

And according to Rabbi Akiva – וְלִרְבִּי עֲקִיבָא: *Tosafot* note that this question is irrelevant according to the opinion of Rabbi Shimon HaTimni, as the Gemara in *Yevamot* states explicitly that he disagrees with Rabbi Akiva in this regard and maintains that betrothal takes effect in cases of women for whom one who rapes them is liable for violating a prohibition. Instead, the difficulty is in accordance with the opinion of Rabbi Shimon ben Menasya, whose opinion the Gemara seeks to reconcile with that of Rabbi Akiva. The Ramban cites a similar answer in the name of Rabbi Avraham Av Bet Din, and other early commentaries explain likewise. The Ra'ah, however, maintains that the question here is not how to reconcile the opinions of these *tanna'im* with that of Rabbi Akiva. Rather, the Gemara is asking: According to Rabbi Akiva, is there a difference between the two interpretations: A woman for whom there is betrothal, and: A woman who is suitable for him to sustain?

He creates *hillulin* – חִילּוּלִין הוּא עוֹשֶׂה: *Tosafot* discuss a different aspect of this dilemma at length: Is *mamzer* status of offspring tied to the question of whether or not there is *havaya*, i.e., whether or not betrothal takes effect, between the man and the woman? They maintain that according to most opinions, *mamzer* status is causally related to the betrothal taking effect. In other words, in any case where betrothal does not take effect, the offspring is a *mamzer*. Admittedly, there are exceptions to this principle, as the child of a Jewish man and a gentile woman or a maidservant is not a *mamzer*. However, that is because no relationship outside the congregation of Israel leads to *mamzer* status, which exists only with regard to Jews. See *Tosafot* for their proof that not everyone agrees that there is necessarily a link between the betrothal not taking effect and *mamzer* status.

וְלִרְבִּי עֲקִיבָא. דְּאָמַר: אִין קִידוּשִׁין תּוֹפְסִין בְּחִיבֵי לְאוּן, מַאי בִּינְיָהוּ? אִיכָא בִּינְיָהוּ אֲלִמְנָה לְכַהֵן גְּדוּל כְּרַבִּי סִימַאי. דְּתַנָּא, רַבִּי סִימַאי אָמַר: מִן הַכֹּל עוֹשֶׂה רַבִּי עֲקִיבָא מְמוֹרֵין, חוּץ מֵאֲלִמְנָה לְכַהֵן גְּדוּל, שְׁהָרִי אִמְרָה תּוֹרָה "לֹא יִקַּח... וְלֹא יִחַלְלֶה" – חִילּוּלִין הוּא עוֹשֶׂה, וְאִין עוֹשֶׂה מְמוֹרֵין.

The Gemara asks: And according to Rabbi Akiva,^N who said: Betrothal does not take effect for women for whose rape one is liable for violating prohibitions, what is the difference between them? According to his opinion, betrothal of a *mamzeret* does not take effect either. The Gemara answers: The difference between their statements is the case of a widow raped by a High Priest, in accordance with the opinion of Rabbi Simai, as it is taught in a *baraita* that Rabbi Simai says: Rabbi Akiva deems children from all illicit relations *mamzerim*, except for a child born from a widow to a High Priest, as the Torah said: "A widow and a divorcée he shall not take... and he shall not profane [*yehallel*] his seed among his people" (Leviticus 21:14–15), from which it is derived: If he has a child with a widow he creates *hillulin*,^N i.e., the male offspring of those relations is a *halal*, disqualified from the priesthood, and the female offspring is a *halala*, unfit to marry a priest, but he does not create *mamzerim*. Apparently, in that case, the betrothal does take effect.

וְלִרְבִּי יֵשֶׁבֶב, דְּאָמַר: בּוֹאוּ וְנִצְוָח עַל עֲקִיבָא בֶן יוֹסֵף, שְׁהֵיָה אָמַר: כָּל שְׂאִין לוֹ בִּיאַהּ בְּיִשְׂרָאֵל הוֹלֵד מְמוֹר. מַאי בִּינְיָהוּ? אִיכָא בִּינְיָהוּ

The Gemara asks: And according to Rabbi Yeshevav, who said: Come, let us scream at Akiva ben Yosef, who is proliferating *mamzerim*, as he would say: With regard to anyone who does not have the possibility of permitted relations in the Jewish people, including a widow with a High Priest, the offspring is a *mamzer*, what is the difference between their opinions, between the one who said that a fine is paid to women with whom the betrothal takes effect and the one who said that a fine is paid to women suitable for one to sustain? Rabbi Yeshevav maintains that betrothal does not take effect even in the case of a widow to a High Priest. The Gemara answers: There is a difference between them with regard to

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חִיבֵי עֵשֶׂה – מְצָרִי וְאֲדוּמִי.

intercourse with women for which one is liable for violating a positive mitzva,^N e.g., an Egyptian convert and an Edomite convert (see Deuteronomy 23:8–9). If he raped a first- or second-generation Egyptian or Edomite convert, even Rabbi Yeshevav agrees that the child is not a *mamzer*, as the betrothal takes effect. On the other hand, it is prohibited for him to sustain her as a wife.

