LANGUAGE

Silk [*shira'in*] – שִׁירָאִין: From the Greek σηρικόν, *sērikon*, a particular variety of silk.

HALAKHA

One who shoots an arrow, etc. – הַזּוֹרֵק חֵץ וכו׳: If one shoots an arrow four cubits in the public domain on Shabbat and it tears silk along its path, he is exempt from payment for the damage as the Shabbat desecration and the damage occur simultaneously. This is in accordance with the statement of Rabbi Avin (Rambam *Sefer Nezikim*, *Hilkhot Geneiva* 3:2).

וְקָרַע שִׁירָאִין שֶׁל חֲבֵירוֹ.

and at the same time **he tore another's silk** [***shira'in***].[LN] The question is whether the liability to receive the death penalty exempts him from the liability for payment incurred at precisely the same moment.

גּוּפָא, אָמַר רַב חִסְדָּא: מוֹדֶה רַבִּי נְחוּנְיָא בֶּן הַקָּנָה בִּגּוֹנֵב חֵלְבּוֹ שֶׁל חֲבֵירוֹ וַאֲכָלוֹ – שֶׁהוּא חַיָּיב שֶׁכְּבָר נִתְחַיֵּיב בִּגְנֵבָה קוֹדֶם שֶׁיָּבֹא לִידֵי אִיסּוּר חֵלֶב. לֵימָא פְּלִיגָא דְּרַבִּי אָבִין, דְּאָמַר רַבִּי אָבִין: הַזּוֹרֵק חֵץ מִתְּחִילַּת אַרְבַּע לְסוֹף אַרְבַּע וְקָרַע שִׁירָאִין בַּהֲלִיכָתוֹ – פָּטוּר, שֶׁעֲקִירָה צוֹרֶךְ הַנָּחָה הִיא. הָכָא נַמִּי – הַגְבָּהָה צוֹרֶךְ אֲכִילָה הִיא.

§ The Gemara analyzes **the** matter **itself. Rav Ḥisda said: Rabbi Neḥunya ben HaKana concedes in** the case of one who **steals another's** forbidden **fat and eats it that he is obligated** to pay for the fat, **as he is already liable for theft before he comes to** violate **the prohibition** against eating forbidden **fat.** The Gemara comments: **Let us say** that Rav Ḥisda **disagrees** with **Rabbi Avin, as Rabbi Avin said: One who shoots an arrow**[H] **from the beginning of four** cubits **to the end of four** cubits in the public domain on Shabbat, thereby performing a prohibited labor for which he is liable to receive a court-imposed death penalty, **and** the arrow **ripped silk as it proceeds, is exempt** from the obligation to pay for the silk because he is liable for the more severe punishment for desecrating Shabbat. Although the silk was ripped prior to completion of the prohibited labor, as the arrow had not yet come to rest, he is nevertheless exempt, **as lifting is a prerequisite for placement.** The prohibited labor of carrying on Shabbat[N] is comprised of lifting of the object and placement. Once he shot the arrow, its movement through the air is a continuation of his act of Shabbat desecration, for which he is liable to be executed. **Here, too,** say that **lifting** the fat **is a prerequisite for eating,** and therefore he should be exempt from payment.

הָכִי הָשְׁתָּא? הָתָם – אִי אֶפְשָׁר לְהַנָּחָה בְּלֹא עֲקִירָה, הָכָא אֶפְשָׁר לַאֲכִילָה בְּלֹא הַגְבָּהָה, דְּאִי בָּעֵי – גָּחֵין וְאָכֵיל. אִי נַמִּי: הָתָם, אִי בָּעֵי לְאַהֲדוּרֵי לָא מָצֵי מַהֲדַר לָהּ, הָכָא – מָצֵי מַהֲדַר לָהּ.

The Gemara refutes this argument: **How can** these cases **be compared? There,** in the case of the arrow, **placement is impossible without lifting,** as placement without lifting is not a labor prohibited on Shabbat. Therefore, lifting and placement are a single unit. In contrast, **here, eating is possible without lifting as, if one wishes,** he could **bend down and eat**[N] without lifting the food to his mouth. **Alternatively,** there is another difference between the cases: **There,** in the case of the arrow, even **if he seeks to take back**[N] the arrow after shooting it, **he cannot take it back;** therefore, lifting and placement constitute one action. **Here, he could replace** the fat after lifting it.

NOTES

And he tore another's silk – וְקָרַע שִׁירָאִין שֶׁל חֲבֵירוֹ: Rashi, the Ra'avad, and the Meiri maintain that Rav Ashi's statement is in accordance with the opinion that the principle that a guilty person receives the greater punishment applies in a case where his liability to be executed is due to the effect of his actions on one person and his liability to pay is due to the effect of his actions on another. This applies not only if the two liabilities were incurred by a single act, e.g., killing a slave, which renders him liable to be executed for killing the slave and liable to pay the value of the slave to his master. It applies even if he performed two separate actions, as in this case, when he ate *teruma* and tore silk. Some commentaries explain that this refers to silk wrapped around his neck that he tore in the course of eating the *teruma* (*Shita Mekubbetzet*). However, *Tosafot* and most early commentaries contend that this is not actually a case of death to one person and payment to another, as death at the hand of Heaven is not the result of a sin committed against a particular person. Rather, the novel element is that he is exempt from payment even though he performed two separate actions.

