חוֹבֵל בַּחֲבֵירוֹ נַמִּי, מִכְּדִי כְּתִיב ״כַּאֲשֶׁר עָשָׂה כֵּן יֵעָשֶׂה לּוֹ״, ״כֵּן יִנָּתֵן בּוֹ״ לָמָּה לִי – דָּבָר שֶׁיֵּשׁ בּוֹ נְתִינָה, וּמַאי נִיהוּ – מָמוֹן.

The same can be said with regard to **one who injures another. Now, since it states:** "And a man who places a blemish upon his counterpart, **as he has done so shall be done to him"** (Leviticus 24:19), **why do I** require the Torah to state: "As one who places a blemish upon a man, **so shall be placed** [***yinnaten***] **upon him"** (Leviticus 24:20)? This teaches that this is referring to **an item that involves giving** [***netina***], **and what is that** item? It is **money.**

וְרַבִּי יוֹחָנָן, מַאי טַעְמָא לָא אֲמַר כְּעוּלָּא? אִם כֵּן ״בִּשְׁלָתָּ עֶרְוַת אֲחוֹתְךָ לֹא תְגַלֶּה״

The Gemara asks: **And Rabbi Yoḥanan, what is the reason** that **he did not say** the same *halakha* **as Ulla,**[N] that where there is liability to both pay money and receive lashes, one pays money but is not flogged? The Gemara answers: **If so,** if that were the case, **you have rendered moot** the prohibition **"The nakedness of your sister…you shall not uncover"** (Leviticus 18:9) in that contrary to the standard prohibitions, no lashes would be administered for its violation.

NOTES

What is the reason that he did not say the same *halakha* as Ulla – מַאי טַעְמָא לָא אֲמַר כְּעוּלָּא: The Ramban notes that it is obvious why the Gemara did not ask why Ulla did not say the same *halakha* as Rabbi Yoḥanan, as Ulla derives his *halakha* from a verbal analogy. However, the question of the Gemara is difficult, as it is clear why Rabbi Yoḥanan rejected Ulla's conclusion; it is because he did not accept his verbal analogy. *Tosafot* explain that Ulla's derivation is universally accepted, and therefore it cannot be said that Rabbi Yoḥanan rejects it. Furthermore, as the Ramban himself explains, Ulla's derivation by means of verbal analogy is more authoritative than Rabbi Yoḥanan's derivation by means of juxtaposed verses. According to the Rashba and other early commentaries, that is the basis for the Gemara's question with regard to Rabbi Yoḥanan's approach. The Ramban maintains that the Gemara is not raising a difficulty with regard to the opinion of Rabbi Yoḥanan but merely seeking to clarify the basis for his opinion.

Perek **III**
Daf **33** Amud **a**

חוֹבֵל בַּחֲבֵירוֹ נַמִּי, אִם כֵּן, בִּשְׁלָתָּ ״לֹא יוֹסִיף פֶּן יוֹסִיף״! עֵדִים זוֹמְמִין נַמִּי, אִם כֵּן, בִּשְׁלָתָּ ״וְהָיָה אִם בֶּן הַכּוֹת הָרָשָׁע״! אֶלָּא עֵדִים זוֹמְמִין אֶפְשָׁר לְקַיּוּמָהּ בְּבֶן גְּרוּשָׁה וּבֶן חֲלוּצָה. חוֹבֵל בַּחֲבֵירוֹ נַמִּי, אֵיכָּא לְקַיּוּמָהּ כְּגוֹן שֶׁהִכָּהוּ הַכָּאָה שֶׁאֵין בָּהּ שָׁוֵה פְּרוּטָה.

The Gemara asks: Based on that reasoning, the same would hold true for **one who injures another as well;**[N] **if so,** if he pays and is not lashed, **you have rendered moot** the prohibition "Forty he shall strike him; **he shall not exceed, lest if he should exceed"** (Deuteronomy 25:3). The same would hold true for **conspiring witnesses as well; if so, you have rendered moot** the verse interpreted as addressing the matter of conspiring witnesses: **"And it shall be if the wicked man deserves to be flogged"** (Deuteronomy 25:2).[N] **Rather,** with regard to **conspiring witnesses,** that verse **can be fulfilled** in the case **of the son of a divorcée or the son of a *ḥalutza*.** If witnesses testified that a priest is the son of a divorcée or a *ḥalutza* and were discovered to be conspiring witnesses, there is no payment and they are flogged. With regard to **one who injures another as well,** the verse **can be fulfilled** in a case **where he struck him** with **a blow that** does **not** cause damage amounting to **the value of a *peruta*.**

אֲחוֹתוֹ נַמִּי, אֵיכָּא לְקַיּוּמָהּ בַּאֲחוֹתוֹ בּוֹגֶרֶת! אָמַר לָךְ רַבִּי יוֹחָנָן: הַאי ״תַּחַת אֲשֶׁר עִנָּהּ״ מִיבָּעֵי לֵיהּ לְכִדְאַבַּיֵי, דַּאֲמַר אַבַּיֵי: אָמַר קְרָא ״תַּחַת אֲשֶׁר עִנָּהּ״, הַאי – ״תַּחַת אֲשֶׁר עִנָּהּ״, מִכְּלָל דְּאִיכָּא בּוֹשֶׁת וּפְגָם.

The Gemara raises a difficulty: If so, with regard to **one's sister as well,**[N] the lashes **can be fulfilled** in the case of one who had forced relations **with his sister** who is **a grown woman.** Since there is no fine in that case, he is flogged and the verse is not moot. The Gemara answers: **Rabbi Yoḥanan** could have **said to you** that he does not agree with Ulla because **this** verse: **"Because he tormented her"** (Deuteronomy 22:29), is not available for a verbal analogy, as **he requires it to** derive **in accordance with that** which **Abaye** said, **as Abaye said** that **the verse states:** The fine of fifty dinar is payment **"because he tormented her"; by inference** one may conclude **that** beyond the fine, **there is** compensation for **humiliation and degradation.**

וְעוּלָּא נָפְקָא לֵיהּ מִדְּרָבָא. דַּאֲמַר רָבָא: אָמַר קְרָא: ״וְנָתַן הָאִישׁ הַשֹּׁכֵב עִמָּהּ לַאֲבִי הַנַּעֲרָה חֲמִשִּׁים כֶּסֶף״, הֲנָאַת שְׁכִיבָה – חֲמִשִּׁים, מִכְּלָל דְּאִיכָּא בּוֹשֶׁת וּפְגָם.