הִנִּיחָא לְרַבִּי יֵשֶׁבֶב, אִי לְאִפּוּקִי מִטְעָמָא דְּרַבִּי סִימַאי קֵאָתִי – שְׁפִיר. אֲלֵא אִי טְעָמָא דְּנִפְשִׁיהּ קֵאָמַר, כָּל שְׂאִין לוֹ בִּיאַהּ בְּיִשְׂרָאֵל הוֹלֵד מְמוֹר – וְאִפְּלוּ חִיבֵי עֵשֶׂה, מַאי בִּינְיָהוּ?

The Gemara asks: This works out well according to Rabbi Yeshevav if he is coming to reject the opinion of Rabbi Simai. If Rabbi Yeshevav merely takes issue with Rabbi Simai, who said that all offspring of forbidden relations are *mamzerim* according to Rabbi Akiva except for those resulting from relations between a widow and a High Priest, then it may well be explained that Rabbi Yeshevav holds that Rabbi Akiva rules that betrothal does not take effect and that there is *mamzerut* when one violates the prohibitions of the priesthood. However, if he is stating his own opinion, independent of Rabbi Simai's statement, his ruling is more comprehensive and leads to the conclusion that in the case of relations with anyone who does not have the possibility of permitted relations among the Jewish people, the child is a *mamzer*, and this is true even of women for relations with whom one is liable for violating positive mitzvot, e.g., Egyptian or Edomite converts. In that case, what is the difference between the opinions of Shimon HaTimni and Rabbi Shimon ben Menasya?

Intercourse with women for which one is liable for violating a positive mitzva – חִיבֵי עֵשֶׂה: The category of positive mitzvot includes all prohibitions that are formulated as a positive mitzva rather than using a negative phrase, e.g.: You may not, lest, do not, take care. One who transgresses and fails to fulfill the command has violated a positive mitzva. In the beginning of tractate *Yevamot* and elsewhere, the Gemara discusses the relative significance of positive mitzvot and prohibitions. There is a fundamental difference between them with regard to punishment: Prohibitions are generally punishable by lashes, whereas positive mitzvot are not. Sexual relations with an Egyptian or Edomite convert are forbidden by a positive mitzva, as explained by Rashi, but there are also other examples of relations forbidden by a positive mitzva. As the Gemara will immediately explain, relations between a non-virgin and a High Priest are also forbidden by a positive mitzva.

איבא בינייהו בעולה לכהן גדול.
ומאי שנא? דהיה ליה עשה שאינו
שוה בכל.

The Gemara answers: **There is a difference between them** in the case of a **non-virgin raped by a High Priest**.^N And the Gemara asks: Here, too, she is a woman for relations with whom one is liable for violating a positive mitzva, as the High Priest fails to fulfill the mitzva “But a virgin of his own people shall he take to wife” (Leviticus 21:14). If Rabbi Akiva rules that betrothal does not take effect when a positive mitzva is violated, **what is different** about this case? The Gemara answers: It is different **because it is a positive mitzva whose application is not equal for all**.^N There are two lenient aspects to this mitzva: It is a positive mitzva and not a prohibition, and it applies only to the High Priest and not to all Jews. Even Rabbi Yesheva would agree that according to Rabbi Akiva, a child born from relations between a High Priest and a non-virgin is not a *mamzer*. However, the High Priest may not sustain the woman as his wife. Therefore, this case is the practical difference between the statements of Shimon HaTimni and Rabbi Shimon ben Menasya.

אמר רב חסדא: הכל מודים בבא
על הנדה שמשלים קנס. למאן דאמר
יש בה הויה – הא נמי יש בה הויה,
למאן דאמר ראויה לקיימה – הא
נמי ראויה לקיימה.

S Rav Hisda said: Everyone agrees with regard to one who engaged in forced intercourse with a menstruating woman^N that he pays the fine. He elaborates: **According to the one who says that the criterion is whether there is betrothal, for this woman too there is betrothal.**^N **According to the one who says that the criterion is whether the woman is suitable for him to sustain, this woman is suitable for him to sustain.**

NOTES

A non-virgin raped by a High Priest – בעולה לכהן גדול: All commentaries grapple with the following fundamental question, which requires explanation of the case of a non-virgin and a High Priest: If the case is that a High Priest raped a non-virgin, he cannot possibly be liable to pay the fine, as the Torah imposes the fine only for rape of a virgin. The case must perforce involve a more intricate situation. Rashi and the Ra’avad explain that the young woman had engaged in anal intercourse, and therefore she is not considered a non-virgin in terms of the prohibition of a High Priest; however, in terms of the fine, she maintains the status of a virgin, even if she engaged in anal intercourse many times. Most commentaries, though, including *Tosafot*, the Ramban, and the Rashba, accept Rabbeinu Hananel’s interpretation that it refers to a virgin young woman who was raped by the High Priest himself. He thereby rendered her a non-virgin, whose betrothal takes effect, but it is prohibited for him to remain married to her. In the *Shita Mekubbetz* Rashi’s explanation is questioned: If the anal intercourse rendered her a non-virgin in terms of the High Priest, when he rapes her he renders her a *halala*. Consequently, she is forbidden to him by a Torah prohibition and the betrothal does not take effect. The answer in the *Shita Mekubbetz* is that although he renders her a *halala* by means of the rape, he incurs the obligation to pay the fine when he initiated intercourse, and she is rendered a *halala* at its conclusion.