The prohibited labor of carrying out on Shabbat – מְלֶאכֶת הוֹצָאָה בְּשַׁבָּת: One of the thirty-nine categories of labor that are prohibited on Shabbat by Torah law is the labor of carrying out, which is treated in detail in a significant portion of tractate *Shabbat*. The labor of carrying out includes two different situations: First, transfer of an object from the private to the public domain or vice versa, regardless of the distance the item was moved; second, carrying an object four cubits in the public domain. Despite the differences between these scenarios, they share several common elements. In both cases, the object in question is lifted from a significant surface with a minimum requisite area and is then placed on another similar surface. If only one of the stages, lifting or placing, was performed by an individual or if each was performed by a different person, it does not constitute labor prohibited on Shabbat by Torah law.

If one wishes, he could bend down and eat – דְּאִי בָּעֵי גָּחֵין וְאָכֵיל: Consistent with his explanation in parallel discussions, Rashi explains here that one who lifts an object acquires it only if he lifted it more than three handbreadths off the ground. Therefore, if he crouched and stood less than three handbreadths off the ground and ate, he did not acquire the food through lifting. Some early commentaries (*Tosafot*) question Rashi's explanation, as it appears from several sources that one acquires the object even by lifting it by less than three handbreadths off the ground. In fact, the Ran states that according to this opinion one must crouch below one handbreadth, as he maintains that by lifting less than one handbreadth off the ground one does not acquire an object. The Meiri, who agrees with Rashi, resolves the difficulty and explains that those sources according to which an acquisition is accomplished by lifting less than three handbreadths are referring to acquisition by rabbinic law. The early commentaries raise an additional difficulty: Independent of lifting, one should acquire the food when it enters his mouth. Therefore, *Tosafot* and other early commentaries explain that the forbidden fat was on a skewer, and he placed it directly at his pharynx when he crouched. Others explain that this matter of crouching and eating is not the primary answer, which is that lifting and placing are integral to the labor of carrying out, whereas lifting fat is not integral to its consumption (Rashba; Ra'ah).

If he seeks to take back – אִי בָּעֵי לְאַהֲדוּרֵי: This appears to mean that the prohibited labor of carrying out begins with the shooting of the arrow, an act that cannot be reversed. The Ramban, however, explains that the shooting of the arrow necessarily entails the tearing of the silk as it moves, which is not the case with the moving knife. Rashi indicates likewise (see Ramban and *Shita Mekubbetzet*).

מַאי אִיכָּא בֵּין הַאי לִישָּׁנָא לְהַאי לִישָּׁנָא? אִיכָּא בֵּינַיְיהוּ הַמַּעֲבִיר סַכִּין בִּרְשׁוּת הָרַבִּים, וְקָרַע שִׁירָאִין בַּהֲלִיכָתוֹ. לְהַךְ לִישָּׁנָא דְּאָמְרַתְּ אִי אֶפְשָׁר לְהַנָּחָה בְּלֹא עֲקִירָה – הָכָא נַמִּי אִי אֶפְשָׁר לְהַנָּחָה בְּלֹא עֲקִירָה. לְהַךְ לִישָּׁנָא דְּאָמְרַתְּ לָא מָצֵי מַהֲדַר לָהּ – הָכָא מָצֵי מַהֲדַר לָהּ.

The Gemara asks: **What** practical difference **is there between this formulation,** where the criterion is whether the second stage could be performed independent of the first stage, **and that formulation,** where the criterion is whether the second stage is inevitable after performing the first stage? The Gemara responds: **There is** a practical difference **between them** with regard to **one who carries**[N] **a knife in the public domain and tears silk as he proceeds. According to that formulation, where you said: Lifting is a prerequisite for placement, here too, lifting is a prerequisite for placement.** As these two stages are inexorably connected, they constitute one action, and the one carrying the knife is exempt from paying the damages. Conversely, **according to that formulation where you said: He cannot take back** the arrow and that is why they are considered one action, **here, he can take back** the knife; therefore, lifting and placement are separate actions and he is not exempt from punishment for the damages that he caused.

גּוּפָא, אָמַר רַבִּי אָבִין: הַזּוֹרֵק חֵץ מִתְּחִלַּת אַרְבַּע לְסוֹף אַרְבַּע, וְקָרַע שִׁירָאִין בַּהֲלִיכָתוֹ – פָּטוּר, שֶׁעֲקִירָה צוֹרֶךְ הַנָּחָה הִיא. מְתִיב רַב בֵּיבָי בַּר אַבָּיֵי: הַגּוֹנֵב כִּיס בְּשַׁבָּת – חַיָּיב, שֶׁכְּבָר נִתְחַיֵּיב בִּגְנֵיבָה קוֹדֶם שֶׁבָּא לִידֵי אִיסּוּר סְקִילָה. הָיָה מְגָרֵר וְיוֹצֵא, מְגָרֵר וְיוֹצֵא – פָּטוּר, שֶׁהֲרֵי אִיסּוּר שַׁבָּת וְגֵנֵיבָה בְּאִין כְּאֶחָד.

§ The Gemara analyzes **the** matter **itself. Rabbi Avin said:** With regard to **one who shoots an arrow from the beginning of four** cubits **to the end of four** cubits **and** the arrow **rips silk as it proceeds, he is exempt, as lifting is a prerequisite for placement. Rav Beivai bar Abaye raised an objection** from that which is taught in a *baraita*: **One who steals a purse on Shabbat**[H] **is liable** for the theft **because he was already liable for theft** as soon as he lifted the purse. This took place **before he came to** violate **the prohibition** against performing prohibited labor on Shabbat by carrying it into the public domain, a violation punishable by **stoning.** However, if he did not lift the purse but **was dragging** it on the ground **and exiting**[NH] the private domain, **dragging and exiting, he is exempt, as the prohibition** against **theft and the prohibition of Shabbat** are violated **simultaneously** when he drags the purse out of the owner's property and into the public domain.