The Gemara asks: **And Ulla,** who uses this verse to derive a verbal analogy, from where does he derive the *halakha* stated by Abaye? The Gemara answers: **He derives it from** the statement of **Rava,** who derives that *halakha* from the same verse, **as Rava said** that **the verse states: "And the man who lay with her shall give to the father of the young woman fifty shekels of silver"** (Deuteronomy 22:29). The superfluous phrase "who lay with her" teaches that it is for **the pleasure of lying** with her that he pays **fifty** shekels, i.e., fifty *sela*; **by inference** one may conclude **that** beyond the fine, **there is** compensation for **humiliation and degradation.**

NOTES

One who injures another as well, etc. – חוֹבֵל בַּחֲבֵירוֹ נַמִּי וכו׳: Why was Rabbi Yoḥanan more concerned about rendering the prohibition with regard to one's sister moot than he was with regard to one who injures another or conspiring witnesses? The Ritva explains that there is no independent prohibition with regard to one who injures another. It is derived from the verse written with regard to the officer of the court: "Lest he exceed" (Deuteronomy 25:3). Likewise, the prohibition against conspiring to bear false witness is also derived from a verse written in another context. In contrast, with regard to a sister, the prohibition is explicit: "The nakedness of your sister…you shall not uncover" (Leviticus 18:9).

You have rendered moot: And it shall be if the wicked man deserves to be flogged – בִּשְׁלָתָּ וְהָיָה אִם בֶּן הַכּוֹת הָרָשָׁע: Why doesn't the Gemara cite the relevant prohibition and say that you have rendered moot the verse "You shall not bear false witness"? One answer is that the prohibition "You shall not bear false witness" is a prohibition that serves as a warning of death at the hands of the court, for which one is not liable to receive lashes (*Shita Yeshana,* cited in *Shita Mekubbetzet*). Alternatively, some Sages maintain that because it is a prohibition that does not involve an action, there are no lashes. Therefore, the Gemara cited the verse from which the punishment of lashes in this case is derived.

One's sister as well, etc. – אֲחוֹתוֹ נַמִּי וכו׳: Why didn't the Gemara raise the difficulty that according to Rabbi Yoḥanan this negates the obligation "He shall give to the father of the young woman" in the case of one who rapes his sister? The Rashba explains that this mitzva can be fulfilled in the case of a sister if he received no forewarning, whereas according to Ulla's opinion, there would be no possibility of lashes at all in the case of a virgin sister.

HALAKHA

Conspiring witnesses…are not subject to forewarning – עֵדִים זוֹמְמִין...לָאו בְּנֵי הַתְרָאָה נִינְהוּ: Conspiring witnesses do not require forewarning. Although corporal punishment is generally not administered unless the guilty party was forewarned, this does not apply to conspiring witnesses (Rambam *Sefer Shofetim*, *Hilkhot Edut* 18:4).

They could say: We forgot – אָמְרִי אִישְׁתַּלִּין: One is liable to receive corporal punishment only if he committed the transgression after being forewarned within an interval equivalent to the time of speaking. As explained here, the reason is that otherwise he could claim that he forgot the forewarning (Rambam *Sefer Shofetim*, *Hilkhot Sanhedrin* 12:2).

BACKGROUND

Forewarning – הַתְרָאָה: This is a formal warning to one who is about to violate a prohibition. The forewarning must include the fact that the action that he is about to perform is prohibited, and must also include the punishment that he will receive. Capital and corporal punishment can be administered only with forewarning that is acknowledged by the transgressor. In rare instances, e.g., the cases of false conspiring witnesses or one who incites to idol worship, punishment is administered without forewarning.

רַבִּי אֱלִיעֶזֶר אוֹמֵר: עֵדִים זוֹמְמִין מָמוֹנָא מְשַׁלְּמֵי וּמִילְקָא לָא לָקֵי, מִשּׁוּם דְּלָאו בְּנֵי הַתְרָאָה נִינְהוּ. אֲמַר רָבָא: תֵּדַע, נִיתְרֵי בְּהוּ אֵימַת? נִיתְרֵי בְּהוּ מֵעִיקָּרָא – אָמְרִי אִישְׁתַּלְיָן. נִיתְרֵי בְּהוּ בְּשְׁעַת מַעֲשֶׂה – פָּרְשִׁי וְלָא מְסַהֲדֵי. נִיתְרֵי בְּהוּ לְבַסּוֹף – מַאי דַּהֲוָה הֲוָה.

§ Rabbi Eliezer says: The reason that **conspiring witnesses pay money**[N] **but are not flogged** is **due to** the fact **that they are not subject to forewarning,**[HB] and without forewarning there are no lashes. **Rava said: Know** that this is true, since there is no practical manner to forewarn them, as **when** would **we forewarn them?** Perhaps **let us forewarn them initially,** before they come to testify; in that case, the forewarning would be ineffective because they could **say: We forgot**[H] the forewarning. Then **let us forewarn them at the moment of the action,** just before they testify; in that case they will **leave and not testify**[N] at all, as concern for potential repercussions will intimidate them into silence. Or, **let us forewarn them at the end** after their testimony; in that case **that which was, was,**[N] and forewarning at that point is pointless.

מַתְקִיף לָהּ אַבַּיֵי: וְנִיתְרֵי בְּהוּ בְּתוֹךְ כְּדֵי דִּבּוּר! מַתְקִיף לָהּ רַב אַחָא בְּרֵיהּ דְּרַב אִיקָא: וְנִיתְרֵי בְּהוּ מֵעִיקָּרָא, וְנִרְמְזוּ בְּהוּ רְמִיזֵי!

Abaye strongly **objects to this: And let us warn them within** an interval **equivalent** to the time **of speaking,**[N] during the brief period after they completed their statements, at which time the testimony is not yet considered to have concluded. Since they can still retract or amend their testimony during that period, a warning delivered at that point would be timely and effective. **Rav Aḥa, son of Rav Ika,** also strongly **objects to this: And let us forewarn them initially,** before they testify, **and gesture to them**[N] during the actual testimony, reminding them of the forewarning so they will be unable to claim that they forgot it.

הֲדַר אָמַר אַבַּיֵי: לָאו מִילְּתָא הִיא דַּאֲמָרִי: אִי סָלְקָא דַּעְתָּךְ עֵדִים זוֹמְמִין צְרִיכִין הַתְרָאָה, כִּי לָא מַתְרִינַן בְּהוּ לָא קָטְלִינַן לְהוּ – מִי אִיכָּא מִידֵּי דְּאִינְהוּ בָּעוּ קְטִיל בְּלָא הַתְרָאָה, וְאִינְהוּ בָּעוּ הַתְרָאָה? הָא בָּעֵינַן ״וַעֲשִׂיתֶם לוֹ כַּאֲשֶׁר זָמַם לַעֲשׂוֹת לְאָחִיו״ וְלֵיכָּא.

Abaye then said: That which I stated is not a significant **matter.** Instead, **if it enters your mind** that **conspiring witnesses require forewarning, when we do not forewarn them we do not kill them.** However, **is there a matter in which they sought to kill** the defendant **without forewarning** him, as their testimony was false, **and** in order to punish them **they require forewarning?**[N] **Don't we require** that their punishment reflect the verse **"And you shall do unto him as he conspired to do unto his brother"** (Deuteronomy 19:19)? **And** if they require forewarning that **is not** the case.

