

NOTES

Most of them left or some of them left – פָּרְשׁוּ רַבִּים – ומקצתם: The Rambam and other commentaries reason as follows: If all the individuals leave for another courtyard, they lose their status of being in a fixed location. Therefore, the principle of majority applies, and one does not desecrate Shabbat for any of them. But if only some people leave, the status of being in a fixed location still applies. Rashi takes the opposite approach. Rabbeinu Efrayim explains that if some of them leave, there are two uncertainties: Uncertainty as to whether the Jew remained in his original place or whether he left, and uncertainty as to whether the building fell on him or not. However, the Ra'avad and many others maintain that, with regard to saving a life, the ruling is lenient even when there are several uncertainties.

HALAKHA

Lineage of a child found in a city – יחוס תינוק שנמצא בעיר – If a baby is found in a city in which both Jews and gentiles live, its status is that of an uncertain gentile, regardless of which group is the majority. If such an individual later marries a Jewish woman, he must divorce her due to the chance that he is not Jewish. If he immerses for the sake of conversion, he is considered a Jew (*Shulhan Arukh, Even HaEzer 4:33*).

לא צריכא דפרוש לחצר אחרת, מהו דתימא: כל דפריש – מרובא פריש, קא משמע לן דלא הלכו בפקוח נפש אחר הרוב.

The Gemara answers: **No, it is necessary to teach that one does not follow the majority in a case where one individual did not remain with the group in their courtyard but separated and went to another courtyard, and a building collapses on him. Lest you say: One should follow the principle that whatever is separated from a group is considered to have left from the majority, and since there was a majority of gentiles there the individual who left the group was probably a gentile, and it is not necessary to clear the debris for a gentile on Shabbat, therefore it teaches us that with regard to uncertainty in a situation of saving a life, one does not follow the majority.**

איני? והאמר רבי אסי אמר רבי יוחנן: תשעה גוים וישראל אחד, באותה חצר – מפקחין, בחצר אחרת – אין מפקחין! לא קשיא, הא – דפרוש בבלהו, הא – דפרוש מקצתיהו.

The Gemara asks: **Is that so? But didn't Rav Asi say that Rabbi Yoḥanan said: If there are nine gentiles and one Jew and a building collapses on one of them, if it is in that same courtyard one removes the debris, but in another courtyard one does not remove the debris?** The Gemara answers: This is **not difficult**; there is no contradiction between the *halakhot*. This case, where one removes the debris, is **when they all left** for another courtyard and it is clear that the Jew was among them. Consequently, the principle of being in a fixed location still applies, and it is considered a case of uncertainty. **That other situation is when only a minority of them left** for the other courtyard, and it is unknown whether the Jew left with them.^N

ומי אמר שמואל הכי? והתנן: מצא ביה תינוק מושלך, אם רוב גוים – גוי, ואם רוב ישראל – ישראל, מחצה על מחצה – ישראל. ואמר רב: לא שנו אלא להחיותו, אבל לייחסו – לא.

The Gemara asks: **Did Shmuel actually say this**, that one does not follow the majority with regard to saving a life? **Didn't we learn in a mishna: If one finds an abandoned child in a city and his parents are unknown, if the majority of the city are gentiles the child is considered a gentile; and if the majority of the city are Jews the child is considered a Jew; if the city is composed of half gentiles and half Jews, the child is considered a Jew?** **And Rav said: They taught this**, that he is a Jew, **only with respect to sustaining him but not with respect to attributing a lineage to him.** One does not say that he is definitely Jewish based on the majority. Therefore, with regard to the *halakhot* of marriage, his status remains uncertain. If the abandoned child is a girl, she is not permitted to marry a priest, who may marry only a woman of certain lineage.^H

Perek VIII
Daf 85 Amud a

ושמואל אמר: לפקח עליו את הגל בני איתמר דשמואל – ארישא איתמר: אם רוב גוים – גוי, אמר שמואל: ולענין פקוח נפש אינו בן.

And Shmuel said: This *halakha* of the status of a found child is with regard to **removing debris from on top of him**, implying that if there is a majority of gentiles in the city where he is found, one does not violate Shabbat by removing the debris from the child to save his life. This implies that one does follow the majority in the case of saving a life. The Gemara answers: **When this statement of Shmuel was stated, it was stated with regard to the first halakha.** Shmuel's intent was to be lenient, and his statement should be understood as follows: **If the majority are gentiles, he is a gentile. Shmuel said: But with regard to the matter of saving a life it is not so.** Rather, one saves him based on the uncertainty.

אם רוב גוים גוי למאי הילכתא? אמר רב פפא: להאכילו נבלות. אם רוב ישראל – ישראל, למאי הילכתא – להחזיר לו אבידתו.

