לקידושין.

The Gemara explains the proof from this source: **And here it is a case where by Torah law, the bill of divorce is nullified, and yet due to the reason of: What good is the power of the court,** his nullification is ineffective, which means that **we permit a married woman to all men.** The Gemara answers: The *halakhot* of marriage afford no proof, as with regard to **one who betroths a woman, he betroths on the authorization of the Sages, and in this case the Sages nullified the betrothal,**^N which they can do because their consent was required for the betrothal to be effective in the first place.

אמר ליה רבינא לרב אשי התינח דקדיש בכספא, קדיש בביאה מאי איכא למימר? שויה רבנן לבגילתו בעילת זנות.

Ravina said to Rav Ashi: This works out well in a case when he **betrothed with money**, as it can be explained that the Sages declared the money ownerless, thereby negating the betrothal. However, if he **betrothed by means of sexual relations, what can be said?** The Gemara answers: **The Sages equated his relations with this woman with licentious sexual intercourse.** Since in this situation as well the acquisition of betrothal is effective only by authorization of the Sages, they have the power to declare it invalid.

Sit and refrain from action is not considered uprooting – שב – ואל תעשה לא מעקר הוא: The commentaries break down this question into its various components. Does the positive action in this context refer to the uprooting of the mitzva, or to the nature of the correct performance of the mitzva itself? Another question is whether a case of: Sit and refrain from action, is more amenable to rabbinical decrees because it does not require an active deed, or is this merely because no decision is reached with regard to different options, which inevitably leads to inaction? Furthermore, after the Sages issue their decree and nullify a mitzva by Torah law, is the mitzva fully canceled, or does it remain intact, but due to the Sages' decree, which one must obey by dint of a positive mitzva, one refrains from action, and this is why the decree overrides the mitzva? They explain that these questions are interdependent, and that many of the discussions of the early authorities in this regard can be clarified in light of the answers to these basic questions (*Kovetz He'arot*).

For the hour, listen to him – לפי שעה שמע לו: If this is the source of the *halakha*, the following difficulty arises: How can the Sages enact permanent decrees, as opposed to temporary ones, if they have the power to suspend a mitzva only for the requirements of the hour? Some commentaries answer that rabbinic decrees are in fact designed as temporary measures, and they are not eternally binding (*Ritva*). Other early authorities distinguish between a situation that involves only: Sit and refrain from action, in which case the Sages can enact permanent decrees, and those in which a mitzva by Torah law is actively uprooted. In these cases of active uprooting, the Sages' decrees are made only for the requirements of the hour. With regard to monetary matters, as the Sages have the power to declare money ownerless, they can even cancel a mitzva permanently in a positive manner, i.e., by obligating one to act.

And let him derive from this case – וליגמר מיניה: A fundamental question is addressed here both by early and later authorities: The verse deals with a prophet, as there is an explicit mitzva to listen to him, whereas the Gemara is referring to the enactments and decrees of the Sages. Apparently, the discussion here is based on the principle that a Sage is preferable to a prophet (see *Bava Batra* 12a), which indicates that anything permitted to a prophet by force of his prophecy is also permitted to a Sage due to his wisdom. Furthermore, a Sage is more powerful than a prophet in that a prophet cannot innovate and establish new *halakhot*, whereas a Sage can enact a permanent *halakha*. This question is likewise explained at length in several places in the Jerusalem Talmud (see *Riaf*).

And the Sages nullified the betrothal, etc. – ואפקעינהו רבנן: Some commentaries maintain that there are two complementary explanations for this nullification. First, any man who betroths a woman does so by authorization of the Sages, and therefore they can nullify his betrothal. Second, even if the man in question did not stipulate that he is betrothing the woman with the consent of the Sages, they can nullify his betrothal on the basis of the principle that property declared ownerless by the court is ownerless (*Ba'al HaHafla'a*).