וְאַמַּאי? הָכָא נַמִּי לֵימָא הַגְבָּהָה צוֹרֶךְ הוֹצָאָה הִיא! הָכָא בְּמַאי עָסְקִינַן – כְּגוֹן שֶׁהִגְבִּיהוֹ עַל מְנָת לְהַצְנִיעוֹ וְנִמְלַךְ עָלָיו וְהוֹצִיאוֹ.

Rav Beivai concludes: **But why** is he liable if he carried the purse? **Here, too, let us say** that **lifting is a prerequisite for carrying out,**[N] and therefore the theft was performed in the course of performance of the prohibited labor and he is exempt. The Gemara answers: **With what are we dealing here?** We are dealing with a case **where he lifted** the pouch **in order to conceal it** in the same domain, not to carry it out into the public domain, **and he reconsidered** his plan with regard to the purse **and carried it out.** In that case the act of lifting was not performed for the purpose of carrying out. Therefore, he is not exempt from the obligation to pay for the theft.

וְכִי הַאי גַּוְונָא מִי חַיָּיב? וְהָאָמַר רַב סִימוֹן אָמַר רַבִּי אַמִּי אָמַר רַבִּי יוֹחָנָן: הַמְפַנֶּה חֲפָצִים מִבַּיִת לְבַיִת, וְנִמְלַךְ עֲלֵיהֶם וְהוֹצִיאָן – פָּטוּר, שֶׁלֹּא הָיְתָה עֲקִירָה מִשָּׁעָה רִאשׁוֹנָה לְכָךְ!

The Gemara asks: **And in a case like that,** where he reconsidered, **is** one **liable** for carrying out an object on Shabbat? **But didn't Rav Simon say** that **Rabbi Ami said** that **Rabbi Yoḥanan said: One who moves objects from** one **corner** of his house to another **corner** on Shabbat, **and he reconsidered** his plan in **their** regard after lifting them **and carried them out** into the public domain, he is **exempt, as the** act of **lifting was not initially** performed **for that** purpose of carrying from one domain to another. Here, too, since the thief did not lift the pouch with the intention of carrying it out, he is not liable to be stoned.

NOTES

There is a difference between them with regard to one who carries – אִיכָּא בֵּינַיְיהוּ הַמַּעֲבִיר: The early commentaries point out that the Gemara could also have said that there is a difference between the two opinions with regard to one who ate forbidden fat that was inserted into his throat by another. According to the approach that lifting is a prerequisite for placing, here too, placing food in one's mouth is a prerequisite for eating and the two actions can be regarded as simultaneous. According to the opinion that the decisive factor is one's ability to take back the object, in this case one can extract the food after it was placed in one's mouth and therefore the actions are not regarded as simultaneous. (Ritva).

If he was dragging and exiting – הָיָה מְגָרֵר וְיוֹצֵא: The Ramban asks: If he was dragging the object and never lifted it at all, the prohibited labor of carrying out was never completely performed even when the item reached the public domain. The Ra'avad resolves this difficulty and explains that lifting is required only for carrying four cubits in the public domain. However, for transfer of an object from one domain to another one need not lift it completely off the ground, as the very transfer to a different domain is tantamount to lifting. The Ramban explains that in talmudic times the entrance to the private domain was three handbreadths higher than the private domain, and therefore taking an object out of the private domain would necessarily include lifting. Yet others contend that this is not difficult to explain at all, as lifting is required for the object to be considered to have been moved only with regard to an object that remains in place. However, with regard to an object that one is dragging, where he moves the entire object, that itself is considered full-fledged lifting (*Tosafot* on *Shabbat* 8b; Rashba; Ra'ah).

Lifting is a prerequisite for carrying out – הַגְבָּהָה צוֹרֶךְ הוֹצָאָה הִיא: Here too, it could nevertheless be asserted that lifting is not integral to carrying out, as one could drag the object without lifting it, or, according to the other opinion, one could reverse the process. Some commentaries do state that the Gemara could have raised these questions but opted not to raise all possible difficulties. The Ramban claims that this is not difficult to explain, as the Gemara is saying merely that one cannot be liable for placement without lifting; therefore, from the moment one lifts the object he begins assuming liability (see *Tosafot*).

HALAKHA

One who steals a purse on Shabbat – הַגּוֹנֵב כִּיס בְּשַׁבָּת: One who steals a purse on Shabbat by lifting it in the owner's domain, is obligated to pay damages even if he later carried it out to the public domain, because the theft preceded the desecration of Shabbat. The *Kesef Mishne* notes that the Rambam omits the Gemara's explanation in this regard because he rules in accordance with the formulation that the decisive factor is whether or not one can take back the object. As the discussion in the Gemara is focused on Rabbi Avin's formulation, it is not relevant to the *halakha*. Therefore, the Rambam omits it (Rambam *Sefer Nezikim*, *Hilkhot Geneiva* 3:2; *Shulḥan Arukh*, *Ḥoshen Mishpat* 351).