It was taught that **if there is a majority of gentiles in the city, a foundling is considered to have the status of a gentile.** The Gemara asks: **To what halakha does this statement relate?** **Rav Pappa said:** It relates to **feeding him non-kosher food.** One need not protect the child from every prohibition and may even feed him non-kosher food, as though he were a gentile. It was further taught: **If there is a majority of Jews, he is a Jew.** The Gemara asks: **To what halakha does this relate?** The Gemara answers: It relates to **returning a lost object to him.** In such a case it is assumed that he is definitely a Jew. Consequently, Jews must return lost objects to him, whereas there is no obligation to return lost objects to gentiles.

To *halakhot* of damages – לְטָקִין: *Tosafot* ask why the Gemara does not explain all the distinctions with regard to the status of this foundling in terms of damages. The later commentaries argue that, according to the opinion that one does not follow the majority in monetary matters, such distinctions are out of place (*Shem Yosef*).

Returning lost objects and paying damages to a gentile – הַשְׁבֵּת אֲבֵדָה וְנִיקָן לְגוֹי: The *halakhot* of returning lost objects and paying only half damages caused by an innocuous ox are not universal *halakhot*; rather, they are unique laws given to the Jewish people. This is why they do not apply when gentiles are involved.

Bring proof – אֵימְתֵי רְאִיָּה: Some commentaries add that even when there is a legitimate reason to think that the foundling is not a Jew, such as when he clearly does not behave like a Jew, one still acts based on the majority of Jews (*Tosefot HaRosh*).

A short while – לְחַיֵּי שָׁעָה: The *Me'iri* adds that in the short time remaining to him, he may confess his sins, repent, and prepare himself for death. One must not deprive him of this opportunity.

מִחְצָה עַל מִחְצָה – יִשְׂרָאֵל, לְמֵאֵי הַיְלֻכְתָּא? אָמַר רִישׁ לְקִישׁ: לְנִיקָן, הֵיכֵי דְמִי? אִי נִימָא דְנִגְחִיה תּוֹרָא דִּידָן לְתוֹרָא דִּידִיה – גְּיֵיתִי רְאִיָּה וְנִשְׁקוּל!

It was further stated: If the city is half gentile and half Jewish, the foundling has the status of a Jew. The Gemara asks: **To what halakha** does this relate? **Reish Lakish said:** It is referring to *halakhot* of damages.^N The Gemara asks: **What are the circumstances?** If we say that our ox, i.e., an ox belonging to another Jew, gored his ox, one could ask: How can he make a claim like a Jew? **Let him bring proof** that he is Jewish, and only then may he take the money for damages, since the burden of proof rests upon the claimant. Since he cannot prove his Jewish status, he has no claim.^N

לֹא צְרִיכָא, דְנִגְחִיה תּוֹרָא דִּידִיה לְתוֹרָא דִּידָן, פְּלִגָּא – וְהֵיב לִיה, אִידָךְ פְּלִגָּא – נִימָא לִיה: אֵימְתֵי רְאִיָּה דְלֵאוּ יִשְׂרָאֵל אָנָּא, וְשָׁקוּל.

The Gemara answers: **No**, it is necessary when his innocuous ox, which has gored fewer than three times, gored our ox, i.e., an ox belonging to a Jew, in which case he gives him half, which is what a Jew pays for damages caused by an innocuous ox. However, a gentile must make full restitution for the damage caused. The foundling^H does not pay the other half, which a gentile gives to a Jew if his ox harms a Jew's ox. **Let us say to the one who suffered the damage: Bring proof^N that I am not a Jew and take the money.** In that case, the burden of proof rests upon the one who suffered the damage.

”מִי שֶׁנִּפְּלַע עָלָיו מִפּוֹלֵת וְכוּ’.” מֵאֵי קָאָמַר?

It was taught in the mishna: With regard to one upon whom a rockslide fell, and there is uncertainty whether he is there under the debris or whether he is not there; and there is uncertainty whether he is still alive or whether he is dead; and there is uncertainty whether the person under the debris is a gentile or whether he is Jew, one clears the pile from atop him. The Gemara asks: **What is the mishna saying?** Why does it bring three different uncertainties to illustrate the principle that one violates Shabbat to save a life even in a case of uncertainty?

לֹא מִיבְעִינָא קָאָמַר: לֹא מִיבְעִינָא סָפֵק הוּא שָׁם סָפֵק אִינוּ שָׁם, דְּאִי אִיתִיה חַי הוּא – דְּמִפְּקָחִין, אֲלֵא אֲפִילוּ סָפֵק חַי סָפֵק מֵת – מִפְּקָחִין, וְלֹא מִיבְעִינָא סָפֵק חַי סָפֵק מֵת דִּישְׂרָאֵל, אֲלֵא אֲפִילוּ סָפֵק גּוֹי סָפֵק יִשְׂרָאֵל – מִפְּקָחִין.