HALAKHA

A prophet who cancels a mitzva temporarily – מצוה לטעה: If a true prophet received a prophetic command to instruct the people to temporarily neglect one of the mitzvot of the Torah, they must listen to him. If, however, he instructs them to cancel the mitzva permanently, this indicates that he is a false prophet and is liable to be executed by strangulation (*Rambam Sefer HaMadda, Hilkhot Yesodei HaTorah* 9:3).

If he proceeded to nullify it, it is nullified – בטלו מבוטל: One who sent a bill of divorce to his wife and wants to cancel it before it arrives in her possession should nullify it in the presence of the same messenger or the wife herself *ab initio*. After the fact, even if he nullified in their absence, it is nullified, provided that he does so in front of two individuals. This is in accordance with the principle that the *halakha* is ruled in accordance with the opinion of Rabbi Yehuda HaNasi in disputes with a single colleague (*Rambam Sefer Nashim, Hilkhot Geirushin* 6:16; *Shulhan Arukh, Even HaEzer* 141:60).

The court may administer lashes and punish – בית דין מכין ועונשין: The court has the right to impose punishments that are not written in the Torah, including lashes and even the death penalty, in order to safeguard the Torah. They cannot do so as a fixed *halakha*, but as a temporary regulation if they consider it necessary at the time to strengthen Torah observance, as stated by Rabbi Elazar ben Ya'akov (Rambam *Sefer Shofetim, Hilkhoh Sanhedrin* 24:4; *Shulhan Arukh, Hoshen Mishpat* 2:1).

Neither this one nor that one may become impure for her – לא זה וזה מטמאין לה: A priest must defile himself for his wife, where their marriage is halakhically valid, but not for a woman to whom he is betrothed, or his divorcee, or his disqualified wife (*Shulhan Arukh, Yoreh De'a* 373:4).

NOTES

Because the hour required – שהשעה צריכה: During persecutions and at various other times, people would neglect the mitzvot of the Torah, which led the Sages to inflict unusually stringent punishments to reinstate the proper observance of the mitzvot (Rabbi Avraham min HaHar; *Nimmukei Yosef*). The commentaries compare the Sages in this regard to a doctor who amputates a limb to save the rest of the body (Rambam *Sefer Shofetim, Hilkhoh Mamrim* 2:4).

With regard to her found objects and her earnings – ובמעשה ידיה: The commentaries investigate why the Gemara here provides two separate reasons to explain why neither man is entitled to her found objects or her earnings when elsewhere it is implied that both *halakhot* were instituted by the Sages due to enmity (*Tosafot*). In the Jerusalem Talmud it is stated that although some Sages group these two categories together in accordance with the opinion that they both serve to preclude hatred, others distinguish between them and base their rulings with regard to them on different reasons, as indicated by the Gemara here.

What is the reason that the Merciful One states that a husband may nullify – טעמא מאי אמר רחמנא בעל: Some commentaries cite a different version of the text: What is the reason that the Sages said that a husband may nullify (*Tosafot Yeshanim*). They explain at length that there is a difference between the basic *halakha* of nullification of vows, which applies by Torah law, and certain vows that a husband may annul by rabbinic law, for the reason stated here. See the Rashba for an analysis of this *halakha* from a different perspective. The later authorities also state that the reason mentioned by the Gemara here accounts only for some of the cases, while there are other justifications, such as the basic claim that a wife always vows with her husband's implicit consent in mind. In this case, as the Sages canceled the husband's rights, she cannot be said to have vowed with his consent.

תא שמע: אמר רבי אלעזר בן יעקב: שמעתי שבית דין מכין ועונשין שלא מן התורה ולא לעבור על דברי תורה אלא לעשות סייג לתורה. ומעשה באדם אחד שרכב על סוס בשבת בימי יונים והביאוהו לבית דין וסקלוהו, לא מפני שראוי לכך, אלא שהשעה צריכה לכך.

ושוב מעשה באדם אחד שהטיח באשתו תחת התאנה והביאוהו לבית דין והלקוהו, לא מפני שראוי לכך אלא שהשעה צריכה לכך! מיגדר מילתא שאני.