If he was dragging and exiting – הָיָה מְגָרֵר וְיוֹצֵא: If one stole a purse on Shabbat without lifting it, but instead dragged it through the owner's property until he reached the public domain, he is exempt from payment, as the desecration of Shabbat and the theft occur simultaneously (Rambam *Sefer Nezikim*, *Hilkhot Geneiva* 3:2; *Shulḥan Arukh*, *Ḥoshen Mishpat* 351).

לָא תֵּימָא עַל מְנָת לְהַצְנִיעוֹ, אֶלָּא אֵימָא עַל מְנָת לְהוֹצִיאוֹ, הָכָא בְּמַאי עָסְקִינַן – בְּכִשְׁעָמַד.

The Gemara emends the previous answer: **Do not say** that he lifted it **in order to conceal it;**[N] **rather, say** that he lifted it **in order to carry it out.** Nevertheless, the case of shooting the arrow and the case of stealing the purse are different, as **with what** case **are we dealing here?** It is a case **where he stopped**[H] in the courtyard before taking the pouch out to the public domain. Therefore, the initial lifting is exclusively theft and not the start of a prohibited labor, as by stopping, he separated the lifting from the carrying out.

עָמַד לְמַאי? אִי לְכַתֵּף – אוֹרְחֵיהּ הוּא! אֶלָּא בְּעוֹמֵד לָפוּשׁ, אֲבָל לְכַתֵּף מַאי?

The Gemara asks: This is a case where he **stopped. For what** purpose did he stop? **If** he stopped in order **to** adjust the burden on his **shoulder,** that **is** the typical **manner** of proceeding and would not be considered an interruption in the process of carrying out the object. **Rather,** it must be **in** a case of one who **stopped to rest,** and when he resumes moving he initiates a separate action. The Gemara infers: **But** if he stopped in order **to** adjust the burden on his **shoulder, what** is the *halakha*?

NOTES

Do not say in order to conceal it, etc. – לָא תֵּימָא עַל מְנָת לְהַצְנִיעוֹ וכו׳: In the *Shita Mekubbetzet* it is explained that many variant versions of the text omit this answer, which may have been inserted under the influence of Rashi's explanation. One can then move to the next explanation in the Gemara with regard to one who stopped, thereby interrupting the transfer of the object.

HALAKHA

Where he stopped – כְּשֶׁעָמַד: One who was carrying an object in the public domain and stopped after walking less than four cubits is exempt. This applies only if he stopped in order to rest; however, if he paused to adjust his burden he is considered to still be in the process of walking, and therefore when he traverses four cubits and stops, he is liable (Rambam *Sefer Zemanim*, *Hilkhot Shabbat* 13:10).

Perek **III**
Daf **31** Amud **b**

פָּטוּר, אַדְּתָנֵי הָיָה מְגָרֵר וְיוֹצֵא מְגָרֵר וְיוֹצֵא פָּטוּר, נִפְלוֹג וְנֵיתְנֵי בְּדִידָהּ: בַּמֶּה דְּבָרִים אֲמוּרִים בְּעוֹמֵד לָפוּשׁ, אֲבָל לְכַתֵּף – פָּטוּר!

He would be **exempt.** If that is the case, **rather than teaching:** If **he was dragging and exiting, dragging and exiting, he is exempt, let** the *tanna* **distinguish and teach** the distinction **within** the case of carrying **itself,** as follows: **In what** case **are these matters stated?** It is **in** a case where **he stopped to rest; however,** if **he stopped to** adjust the burden on his **shoulder,** he is **exempt.**

אֶלָּא הָא מַנִּי – בֶּן עַזַּאי הִיא, דְּאָמַר: מְהַלֵּךְ כְּעוֹמֵד דָּמֵי. אֲבָל זוֹרֵק מַאי – פָּטוּר, נִיפְלוֹג [וְנֵיתְנֵי] בְּדִידָהּ: בַּמֶּה דְּבָרִים אֲמוּרִים – בִּמְהַלֵּךְ, אֲבָל זוֹרֵק – פָּטוּר!

Rather, the Gemara explains why one is liable in the case where he carries the purse. In accordance with **whose** opinion was **this** *halakha* taught? **It is** in accordance with the opinion of **ben Azzai,** who **said:** The legal status of **one who walks is like** that of **one who stops,**[N] as each step constitutes a pause between the actions of lifting and placement. Therefore, the initial lifting is not part of the prohibited labor of carrying out. The Gemara infers: **But** if **one throws** the object into another domain, **what** is the *halakha*? He would be **exempt** from payment, as the lifting is the start of the prohibited labor of carrying out. If so, **let** the *tanna* **distinguish and teach** the distinction **within** the case **itself,** without resorting to the case of dragging and exiting, as follows: **In what** case **are these matters stated?** It is in the case of **one who walks,** so that there is separation between lifting and carrying out, and therefore the theft and the desecration of Shabbat are not simultaneous. **However, one who throws** is **exempt** from payment, as liability for carrying out and for theft are incurred simultaneously.

מָגְרֵר וְיוֹצֵא אִיצְטְרִיכָא לֵיהּ, סָלְקָא דַּעְתָּךְ אָמִינָא: אֵין דֶּרֶךְ הוֹצָאָה בְּכָךְ, קָא מַשְׁמַע לָן.

The Gemara answers: According to the opinion of ben Azzai, that would in fact be a more appropriate distinction; however, the case of one who was **dragging and exiting was necessary for** the *tanna*[N] to teach because it includes a novel element, as **it might enter your mind to say** that **this is not** a typical **manner of carrying out,** and one is not liable to be executed for performing a prohibited labor in an atypical manner. Therefore, **it teaches us** that this too is a manner of carrying out.