The Gemara explains: **It is speaking** using the style of: **Needless to say**, and the mishna should be understood as follows: **Needless to say**, in a case where it is uncertain whether he is there or not there, one removes the debris, since if he is there and he is alive, one must clear the debris. **But even** if it is uncertain whether he is alive or dead, one must clear the debris. **And needless to say**, when there is uncertainty whether he is alive or dead, but it is certain that he is a Jew, one must clear the debris. **Rather**, one must clear the debris even if there is uncertainty whether he is a gentile or a Jew.

”מִצְאוּהוּ חַי מִפְּקָחִין.” מִצְאוּהוּ חַי פְּשִׁיטָא! לֹא צְרִיכָא, דְּאֲפִילוּ לְחַיֵּי שָׁעָה.

The mishna taught: If they found him alive, they continue to remove the debris. The Gemara is surprised at this: **If they find him alive**, it is obvious that they remove the debris, since that is saving a life. The Gemara answers: **No**, it is necessary to teach that one must desecrate Shabbat for his sake even if it is clear that he will live only a short while^{NH} and will die soon after.

HALAKHA

A child found in a city – תִּינוּק שֶׁנִּמְצָא בְּעִיר: If a child was found in a city of Jews and gentiles and was not converted, nor did he convert on his own, then he may be fed non-kosher food if the majority of residents of the town are not Jewish. If the majority of residents in the town are Jewish, he is treated as a Jew and his lost objects must be returned. If the population of the town is evenly split, he must be sustained as a Jew and rescued from a collapsed building on Shabbat. With regard to paying damages, his status is in doubt, and the burden of proof

rests on the claimant (Rambam *Sefer Kedusha, Hilkhhot Issurei Bia* 15:22). Other authorities claim that if the majority in the town is gentile, the child is rescued from a ruin on Shabbat, but he need not be sustained (*Tur, Shulhan Arukh, Even HaEzer* 4:34).

Even if he will live only a short while – אֲפִילוּ לְחַיֵּי שָׁעָה: If a person is found crushed under debris and will survive only a short while, one still clears the debris from him on Shabbat (*Shulhan Arukh, Oraḥ Hayyim* 329:4).

מצילין את – One may save a corpse from a fire on Shabbat – **המת מהדליקה בשבת**: If there is concern that a dead body will be consumed by fire on Shabbat, a loaf of bread or a child is placed on it, whereupon it may be removed from danger. If such a procedure is not possible, the body may be moved normally, but not to a different domain. This ruling is in accordance with the opinion of Rabbi Yehuda ben Lakish (*Shulhan Arukh, Oraḥ Hayyim* 311:1).

Check until the nose – **בודק עד חוטמו**: If a person is found in debris on Shabbat, his breathing is checked by examining his nose. If he is still breathing, the rescue is continued. In that case, it does not matter whether the digging began at his head or his feet. This ruling is in accordance with the unattributed *baraita* (*Shulhan Arukh, Oraḥ Hayyim* 329:4).

“ואם מת ויחווהו. הא נמי פשיטא! לא צריכא לרבי יהודה בן לקיש. דתנא: אין מצילין את המת מפני הדליקה. אמר רבי יהודה בן לקיש: שמעתי שמצילין את המת מפני הדליקה. ואפילו רבי יהודה בן לקיש לא קאמר אלא מתוך שאדם בהול על מתו, אי לא שרית ליה – אתי לכבויו. אבל הכא, אי לא שרית ליה – מאי אית ליה למעבד?”

תנו רבנן: עד היכן הוא בודק? עד חוטמו, ויש אומרים: עד לבו. בודק ומצא עליונים מתים – לא יאמר: כבר מתו התחתונים. מעשה היה, ומצאו עליונים מתים ותחתונים חיים.

נימא הני תנאי בי הני תנאי, דתנא: מהיכן הולד נוצר – מראשו, שנקאמר: “ממעני אמי אתה גוזי” ואומר: “גוזי נורך והשליכי.” אבא שאול אומר: מטיבורו, ומשליח שרשיו אילך ואילך.

אפילו תימא אבא שאול, עד כאן לא קא אמר אבא שאול התם – אלא לענין יצירה, דכל מידי ממציעתיה מיתצר. אבל לענין פקוח נפש – אפילו אבא שאול מודי דעיקר חיותא באפיה הוא, דכתיב: “כל אשר נשמת רוח חיים באפיו.”

אמר רב פפא: מחלוקת ממשא למעלה, אבל ממעלה למטה, בין דבדק ליה עד חוטמו – שוב אינו צריך, דכתיב: “כל אשר נשמת רוח חיים באפיו.”

