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 בְּדִרַבָּה 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. הָתַנַּי עֲבוֹדָה זָרָה וְשׁוֹר הַנִּסְקָל, אֶלָּא שְׁחִיטַת שַׁבָּת – שְׁחִיטָה רְאוּיָה הִיא, דְּתָנֵן: 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.

סָבַר לָהּ כְּרַבִּי יוֹחָנָן הַסַּנְדְּלָר, דְּתַנְיָא: הַמְבַשֵּׁל בְּשַׁבָּת, בְּשׁוֹגֵג – יֹאכַל, בְּמֵזִיד – לֹא יֹאכַל, דִּבְרֵי רַבִּי מֵאִיר. רַבִּי יְהוּדָה אוֹמֵר: בְּשׁוֹגֵג – יֹאכַל לְמוֹצָאֵי שַׁבָּת, בְּמֵזִיד – לֹא יֹאכַל עוֹלָמִית. רַבִּי יוֹחָנָן הַסַּנְדְּלָר אוֹמֵר: בְּשׁוֹגֵג – יֵאָכֵל לְמוֹצָאֵי שַׁבָּת לַאֲחֵרִים, וְלֹא לוֹ. בְּמֵזִיד – לֹא יֵאָכֵל עוֹלָמִית, לֹא לוֹ וְלֹא לַאֲחֵרִים.

The Gemara answers: The *tanna* of the *baraita* under discussion **holds in accordance with** the opinion of **Rabbi Yoḥanan HaSandlar, as it is taught** in a *baraita*:

With regard to **one who cooks on Shabbat,**[HN] if he did so **unwittingly, he may eat** the food he cooked; if he did so **intentionally, he may not eat** it at all. This is **the statement of Rabbi Meir.**[N]

Rabbi Yehuda says: If he cooked **unwittingly he may eat at the conclusion of Shabbat,**[N] as the Sages penalized even one who sinned unwittingly in that they prohibited him from deriving immediate benefit from the dish that he cooked; if he sinned **intentionally, he may not eat** from it **ever.**

Rabbi Yoḥanan HaSandlar says: If he did so **unwittingly,** the food **may be eaten at the conclusion of Shabbat by others but not by him;** if he did so **intentionally, it may not be eaten ever, neither by him nor by other** Jews. According to Rabbi Yoḥanan HaSandlar, food prepared by means of intentional desecration of Shabbat is unfit to be eaten. That is true with regard to cooking food on Shabbat and with regard to slaughtering an animal on Shabbat.

מַאי טַעְמָא דְּרַבִּי יוֹחָנָן הַסַּנְדְּלָר? כִּדְדָרֵישׁ רַבִּי חִיָּיא אַפִּיתָחָא דְּבֵי נְשִׂיאָה: ״וּשְׁמַרְתֶּם אֶת הַשַּׁבָּת כִּי קֹדֶשׁ הִיא לָכֶם״. מַה קּוֹדֶשׁ אָסוּר בְּאַכִּילָה אַף מַעֲשֶׂה שַׁבָּת אָסוּרִין בְּאַכִּילָה. אִי מַה קּוֹדֶשׁ אָסוּר בַּהֲנָאָה אַף מַעֲשֶׂה שַׁבָּת אָסוּר בַּהֲנָאָה – תַּלְמוּד לוֹמַר ״לָכֶם״, שֶׁלָּכֶם יְהֵא.

The Gemara asks: **What is the rationale** for the opinion **of Rabbi Yoḥanan HaSandlar?** The Gemara explains: It is **as Rabbi Ḥiyya taught at the entrance to the house of the *Nasi*.** It is written: **"And you shall observe Shabbat, for it is sacred to you;** he who profanes it shall be put to death" (Exodus 31:14); **just as** with regard to **a sacred** item consecrated to the Temple, **eating** it **is prohibited, so too,** with regard to food produced through **action** that desecrates **Shabbat, eating** it **is prohibited.** The Gemara asks: **If** so, perhaps the analogy should be extended to include the following: **Just as** with regard to **a sacred item,** deriving **benefit** from it **is prohibited, so too,** with regard to the product of **an action** that desecrates **Shabbat,** deriving **benefit** from it should be **prohibited.** The Gemara answers: **The verse states:** "It is sacred **to you"** (Exodus 31:14), indicating that **it shall be yours** in the sense that one may derive benefit from it.