A positive mitzva whose application is not equal for all – עשה שאינו שוה בכל: The Gemara explains in several places that a mitzva that is universally applicable, whether it is a positive mitzva or a prohibition, is more severe than one whose applicability is selective. Rabbi Akiva Eiger notes that the prohibition rendering a widow forbidden to a High Priest is also not universally applicable, just like the mitzva that renders a non-virgin forbidden. The essence of his answer, which is rejected by the Rashash, is that the mitzva that renders a non-virgin forbidden to a High Priest has a twofold leniency: It is a positive mitzva, and it is a mitzva that is not universally applicable. The Meiri explains similarly that the reason for leniency with regard to this mitzva is that it applies exclusively to the High Priest and not even to other priests. Furthermore, there are additional lenient aspects to this prohibition, as the Gemara states in

tractate *Yevamot*: Ultimately she will be a non-virgin after her marriage to him, and it stands to reason that the fact that the prohibition will eventually be negated on its own renders it a lenient prohibition. In fact, some assert that if a High Priest married a virgin that he raped, he need not divorce her after the fact (see *Tosafot*).

Everyone agrees with regard to one who engaged in forced intercourse with a menstruating woman – הכל מודים בבא על הנדה: The phrase: Everyone agrees, does not include all of the Sages, as from the statement of Rabbi Nehunya ben HaKana it appears that one who rapes a menstruating woman does not pay the fine. Admittedly, some take issue with this assertion, but the *Tosafot Yeshanim*, citing the Maharam MiRotenburg, bring conclusive proof from the *Tosefta* in which it is explicitly stated that Rabbi Nehunya ben HaKana exempts one who rapes a menstruating woman from paying the fine. Rather, the phrase: Everyone agrees, refers to the dispute between Shimon HaTimni and Rabbi Shimon ben Menasya, as according to the criteria established by both of them he is obligated to pay the fine, as there, betrothal with a menstruating woman takes effect and she is suitable for him to sustain as his wife (see *Tosafot* and Ritva). This is the understanding in the Babylonian Talmud; however, in the Jerusalem Talmud the understanding is the opposite, and Rabbi Nehunya ben HaKana agrees that one who has relations with a menstruating woman or with his wife’s sister is liable to pay the fine. The reason is that these relationships can become permitted over the course of time, when the menstruating woman immerses in a ritual bath and when one’s wife dies, respectively. However, one who rapes a woman that is forbidden to him by a prohibition punishable by *karet* and whom will remain permanently forbidden to him is exempt from payment of the fine. Rabbi Shimon ben Menasya, in contrast, contends that wherever there is liability to receive *karet* he is exempt from payment of the fine.

A menstruating woman has betrothal – נדה יש בה הויה: This is derived from the verse “And her menstruation is [tehi] upon him” (Leviticus 15:24), which indicates that the *havaya* of betrothal is effective even when she is menstruating. Although the early commentaries disagree as to whether or not marriage to a menstruating woman takes effect, everyone agrees that her betrothal takes effect (see Ritva).

רבבי נחוניא בן הקנה – Rabbi Neḥunya ben HaKana was a *tanna* during the generation when the Second Temple was destroyed. It is possible that he is the same *tanna* occasionally referred to as Rabbi Neḥunya the Great.

Apparently, he had a close relationship with the students of Rabban Yoḥanan ben Zakkai.

Few of Rabbi Neḥunya ben HaKana's halakhic statements were preserved; however, several aggadic statements are cited in his name. The prayer that he recited upon entering the study hall (*Berakhot* 28b) is widely known. Later in this tractate (28a) his positive attributes and his modesty are recounted. Rabbi Neḥunya is credited with development of the hermeneutical method of generalization and detail, and it is generally attributed to Rabbi Yishmael, his most prominent student. Authorship of *Sefer HaBahir*, a kabbalistic midrash, is also attributed to him, as is the prayer: Please, with the might [*ana bekhō'ah*].

Kana is the name of a city in the tribal territory of Asher (*Joshua* 19:28). Perhaps his title is attributable to the place where he lived.

HALAKHA

Death at the hands of man, he is exempt from payment – **מיתה בידי אדם פטור מן התשלומין** – If one committed a transgression for which he was liable to be executed, even if he was not forewarned and therefore not actually punished, he is nevertheless exempt from any payment for which he may be liable due to this transgression (*Rambam Sefer Nashim, Hilkhot Na'ara Betula* 1:14 and *Sefer Nezikim, Hilkhot Geneiva* 3:2; *Shulḥan Arukh, Hoshen Mishpat* 351).