§ The mishna taught: If they found him dead, they should leave him. The Gemara is surprised at this: Isn't this also obvious? What allowance might there be to desecrate Shabbat for the sake of a corpse? The Gemara answers: No, this ruling is necessary according to the opinion of Rabbi Yehuda ben Lakish, as it was taught in a *baraita*: One may not save a corpse from a fire, since one may not violate Shabbat for the sake of the dead. Rabbi Yehuda ben Lakish said: I heard that one may save a corpse from a fire.^h The Gemara challenges: Even Rabbi Yehuda ben Lakish said this only with regard to a fire because a person is agitated over his dead relative, whose body might burn in the fire. If you do not permit him to remove the corpse he may come to extinguish the fire and transgress a severe Torah prohibition. However, here, in the case of a rockslide or building collapse, if you do not permit him to remove the debris, what might he do? In this case, there is no concern of Shabbat desecration, and preserving the dignity of the dead does not override Shabbat.

The Rabbis taught: If a person is buried under a collapsed building, until what point does one check to clarify whether the victim is still alive? Until what point is he allowed to continue clearing the debris? They said: One clears until the victim's nose.^h If there is no sign of life, i.e., if he is not breathing, he is certainly dead. And some say: One clears until the victim's heart to check for a heartbeat. If several people are buried and one checked and found the upper ones under the debris dead, he should not say: The lower ones are likely also already dead, and there is no point in continuing to search. There was an incident where they found the upper ones dead and the lower ones alive.

The Gemara comments: Let us say that the dispute between these *tanna'im* who disagree about checking for signs of life is like the dispute between these *tanna'im* who disagree about the formation of the fetus. As it was taught in a *baraita*: From what point is the fetus created? It is from its head, as it is stated: “You are He Who took me [gozi] out of my mother's womb” (Psalms 71:6), and it says: “Cut off [gozi] your hair, and cast it away” (Jeremiah 7:29). These verses suggest that one is created from the head, the place of the hair. Abba Shaul says: A person is created from his navel, and he sends his roots in every direction until he attains the image of a person. The *tanna* who says that the presence of life is determined based on the nose holds in accordance with the opinion of the *tanna* who maintains that the formation of a fetus begins with its head. Likewise, the *tanna* who says the presence of life is determined based on the heart holds in accordance with the opinion of the one who thinks the formation of a fetus begins with its navel.

The Gemara rejects this: Even if you say that the formation of a fetus from the navel is the opinion of Abba Shaul, he may nevertheless require one to check the nose for signs of life. Until now, Abba Shaul spoke there only about formation, saying that everything is created from its middle; however, as for saving a life, even Abba Shaul admits that the main sign of life is in the nose, as it is written: “All in whose nostrils was the breath of the spirit of life” (Genesis 7:22).

Rav Pappa said: The dispute with regard to how far to check for signs of life applies when the digger begins removing the rubble from below, starting with the feet, to above. In such a case it is insufficient to check until his heart; rather, one must continue removing rubble until he is able to check his nose for breath. But if one cleared the rubble from above to below, once he checked as far as the victim's nose he is not required to check further, as it is written: “All in whose nostrils was the breath of the spirit of life” (Genesis 7:22).

And the children of Israel shall keep Shabbat – וְשָׁמְרוּ בְּנֵי יִשְׂרָאֵל אֶת הַשַּׁבָּת: It seems that the support for this argument is the entire verse, since “the children of Israel shall keep Shabbat” so that they will “observe Shabbat” in the future. The commentaries note that since saving a life overrides Shabbat even when the individual will live for only a short while, and even when it is clear that he will not be able to observe future *Shabbatot*, the main point here is that it is permitted to desecrate Shabbat for the sake of fulfilling the mitzvot (*Tosefet Yom HaKippurim*).

And not that he should die by them – וְלֹא שְׂיָמוּת בָּהֶם: One must see to it that the mitzvot do not in any way cause a person's death. Therefore, both certain and uncertain risk to life override the observance of mitzvot (see *Tosafot*).

Death and Yom Kippur atone – מִיַּתָּה וְיוֹם הַכִּפּוּרִים מְכַפְּרִים: The letter *vav* in this statement, translated as the word: And, may also mean: Or. That is, each one of these atones when accompanied by repentance. This is clear from the corresponding passage in the Jerusalem Talmud.

I will sin and Yom Kippur will atone – אֶחָטָא וְיוֹם כִּפּוּר יִכַּפֵּר: One who relies on the Judge of the world to atone for him, believing that this gives him license to sin, has no chance for atonement at all, even on Yom Kippur (Rabbeinu Yehonatan).

HALAKHA

I will sin and I will repent – אֶחָטָא וְאָשׁוּב: If one says: I will sin and repent, or: I will sin and Yom Kippur will atone, he is given no chance to repent (*Rambam Sefer HaMadda, Hilkhot Teshuva* 4:1).

Transgressions between a person and another – עֲבֵירוֹת: Yom Kippur atones only for transgressions committed against God, whereas transgressions committed against one's fellow man are not forgiven until the sinner rights the wrong and appeases his friend (*Rambam Sefer HaMadda, Hilkhot Teshuva* 2:9).