NOTES

Rabbi Eliezer says: Conspiring witnesses pay money – רַבִּי אֱלִיעֶזֶר אוֹמֵר: עֵדִים זוֹמְמִין מָמוֹנָא מְשַׁלְּמֵי: Most early commentaries continue along lines suggested by Rashi and explain that Rabbi Eliezer contends that since there are two possible punishments, money and lashes, it stands to reason that they would pay and not be flogged because, as a rule, corporal punishment is administered only if there was forewarning, a condition that does not affect payment (Ra'ah; Rashba; Rabbeinu Crescas Vidal). This leads to a question raised by Rashi: If so, why are those who testified that a priest is the son of a divorcée liable to receive lashes? He explains that since fulfillment of the verse "And you shall do unto him as he conspired" is impossible, as explained at length in *Makkot*, the sole option remaining is to administer lashes. Rabbi Eliezer, however, was referring to a situation where the choice is between two available punishments for a single transgression. The Maharsha asks: Why not say that one who is liable to be executed and pay should pay, for the same reason that there is no execution without forewarning? He answers that conspiring witnesses are not liable to be executed because they violated the prohibition "You shall not bear false witness"; rather, they are executed due to the verse "And you shall do unto him as he conspired to do unto his brother."

They will leave and not testify – פָּרְשִׁי וְלָא מְסַהֲדֵי: Based on Rashi's commentary, apparently they will leave and not testify because they are humiliated by the suspicion that they will testify falsely. The Ritva explains that if they are warned just before they testify they will be concerned that false witnesses might come and render them conspiring witnesses, and they will prefer not to testify at all. The early commentaries inquire into the difference between this *halakha*, where there is concern that they might refrain from testifying, and the *halakha* that in capital cases witnesses are threatened in order to discourage false testimony, where the possibility that they might leave and not testify is not a concern. Several answers were suggested. The most common approach is that in capital cases the witnesses are not actually threatened, as explained in tractate *Sanhedrin*; they are merely informed of the severity of capital cases in general terms, and there is no suspicion voiced that they will testify falsely.

That which was, was – מַאי דַּהֲוָה הֲוָה: Rashi states that they cannot change their testimony once they have delivered it. The *Shita Yeshana*, cited in the *Shita Mekubbetzet*, explains that since they already violated the prohibition with their testimony, warning them is pointless.

Within an interval equivalent to the time of speaking – בְּתוֹךְ כְּדֵי דִּבּוּר: *Tosafot* ask: Doesn't it take longer than that to state the forewarning, and therefore the witnesses would be unable to resume their testimony within that interval? They explain that as long as they remain engaged in the same matter it is considered within an interval equivalent to the time of speaking. A slightly different interpretation is offered by the Ra'avad. He claims that if witnesses require a warning, their testimony would not be complete until after that warning was given. Therefore, the interval is measured only from the conclusion of the warning.

And gesture to them – וְנִרְמְזוּ בְּהוּ רְמִיזֵי: Rashi explains that it is possible to gesture subtly, consistent with his approach that the concern is the embarrassment of the witnesses. The Rashba explains, in keeping with the plain understanding of the Gemara, that the gestures remind them of the earlier warning.

And they require forewarning – וְאִינְהוּ בָּעוּ הַתְרָאָה: Even so, one is not punished for transgressions committed when he was unwitting or unaware. How, then, can it be ascertained that they acted intentionally? One answer is that in general, the assumption is that one is aware that he is violating a prohibition, and therefore the assumption is that a transgressor acted intentionally (*Ketzot HaḤoshen* 28:8). However, there is a Torah decree that no punishment may be administered without forewarning adjacent to the act. Here, there is no need for forewarning, as it is clear that they know it is wrong to testify falsely (*Birkat Avraham*).

מַתְקִיף לָהּ רַב סַמָּא בְּרֵיהּ דְּרַב יִרְמְיָה: אֶלָּא מֵעַתָּה, בֶּן גְּרוּשָׁה וּבֶן חֲלוּצָה, דְּלָא מִכַּאֲשֶׁר זָמַם״ קָא מִיתַרְבִּי, לִיבָּעֵי הֲתְרָאָה! אָמַר קְרָא: ״מִשְׁפַּט אֶחָד יִהְיֶה לָכֶם״, מִשְׁפַּט הַשָּׁוֶה לְכוּלְּכֶם.

Rav Samma, son of Rav Yirmeya, strongly **objects to this: However, if** what you say is **so,** when witnesses falsely accuse a priest of being **the son of a divorcée or the son of a *ḥalutza*, as** their punishment **is not amplified from** the verse **"As he conspired"** but rather they are punished for violating the prohibition "You shall not bear false witness against your neighbor," **let them require forewarning.** The Gemara answers that **the verse states: "You shall have one manner of law"** (Leviticus 24:22), meaning that there must be **a law equal for all of you.**[N] Since in standard cases of conspiring witnesses no forewarning is required, even in exceptional cases like testimony that a priest is the son of a divorcée or a *ḥalutza*, forewarning is not required.

רַב שֵׁישָׁא בְּרֵיהּ דְּרַב אִידִי אָמַר: חוֹבֵל בַּחֲבֵירוֹ נַמִּי, מָמוֹנָא מְשַׁלֵּם וּמִילְקָא לָא לָקֵי – מֵהָכָא: ״וְכִי יִנָּצוּ אֲנָשִׁים וְנָגְפוּ אִשָּׁה הָרָה וְיָצְאוּ יְלָדֶיהָ״, וְאָמַר רַבִּי אֶלְעָזָר: בְּמַצּוּת שֶׁבְּמִיתָה הַכָּתוּב מְדַבֵּר, דִּכְתִיב ״וְאִם אָסוֹן יִהְיֶה וְנָתַתָּ נֶפֶשׁ תַּחַת נָפֶשׁ״.

§ **Rav Sheisha, son of Rav Idi, said:** The fact that in the case of **one who injures another as well**[N] **he pays money and is not flogged** is derived not by means of a verbal analogy but **from here: "If men quarrel and hurt a pregnant woman so that her child departs from her,** and yet no harm follow, he shall be punished as imposed upon him by the woman's husband" (Exodus 21:22). **And Rabbi Elazar said: The verse is speaking of a quarrel that involves death,**[N] i.e., they sought to kill each other, **as it is written: "And if any harm follow, then you shall give a soul for a soul"** (Exodus 21:23).

הֵיכִי דָּמֵי? אִי דְּלָא אַתְרוּ בֵּיהּ – אַמַּאי מִיקְטִיל, אֶלָּא פְּשִׁיטָא דְּאַתְרוּ בֵּיהּ, וּמוּתְרֶה לְדָבָר חָמוּר הָוֵי מוּתְרֶה לְדָבָר הַקַּל, וְאָמַר רַחֲמָנָא ״וְלֹא יִהְיֶה אָסוֹן עָנוֹשׁ יֵעָנֵשׁ״.