יָכוֹל אֲפִילּוּ בְּשׁוֹגֵג. תַּלְמוּד לוֹמַר ״מְחַלְלֶיהָ מוֹת יוּמָת״, בְּמֵזִיד אֲמַרְתִּי לָךְ, וְלֹא בְּשׁוֹגֵג.

The Gemara asks: Based on the analogy between actions that desecrate Shabbat and sacred items, one **might** have thought that **even** if the action was performed **unwittingly** it should be prohibited to eat its product, as is the case with regard to sacred items. Therefore, **the verse states: "He who profanes it shall be put to death"** (Exodus 31:14), indicating that it is **with regard to** one who desecrates Shabbat **intentionally** that **I stated to you** this analogy to sacred items,[N] as the verse is clearly referring to one who is liable to receive the death penalty, **and not with regard to** one who desecrates Shabbat **unwittingly,** who is not executed.

HALAKHA

One who cooks on Shabbat – הַמְבַשֵּׁל בְּשַׁבָּת: With regard to a Jew who performed prohibited labor on Shabbat, e.g., cooking, if he did so intentionally, it is permanently prohibited for him to derive benefit from that labor, while others may eat the food immediately at the conclusion of Shabbat. If he did so unwittingly, it is permitted both for him and for others to eat the dish at the conclusion of Shabbat. The *halakha* is ruled in accordance with the opinion of Rabbi Yehuda in his dispute with Rabbi Meir. The Ran adds that the ruling is based on the statement of Rav in *Ḥullin*, where he ruled in accordance with the opinion of Rabbi Meir for Torah scholars but in accordance with the opinion of Rabbi Yehuda for ignorant people, so that they will not come to treat Shabbat prohibitions with contempt (Rambam *Sefer Zemanim*, *Hilkhot Shabbat* 6:23; *Shulḥan Arukh*, *Oraḥ Ḥayyim* 318:1).

NOTES

Benefit from prohibited labor on Shabbat – הֲנָאָה מִמְּלֶאכֶת שַׁבָּת: In the *Shita Mekubbetzet* it is explained that there are three different rationales mentioned here. First, the Sages penalized the sinner so that he would not profit from his transgression. Others explain that the Sages issued a decree penalizing one who acted unwittingly due to an intentional sinner. Second, they did not want people to benefit from prohibited labor performed on Shabbat. Third, due to the verse "It is sacred to you" (Exodus 31:14), the product of labor performed on Shabbat is forbidden.

Intentionally, he may not eat it; this is the statement of Rabbi Meir – בְּמֵזִיד לֹא יֹאכַל דִּבְרֵי רַבִּי מֵאִיר: According to most early commentaries, Rabbi Meir's statement: If he did so intentionally he may not eat it, refers not just to the sinner himself; rather, this dish may not be consumed on Shabbat at all. Rabbi Meir did not formulate his opinion as: It may not be eaten, for stylistic reasons, to use parallel phrasing in both parts of his statement. Similarly, Rabbi Yehuda's statement below must be explained by suggesting that he too employed a uniform mode of expression. The commentaries further state that Rabbi Meir permits even an intentional sinner to partake of the dish after the conclusion of Shabbat. Based on the Gemara in tractate *Ḥullin*, the legal status of an intentional sinner according to Rabbi Meir parallels that of an unwitting transgressor according to Rabbi Yehuda. The legal status of an intentional sinner according to Rabbi Yehuda parallels that of an unwitting sinner according to Rabbi Yoḥanan HaSandlar. However, Rashi here states that according to Rabbi Meir, one who cooks intentionally may never partake of that dish (see *Shita Mekubbetzet*).