רבי שמעון בן מנסיא אומר: וְשָׁמְרוּ בְּנֵי יִשְׂרָאֵל אֶת הַשַּׁבָּת: אָמְרָה תּוֹרָה: חֵלְלָה עָלָיו שַׁבָּת אַחַת, בְּדִי שֵׁיִשְׁמֹר שַׁבָּתוֹת הַרְבֵּה. אָמַר רַב יְהוּדָה אָמַר שְׂמוּאֵל: אִי הוּאֵי הַתָּם הוּאֵי אָמֵנָא: דִּיִּדֵי עֲדִיפָא מִדִּיִּדְהוּ, וְחֵי בָהֶם – וְלֹא שְׂיָמוּת בָּהֶם.

אָמַר רַבָּא: לְכוּלְהוּ אֵיִתְּ לְהוּ פִּירְכָּא, בְּרַמְדֵּי שְׂמוּאֵל דְּלִית לֵיהּ פִּירְכָּא. דְּרַבִּי יִשְׁמַעְיָאֵל – דִּילְמָא כְּדָרְבָּא, דְּאָמַר רַבָּא: מָאֵי טַעְמָא דְּמַחְתְּרַת – חִזְקָה אִין אָדָם מַעֲמִיד עַצְמוֹ עַל מְמוֹנֵו, וְהָאֵי מִיִּדְעָ יָדַע דְּקָאֵי לְאִפִּיָּה, וְאָמַר: אִי קָאֵי לְאִפִּיָּה – קְטִילָנָא לֵיהּ, וְהַתּוֹרָה אָמְרָה: בָּא לְהַרְגֵּן – הַשֶּׁכֶם לְהַרְגֵּו. וְאִשְׁבַּחֵן וְדָאֵי, סַפֵּק מְנָא לָן?

דְּרַבִּי עֲקִיבָא נָמִי, דִּילְמָא כְּדָאֵבִי. דְּאָמַר אָבִי: מִסְרִינָן לֵיהּ זִוְגָא דְּרַבְּנָן, לִידְעָ אִם מַמְשׁ בְּדַבְּרֵי. וְאִשְׁבַּחֵן וְדָאֵי, סַפֵּק מְנָא לָן?

וְכוּלְהוּ אִשְׁבַּחֵן וְדָאֵי, סַפֵּק מְנָא לָן? וְדְשְׂמוּאֵל וְדָאֵי לִית לֵיהּ פִּירְכָּא. אָמַר רַבִּינָא וְאִיתִימָא רַב נַחְמָן בְּרַ יִצְחָק: טַבָּא תְּדָא פְּלַפְלָתָא חֲרִיפָא מְמָלָא עֲצָא דְקָרִי.

מתני' חטאת ואשם ודאי – מכפרין. מיתה ויום הכפורים – מכפרין עם התשובה. תשובה מכפרת על עבירות קלות, על עשה ועל לא תעשה, ועל החמורות הוא תולה עד שיבא יום הכפורים וכפר. האומר "אחטא ואשוב", "אחטא ואשוב" – אין מספקין בידו לעשות תשובה, "אחטא ויום הכפורים מכפר" – אין יום הכפורים מכפר. עבירות שבין אדם למקום – יום הכפורים מכפר. עבירות שבין אדם לחבירו – אין יום הכפורים מכפר, עד שירצה את חבירו.

Rabbi Shimon ben Menasya said: It is stated: “And the children of Israel shall keep Shabbat,ⁿ to observe Shabbat” (Exodus 31:16). The Torah said: Desecrate one Shabbat on his behalf so he will observe many *Shabbatot*. Rav Yehuda said that Shmuel said: If I would have been there among those Sages who debated this question, I would have said that my proof is preferable to theirs, as it states: “You shall keep My statutes and My ordinances, which a person shall do and live by them” (Leviticus 18:5), and not that he should die by them.ⁿ In all circumstances, one must take care not to die as a result of fulfilling the mitzvot.

Rava commented on this: All of these arguments have refutations except for that of Shmuel, which has no refutation. The Gemara explains Rava's claim: The proof brought by Rabbi Yishmael from the thief who breaks in could perhaps be refuted based on the principle of Rava, as Rava said: What is the reason for the *halakha* about the thief who breaks in? There is a presumption that while a person is being robbed he does not restrain himself with respect to his money. And this thief knows that the homeowner will rise to oppose him and said to himself from the start: If he rises against me, I will kill him. And the Torah states: If a person comes to kill you, rise to kill him first. We found a source for saving a life that is in certain danger, but from where do we derive that even in a case where there is uncertainty as to whether a life is in danger one may desecrate Shabbat? Consequently, Rabbi Yishmael's argument is refuted.