LANGUAGE

Cold and heat [*tzinim pahim*] – **צינים פחים**: Most commentaries on the book of Proverbs agree that *tzinim pahim* means thorns and traps. However, opinions are divided with regard to its use in the Talmud. *Tosafot* cite several different explanations for these words. Some interpret *tzinim pahim* as gale-force cold winds (Rabbeinu Gershom on *Bava Batra* 144b). Those commentaries who translate *pahim* as heat apparently connect it to the term for coals, *pehamim*, as in the verse "Upon the wicked He shall rain coals [*pahim*], fire, and brimstone" (*Psalms* 11:6).

BACKGROUND

The four death penalties – **ארבע מיתות**: There are four forms of court-administered capital punishment in the Torah. They are, in diminishing order of severity: Stoning, burning, decapitation, and strangulation. Capital cases are adjudicated by a court consisting of twenty-three judges.

ולאפוקי מדרבי נחוניא בן הקנה. דתנאי: רבי נחוניא בן הקנה היה עושה את יום הכפורים כשבת לתשלומין; מה שבת מתחייב בנפשו ופטור מן התשלומין – אף יום הכפורים מתחייב בנפשו ופטור מן התשלומין.

מאי טעמא דרבי נחוניא בן הקנה? אמר אבוי: נאמר "אסון" בידי אדם ונאמר "אסון" בידי שמים, מה "אסון" האמור בידי אדם פטור מן התשלומין, אף "אסון" האמור בידי שמים פטור מן התשלומין.

מתקיף לה רב אדא בר אבהו: ממאי דכי קא מזהר להו יעקב לבניה על צינים ופחים, דבידי שמים נזהר? דלמא על אריא ונבבי, דבידי אדם ניהו? אטו יעקב אהא אזהר, אהא לא אזהר? יעקב על כל מילי אזהר.

וצינים פחים בידי שמים ניהו? והתנאי: הכל בידי שמים חוץ מצינים פחים, שנאמר "צינים פחים בדרך עיקש שומר נפשו ירחק מהם!" ותו: אריא ונבבי בידי אדם ניהו? והאמר רב יוסף, וכן תני רבי חייא: מיום שחרב בית המקדש, אף על פי שבטלו סנהדרין – ארבע מיתות לא בטלו? לא בטלו? הא בטלו להו! אלא:

The Gemara comments: **And the mishna's ruling that one who has relations with his sister is liable to pay the fine comes to exclude the opinion of Rabbi Neḥunya ben HaKana,^{PN} as it is taught in a baraita: Rabbi Neḥunya ben HaKana would render Yom Kippur like Shabbat with regard to payment for damages.^N Just as one who intentionally desecrates Shabbat is liable to receive the death penalty and is therefore exempt from the obligation of payment for damages caused while desecrating Shabbat, so too, one who intentionally desecrates Yom Kippur is liable to receive the death penalty and is therefore exempt from the obligation of payment for damages caused while desecrating Yom Kippur.**

The Gemara asks: **What is the rationale for the opinion of Rabbi Neḥunya ben HaKana? Abaye said: It states the word harm at the hands of man, in the verse "But if any harm follow, then you shall give a soul for a soul" (Exodus 21:23) and it states the word harm at the hand of Heaven, in the verse in which Jacob states: "My son shall not descend with you... and harm befalls him on the way" (Genesis 42:38). Just as with regard to harm that is stated at the hands of man, e.g., one who kills and is liable to be executed, one is exempt from the associated payment,^H so too, with regard to harm that is stated at the hand of Heaven, one is exempt from the associated payment.**

Rav Adda bar Ahava strongly objects to this: **From where is it derived that when Jacob is warning his sons he is warning them about cold and heat [*tzinim pahim*],^{LN} which are at the hand of Heaven? Perhaps he was warning them about a lion and thieves, which are harm at the hands of man, meaning that unlike heat and cold, these dangers are not calibrated by God. The Gemara refutes this: Is that to say that Jacob warned them about this harm at the hand of man, but about that harm at the hand of Heaven he did not warn them? Jacob warned them about all potentially harmful matters that might befall Benjamin, not merely one particular form of catastrophe.**

The Gemara asks: **And are cold and heat at the hand of Heaven? Isn't it taught in a baraita: All matters are at the hand of Heaven except for cold and heat, as it is stated: "Cold and heat are on the path of the crooked, he who guards his soul shall keep far from them" (Proverbs 22:5)? This indicates that cold and heat are forms of harm caused by man, from which one can protect himself. And furthermore, are a lion and thieves forms of harm at the hands of man? But didn't Rav Yosef say, and similarly, didn't Rabbi Ḥiyya teach a baraita: From the day that the Temple was destroyed,^N although the Sanhedrin was abolished the four death penalties^B were not abolished? The Gemara asks: Were they not abolished? It is clear that they were abolished, as today there is neither Sanhedrin nor capital punishment. Rather, it means that although there are no court-imposed executions,**