He may eat at the conclusion of Shabbat – יֹאכַל לְמוֹצָאֵי שַׁבָּת: Rashi in *Ḥullin* states that this does not mean that the food may be eaten immediately after Shabbat. After the conclusion of Shabbat one must wait until the period of time that would be sufficient for the food to have been prepared from the beginning has elapsed. This is based on the concept that the Sages did not want the sinner to benefit from labor performed on Shabbat.

It is with regard to one who desecrates Shabbat intentionally that I stated to you – בְּמֵזִיד אֲמַרְתִּי לָךְ: The Rashash asks why Rabbi Yoḥanan HaSandlar did not explain that the food is prohibited only if one was forewarned, since if he is not forewarned he is not liable to be executed. In fact, in *Gilyon HaShas*, *Sefer HaPardes* is cited, which explains, according to Rashi, that Rabbi Yoḥanan HaSandlar holds that only the product of labor performed on Shabbat by one who was forewarned is permanently forbidden.

פְּלִיגִי בָּהּ רַב אַחָא וְרָבִינָא: חַד אָמַר: מַעֲשֶׂה שַׁבָּת דְּאוֹרַיְיתָא, וְחַד אָמַר: דְּרַבָּנַן, מַאן דַּאָמַר דְּאוֹרַיְיתָא – כְּדַאָמְרַן. מַאן דְּאָמַר דְּרַבָּנַן – אָמַר קְרָא: ״קֹדֶשׁ הִיא״ – הִיא קוֹדֶשׁ, וְאֵין מַעֲשֶׂיהָ קוֹדֶשׁ.

The Gemara comments: **Rav Aḥa and Ravina disagree with regard to** this matter.[N] **One said:** The product of **an action** that desecrates **Shabbat** is prohibited **by Torah** law, **and one said** that it is prohibited **by rabbinic** law. With regard to the **one who said** that it is prohibited **by Torah** law, it is **as we said,** that it is based on the verse interpreted by Rabbi Ḥiyya. **And** the **one who said** that it is prohibited **by rabbinic** law holds that **the verse states: "It is sacred,"** from which he infers: **It is sacred, but** the product of **its actions is not sacred,** and therefore, by Torah law it may be eaten.

וּלְמַאן דְּאָמַר דְּרַבָּנַן, מַאי טַעֲמַיְיהוּ דְּרַבָּנַן דְּפָטְרִי? כִּי קָא פָּטְרִי רַבָּנַן – אַשְּׁאָרָא.

The Gemara asks: **And** according to the **one who said** it is prohibited **by rabbinic** law, **what is the rationale**[N] for the opinion **of the Rabbis who exempt** the thief from payment for the slaughter performed by his agent on Shabbat? By Torah law, the slaughter is valid. The Gemara answers: **When the Rabbis exempt** the thief from payment, it is with regard **to the rest** of the cases, i.e., one who slaughters for idolatry or an ox sentenced to stoning, not with regard to Shabbat.

טוֹבֵחַ לַעֲבוֹדָה זָרָה, כֵּיוָן דְּשָׁחַט בֵּיהּ פּוּרְתָּא אֵיתְסַר לֵיהּ, אִידָךְ כִּי קָא טָבַח – לָאו דְּמָרֵיהּ קָא טָבַח! אֵמַר רָבָא: בְּאוֹמֵר ״בִּגְמַר זְבִיחָה הוּא עוֹבְדָהּ״.