The proof of Rabbi Akiva can also be refuted. He brought the case of removing a priest from altar service in order to have him testify on another's behalf, since his testimony might acquit the accused and save him from execution. But perhaps that *halakha* is in accordance with the opinion of Abaye, as Abaye said: If the accused says he has a witness in his favor, we send a pair of rabbis on his behalf to determine if his words of testimony have substance. These rabbis would first check that the testimony of the priest is substantive before removing him from the altar. If so, we have found that one interrupts the Temple service to save a life from certain danger, but from where do we derive that one interrupts the Temple service when the likelihood of saving life is uncertain?

And for all the other arguments as well, we have found proofs for saving a life from certain danger. But for cases of uncertainty, from where do we derive this? For this reason, all the arguments are refuted. However, the proof that Shmuel brought from the verse: “And live by them,” which teaches that one should not even put a life in possible danger to observe mitzvot, there is certainly no refutation. Ravina said, and some say it was Rav Nahman bar Yitzhak who said with regard to this superior proof of Shmuel: One spicy pepper is better than a whole basket of squash, since its flavor is more powerful than all the others.

MISHNA A sin-offering, which atones for unwitting performance of transgressions punishable by *karet*, and a definite guilt-offering, which is brought for robbery and misuse of consecrated items, atone for those sins. Death and Yom Kippur atoneⁿ for sins when accompanied by repentance. Repentance itself atones for minor transgressions, for both positive mitzvot and negative mitzvot. And repentance places punishment for severe transgressions in abeyance until Yom Kippur comes and completely atones for the transgression. With regard to one who says: I will sin and then I will repent,^h I will sin and I will repent, Heaven does not provide him the opportunity to repent, and he will remain a sinner all his days. With regard to one who says: I will sin and Yom Kippur will atone for my sins, Yom Kippur does not atone for his sins.ⁿ Furthermore, for transgressions between a person and God, Yom Kippur atones; however, for transgressions between a person and another,^h Yom Kippur does not atone until he appeases the other person.

לִפְנֵי מִי אַתֶּם מְטַהְרִין – Before Whom are you purified – The phrase: Before Whom are you purified, is referring to when the people repent willingly and with knowledge. The phrase: And who purifies you, is referring to when God helps people repent through mitzvot such as Yom Kippur (*Tosefot Yom Tov*).

אֲשֶׁם תְּלוּי – Uncertain guilt-offering – A sin-offering is brought by one who unwittingly violates a prohibition that is punishable by *karet* if violated intentionally. An uncertain guilt-offering is brought for transgressions that require one to bring a sin-offering, in a case where it is unclear whether one actually committed the transgression. For example, if one is not sure whether he ate blood or not, he brings an uncertain guilt-offering until the facts are clarified. If he subsequently learns that he did sin, he brings a sin-offering.

דַּרְשׁ רַבִּי אֶלְעָזָר בֶּן אַזַּרְיָה: "מִכֹּל חַטָּאתֵיכֶם לִפְנֵי ה' תִּטְהָרוּ" עֲבִירוֹת שְׂבִין אָדָם לְמָקוֹם – יוֹם הַכִּפּוּרִים מְכַפֵּר עֲבִירוֹת שְׂבִין אָדָם לְחִבְרוֹ – אֵין יוֹם הַכִּפּוּרִים מְכַפֵּר עַד שִׁירָצָה אֶת חֲבִירוֹ. אָמַר רַבִּי עֲקִיבָא: אֲשֶׁרֵיכֶם יִשְׂרָאֵל, לִפְנֵי מִי אַתֶּם מְטַהְרִין, מִי מְטַהֵר אֶתְכֶם – אֲבִיכֶם שְׁבַשְׁמִים, שְׁנֵאֲמַר: "וְזָרַקְתִּי עֲלֵיכֶם מִים טְהוֹרִים וּטְהַרְתֶּם" וְאָמַר: "מִקּוּהַ יִשְׂרָאֵל (ה') מִה מְקוּהַ מְטַהֵר אֶת הַטְּמֵאִים – אֵין הַקְּדוֹשׁ בְּרוּךְ הוּא מְטַהֵר אֶת יִשְׂרָאֵל.

גַּמ' אֲשֶׁם וְדָאֵי – אין, אֲשֶׁם תְּלוּי לֹא? וְהָא כְּפָרָה כְּתִיבָא בֵּיהּ: הִנֵּךְ מְכַפֵּר כְּפָרָה גְּמוּרָה, אֲשֶׁם תְּלוּי אֵינוֹ מְכַפֵּר כְּפָרָה גְּמוּרָה.

אֵי נִמְי: הִנֵּךְ – אֵין אַחַר מְכַפֵּר כְּפָרָתְךָ, אֲשֶׁם תְּלוּי – אַחַר מְכַפֵּר כְּפָרָתְךָ. דְּתַנֵּן: חֵיבֵי חַטָּאוֹת וְאֲשָׁמוֹת וְדָאֵין שְׁעֵבַר עֲלֵיהֶן יוֹם הַכִּפּוּרִים – חֵיבֵי, אֲשָׁמוֹת תְּלוּיִן – פְּטוּרִין.