NOTES

To exclude the opinion of Rabbi Neḥunya ben HaKana – **לאפוקי מדרבי נחוניא בן הקנה**: Some commentaries maintain that this statement relates to that which Rav Ḥisda said: Everyone agrees with regard to one who engaged in forced intercourse with a menstruating woman that he pays the fine. In that statement, Rav Ḥisda rejects the opinion of Rabbi Neḥunya (*Tosafot; Shita Yeshana*, cited in *Shita Mekubbetzet*). However, Rashi and others claim that the Gemara relates to the *halakha* in the mishna with regard to one who rapes his sister. Proof is cited in the *Shita Mekubbetzet* for Rashi's explanation from the fact that the mishna adds the phrase: Although there is *karet* for them, which underscores the fact that despite the prohibition involving *karet* Rabbi Neḥunya's opinion is not taken into account.

The opinion of Rabbi Neḥunya ben HaKana – **ישית רבי נחוניא** – Rabbi Neḥunya's opinion is based on two fundamental reasons that are basically accepted by most *tanna'im*. First, one is not punished twice for the same transgression, as the Gemara later explains at length. Second, there is a principle that

one receives the greater of two punishments. Rabbi Neḥunya reasons: Since this transgression entails *karet*, it is sufficient that one receive that severe punishment and not be liable to pay. Another factor taken into consideration by Rabbi Neḥunya, as mentioned in the Gemara briefly, is that wherever the Torah imposes the death penalty it does not render one liable to receive any other punishment, and *karet* is essentially death at the hand of Heaven. The Rabbis respond that these principles apply only to punishments administered by man, but not to penalties administered by Heaven. Furthermore, when one's punishment is at the hand of Heaven he can repent, gain atonement for his sin, and avert his punishment. That is not the case with regard to punishments administered by man (Meiri).

Cold and heat [*tzinim pahim*] – **צינים פחים** – Rashi and most commentaries explain these words as meaning cold and heat. The Rashbam maintains that *tzinim* is a form of the word *tzina*, meaning cold, while *pahim* means trap (see *Tosafot*). Rashi and other commentaries explain the verse in Proverbs in an entirely

different manner, unrelated to cold and heat. In any case, the idea is that most suffering cannot be prevented no matter what precautions a person takes, except for those matters caused by negligence (see *Tosafot; Ramban*).

From the day that the Temple was destroyed – **מיום שחרב בית המקדש**: *Tosafot* question this statement, as it is well known that the courts ceased adjudicating capital cases before the destruction of the Temple. They answer that even so, these judgments were not entirely abrogated at the time. Furthermore, as long as the Temple was standing it afforded atonement for certain types of sins through the priestly vestments and the scapegoat. The *Shita Yeshana*, cited in the *Shita Mekubbetzet*, explains that Rabbi Ḥiyya spoke in general terms and did not insist on precision with regard to the date, as it roughly coincided with the destruction. Likewise, it can be explained that even while the Temple was standing, if the Sanhedrin did not have the authority to impose judgment, violators would be punished at the hand of Heaven.

LANGUAGE

Diphtheria [*serunki*] – סְרוּנְכִי: An extension of the Hebrew/Aramaic roots *samekh, nun, kaf* or *shin, nun, kuf*, and the verb, *lesarneq*, meaning strangulation. The reference here is most likely to diphtheria, which causes the blockage of the trachea and death by strangulation.

HALAKHA

A non-priest who ate *teruma* – זָר שָׁאֵבֵל תְּרוּמָה: A non-priest who intentionally ate *teruma* is liable to receive death at the hand of Heaven. If he was forewarned, he is flogged and need not pay for the *teruma* he ate, as one does not both receive lashes and pay. The *halakha* is not decided based on the Gemara here, which is in accordance with the opinion of Rabbi Neḥunya. Rather, it is in accordance with the conclusion in tractate *Terumot* of the Jerusalem Talmud (Rambam *Sefer Zera'im, Hilkhot Terumot* 6:6 and *Kesef Mishne* there).

דִּין אַרְבַּע מִיתוֹת לֹא בָטְלוּ: מִי שֶׁנִּתְחַיֵּב סָקִילָה – אוֹ נוֹפֵל מִן הַגֶּגֶג, אוֹ חִיָּה דוֹרְסָתוֹ. וְכִי שֶׁנִּתְחַיֵּב שְׂרִיפָה – אוֹ נוֹפֵל בְּדִלְיָקָה, אוֹ נֹחֵשׁ מִכִּישׁוֹ. וְכִי שֶׁנִּתְחַיֵּב הַרְגָה – אוֹ נִמְסָר לַמַּלְכוּת, אוֹ לִיֶּסְטִים בְּאֵין עָלָיו. וְכִי שֶׁנִּתְחַיֵּב חֲנֶק – אוֹ טוֹבֵעַ בְּנֶהֱרַ, אוֹ מֵת בְּסִרוּנְכִי אֶלֶּא אִיפּוּךְ: אֲרִיא וְגַנְבִי – בְּיַדֵי שָׂמִים, צִיָּנִים וּפְחִים – בְּיַדֵי אָדָם.