“ולא זה וזה מטמאין לה” מנלן? דכתוב “כי אם לשראו הקרוב אליו”, ואמר מר: “שראו” זו אשתו.

וכתיב “לא יטמא בעל בעמיו להחלו”, יש בעל שמטימא ויש בעל שאין מיטמא. הא כיצד? מיטמא הוא לאשתו בשרה, ואינו מיטמא לאשתו פסולה.

“ולא זה וזה זכאין במציאתה” וכו'. טעמא מאי אמור רבנן מציאת אשה לבעלה – כי היכי דלא תיהוי ליה איבה, הכא – תיהוי ליה איבה ואיבה.

“ובמעשה ידיה”. טעמא מאי אמרי רבנן מעשה ידיה לבעלה – משום דקאכלה מזונג, הכא כיון דמזונג לית לה מעשה ידיה לאו ידיה.

“ולא מיפר נדריה”, טעמא מאי אמר רחמנא בעל מיפר – כדי שלא תתנגדה, הכא תתנגדה ותתנגדה.

“היתה בת ישראל נפסלה מן הכהונה” וכו'.

The Gemara cites yet another relevant source. Come and hear, as Rabbi Elazar ben Ya'akov said: I have heard that the reason why the court may administer lashes and punish¹¹ not by Torah law, i.e., in response to actions for which one is not liable to receive punishment by Torah law, is not so as to transgress matters of Torah, but to establish a safeguard for the Torah. And an example of this is an incident involving a certain person who rode on a horse on Shabbat in the days of the Greeks, an act that is prohibited by rabbinic law, and they brought him to the court and they stoned him as a desecrator of Shabbat. They did so not because he was deserving of this, as riding a horse is not punishable by stoning by Torah law, but because the hour required^N it, as at that time Jews were negligent with regard to Shabbat observance.

And again, an incident occurred involving a certain person who cohabited with his own wife under a fig tree in plain view, and they brought him to the court and flogged him, not because this punishment was fitting for him, as it is not prohibited by the Torah for one to engage in relations with his wife wherever he chooses, but because the hour required it, to discourage others from engaging in licentious behavior. This shows that the court can uproot a Torah mitzva even by means of a positive action such as stoning. The Gemara answers: Safeguarding a matter is different. As stated above, the court may uproot a Torah mitzva so as to strengthen Torah observance in general, as was the case with the prophet Elijah.

§ The mishna taught: Neither this one, her first husband, nor that one, her second, may become impure for her,¹¹ if they were priests. The Gemara asks: From where do we derive this *halakha*? The Gemara explains that it is written: “But to his relative, who is close to him, for her he may defile himself” (Leviticus 21:2), and the Master said: “His relative” is his wife.

And it is further written: “He shall not defile himself, a husband among his people, to profane himself” (Leviticus 21:4). It may be inferred from this apparent contradiction between the verses that there is a husband who becomes impure for his wife, and there is a husband who does not become impure. How so? He becomes impure for his fit wife, but he does not become impure for his disqualified wife. Since in the case of the mishna, the woman in question is disqualified with regard to both men, neither of them may become impure for her.

§ The mishna further taught: Neither this one nor that one is entitled to her found articles. The Gemara explains: What is the reason that the Sages said that the found object of a wife belongs to her husband? So that he should not harbor enmity toward her, due to her refusal to give him the item she found. Here, however, let him harbor much enmity toward her, as the Sages want him to divorce her.

§ And the mishna also taught that neither man is entitled to her earnings.^N The Gemara explains: What is the reason that the Sages said that a wife's earnings belong to her husband? Because she eats his food. In this case here, since she does not have rights to his food, her earnings are not his either.

§ And the mishna further taught that they may not nullify her vows. The Gemara similarly explains: What is the reason that the Merciful One states that a husband may nullify^N his wife's vows? So that she should not have to fulfill a vow that will cause her to become repulsive to him, such as refraining from washing or from applying cosmetics. Here, let her be highly repulsive, as the Sages want their relationship to end.

§ The mishna taught that if she was an Israelite woman, she is disqualified from marrying into the priesthood.