"מִיִּתְהָ וְיוֹם הַכִּפּוּרִים מְכַפֵּרִין עִם הַתְּשׁוּבָה." עִם הַתְּשׁוּבָה – אֵין, בְּפִנֵּי עֲצֻמֵן – לֹא, נִימָא דְלֹא כְּרַבִּי דְתַנֵּא, רַבִּי אֲמַר: עַל כָּל עֲבִירוֹת שְׁבַתוֹרָה, בֵּין עֲשָׂה תְּשׁוּבָה בֵּין לֹא עֲשָׂה תְּשׁוּבָה, יוֹם הַכִּפּוּרִים מְכַפֵּר, חוּץ (מְפֹרָק עוֹל) וּמַגְלָה פְּנִים בְּתוֹרָה וּמִיפֵר בְּרִית בְּשָׂר, שְׂאֵם עֲשָׂה תְּשׁוּבָה – יוֹם הַכִּפּוּרִים מְכַפֵּר, וְאֵם לֹא עֲשָׂה תְּשׁוּבָה אֵין יוֹם הַכִּפּוּרִים מְכַפֵּר!

אֶפִּילוֹ תִימָא רַבִּי, תְּשׁוּבָה בְּעֵינֵי יוֹם הַכִּפּוּרִים – יוֹם הַכִּפּוּרִים לֹא בְּעֵינֵי תְּשׁוּבָה.

Similarly, Rabbi Elazar ben Azarya taught that point from the verse: "From all your sins you shall be cleansed before the Lord" (Leviticus 16:30). For transgressions between a person and God, Yom Kippur atones; however, for transgressions between a person and another, Yom Kippur does not atone until he appeases the other person. In conclusion, Rabbi Akiva said: How fortunate are you, Israel; before Whom are you purified,^N and Who purifies you? It is your Father in Heaven, as it is stated: "And I will sprinkle purifying water upon you, and you shall be purified" (Ezekiel 36:25). And it says: "The ritual bath of Israel is God" (Jeremiah 17:13). Just as a ritual bath purifies the impure, so too, the Holy One, Blessed be He, purifies Israel.

GEMARA The mishna says that a definite guilt-offering atones for sins. The Gemara analyzes this: With regard to a definite guilt-offering, yes, it does atone for sins. This implies that an uncertain guilt-offering^N does not. The Gemara asks: But isn't atonement written with regard to it? Why, then, doesn't it atone? The Gemara answers: Those, the sin-offerings and definite guilt-offerings, facilitate complete atonement, but an uncertain guilt-offering does not facilitate complete atonement. Instead, this offering provides temporary atonement for an individual, to protect him from punishment until he becomes aware of his sin and brings the appropriate offering.

Alternatively, there is this distinction: Nothing else facilitates the atonement of those sin-offerings and definite guilt-offerings, whereas something else does facilitate the atonement of the uncertain guilt-offering, as we learned in a mishna: If Yom Kippur passed, those who are obligated to bring sin-offerings and definite guilt-offerings are still obligated to bring their offerings; however, those obligated to bring uncertain guilt-offerings are exempt because Yom Kippur atoned for them.^H

S It was taught in the mishna that death and Yom Kippur atone for sins when accompanied by repentance. The Gemara analyzes this: With repentance, yes, they do atone for sins; but by themselves, without repentance, they do not. Let us say that the mishna is not in accordance with the opinion of Rabbi Yehuda HaNasi, as it was taught in a *baraita*: Rabbi Yehuda HaNasi says that for all transgressions in the Torah, whether one repented or did not repent, Yom Kippur atones, with the exception of rejecting the yoke of Torah and mitzvot; and denying the Holy One, Blessed be He; and interpreting the Torah falsely; and violating the covenant of the flesh, i.e., circumcision. In these cases, if one repents Yom Kippur atones for his sin, and if one does not repent Yom Kippur does not atone for his sin.

The Gemara rejects this: This is no proof; even if you say that the mishna is in accordance with the opinion of Rabbi Yehuda HaNasi, the mishna can be understood as follows: Repentance still requires Yom Kippur in order to complete the atonement, whereas Yom Kippur does not require repentance but atones even without it.

HALAKHA

כְּפָרַת חַטָּאוֹת – Atonement of sin-offerings and guilt-offerings – After Yom Kippur, people are still obligated to bring their sin-offerings and definite guilt-offerings incurred before

Yom Kippur. However, those liable to bring uncertain guilt-offerings are exempt if they do not bring them before Yom Kippur (*Rambam Sefer Korbanot, Hilkhot Shegagot* 3:9).