The Gemara asks the following question with regard to Rabbi Meir's opinion that **one who slaughters for idolatry** is liable to pay the owner for the animal. **Once he slaughtered** the animal **a bit,**[N] at the very start of the act of slaughter, **it is prohibited for him** to derive benefit from the animal because it is an animal sacrificed to idolatry; **and when he slaughters the rest,** it is **not** the animal that belongs **to its owner** that he **is slaughtering.** Since it is prohibited to derive benefit from the animal, it has no value and there is no ownership. **Rava said:** It is referring **to one who says,** prior to the slaughter, that **he is worshipping** the idol only **at the completion of the slaughter,** and therefore the prohibition takes effect only then.

שׁוֹר הַנִּסְקָל – לָאו דִּידֵיהּ הוּא דְּקָטָבַח! אֲמַר רַבָּה: הָכָא בְּמַאי עָסְקִינַן – כְּגוֹן שֶׁמְּסָרוֹ לְשׁוֹמֵר, וְהִזִּיק בְּבֵית שׁוֹמֵר, וְנִגְמַר דִּינוֹ בְּבֵית שׁוֹמֵר, וּגְנָבוֹ גַּנָּב מִבֵּית שׁוֹמֵר.

The Gemara asks the following question with regard to Rabbi Meir's opinion that one who slaughters **the ox that is stoned** is liable to pay for the slaughter. Why is he liable? It is **not** the owner's ox that **he is slaughtering,** since once the ox is sentenced to be stoned it is prohibited to derive benefit from it. **Rabba said: With what are we dealing here?** We are dealing with a case **where** the owners **entrusted** the ox **to a bailee and** the ox **injured** another person while **in the bailee's house, and it was sentenced** to be stoned while **in the bailee's house, and** the **thief** then **stole it from the bailee's house** and slaughtered it.

וְרַבִּי מֵאִיר סָבַר לָהּ כְּרַבִּי יַעֲקֹב, וְסָבַר לָהּ כְּרַבִּי שִׁמְעוֹן; סָבַר לָהּ כְּרַבִּי יַעֲקֹב – דַּאֲמַר: אַף מִשְּׁנִגְמַר דִּינוֹ, הֶחֱזִירוֹ שׁוֹמֵר לִבְעָלָיו – מוּחְזָר. וְסָבַר לָהּ כְּרַבִּי שִׁמְעוֹן, דַּאֲמַר: דָּבָר הַגּוֹרֵם לְמָמוֹן כְּמָמוֹן דָּמֵי.

And this solution is based on the fact that **Rabbi Meir holds in accordance with** the opinion of **Rabbi Ya'akov and holds in accordance with** the opinion of **Rabbi Shimon. He holds in accordance with** the opinion of **Rabbi Ya'akov, who said: Even after** the ox **was sentenced** to be stoned, if the **bailee returned it to its owners, it is returned.** Despite the fact that the ox is now worthless, as no benefit may be derived from it, since the bailee returned an ox that is physically intact the owner has no claim against him. **And** Rabbi Meir **holds in accordance with** the opinion of **Rabbi Shimon, who said** that the legal status of **an object that effects monetary** loss[NH] **is like** that of **money.** Even in the case of an object that is worthless, if its elimination causes monetary loss because it must be replaced, it is considered to have value. In this case, although the ox has no value in and of itself, slaughtering the animal prevents the bailee from returning it intact to the owner, requiring him to pay the owner the value of the ox before it was sentenced to be stoned. Consequently, the thief must reimburse the bailee, as the ox has value for the bailee.

רַבָּה אָמַר: לְעוֹלָם בְּטוֹבֵחַ עַל יְדֵי עַצְמוֹ,

Rabba said: Actually, contrary to Rabbi Yoḥanan's explanation of the *baraita*, it is referring **to one who slaughters** the animal **himself,**