רָבָא אָמַר: טַעֲמָא דְרַבִּי נְחוּנְיָא בֶּן הַקָּנָה מִהָבָא: "וְאִם הָעָלַם יַעֲלִימוּ עִם הָאָרֶץ אֶת עֵינֵיהֶם מִן הָאִישׁ הַהוּא בְּתַתּוֹ מוֹרְעוֹ לְמוֹלֵךְ וְשִׁמְתִי אָנִי אֶת פְּנֵי בְּאִישׁ הַהוּא וּבְמִשְׁפַּחְתּוֹ וְהִכַּרְתִּי אוֹתוֹ" אָמְרָה תוֹרָה: כִּרְתֵּן שְׁלִי כְּמִיתָה שְׁלָכֶם, מִה מִיתָה שְׁלָכֶם – פְּטוֹר מִן הַתְּשֻׁלוּמִין, אִף כִּרְתֵּן שְׁלִי – פְּטוֹר מִן הַתְּשֻׁלוּמִין.

מֵאִי אֵיכָּא בֵּין רָבָא לְאַבְיִי? אֵיכָּא בֵּינֵיהוּ זָר שָׁאֵבֵל תְּרוּמָה. לְאַבְיִי פְטוֹר, וְלְרָבָא חַיֵּיב.

the punishment of the four death penalties was not abolished.^N How so? One who was liable to be executed by stoning either falls from the roof or a beast tramples him. That is similar to stoning, which involves being pushed off an elevated place and then stoned. And one who was liable to be executed by burning either falls into a conflagration or a snake bites him, which creates a burning sensation. And one who was liable to be executed by decapitation is either handed over to the ruling monarchy for execution by sword, or bandits attack and kill him. And one who was liable to be executed by strangulation either drowns in a river, or dies of diphtheria [*serunki*].^L Rather, reverse the order of the previous statement: A lion and thieves are cases of harm at the hand of Heaven,^N while cold and heat are cases of harm at the hands of man.^N

Rava said an additional explanation: The rationale for the opinion of Rabbi Neḥunya ben HaKana is from here. It is written that one who gives his children to Molech is liable to be executed by stoning: "And if the people of the land do at all hide their eyes^N from that man, when he gives of his seed to Molech, and do not put him to death; then I will set My face against that man and against his family, and will cut him off [*vehikhrati*]" (Leviticus 20:4–5). Through the juxtaposition in this verse the Torah said: My *karet* is like your death penalty; just as one who is liable to receive your death penalty is exempt from the associated payments, so too, one who is liable to receive My *karet* is exempt from the associated payments.

The Gemara asks: What practical difference is there between the opinions of Rava and Abaye with regard to the rationale for the opinion of Rabbi Neḥunya ben HaKana? The Gemara answers: There is a difference between them with regard to a non-priest who intentionally ate *teruma*.^{HN} According to Abaye he is exempt from paying the priest the value of the *teruma*, as a non-priest who ate *teruma* is liable to receive death at the hand of Heaven. Abaye maintains that the legal status of all forms of death at the hand of Heaven is equivalent to that of death at the hands of man, and therefore, one is exempt from payment. And according to Rava, who derives the rationale from the juxtaposition between *karet* and death at the hands of man, since a non-priest who ate *teruma* is not liable to receive *karet*, he is liable to pay the priest for the *teruma* that he ate.

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The punishment of the four death penalties was not abolished – דִּין אַרְבַּע מִיתוֹת לֹא בָטְלוּ: *Tosafot* ask: Aren't there many wicked people who die peacefully and are not punished in these manners? They answer that sometimes the punishment is waived if they repented. Similarly, the Rambam writes that their other merits can protect them, as one is not in a position to assess the actions of others and determine the precise punishment that they deserve. In the *Shita Mekubbetzet* and in the commentary of the Ritva, the explanation is that punishment meted out in this world corresponds to the four death penalties. Not all wicked people are punished in this manner, however, as some enjoy peace in this world to facilitate their more severe punishment in the next world. In the *Shita Mekubbetzet* it is explained that only those who were forewarned and sinned in the presence of witnesses are subject to these punishments, and if the courts had the authority they would have administered the four death penalties.

A lion and thieves are at the hand of Heaven – אֲרִיא וְגַנְבִי: The early commentaries ask: How can any harm be deemed at the hands of man, if even these are considered to

be caused by Heaven? They answer, based on Rashi, that when the verse states: "And yet no harm follow, he shall be punished" (Exodus 21:22), harm refers to court-administered death penalties (Ramban). The Ra'ah likewise explains that since the death penalty is imposed due to the misguided choices of the sinner, it is parallel to cold or heat, as there too one's failure to take precautions leads to harm.