The Gemara asks: **What are the circumstances** of this case? **If they did not forewarn one** not to kill the other, **why is he killed** if the death of his opponent ensues? **Rather, obviously** it is a case **where they forewarned him, and** the principle is that **one who is forewarned with regard to a severe matter,** murdering his counterpart, **is forewarned with regard to a lesser matter,**[H] injuring his counterpart. **And** although he is forewarned against injuring another, which violates a prohibition and is punishable by lashes, **the Merciful One states: "And yet no harm follow, he shall be punished"** (Exodus 21:22), indicating that one pays and is not flogged.

מַתְקִיף לָהּ רַב אַשִׁי: מִמַּאי דְּמוּתְרֶה לְדָבָר חָמוּר הָוֵי מוּתְרֶה לְדָבָר הַקַּל, דִּילְמָא לָא הָוֵי? אִם תִּמְצָא לוֹמַר הָוֵי – מִמַּאי דִּמְיתָה חֲמוּרָה,

Rav Ashi strongly **objects to this** proof. First of all, with regard to your initial assumption, **from where** do you ascertain **that one who is forewarned with regard to a severe matter**[N] **is forewarned with regard to a lesser matter? Perhaps he is not** considered forewarned with regard to the lesser matter. Furthermore, even **if you say** that one **is** in fact forewarned with regard to a lesser matter, **from where** do you ascertain **that** the **death** penalty is a more **severe** punishment than lashes?

HALAKHA

Forewarned with regard to a severe matter – מוּתְרֶה לְדָבָר חָמוּר: The question of whether one forewarned with regard to a severe matter is forewarned with regard to a lesser matter remains unresolved. The *Ein Mishpat* claims that the Rambam indicates that one who was forewarned that his action is punishable by death in general is considered forewarned with regard to all forms of executions, regardless of their degree of severity. However, this does not resolve the question with regard to one who was forewarned specifically with regard to a severe death penalty. *Tosafot* suggest that there might be a Torah decree that one must be forewarned specifically with regard to the exact punishment for which he is liable (see Rambam *Sefer Shofetim*, *Hilkhot Sanhedrin* 12:2).

NOTES

A law equal for all of you – מִשְׁפַּט הַשָּׁוֶה לְכוּלְּכֶם: This does not mean that the details of all *halakhot* are the same, as clearly there is a difference between one who injures another, one who pays and is not flogged, and other cases. Rather, the meaning is that when punishment is administered for a particular prohibition, e.g., "You shall not bear false witness," there is no distinction between different cases where the prohibition applies (*Shita Yeshana,* cited in *Shita Mekubbetzet*).

One who injures another as well – חוֹבֵל בַּחֲבֵירוֹ נַמִּי: In this context, some commentaries cite the earlier statement of *Tosafot* (32b) that the fact that one who injures another pays and is not flogged is derived from the verse "A hand for a hand" (Deuteronomy 19:21), written with regard to conspiring witnesses. Rabbi Eliezer, at least according to Rava, maintains that this verse is unnecessary in the context of conspiring witnesses, as it can be learned by logical reasoning; therefore, with regard to one who injures another it should be learned by logical reasoning as well (*Shita Mekubbetzet*).

The verse is speaking of a quarrel that involves death – בְּמַצּוּת שֶׁבְּמִיתָה הַכָּתוּב מְדַבֵּר: The verse speaks of two men who were fighting with each other, and in the course of their struggle they hurt a woman. Since "a soul for a soul" is understood literally in this case, although some Sages maintain that here too it is referring to payment of money, the men must have been forewarned not to kill each other. This is according to the opinion that one who intended to kill one person and killed another is liable.

From where do you ascertain that one who is forewarned with regard to a severe matter, etc. – מִמַּאי דְּמוּתְרֶה לְדָבָר חָמוּר וכו': The principle that one forewarned with regard to a severe matter is forewarned with regard to a lesser matter seems obvious, since if one is aware that his action is punishable by a severe punishment and decides to perform the action anyway, he certainly accepts a lesser punishment as well. The opposite contention, as explained by *Tosafot*, is that there is a Torah decree that one is punished only if he received forewarning that reflects his precise punishment, whether it is a severe or lesser punishment. Others explain that since it is derived that if a murderer cannot be executed with the death penalty designated for his crime he is executed with another form of death, it can be inferred that those liable to receive other punishments cannot be punished with any other punishment than the one to which they are liable, even if it is a lesser punishment than the designated one (Rabbi David Bonfils on *Sanhedrin* 80b).

דִּלְמָא מַלְקוּת חָמוּר? דַּאֲמַר רַב: אֵילְמָלֵי נִגְּדוּהּ לַחֲנַנְיָה מִישָׁאֵל וַעֲזַרְיָה – פָּלְחוּ לְצַלְמָא! אֲמַר לֵיהּ רַב סַמָּא בְּרֵיהּ דְּרַב אַסִי לְרַב אַשִׁי, וְאָמְרִי לָהּ רַב סַמָּא בְּרֵיהּ דְּרַב אַשִׁי לְרַב אַשִׁי: וְלָא שָׁנֵי לָךְ בֵּין הָכָאָה שֶׁיֵּשׁ לָהּ קִצְבָּה לְהָכָאָה שֶׁאֵין לָהּ קִצְבָּה?!

Perhaps the punishment of **lashes is** more **severe,**[N] **as Rav said: Had they flogged**[N] **Hananiah, Mishael, and Azariah** (see Daniel, chapter 3) instead of casting them into the fiery furnace, these three **would have** been induced to **worship the** graven **image.** Apparently, the punishment of lashes is more severe than death. **Rav Samma, son of Rav Asi, said to Rav Ashi, and some say Rav Samma, son of Rav Ashi,** said **to Rav Ashi: And** is **there no difference to you between flogging that has a limit,** e.g., forty lashes by Torah law, which is a less severe punishment, **and flogging that does not have a limit,**[N] i.e., flogging administered to induce compliance, which is more severe?

מַתְקִיף לָהּ רַב יַעֲקֹב מִנְּהַר פְּקוֹד: הָנֵיחָא לְרַבָּנַן דְּאָמְרִי נֶפֶשׁ מַמָּשׁ, אֶלָּא לְרַבִּי דַּאֲמַר – מָמוֹן מַאי אִיכָּא לְמֵימַר?

With regard to the basic proof from the case of the two men quarreling, **Rav Ya'akov from Nehar Pekod** strongly **objects to this. This** works out **well according to** the opinion of **the Rabbis, who said** that the verse "And you shall give a soul for a soul" (Exodus 21:23) is referring to **an actual life,** and that if he caused the woman's death he is executed. **However, according to Rabbi** Yehuda HaNasi, **who said** that if he did not intend to injure the woman he is not liable to be executed and instead pays **money** as indemnity for causing her death, **what can be said?** According to that opinion, there was no forewarning for lashes at all, and the only liability is payment for injuring another.