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Rav Aḥa and Ravina disagree with regard to this matter – פְּלִיגִי בָּהּ רַב אַחָא וְרָבִינָא: Most early commentaries, beginning with Rabbeinu Ḥananel, maintain that this is a dispute based only on the opinion of Rabbi Yoḥanan HaSandlar. Even so, most halakhic authorities do not consider this as proof that the *halakha* is in accordance with his opinion, although some *ge'onim* rule based on this Gemara that the *halakha* is in accordance with his opinion. The Ramban cites a different interpretation. He suggests that the *tanna'im* disagree with regard to the correct exposition of the verse "It is sacred to you." Rabbi Meir maintains that the product of prohibited labor is sacred only on the sacred day itself, Rabbi Yehuda claims that it is sacred and prohibited only to one who desecrated Shabbat intentionally, while Rabbi Yoḥanan HaSandlar contends that if Shabbat was willfully desecrated, the resulting product is sacred and prohibited to all.

And according to the one who said it is prohibited by rabbinic law what is the rationale, etc. – וּלְמַאן דְּאָמַר דְּרַבָּנַן מַאי טַעֲמַיְיהוּ וכו׳: The Maharshal asks: Even if the prohibition is by rabbinic law, the meat may not be eaten, and one should therefore be exempt from punishment for the slaughter of the stolen animal. He cites proof from the fact that if one betroths a woman with an object from which it is prohibited to derive benefit by rabbinic law, the betrothal does not take effect even by Torah law. In the *Shita Mekubbetzet* it is explained that the Sages issued the decree that the meat may not be eaten as a stringency, and not as a leniency. The Rashash maintains that there is a difference between the authority of the court to declare one's property ownerless, which influences the legal status of an item even by Torah law, and issuing a decree that slaughter is unfit, which does not influence the legal status by Torah law.

Once he slaughtered the animal a bit – כֵּיוָן דְּשָׁחַט בֵּיהּ פּוּרְתָּא: Even according to the opinion that one cannot render forbidden an object that is not his, that is only with regard to rendering the object forbidden without performing an action. However, if one performs an action that directly affects the object, he renders it forbidden even if it does not belong to him (Ritva; see Rashba).

And Rabbi Meir holds in accordance with the opinion of Rabbi Shimon, who said that the legal status of an object that effects monetary loss – וְסָבַר לָהּ כְּרַבִּי שִׁמְעוֹן דַּאֲמַר דָּבָר הַגּוֹרֵם לְמָמוֹן: *Tosafot* ask why this is necessary, as it is well known that Rabbi Meir adjudicates cases of indirect damage. In other words, if one harms another in a manner that is not discernible, or damages an item that is worthless in and of itself, if he causes financial loss he must reimburse his victim. Several answers are offered. Many early commentaries accept the claim of *Tosafot*, who claim that there is a difference between the two cases. Although Rabbi Meir adjudicates cases of indirect damage, that does not mean that he deems the object itself to be worth money. It is merely an obligation by rabbinic law to compensate the victim. Rabbi Shimon, in contrast, maintains that legal status of an object that effects monetary loss is like that of actual money (see Ramban).

HALAKHA

An object that effects monetary loss – דָּבָר הַגּוֹרֵם לְמָמוֹן: If one stole consecrated items from the house of the one who consecrated them, then although the owner is responsible to replace the items the thief is not liable to pay double the principal because, contrary to the ruling of Rabbi Shimon, the legal status of an object that effects monetary loss is not that of money. This is a case of an object that effects monetary loss, as the owner is obligated to bring replacement offerings. The *Shakh* adds that although the *halakha* is that one adjudicates cases of indirect damage and deems one who inflicts that damage liable to pay compensation, most authorities maintain that that is a different issue (Rambam *Sefer Nezikim*, *Hilkhot Geneiva* 2:1; *Shulḥan Arukh*, *Ḥoshen Mishpat* 386:2).