וּבְמַאי? אִי בְּרַבְרְבֵי – אוֹרְחֵיהּ הוּא, אִי בְּזוּטְרֵי – לָאו אוֹרְחֵיהּ הוּא! אֶלָּא, בְּמֵיצְעֵי.

And the Gemara asks: **In what** case is this so? **If** it is **in** the case of **large** purses, obviously dragging **is its** typical **manner,** and there is nothing novel in this. **If** it is **in** the case of **small** purses, dragging **is** certainly **not its** typical **manner,** and one would certainly not be liable. **Rather,** it must be referring **to intermediate**-sized purses.[N] Although they are not always carried out in this manner, since they are sometimes dragged, the novelty is that he is liable for desecrating Shabbat and exempt from the payment.

NOTES

The legal status of one who walks is like that of one who stops – מְהַלֵּךְ כְּעוֹמֵד דָּמֵי: Ben Azzai's reasoning is clear: Since the act of walking involves the placement of one foot and the lifting of the other foot, one who walks essentially stops between each step. The problem is that according to that understanding, it is difficult to envision how one could perform the prohibited labor of carrying four cubits on Shabbat at all. *Tosafot* briefly cite three answers to this question, which are discussed in greater detail in other early commentaries. The first explanation is that according to ben Azzai carrying four cubits on Shabbat is a special *halakha*, and although one stops between each step it is considered one continuous action. A second resolution maintains that ben Azzai stated his *halakha* only with regard to one who is walking from a private domain to a public domain or vice versa through an exempt domain, and not with regard to walking in one domain. In the Jerusalem Talmud the explanation is that according to ben Azzai one would be liable for carrying out if he jumped four cubits, and the same would be true for one who threw an object that distance. Yet others suggest that the legal status of carrying four cubits is similar to that of carrying out from domain to domain, as the four cubits are considered one's domain. Ben Azzai's *halakha* is irrelevant in that case.

Dragging and exiting was necessary for the *tanna* – מְגָרֵר וְיוֹצֵא אִיצְטְרִיכָא לֵיהּ: The Ritva had a variant reading of the text: Rather, dragging and exiting was necessary for the *tanna*, etc. The term rather typically signifies a rejection of the previous explanation, and the Ritva explains that the Gemara here is explaining the matter in accordance with the opinion of the Rabbis, and not merely according to ben Azzai. This also resolves the difficulty raised in *Tosafot*. However, the Rashba rejects the variant reading. He claims that the explanation of the Gemara is in accordance with the opinions of both the Rabbis and ben Azzai, although some commentaries maintain that it is only in accordance with the opinion of ben Azzai.

Rather, it must be referring to intermediate-sized purses – אֶלָּא בְּמֵיצְעֵי: Some commentaries maintain that the Gemara here disagrees with the Gemara in *Bava Batra* (86a), which states that objects that are typically lifted cannot be acquired with the acquisition of pulling (see Ramban and Rashba).

וּדְאַפְּקֵיהּ לְהֵיכָא? אִי דְּאַפְּקֵיהּ לִרְשׁוּת הָרַבִּים אִיסּוּר שַׁבָּת – אִיכָּא, אִיסּוּר גְּנֵיבָה – לֵיכָּא, אִי דְּאַפְּקֵיהּ לִרְשׁוּת הַיָּחִיד – אִיסּוּר גְּנֵיבָה אִיכָּא, אִיסּוּר שַׁבָּת – לֵיכָּא! לָא צְרִיכָא, דְּאַפְּקֵיהּ לְצִידֵי רְשׁוּת הָרַבִּים.

The Gemara continues: **And** in this case, **to where** did **he carry out** the pouch? **If he carried it out** from the owner's private domain **to the public domain,**[N] **there is** violation of the **prohibition of Shabbat;** however, **there is no** violation of the **prohibition** against **theft,** as one does not acquire an item by pulling it into the public domain. **If he carried it out** from the owner's private domain **to** his own **private domain, there is** violation of the **prohibition** against **theft;** however, **there is no** violation of the **prohibition of Shabbat.** The Gemara answers: This ruling **is necessary only** in a case **where he carried it out to the sides of the public domain.**[N] This is referring to the area in the public domain adjacent to the houses located on its sides, demarcated from the thoroughfare by small pegs and not by a full-fledged partition.

וּכְמַאן? אִי כְּרַבִּי אֱלִיעֶזֶר, דַּאֲמַר: צִידֵי רְשׁוּת הָרַבִּים כִּרְשׁוּת הָרַבִּים דָּמוּ אִיסּוּר שַׁבָּת אִיכָּא אִיסּוּר גְּנֵיבָה לֵיכָּא. אִי כְּרַבָּנַן, דְּאָמְרִי צִידֵי רְשׁוּת הָרַבִּים לָאו כִּרְשׁוּת הָרַבִּים דָּמוּ – אִיסּוּר גְּנֵיבָה אִיכָּא, אִיסּוּר שַׁבָּת לֵיכָּא.