אֶלָּא אֲמַר רַב יַעֲקֹב מִנְּהַר פְּקוֹד מִשְּׁמֵיהּ דְּרָבָא: מֵהָכָא, "אִם יָקוּם וְהִתְהַלֵּךְ בַּחוּץ עַל מִשְׁעַנְתּוֹ וְנִקָּה הַמַּכֶּה". וְכִי תַּעֲלֶה עַל דַּעְתָּךְ שֶׁזֶּה מְהַלֵּךְ בַּשּׁוּק וְזֶה נֶהֱרָג? אֶלָּא מְלַמֵּד שֶׁחוֹבְשִׁין אוֹתוֹ, וְאִי מֵת – קָטְלִינַן לֵיהּ, וְאִי לָא מֵת – "שִׁבְתּוֹ יִתֵּן וְרַפֹּא יְרַפֵּא".

Rather, Rav Ya'akov from Nehar Pekod said in the name of Rava that the *halakha* that one pays and is not flogged is derived **from here.** With regard to one who struck another with a stone or his fist and did not kill him but caused him to be bedridden, it is written: **"If he rises and walks outside with his staff, he who struck him is absolved"** (Exodus 21:19). **And could it enter your mind that this** victim **is walking in the marketplace and that** aggressor **is executed** as a murderer? **Rather,** the verse **teaches that one imprisons** the aggressor[H] while the injured party recuperates, **and if he dies** due to the blow he received, **we kill him. And if he does not die** and recovers, the aggressor's punishment is based on the verse **"His loss of livelihood he shall give, and he shall cause him to be thoroughly healed"** (Exodus 21:19).

הֵיכִי דָּמֵי? אִי דְּלָא אַתְרוּ בֵּיהּ – אַמַּאי מִיקְטַיל? אֶלָּא פְּשִׁיטָא – דְּאַתְרוּ בֵּיהּ, וּמוּתְרֵה לְדָבָר חָמוּר מוּתְרֵה לְדָבָר הַקַּל, וְאָמַר רַחֲמָנָא "שִׁבְתּוֹ יִתֵּן וְרַפֹּא יְרַפֵּא.

The Gemara elaborates: **What are the circumstances? If** the witnesses **did not forewarn him, why is** the offender **killed** if the victim dies? **Rather, obviously** it is a case **where** the witnesses **forewarned him, and one who is forewarned for a severe matter,** such as the potential death penalty, **is** also **forewarned for** the **lesser matter** of injuring another, for which he is liable to be flogged, **and** nevertheless **the Merciful One states: "His loss of livelihood he shall give, and he shall cause him to be thoroughly healed."** Apparently, despite his liability to be flogged, he pays and is not flogged.

מַתְקִיף לָהּ רַב אַשִׁי: מִמַּאי דְּמוּתְרֵה לְדָבָר חָמוּר הָוֵי מוּתְרֵה לְדָבָר הַקַּל? דִּלְמָא לָא הָוֵי, וְאִם תִּמְצָא לוֹמַר הָוֵי – מִמַּאי דְּמִיתְּחָה חֲמוּרָה, דִּלְמָא מַלְקוּת חָמוּר? דַּאֲמַר רַב: אִילְמָלֵי נִגְּדוּהּ לַחֲנַנְיָה מִישָׁאֵל וַעֲזַרְיָה פָּלְחוּ לְצַלְמָא!

Rav Ashi strongly **objects to this** proof:[N] First of all, with regard to your initial assumption, **from where** do you ascertain **that one who is forewarned with regard to a severe matter is forewarned with regard to a lesser matter? Perhaps he is not** considered forewarned with regard to the lesser matter. Furthermore, even **if you say** that one **is** in fact forewarned with regard to a lesser matter, **from where** do you ascertain **that** the **death** penalty is a more **severe** punishment than lashes? **Perhaps** the punishment of **lashes is** more **severe, as Rav said: Had they flogged Hananiah, Mishael, and Azariah,** instead of casting them into the fiery furnace, **they would have** been induced to **worship the** graven **image.** Apparently, the punishment of lashes is more severe than death.

NOTES

Perhaps the punishment of lashes is more severe – דִּלְמָא מַלְקוּת חָמוּר: *Tosafot* ask: Why doesn't the Gemara prove that death is the more severe punishment from the fact that it is the punishment administered for the most serious transgressions? The early commentaries suggest various answers, primarily that the issue is not the severity of the punishment itself but its relative harshness from the perspective of the punished. The Ritva states that one sentenced to death might say, as Samson did: "Let me die with the Philistines" (Judges 16:30), and would be prepared to die after murdering his hated enemy. With regard to lashes, in contrast, it is unlikely that one would agree to suffer merely for injuring another. The *Shita Yeshana*, cited in the *Shita Mekubbetzet*, explains that lashes carries with it great suffering and is also very demeaning. Therefore, people consider it a more severe punishment than death.

Had they flogged, etc. – אִילְמָלֵי נִגְּדוּהּ וכו': This statement of Rav has raised questions among many early commentaries, as the verse "And you shall love the Lord your God…with all your soul" (Deuteronomy 6:5) indicates that one must be willing to undergo great suffering to sanctify the name of God, as Rabbi Akiva and others did. The Rashba states, citing Rashi, although it does not appear in the standard version of Rashi, that Rav was asking a rhetorical question: Had they been flogged, would they have worshipped the graven image? In any case, Rav's comment proves that lashes are more severe than death. Most early commentaries, however, accept the opinion of *Tosafot* that Nebuchadnezzar's image was not an actual idol, and therefore, by the letter of the law, Hananiah, Mishael, and Azariah were not obligated to give their lives rather than bow to the image. The Ramban agrees with this approach and cites additional proofs that the image was merely an item that could have been mistaken for idolatry and that the three righteous men sought to sanctify the name of God by demonstrating their refusal to accept any authority other than God. He cites a midrash that states that they could have avoided being thrown into the furnace. Others state, citing Rabbi Eliezer, that the *halakha* does not require one to subject himself to suffering greater than death (see *Shita Yeshana,* cited in *Shita Mekubbetzet*).

Flogging that does not have a limit – הַכָּאָה שֶׁאֵין לָהּ קִצְבָּה: In the *Shita Mekubbetzet* it is explained that it is not the number of lashes that determines the sense of the severity of the punishment; rather, it is the very knowledge that the lashes of the court are limited and will eventually end. In contrast, with regard to lashes administered by the monarchy, even if in practice fewer lashes are administered, there is no limit to the lashes that they could inflict.