וְרַבִּי מֵאִיר, לוֹקֶה וּמְשַׁלֵּם אִית לֵיהּ, מֵת וּמְשַׁלֵּם לֵית לֵיהּ. וְשָׁאנֵי הָנֵי, דְּחִידּוּשׁ הוּא שֶׁחִידְּשָׁה תּוֹרָה בְּקָנָס, אַף עַל גַּב דְּמִיקְּטִיל – מְשַׁלֵּם. וְאָזְדָא רַבָּה לְטַעֲמֵיהּ, דְּאָמַר רַבָּה: הָיָה גְּדִי גָּנוּב לוֹ וּטְבָחוֹ בְּשַׁבָּת – חַיָּיב, שֶׁכְּבָר נִתְחַיֵּיב בִּגְנֵיבָה קוֹדֶם שֶׁעָבַר לִידֵי אִיסּוּר שַׁבָּת. גָּנַב וְטָבַח בְּשַׁבָּת – פָּטוּר, שֶׁאִם אֵין גְּנֵיבָה – אֵין טְבִיחָה וְאֵין מְכִירָה.

and 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 these** *halakhot* **are different, as it is a novel element that the Torah innovated with regard to** the halakhic category of **fines;**[N] **although he is killed, he pays. And Rabba followed his** line of **reasoning**[N] stated elsewhere, **as Rabba said:** If one **had a stolen kid** in **his** possession that he had stolen previously, **and he slaughtered it on Shabbat,** he is **liable** to pay five times the principal for slaughtering the kid, **as he was already liable for stealing before he came to** violate **the prohibition** against performing labor on **Shabbat.** Although he slaughtered the goat on Shabbat, a capital crime, he is liable for the payment because it is a fine. However, if **he stole** the goat **and slaughtered** it **on Shabbat,**[N] he is **exempt** from the payment of five times the principal **as, if** there is **no** payment for **theft,**[N] due to his liability to receive the death penalty for desecrating Shabbat, and his obligation to repay the theft is not a fine, there is **no** liability for **slaughter and** there is **no** liability for **sale.**

וְאָמַר רַבָּה: הָיָה גְּדִי גָּנוּב לוֹ וּטְבָחוֹ בַּמַּחְתֶּרֶת – חַיָּיב, שֶׁכְּבָר נִתְחַיֵּיב בִּגְנֵיבָה קוֹדֶם שֶׁעָבַר לִידֵי אִיסּוּר מַחְתֶּרֶת. גָּנַב וְטָבַח בַּמַּחְתֶּרֶת – פָּטוּר, שֶׁאִם אֵין גְּנֵיבָה – אֵין טְבִיחָה וְאֵין מְכִירָה.

And Rabba said: If one **had a stolen kid** in **his** possession that he had stolen previously, **and he slaughtered it in** the course of an act of **burglary,**[N] he is **liable** to pay four or five times the principal, **as he was already liable for theft before he came to** violate **the prohibition** against **burglary.** However, if **he stole and slaughtered** an animal **in** the course of an act of **burglary,**[H] he is **exempt.** Because the owner of the house is permitted to kill the burglar, the status of the burglar is tantamount to one liable to receive the death penalty. **As, if** there is **no** payment **for theft,** there is **no** liability for **slaughter and** there is **no** liability for **sale.** Rabba's statements indicate that one pays the fines for slaughter or sale even if he is liable to receive the death penalty.

HALAKHA

If he stole and slaughtered in the course of an act of burglary – גָּנַב וְטָבַח בַּמַּחְתֶּרֶת: If a burglar broke into a house and stole an animal and slaughtered it there, he is exempt, as it is permitted to take his life at the time, as per the statement of Rabba (Rambam *Sefer Nezikim*, *Hilkhot Geneiva* 9:13; *Tur*, *Ḥoshen Mishpat* 351).