The Gemara asks: **And in accordance with whose** opinion is this taught? **If** it is **in accordance with** the opinion of **Rabbi Eliezer, who said:** The legal status of **the sides of the public domain is like** that of **the public domain, there is** violation of the **prohibition of Shabbat;** however, **there is no** violation of the **prohibition** against **theft. If** it is **in accordance with** the opinion of **the Rabbis, who said:** The legal status of **the sides of the public domain is not like** that of **the public domain, there is** violation of the **prohibition** against **theft;** however, **there is no** violation of the **prohibition of Shabbat.**

לְעוֹלָם כְּרַבִּי אֱלִיעֶזֶר, וְכִי אֲמַר רַבִּי אֱלִיעֶזֶר צִידֵי רְשׁוּת הָרַבִּים כִּרְשׁוּת הָרַבִּים דָּמוּ – הָנֵי מִילֵּי לְעִנְיַן חִיּוּבָא דְּשַׁבָּת, דְּזִימְנִין דְּדַחְקֵי רַבִּים וְעָיְילֵי לְהָתָם, אֲבָל לְעִנְיַן מִיקְנָא – קָנֵי, מַאי טַעֲמָא – דְּהָא לָא שְׁכִיחִי רַבִּים.

The Gemara answers: **Actually,** it is **in accordance with** the opinion of **Rabbi Eliezer, and when Rabbi Eliezer said:** The legal status of **the sides of the public domain is like** that of **the public domain, that applies only with regard to the liability for** performing prohibited labor on **Shabbat, as occasionally the multitudes crowd and enter there. However,** with regard **to the matter of acquiring**[H] an object, one **acquires** it by dragging it there. **What is the reason** for this *halakha*? It is due to the fact **that the public is not** typically **found** there, and acquisition can be effected in a place where the multitudes are not typically found.

רַב אַשִׁי אָמַר: כְּגוֹן שֶׁצֵּירַף יָדוֹ לְמַטָּה מִשְּׁלֹשָׁה וְקִיבְּלוֹ, כְּדִרְבָּא. דְּאָמַר רָבָא: יָדוֹ שֶׁל אָדָם חֲשׁוּבָה לוֹ כְּאַרְבָּעָה עַל אַרְבָּעָה. רַב אַחָא מַתְנֵי הָכִי.

Rav Ashi said: Actually, one is exempt when one dragged the object into the public domain in a case **where he joined his hand** to his other hand at a height **below three handbreadths** off the ground **and received** the purse by passing it from one hand into the other as soon as he brought it into the public domain. This is **in accordance with** the opinion of **Rava,**[N] **as Rava said: A person's hand is considered like four by four** handbreadths **for him.**[H] Therefore, an object placed in one's hand is considered placed with regard to Shabbat, and since his hand is his personal domain he has also acquired the stolen item. **Rav Aḥa taught** the entire discussion **this way,** as above.

HALAKHA

Acquisition in the sides of the public domain – קִנְיָן בְּצִידֵי רְשׁוּת הָרַבִּים: With regard to an object acquired by pulling in a place that belongs neither to the owner nor to the one acquiring the object, or in the public domain, if the one acquiring the object pulled it into his own domain or into an alleyway, i.e., the sides of the public domain, he acquires it. This is in accordance with the conclusion in the Gemara here that in terms of acquisition, the legal status of the sides of the public domain are not like that of the public domain (Rambam *Sefer Kinyan*, *Hilkhot Mekhira* 4:4; *Shulḥan Arukh*, *Ḥoshen Mishpat* 198:14).

A person's hand is considered like four by four handbreadths for him – יָדוֹ שֶׁל אָדָם חֲשׁוּבָה לוֹ כְּאַרְבָּעָה עַל אַרְבָּעָה: A person's hand is considered for him like a surface with an area of four by four cubits. Consequently, if on Shabbat one carried an object out of one domain and held it in his hand in a different domain, although he did not place it in that domain he is liable for carrying it out, as stated by Rava (Rambam *Sefer Zemanim*, *Hilkhot Shabbat* 13:2).

NOTES

If he carried it out to the public domain, etc. – אִי דְּאַפְּקֵיהּ לִרְשׁוּת הָרַבִּים וכו׳: Some ask: Why not explain that he carried it into another private domain, his own property, via a public domain? The answer is that in that case the prohibition of Shabbat would be violated when the object enters the public domain, and he completes the theft later (*Shita Yeshana,* cited in *Shita Mekubbetzet*).

To the sides of the public domain, etc. – לְצִידֵי רְשׁוּת הָרַבִּים וכו׳: The definition of public and private domains varies in its application to three different areas of *halakha*: Shabbat, monetary law, and impurity. With regard to monetary law, a private domain is determined by ownership; for Shabbat, a domain is deemed public or private by its area and partitions. With regard to impurity, the decisive factor is the number of people found there. Therefore, it is possible for a place, e.g., the sides of the public domain, to be a private domain with regard to one area of *halakha* and a public domain with regard to another area.

Where he joined his hand below three handbreadths off the ground and received the purse, in accordance with the opinion of Rava – כְּגוֹן שֶׁצֵּירַף יָדוֹ לְמַטָּה מִשְּׁלֹשָׁה וְקִיבְּלוֹ, כְּדִרְבָּא: There is a fundamental difficulty with this matter, mentioned in brief by *Tosafot* and discussed at length by the Ramban: Since Rava said in tractate *Shabbat* that the legal status of one's hand is like that of an area of four by four cubits, and therefore an object placed in one's hand is considered as though it were placed in the domain in which he is located, why is it necessary for one to place his hand below three handbreadths? Even if his hand were higher up, the object would still be considered placed in that domain. Apparently, Rashi was aware of this difficulty, as he explains that Rav Ashi's statement that this *halakha* is in accordance with the opinion of Rava is with regard to the *halakhot* of acquisitions, not those of Shabbat. Due to the significance of one's hand, it acquires the object even below three handbreadths. *Tosafot* and others question Rashi's approach, and the early and later commentaries seek to explain Rashi both in terms of different modes of acquisition and in terms of the definition of a person's hand. The *Ḥatam Sofer* writes that according to Rashi, Rava is saying that the legal status of one's hand is that of a larger surface in terms of placement, which explains his opinion with regard to acquisitions. According to *Tosafot*, in contrast, the hand is considered significant but not larger.