Rav Ashi strongly objects to this proof – מַתְקִיף לָהּ רַב אַשִׁי: This is difficult, as this statement of Rav Ashi was cited and rejected above. Why is it cited again? In the *Shita Mekubbetzet* it is explained that Rav Ya'akov spoke in accordance with the opinion of Rabbi Yehuda HaNasi that one who sought to kill one person and killed another is exempt. According to that opinion, the questions that Rav Ashi raised are more difficult, as forewarning with regard to one person is ineffective with regard to the other, so forewarning for a severe transgression is ineffective for a lesser transgression.

HALAKHA

The verse teaches that one imprisons the aggressor, etc. – מְלַמֵּד שֶׁחוֹבְשִׁין אוֹתוֹ וכו': If one struck another with a stone or his fist, and the court estimated that the blow was capable of killing him, then the aggressor is imprisoned until the fate of the victim is determined. If he dies, the aggressor is executed; if he makes a full recovery, the aggressor pays the five indemnities and is exempt from any other punishment (Rambam *Sefer Nezikim*, *Hilkhot Rotze'aḥ* 4:3).

אֲמַר לֵיהּ רַב סַמָּא בְּרֵיהּ דְּרַב אַסִי לְרַב אַשִׁי, וְאָמְרִי לָהּ רַב סַמָּא בְּרֵיהּ דְּרַב אַשִׁי לְרַב אַשִׁי: וְלָא שָׁנֵי לָךְ בֵּין הַכָּאָה שֶׁיֵּשׁ לָהּ קִצְבָּה לְהַכָּאָה שֶׁאֵין לָהּ קִצְבָּה?

Rav Samma, son of Rav Asi, said to Rav Ashi, and some say Rav Samma, son of Rav Ashi, said **to Rav Ashi: And** is **there no difference to you between flogging that has a limit,** e.g., forty lashes by Torah law, which is a less severe punishment, **and flogging that does not have a limit,** administered to induce compliance, which is more severe?

מַתְקִיף לָהּ רַב מָרִי: מִמַּאי דִּבְמֵזִיד ״וְנָקָה״ מִקְּטָלָא, דִּלְמָא בִּשּׁוֹגֵג ״וְנָקָה״ מִגָּלוּת? קַשְׁיָא.

Rav Mari strongly **objects to this** proof that one pays and is not flogged: **From where** do you ascertain **that** this is referring to one who struck another **intentionally,** and that the verse "He who struck him shall be absolved" means that he **shall be absolved of** the **death** penalty? **Perhaps** the verse is referring to one who struck another **unwittingly, and** the verse means that he **shall be absolved of exile?**[N] In that case, there would be no forewarning. Therefore, no proof may be cited from here that one who injures another pays and is not flogged. The Gemara concludes: This is **difficult,** and no proof may be cited from here.

רֵישׁ לָקִישׁ אָמַר: הָא מַנִּי – רַבִּי מֵאִיר הִיא, דְּאָמַר: לוֹקֶה וּמְשַׁלֵּם. אִי רַבִּי מֵאִיר – אֲפִילּוּ בְּתּוֹ נָמֵי!

§ The Gemara cites another resolution of the apparent contradiction between the mishna here, which obligates one who rapes his sister to pay a fine, and the mishna in *Makkot*, which rules him liable to be flogged. **Reish Lakish said:** In accordance with **whose** opinion **is this** mishna taught? **It is** in accordance with the opinion of **Rabbi Meir, who said: One is flogged and pays.** The Gemara asks: **If** the mishna is in accordance with the opinion of **Rabbi Meir, even** if one raped **his daughter** he should **also** be obligated to pay the fine. However, the mishna lists only those who raped women for whom one is liable to be punished for violating a prohibition or liable to receive *karet*, not those for whom one is liable to receive court-imposed execution.

וְכִי תֵּימָא רַבִּי מֵאִיר לוֹקֶה וּמְשַׁלֵּם אִית לֵיהּ, מֵת וּמְשַׁלֵּם – לֵית לֵיהּ, וְלָא? וְהָתְנַיָא: גָּנַב וְטָבַח בְּשַׁבָּת, גָּנַב וְטָבַח לַעֲבוֹדָה זָרָה, גָּנַב שׁוֹר הַנִּסְקָל וּטְבָחוֹ – מְשַׁלֵּם תַּשְׁלוּמֵי אַרְבָּעָה וַחֲמִשָּׁה, דִּבְרֵי רַבִּי מֵאִיר, וַחֲכָמִים פּוֹטְרִין.

And lest you say that **Rabbi Meir is of** the opinion that **one is flogged and pays,** but **is not of** the opinion that **one dies** by execution **and pays; and isn't** he of the opinion that one who is executed pays? **But isn't it taught** in a *baraita*: If one **stole** an animal **and slaughtered** it **on Shabbat,**[H] or **stole** it **and slaughtered** it **for idolatry,** or **stole an ox that** was sentenced to be **stoned,**[B] from which one may derive no benefit and is therefore worthless, **and slaughtered it, he pays** the owner **a payment of four or five** times the principal, as he would in any case of stealing and slaughtering an animal? This is **the statement of Rabbi Meir. And the Rabbis exempt him** from payment because he is liable to receive the death penalty for slaughtering on Shabbat or for idolatry. Apparently, Rabbi Meir maintains that one is obligated to pay even when he is liable to receive the death penalty.

הָא אִיתְּמַר עֲלָהּ, אָמַר רַבִּי יַעֲקֹב אָמַר רַבִּי יוֹחָנָן, וְאָמְרִי לָהּ אָמַר רַבִּי יִרְמְיָה אָמַר רַבִּי שִׁמְעוֹן בֶּן לָקִישׁ: רַבִּי אָבִין וְרַבִּי אֵילְעָא וְכָל חֲבוּרְתָּא מִשְּׁמֵיהּ דְּרַבִּי יוֹחָנָן אָמְרִי: בְּטוֹבֵחַ עַל יְדֵי אַחֵר.

The Gemara refutes this: **Wasn't it stated concerning** this *baraita* that **Rabbi Ya'akov said** that **Rabbi Yoḥanan said, and some say** that **Rabbi Yirmeya said** that **Rabbi Shimon ben Lakish said, that Rabbi Avin and Rabbi Ile'a and the entire group said in the name of Rabbi Yoḥanan:** That case is referring **to one who slaughters by means of another?**[H] The thief himself did not slaughter the animal; rather, it was his agent. Consequently, the thief pays because the capital crime was committed by his agent. Therefore, this source is unrelated to Rabbi Meir's opinion with regard to the question of whether one is executed and pays.

וְכִי זֶה חוֹטֵא וְזֶה מִתְחַיֵּיב? אָמַר רָבָא: אָמַר רַחֲמָנָא ״וּטְבָחוֹ אוֹ מְכָרוֹ״ מַה מְּכִירָה עַל יְדֵי אַחֵר – אַף טְבִיחָה עַל יְדֵי אַחֵר.