”תשובה מכפרת על עבירות קלות על עשה ועל לא תעשה.“ השתא על לא תעשה מכפרת, על עשה מיבעיא? אמר רב יהודה, הכי קאמר: על עשה ועל לא תעשה שניתק לעשה.

It was taught in the mishna: **Repentance itself atones for minor transgressions, for both a positive mitzva and for a negative mitzva.** The Gemara is surprised at this: **Now** that it was stated that repentance **atones for a negative mitzva**, which is severe and warrants lashes, is it **necessary** to also teach that it atones for a **positive mitzva**, which is more lenient? **Rav Yehuda said:** **This is what it said**, i.e., the mishna should be understood as follows: **Repentance atones for a positive mitzva and for a negative mitzva whose violation can be rectified by a positive mitzva.** One is not punished by a court for violating a prohibition for which the Torah prescribes a positive act as a corrective measure and which thereby has the same *halakha* as a positive mitzva.

ועל לא תעשה גמור לא? ורמינהו: אלו הן קלות – עשה ולא תעשה.

The Gemara asks: **But** does repentance **not atone for a full-fledged negative mitzva?** The Gemara **raises a contradiction** from a separate source: It was taught that **these are minor transgressions: A positive mitzva and a negative mitzva,**

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NOTES

עשה ולא תעשה – A positive mitzva and a negative mitzva – An ancient dispute exists as to whether a positive mitzva is more important than a prohibition (see Ramban and others). The Maharsha explains the positions as follows: Since positive mitzvot demand action, they are preferable to prohibitions and override them. On the other hand, when one transgresses a positive mitzva, he has abstained from action, while one who violates a prohibition sins by performing an action, and therefore his punishment is greater.

חוץ מ"לא תשא" – "לא תשא" וכל דדמי ליה.

except for: “**You shall not take the name of the Lord, your God, in vain**” (Exodus 20:6), about which the Torah states: “**For God will not absolve him who takes His name in vain**” (Exodus 20:6). The Gemara answers: It is not that this is the only negative mitzva that is not a minor transgression; rather, it is: “**You shall not take the name of the Lord, your God, in vain**” **and any prohibition similar to it**, meaning all severe prohibitions that carry punishment by a court.

תא שמע, רבי יהודה אומר: כל שהוא מ"לא תשא" ולמטה – תשובה מכפרת, מ"לא תשא" ולמעלה – תשובה תולה, ויום הכפורים מכפר "לא תשא" וכל דדמי ליה.

The Gemara proposes: **Come and hear** from that which was taught: **Rabbi Yehuda says:** For any sin from “**You shall not take the name of the Lord, your God, in vain**” **and below**, i.e., prohibitions less severe than that, **repentance atones.** For any sin from “**You shall not take the name of the Lord, your God, in vain**” **and above**, **repentance suspends punishment and Yom Kippur atones.** The Gemara rejects this: This does not constitute proof either, since one could say that it is referring to: “**You shall not take the name of the Lord, your God, in vain**” **and anything similar to it.**

תא שמע: לפי שנאמר בחורב תשובה וינקה, יכול אף "לא תשא" עמקן – תלמוד לומר: "לא ינקה". יכול אף שאר תיבי לאוין בן – תלמוד לומר: "את שמו" – שמו הוא דאינו מנקה, אבל מנקה שאר תיבי לאוין!

Come and hear from a different source that was taught: **Since it was stated at Horeb with regard to repentance:** “**Absolve,**” one might have thought that **even** the transgression of: “**You shall not take the name of the Lord, your God, in vain**” is included **among them**; therefore, **the verses states:** “**Will not absolve**” (Exodus 20:6). One might have thought this is **also true for those who are liable for violating all other prohibitions**; therefore, **the verse states:** “**His name.**” **God does not absolve the one who disrespects His name, but He absolves those who are liable for violating all other prohibitions and repent.** This is proof that those who violate all other prohibitions are not comparable to one who violates: “**You shall not take the name of the Lord, your God, in vain.**”

תנאי היא, דתנאי: על מה תשובה מכפרת – על עשה ועל לא תעשה שניתק לעשה, ועל מה תשובה תולה ויום הכפורים מכפר – על כריתות ועל מיתות בית דין, ועל לא תעשה גמור.

The Gemara answers: **This is a dispute between tanna'im, as it was taught in a baraita:** **For what does repentance atone?** It atones for a **positive mitzva and for a negative mitzvaⁿ** that can be rectified through a **positive mitzva.** **And for what does repentance suspend punishment and Yom Kippur atone?** It is for sins punishable by *karet*, and for sins punishable by the **death penalty** from the earthly court, and for **full-fledged negative mitzvot.** This indicates that there is a *tanna* who distinguishes between prohibitions that warrant lashes and those that do not. Therefore, there is a tannaitic dispute as to whether or not prohibitions that warrant punishment by the courts can be rectified by repentance alone.