The Ramban, consistent with his approach, maintains that the private domain was significantly higher than the public domain, and when the Gemara states that he joined his hand below three handbreadths it means three handbreadths below the private domain, thereby lifting the object above the public domain. The Rid's version, also mentioned by *Tosafot*, reads: Alternatively, it is in accordance with the opinion of Rava. According to this version, the difficulty does not arise at all, as there are two separate answers: First, that he lowered his hand below three handbreadths, and second, that a person's hand is significant, as stated by Rava. The Ramban agrees that this is a worthy reading, but he notes that it does not appear in the manuscripts of Spain (see *Tosafot*).

רָבִינָא מַתְנֵי: לְעוֹלָם דְּאַפְקֵיהּ לִרְשׁוּת הָרַבִּים וּבִרְשׁוּת הָרַבִּים נַמִּי קָנָה. וְתַרְוַיְיהוּ בְּדִיּוּקָא דְּהָא מַתְנִיתִין קָמִיפַּלְגִי, דְּתָנַן: הָיָה מוֹשְׁכוֹ וְיוֹצֵא, וּמֵת בִּרְשׁוּת בְּעָלִים – פָּטוּר, הִגְבִּיהוֹ אוֹ שֶׁהוֹצִיאוֹ מֵרְשׁוּת בְּעָלִים וּמֵת – חַיָּיב.

Ravina taught otherwise: **Actually,** it is a case **where one carried out** the object **to the public domain, and in the public domain he also acquires**[NH] the stolen object by removing it from the owner's domain, even if he does not transfer it to his own domain. The Gemara comments: **And the two of them,** Rav Aḥa and Ravina **disagree with regard to the inference of this mishna, as we learned** in a mishna (*Bava Kamma* 79a) with regard to one who stole an animal: If he **was pulling** the animal **and exiting, and it died in the domain of the owner,** the thief is **exempt** from payment because he did not yet acquire the animal and therefore did not assume liability for its death through circumstances beyond his control. If **he lifted it or took it out of the owner's domain,** thereby acquiring the animal, **and it died,** the thief is **liable** to pay its value because it died in his possession.

רָבִינָא דָּיֵיק מֵרֵישָׁא, רַב אַחָא דָּיֵיק מִסֵּיפָא. רָבִינָא דָּיֵיק מֵרֵישָׁא: הָיָה מוֹשְׁכוֹ וְיוֹצֵא, וּמֵת בִּרְשׁוּת בְּעָלִים – פָּטוּר. טַעֲמָא – דְּמֵת בִּרְשׁוּת בְּעָלִים, הָא הוֹצִיאוֹ מֵרְשׁוּת בְּעָלִים וּמֵת – חַיָּיב. רַב אַחָא דָּיֵיק מִסֵּיפָא: הִגְבִּיהוֹ אוֹ שֶׁהוֹצִיאוֹ, הוֹצָאָה דּוּמְיָא דְּהַגְבָּהָה; מָה הַגְבָּהָה – דְּאָתֵי לִרְשׁוּתֵיהּ, אַף הוֹצָאָה נַמִּי – דְּאָתֵי לִרְשׁוּתֵיהּ.

Ravina inferred his conclusion **from the first clause** of the mishna, **and Rav Aḥa inferred** his conclusion **from the latter clause. Ravina inferred** his conclusion **from the first clause:** If he **was pulling** the animal **and exiting, and it died in the domain of the owner,** the thief is **exempt** from payment. **The reason** that the thief is exempt **is that** the animal **died in the owner's domain; by inference,** if **he took it out of the owner's domain**[H] **and it died,** he is **liable** because the thief acquires the item by its very removal from the owner's property, even to the public domain. **Rav Aḥa inferred** his conclusion **from the latter clause** of the mishna: If **he lifted it or took it out of the owner's domain,** he is liable. Based on the juxtaposition of the two, **taking** the animal **out is similar to lifting** it: **Just as lifting** is an act of acquisition through which the animal **comes into his domain, so too, taking** it **out** is referring to a case **where it comes into his domain.**

לְרַב אַחָא קַשְׁיָא רֵישָׁא, לְרָבִינָא קַשְׁיָא סֵיפָא! רֵישָׁא לְרַב אַחָא לָא קַשְׁיָא: כַּמָּה דְּלָא אָתֵי לִרְשׁוּתֵיהּ – רְשׁוּת בְּעָלִים קָרֵינָא בֵּיהּ. סֵיפָא לְרָבִינָא לָא קַשְׁיָא: הוֹצָאָה דּוּמְיָא דְּהַגְבָּהָה – לָא אָמְרִינַן.

The Gemara observes: **For Rav Aḥa the first clause** of the mishna **is difficult,** while **for Ravina the latter clause is difficult.** The Gemara answers: **The first clause is not difficult for Rav Aḥa,** as he could explain it as follows: **As long as** the animal **has not come into one's domain,**[N] even if it has left the owner's property, **we** continue to **call it the owner's domain.** Similarly, **the latter clause is not difficult for Ravina,** as in his opinion **we do not say: Taking** the animal **out is similar to lifting** it. Therefore, the mishna's ruling is that the thief acquires the animal merely through its removal from the owner's property.