The Gemara analyzes Rabbi Yoḥanan's explanation: **And does this** agent **sin and that** thief **is liable**[N] to pay four and five times the principal? This violates the principle: There is no agent for matters of transgression. The Gemara explains that this is a *halakha* unique to this case. **Rava said** that **the Merciful One states:** "If a man steal an ox or a sheep **and slaughter it**[N] **or sell it"** (Exodus 21:37). Based on the juxtaposition of slaughter and sale, Rava continues: **Just as sale** is performed **by means of another,** as there is no sale without a buyer, **so too,** one is liable to be punished for **slaughter by means of another.** Although there is no agent for transgression, here there is a Torah decree that one is liable by means of another.

NOTES

Perhaps the verse is referring to one who struck another unwittingly, and the verse means that he shall be absolved of exile – דִּלְמָא בְּשׁוֹגֵג וְנָקָה מִגָּלוּת: *Tosafot* ask: In light of the principle that one is not exiled if there is the slightest concern that there was an additional complication that contributed to the death of the victim, the fact that the victim did not die immediately should exempt one from exile (see *Tosafot*). The Ritva maintains that the verse is referring to a situation involving exile and not the death penalty. A different objection is raised in the *Shita Mekubbetzet*: As the verse is clearly speaking of one who struck another, how could it be dealing with exile, which only applies to an unintentional murderer? The answer is that exile is conceivable in a case where one intended to strike one person and struck another.

And does this agent sin and that thief is liable – וְכִי זֶה חוֹטֵא וְזֶה מִתְחַיֵּיב: Rashi says that this question is based on the principle: There is no agent for transgression. In *Derush VeḤiddush*, Rabbi Akiva Eiger explains that this is not a case of an agent for transgression, as were he an agent his legal status would be like that of the sender himself, who would not be liable to pay because he would have desecrated Shabbat. Rather, this is a special *halakha* with regard to an action performed by means of another, unrelated to the laws of agency.

Rava said that the Merciful One states: If a man steals an ox or a sheep and slaughter it, etc. – אָמַר רָבָא: אָמַר רַחֲמָנָא וּטְבָחוֹ וכו': In the *Sefer Hafla'a* the question is raised: Since there are two expositions cited by earlier Sages for this *halakha*, what did Rava add by citing another source? Furthermore, why does the Gemara cite Rava's proof first? Various answers were suggested. Primary among them is that from Rava's statement it can be derived that this *halakha* applies not only to an agent but to anyone who performs an action of this sort on another's behalf, even if he is ineligible for agency, e.g., a deaf-mute or an imbecile (*Beit Ya'akov*). Alternatively, Rava's statement here is consistent with his opinion elsewhere that the thief is liable even if he slaughtered the animal unwittingly (*Beit Aharon*).

HALAKHA

If one stole and slaughtered on Shabbat, etc. – גָּנַב וְטָבַח בְּשַׁבָּת וכו': If one stole an animal and slaughtered it on Shabbat, or stole it and slaughtered it for idolatry, even if he did so unwittingly he is exempt from payment of four or five times the principal, in accordance with the opinion of the Rabbis (Rambam *Sefer Nezikim*, *Hilkhot Geneiva* 3:3).

One who slaughters by means of another – טוֹבֵחַ עַל יְדֵי אַחֵר: If a thief appointed an agent to slaughter the stolen animal on his behalf, and the agent did so on Shabbat, the thief is liable for the payment of four or five times the principal. The Rosh rules that he is exempt, based on the Gemara's statement below that according to the Rabbis, slaughter on Shabbat is considered an unfit act of slaughter (Rambam *Sefer Nezikim*, *Hilkhot Geneiva* 3:6; *Tur*, *Ḥoshen Mishpat* 350).

BACKGROUND

An ox that was sentenced to be stoned – שׁוֹר הַנִּסְקָל: An ox that killed a person is stoned to death, whether or not the ox had previously displayed violent tendencies and whether the victim was an adult, a child, or a Canaanite slave. It is prohibited to derive any benefit from an ox that is stoned, not only after its execution but from the moment the court of twenty-three judges delivered its verdict. The term: Ox that is stoned, is employed to describe any domesticated or non-domesticated animal that killed a person, whether it is a large or small animal, or even a bird.

דְּבֵי רַבִּי יִשְׁמָעֵאל תָּנָא: ״אוֹ״ – לְרַבּוֹת אֶת הַשָּׁלִיחַ. דְּבֵי חִזְקִיָּה תָּנָא: ״תַּחַת״ – לְרַבּוֹת אֶת הַשָּׁלִיחַ.

The Sages **of the school of Rabbi Yishmael taught** a different source for the *halakha* that one is liable for slaughter by means of an agent. It is written: "And slaughter it or sell it"; the term **"or"** comes **to include an agent.**[N] The Sages **of the school of Rabbi Ḥizkiyya taught** a different proof from the same verse: "He shall pay… for an ox… for a sheep"; the term **"for"** comes **to include an agent.**[H]

מַתְקִיף לָהּ מָר זוּטְרָא: מִי אִיכָּא מִידֵּי דְּאִילּוּ עֲבַד אִיהוּ לָא מִיחַיַּיב, וְעָבֵיד שָׁלִיחַ וּמְחַיַּיב? אִיהוּ לָאו מִשּׁוּם דְּלָא מִיחַיַּיב, אֶלָּא מִשּׁוּם דְּקָם לֵיהּ בְּדַרְבָּה מִינַּיְיהוּ.

Mar Zutra strongly **objects to this** *halakha*. **Is there** any **matter** with regard to **which if one performs** it himself, he is not **liable, and** yet if his **agent performs** it he is **liable?** Had he slaughtered the animal himself on Shabbat he would have been exempt from payment. How, then, is he liable if he does so by means of an agent? The Gemara answers: **He** is exempt **not due to** the fact **that he is not liable** for the slaughter; **rather,** he is exempt **due to** the fact **that he receives the greater of** the two punishments, the death penalty, for his desecration of Shabbat. He is liable for both the slaughter and the desecration of Shabbat. In practice, he receives the more severe punishment. However, when he appoints an agent, there is no liability for the desecration of Shabbat, and therefore he must pay for the slaughter.

אִי בְּטוֹבֵחַ עַל יְדֵי אַחֵר, מַאי טַעֲמַיְיהוּ דְּרַבָּנַן דְּפָטְרִי? מַאן חֲכָמִים?

The Gemara returns to Rabbi Yoḥanan's explanation of the *baraita*. **If** the *baraita* is referring to the case **of** one **who slaughtered by means of another, what is the** rationale for the opinion **of the Rabbis,**[N] **who exempt** him from payment? As the thief did not perform a transgression for which he is liable to receive the death penalty, why is he exempt from payment for slaughtering the animal? The Gemara answers: **Who are the Rabbis** who disagree with Rabbi Meir in this case?