Cold and heat are at the hands of man – צִיָּנִים וּפְחִים בְּיַדֵי אָדָם: Rabbeinu Hananel explains that suffering from cold and heat is sometimes at the hands of man, such as when one carelessly exposes himself to extreme temperatures, and sometimes at the hand of God. Some commentaries maintain that the version of the Gemara before Rabbeinu Hananel reflects this explanation.

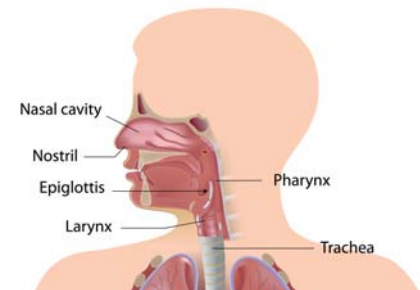
And if the people of the land do at all hide their eyes – וְאִם הָעָלַם יַעֲלִימוּ עִם הָאָרֶץ: In the *Shita Mekubbetzet*, the question is raised: Why does the Gemara cite this verse rather than the preceding one: "And I will set My face against that man, and will cut him off from among his people, because he has given

of his seed unto Molech" (Leviticus 20:3)? The answer is that the preceding verse first refers to one who sinned intentionally but without forewarning or without witnesses, and therefore there is no parallel to one who is liable to receive the death penalty. The Gemara therefore cites a verse that deals with one who was liable to receive court-administered execution, in which case the parallel between the death penalties administered by Heaven and by the court is clear.

A non-priest who ate *teruma* – זָר שָׁאֵבֵל תְּרוּמָה: The punishment for a non-priest who intentionally ate *teruma* is death at the hand of Heaven, as it is written: "And they shall die therein if they profane it" (Leviticus 22:9). In several places the Gemara explains that although *karet* is also a death penalty at the hand of Heaven, there is a difference between the two. *Karet* is a more severe punishment, as one dies younger and sometimes one's family is also eliminated. This is especially true according to the explanation of the Rambam, who maintains that *karet* entails the soul ceasing to exist. Since death at the hand of Heaven is less severe, it is possible that even according to Rabbi Neḥunya the sinner would not be exempt from payment.

Fat – חלב: The reference is to forbidden animal fats prohibited by Torah law, in contrast to animal fats that are permitted. One who partakes of forbidden fats of a kosher domesticated animal is liable to receive *karet* (Leviticus 7:22–25). One who partakes of those fats unwittingly is liable to bring a sin-offering. It is permitted to eat the fats of non-domesticated kosher animals and of kosher birds. Among the indicators distinguishing forbidden and permitted fats is that the forbidden fats are concentrated in certain areas in the animal's body, form an independent unit, and are not attached to the muscle. They are surrounded by a thin membrane and can easily be peeled away from the meat. Most forbidden fats of a consecrated animal were offered on the altar.

Pharynx – בית הבליעה: This is located in the back of the mouth. Food reaching the pharynx activates a swallowing reflex. At that point, it is only with great effort that one could prevent the food from being swallowed.



Location of the pharynx

HALAKHA

With regard to one who steals another's forbidden fat and eats it – בגונב חלב של חבירו ואכלו: One who steals forbidden fat from another and eats it must pay him the value of the fat. The *Sma* and others maintain that this is the *halakha* when one lifted the forbidden fat before consuming it. The *Shakh* notes that this is unnecessary, as the *halakha* is in accordance with the opinion of the Sages that even one who is liable to receive *karet* is obligated to pay for damage that he caused (Rambam *Sefer Nezikim, Hilkhot Geneva* 2:4; *Shulhan Arukh, Hoshen Mishpat* 350).

ולאבי פטור? והאמר רב חסדא: מודה רבי נחוניא בן הקנה בגונב חלב של חבירו ואכלו – שהוא חייב, שכבר נתחייב בגניבה קודם שבא לידי איסור חלב. אלמא, דמעידנא דאגביה קנייה, מתחייב בנפשו לא הוה עד דאכיל ליה. הכא נמי, בעידנא דאגביה קנייה, מתחייב בנפשו לא הוה עד דאכיל ליה! הכא במאי עסקינן – בגון שתתב לו חבירו לתוך פיו.

סוף סוף, כיון דלעסיה – קנייה, מתחייב בנפשו לא הוה עד דבלעה! בגון שתתב לו לתוך בית הבליעה. היכי דמי? אי דמצי לאהדורה – ניהדר, אי לא מצי לאהדורה – אמאי חייב? לא צריכא, דמצי לאהדורה על ידי הדחק.