"הַבָּא עַל אֲחוֹתוֹ וְעַל אֲחוֹת אָבִיו" כו'. וּרְמִינְהוּ: אֵלּוּ הֵן הַלּוֹקִין: הַבָּא עַל אֲחוֹתוֹ, וְעַל אֲחוֹת אָבִיו, וְעַל אֲחוֹת אִמּוֹ, וְעַל אֲחוֹת אִשְׁתּוֹ, וְעַל אֵשֶׁת אָחִיו, וְעַל אֵשֶׁת אֲחִי אָבִיו, וְעַל הַנִּדָּה.

§ The mishna continues: Similarly, **one who has** forced **relations with his sister,** i.e., he rapes her, **or with his father's sister,** or with his mother's sister, or with his wife's sister, or with his brother's wife, or with his father's brother's wife after they divorced, or with a menstruating woman, there is a fine paid. **And** the Gemara **raised a contradiction** from the following mishna (*Makkot* 13a): **And these** people **are flogged:**[NH] **One who has relations with his sister, or with his father's sister, or with his mother's sister, or with his wife's sister, or with his brother's wife, or with his father's brother's wife, or with a menstruating woman.** Anyone who intentionally has relations with any of these women is punished with lashes.

NOTES

In the public domain he also acquires – בִּרְשׁוּת הָרַבִּים נַמִּי קָנָה: *Tosafot* point out that this appears to contradict the opinion of Abaye and Rava in *Bava Batra* (84b), who state clearly that pulling, as a mode of acquisition, is not effective in the public domain. In fact, the Rid and other early commentaries maintain that there is a contradiction between the sources in the two tractates, and that is why they do not rule in accordance with the opinion of Ravina (see HALAKHA). Conversely, the Rashba and others accept the explanation of Rabbeinu Yitzḥak in *Tosafot*, who explains that this is not dealing with a standard acquisition; rather, the Gemara is saying that when a thief pulls the object into the public domain he acquires the object to the extent that he is liable for unavoidable accidents that befall the object. However, he does not acquire the object completely. The Ra'ah and the Ritva explain that although pulling does not typically effect acquisition in the public domain, in this case the object was pulled in the public domain after its removal from the owner's domain, and in that case the thief acquires ownership.

As long as it has not come into one's domain, etc. – כַּמָּה דְּלָא אָתֵי לִרְשׁוּתֵיהּ וכו': When the mishna refers to the owner's domain, the reference is not to the area currently occupied by the owner but to his domain in terms of legal ownership. Consequently, until the thief acquires the object it remains in the owner's domain (Ritva).

And the Gemara raised a contradiction: These are flogged, etc. – וּרְמִינְהוּ: אֵלּוּ הֵן הַלּוֹקִין וכו': Why does the Gemara raise this problem here? The same difficulty could be raised at the beginning of the mishna, as one who rapes a *mamzeret* violates a prohibition and is liable to be flogged. *Tosafot* explain that in fact the Gemara could have raised the question there, but it preferred to cite the question from the mishna in *Makkot*. The Ramban maintains that since the mishna was established earlier in accordance with the opinion of Rabbi Meir, who maintains that one is lashed and pays the fine, as explained later, the difficulty can be raised only with regard to prohibitions punishable by *karet*. In the Jerusalem Talmud there is a different resolution to this problem, as the Gemara there proposes that the mishna is referring to a *mamzer* who raped a *mamzeret*, who is not subject to lashes, as she is permitted to him. According to this interpretation, the novel element in the mishna is that a *mamzeret* is entitled to the fine despite her flawed lineage.

HALAKHA

In the public domain he also acquires – בִּרְשׁוּת הָרַבִּים נַמִּי קָנָה: One who stole a purse on Shabbat by dragging it from the owner's domain into the public domain is exempt from payment, as the desecration of Shabbat and the theft occur simultaneously. The *halakha* is in accordance with the opinion of Ravina, as he is a later Sage, and the *halakha* is generally ruled in accordance with his opinion in disputes with Rav Aḥa. The *Tur* rules in accordance with the opinion of Rav Aḥa because according to the Riva in *Tosafot*, this is also the opinion of Abaye and Rava (Vilna Gaon; Rambam *Sefer Nezikim*, *Hilkhot Geneiva* 3:2; *Shulḥan Arukh*, *Ḥoshen Mishpat* 351).

If he took it out of the owner's domain, etc. – הוֹצִיאוֹ מֵרְשׁוּת בְּעָלִים וכו': A thief is liable to be punished for theft from the moment he removes an object from its owner's domain, even if it was subsequently destroyed by unavoidable accident. If he did not remove it from the owner's domain he is liable only if he lifted the item, as stated by Ravina (Rambam *Sefer Nezikim*, *Hilkhot Geneiva* 2:16; *Shulḥan Arukh*, *Ḥoshen Mishpat* 348:4).

These are flogged, etc. – אֵלּוּ הֵן הַלּוֹקִין וכו': With regard to any prohibition punishable by *karet* and not by court-administered execution, if one violated the prohibition in the presence of witnesses and after forewarning, he is liable to be flogged, as explained in the mishna cited here (Rambam *Sefer Shofetim*, *Hilkhot Sanhedrin* 19:1).