NOTES

"Or" comes to include an agent – אוֹ לְרַבּוֹת אֶת הַשָּׁלִיחַ: Ostensibly the term "or" is necessary to rule out the possibility that one would be liable to pay four or five times the principal only if he both slaughtered and stole the animal and did not include an agent. Why, then, is it understood in this manner? One answer is that this derivation is in accordance with the *tanna* who maintains that even when the conjunction "and" [*vav*] is written, it would be understood that either slaughter or sale is sufficient to generate liability. Alternatively, it would have been possible to indicate that one is liable for either one of the actions by reversing the order and writing: And he sold it and slaughtered it, as clearly one could not slaughter the animal after selling it. Therefore, this *halakha* of agency can be derived from the fact that the term "or" is used here (*Shita Mekubbetzet*).

What is the rationale for the opinion of the Rabbis – מַאי טַעֲמַיְיהוּ דְּרַבָּנַן: The question is raised: Couldn't the exemption of the Rabbis be attributed to the fact that they maintain that slaughtering by means of an agent does not render the sender liable? The answer is that the derivation from use of the word "or" is the accepted *halakha*, and the Gemara sought to avoid a difficult response. Furthermore, if there is a dispute with regard to the *halakha* of one who slaughters by means of another, there would have been no point in citing the special cases of one who slaughtered on Shabbat or for idolatry (Ra'ah; Rabbeinu Crescas Vidal).

HALAKHA

Slaughter by means of another – טְבִיחָה עַל יְדֵי אַחֵר: If one stole an ox or sheep and gave it as a gift, or gave it to another to slaughter and the recipient did so, or gave it to another to sell and the recipient sold it, the thief is liable for payment of four or five times the principal, in accordance with the exposition of the Sages here that there is a special *halakha* in the case of one who slaughters a stolen animal (Rambam *Sefer Nezikim*, *Hilkhot Geneiva* 2:10).

Perek **III**
Daf **34** Amud **a**

HALAKHA

Slaughter that is improper – שְׁחִיטָה שֶׁאֵינָהּ רְאוּיָה: In general the ruling is contrary to the opinion of Rabbi Shimon, and improper slaughter is considered an act of slaughter. Consequently, if a thief slaughtered an ox or lamb that was discovered to be a *tereifa*, he is liable to pay four or five times the principal. Similarly, if an animal was slaughtered in a manner that does not permit its consumption, e.g., it was a *tereifa*, one who slaughters its offspring on the same day is liable for transgressing the prohibition against slaughter of an animal itself and its young on a single day. Nevertheless, one who performs an improper act of slaughter on a bird or undomesticated animal is exempt from covering the blood (see *Ḥullin* 85a), as in that regard it is not considered a bona fide act of slaughter, based on the unattributed mishna in accordance with the opinion of Rabbi Shimon (Rambam *Sefer Kedusha*, *Hilkhot Sheḥita* 12:6, 14:10 and *Sefer Nezikim*, *Hilkhot Geneiva* 2:8; *Shulḥan Arukh*, *Yoreh De'a* 16:9, 28:17; *Tur*, *Ḥoshen Mishpat* 350).

One who slaughters on Shabbat or on Yom Kippur – הַשּׁוֹחֵט בְּשַׁבָּת וּבְיוֹם הַכִּפּוּרִים: Although one who slaughters an animal on Shabbat is liable to be executed and one who does so on Yom Kippur is liable to receive *karet* or lashes, the slaughter is valid, in accordance with the mishna in *Ḥullin* (Rambam *Sefer Kedusha*, *Hilkhot Sheḥita* 1:29; *Shulḥan Arukh*, *Yoreh De'a* 11:2).

רַבִּי שִׁמְעוֹן הִיא, דְּאָמַר: שְׁחִיטָה שֶׁאֵינָהּ רְאוּיָה – לֹא שְׁמָהּ שְׁחִיטָה. הָתֵינַח עֲבוֹדָה זָרָה וְשׁוֹר הַנִּסְקָל, אֶלָּא שְׁחִיטַת שַׁבָּת – שְׁחִיטָה רְאוּיָה הִיא, דְּתָנָן: הַשּׁוֹחֵט בְּשַׁבָּת וּבְיוֹם הַכִּפּוּרִים, אַף עַל פִּי שֶׁמִּתְחַיֵּיב בְּנַפְשׁוֹ – שְׁחִיטָתוֹ כְּשֵׁרָה!

It is Rabbi Shimon, who said: The legal status of **slaughter that is improper,**[HN] in that it does not render the meat fit to be eaten, **is not that of slaughter.** Therefore, one is not liable for slaughter of the animal. The Gemara asks: **This** works out **well** with regard to **idolatry and** the **ox that is stoned,** as their slaughter is ineffective in rendering the meat fit to be eaten; **however, the slaughter on Shabbat is a proper** act of **slaughter, as we learned** in a mishna (*Ḥullin* 14a): In the case of **one who slaughters** an animal **on Shabbat**[N] **or on Yom Kippur,**[H] **although he is liable to** receive the **death** penalty for desecrating Shabbat, **his slaughter is valid** and the meat may be eaten.

NOTES

Slaughter that is improper – שְׁחִיטָה שֶׁאֵינָהּ רְאוּיָה: Rabbi Shimon defines slaughter as an action that renders the animal fit to be eaten. If the slaughter is ineffective it is not considered slaughter at all; rather, it is as though one killed the animal by some other means. Consequently, wherever a particular *halakha* depends on performance of an act of slaughter, ineffective slaughter does not meet that requirement. Even the Rabbis concede that one who kills an animal in a manner other than slaughter, e.g., by stabbing it, does not meet the requirement of slaughter. *Tosafot* prove that although the term in the Torah in this context is *teviḥa* and not *sheḥita*, which is the standard term for slaughter, the reference is to slaughter.

One who slaughters on Shabbat, etc. – הַשּׁוֹחֵט בְּשַׁבָּת וכו': The early commentaries ask: Isn't one who desecrates Shabbat an apostate, in which case everyone agrees that his slaughter is invalid? How, then, can one say that slaughter on Shabbat is valid? There are several answers offered. *Tosafot* on *Ḥullin* 14a claim that only one who desecrates Shabbat in public is an apostate. The case here is referring to one who slaughtered the animal in private. Rabbeinu Crescas Vidal agrees. In addition, *Tosafot* explain that the act of slaughter that renders one an apostate is not invalid; rather, all subsequent acts of slaughter are invalid. The Ran in tractate *Ḥullin* explains that it is only the conclusion of the act of slaughter that renders one an apostate, but the slaughter that rendered the animal permitted was already complete. In the Rambam's Commentary on the Mishna, it is explained in *Ḥullin* that this is referring only to one who slaughters unwittingly, and therefore the slaughter is not invalidated as that of an apostate.