רב פפא אמר: בגון שתתב לו חבירו משקין של תרומה לתוך פיו. רב אשי אמר: בוד שאכל תרומה משלו,

The Gemara asks: **And according to Abaye, is a non-priest actually exempt from payment for the *teruma*? But didn't Rav H̄isda say that Rabbi Neḥunya ben HaKana concedes^N with regard to one who steals another's forbidden fat^B and eats it^H that he is obligated to pay for the fat, even though he is liable to receive *karet*, as he was already liable for theft before he came to violate the prohibition against eating forbidden fat? Apparently, from the moment he lifts the fat to steal it he acquired it,^N and he bears responsibility to repay it, but he is liable to receive the death penalty only when he eats it. Here, too, with regard to a non-priest who ate *teruma*, at the moment he lifts the *teruma* he acquired it and is responsible to repay it, and he is liable to receive the death penalty only when he eats it.** The Gemara answers: **With what are we dealing here?** It is a case where another inserted the *teruma* into his mouth. In that case, acquisition and liability to receive the death penalty are simultaneous.

The Gemara asks: **Ultimately, once he chewed the *teruma* he acquired it^N and is liable to pay, and he is liable to receive the death penalty only when he swallows it.^N** Since the two are not simultaneous, he should be liable to pay. The Gemara answers: It is a case where another inserted it into the pharynx,^B so the liability for payment and liability for the death penalty were both achieved through swallowing. The Gemara asks: **What are the circumstances? If it is possible to retrieve the *teruma* by removing it without ruining it, let him retrieve it.** If one does so, he would not be liable to pay. If he fails to do so, liability or payment precedes liability for the death penalty. **If it is not possible to retrieve^N the *teruma*, why is he liable?** He did nothing; another person inserted the food in his throat. The Gemara answers: It is necessary only in a situation where it is possible to retrieve the *teruma* under duress, with great effort.

Rav Pappa said: It is referring to a case where another inserted liquids of *teruma* into his mouth. As soon as the liquid enters his mouth, it is ruined. Therefore, the acquisition and his enjoyment are simultaneous. **Rav Ashi said:** It is referring to a non-priest who partook of his own *teruma*,^N e.g., if the non-priest inherited *teruma* from a priest, or acquired ownership from a priest. In that case, he did not steal the *teruma* and there is no payment for it, but he is liable to receive the death penalty for eating *teruma*,

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מוֹדָה רַבִּי נְחוּנְיָא וְכוּ' – Rabbi Neḥunya...concedes, etc. – The Ramban asks: What is novel in Rav H̄isda's statement, as clearly, with regard to a violation punishable by a court-administered death penalty, Rabbi Neḥunya does not rule more stringently than do the Rabbis, who hold that if one does not incur the liability to be executed and the liability to pay simultaneously he is executed and also pays the damages? The Ramban answers: It is possible that Rav H̄isda is teaching that the act of lifting the forbidden fat is not considered part of eating but is instead a separate act of acquisition. Furthermore, since Rabbi Neḥunya is lenient with regard to payment, it was necessary to emphasize that even he deems the offender liable in this case.

מֵעֵיְדָנָא – From from the moment he lifts it he acquired it – דאגביה קנייה: As explained below, it is necessary to precisely define the moment when a particular act is considered theft. Although in the case of misappropriation of a deposit one is liable for merely planning to do so, that is not the case with regard to theft. Instead, the Sages established lifting as the determining factor in theft. One of the ramifications of this determination is with regard to the liability of the thief for damage to the object from the moment he acquired it through the act of theft, even if he derived no benefit from it. Removing an item from its owner's domain also constitutes an act of theft, even if one did not lift it, as explained later in the Gemara.

כִּיּוֹן דְּלַעֲסִיָּה קִנְיָה – Once he chewed it he acquired it – The Meiri maintains that this phrase is superfluous, as merely holding food in one's mouth acquires the food. He suggests that perhaps the

thief must perform an action that demonstrates his consent to the proceedings (see Maharam Schiff).

He is liable to receive the death penalty only when he swallows it – מתחייב בנפשו לא הוה עד דבלעה: The Rosh asks why he is liable only when he swallows the *teruma* if the *teruma* is already profaned when he chews it. He answers that when the Sages said that one who uses *teruma* profanes it, that is only the case when one uses *teruma* and thereby completes his enjoyment of the food. Here, however, the chewing was not the final stage, as he swallowed it thereafter, and only at that point is the *teruma* profaned (see *Tosafot Yeshanim*).

If it is not possible to retrieve – אי לא מצי לאהדורה – The Ritva explains that this can also be referring to a case when another inserted the *teruma* with one's knowledge and consent. *Tosafot* approach this possibility from a different perspective. Some write that although he agreed to have the *teruma* placed in his mouth, he did not intend for it to be shoved in so far that he could not change his mind (see Meiri).

Who partook of his own *teruma* – שאכל תרומה משלו: The Rashba and others state that this does not mean that it is only in a case where the *teruma* is his; rather, Abaye maintains that he is exempt from punishment for tearing his friend's silk even if the *teruma* was his. An issue addressed by the later commentaries is that if the *teruma* belonged to him he could request that a Sage dissolve the consecration of the *teruma*, as that consecration is like any other vow that can be dissolved in that manner (see *Taz, Nekuddot Hakesef*, and *Sefer Hafla'a*).