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As it is a novel element that the Torah innovated with regard to the halakhic category of fines – דְּחִידּוּשׁ הוּא שֶׁחִידְּשָׁה תּוֹרָה בְּקָנָס: In the *Shita Mekubbetzet* it is explained that Rashi is not saying that the novel element in the Torah is that one who is liable to pay a fine is executed and pays. Rather, the novel element is the very imposition of a fine. Therefore, one cannot derive the legal status of fines from other similar payments, and as a result, one is liable to be executed and to pay. Whenever a *halakha* in the Torah is characterized as novel, that means that it is exceptional in certain respects, as the principles in effect in similar cases do not apply. Its *halakhot* are therefore unique; elements of other *halakhot* cannot be derived from it, nor can its elements be derived from other *halakhot*. As for the novel element of fines, the *Ḥatam Sofer* writes that it is not that one pays more than the damage he caused, as that is true about other Torah punishments, e.g., corporal punishment, where there is no necessary connection between the damage caused and the penalty imposed. Instead, the novel element is that the fine is paid to the victim rather than to the public treasury or to the Sanctuary, which is generally the case with regard to sinners.

And Rabba followed his line of reasoning – וְאָזְדָא רַבָּה לְטַעֲמֵיהּ: A general question is raised here: When an *amora* repeats a *halakha*, why does the Gemara sometimes react by asking: Didn't he already state that once, while on other occasions the Gemara simply notes: And the Sage followed his line of reasoning stated elsewhere. In *Sefer HaḤokhma*, Rabbeinu Barukh explains that when the statement of the Sage is stated as an elucidation of a mishna or the like, the Gemara says that he followed his standard line of reasoning, as his explanation is consistent with his practical halakhic ruling. However, if both statements are halakhic rulings, the Gemara will question the repetition.

If he stole and slaughtered on Shabbat – גָּנַב וְטָבַח בְּשַׁבָּת: The early and later commentaries discuss the case of one who stole on Shabbat and proceeded to slaughter or sell the animal during the week. The Ritva and others infer from Rashi that in that case he is liable to pay four or five times the principal. The reason is that the theft committed on Shabbat is no longer relevant, and when he takes the animal to slaughter or sells it is as though the theft began at that moment. The Rashba disagrees and maintains that in that case he is exempt, in accordance with the principle that if there is no theft there is no slaughter or sale either. Since one is not liable to pay for theft on Shabbat, there is no liability for slaughter or sale. The *Shita Yeshana*, cited in the *Shita Mekubbetzet* explains likewise. Several later commentaries address the fundamental aspects of this dilemma. It appears that the dispute among the early commentaries is dependent on the precise definition of theft performed in the course of desecrating Shabbat. Is it considered a full-fledged acquisition in every sense but the thief is exempt from payment, or is it viewed as an incomplete acquisition and considered as though there were no theft at all (Rabbi Akiva Eiger; *Or Same'aḥ*; *Kovetz Shiurim*)?

As, if there is no payment for theft, etc. – שֶׁאִם אֵין גְּנֵיבָה וכו': Although the fine for slaughter or sale is an independent fine, independent of the mitzva to restore the stolen item to its owner, it is a biblical decree that one is liable to pay four or five times the principal, not merely three or four times. Based on that biblical decree, if one is exempt from the obligation to return the principal, he is exempt from paying the fine as well (Ritva).

The prohibition against burglary – אִיסּוּר מַחְתֶּרֶת: The *halakha* of a burglar who breaks into a private home is stated in the Torah: "If the thief is found breaking in, and is struck and dies, there is no blood for him" (Exodus 22:1). The basic concept, which is elucidated in tractate *Sanhedrin*, is that a thief breaking into a house is considered, with certain exceptions, as one with the intention to commit murder if necessary. Therefore, if the homeowner kills him, he is exempt. Since taking the life of the burglar is permitted, his legal status is like that of one sentenced to death, and therefore he is exempt from payment for any damage that he may have caused at that moment. That status is temporary, as once the burglar leaves the premises it is no longer permitted to kill him and he is liable to pay for any monetary liability that he may incur.

וּצְרִיכָא, דְּאִי אַשְׁמְעִינַן שַׁבָּת – מִשּׁוּם דְּאִיסּוּרָהּ אִיסּוּר עוֹלָם, אֲבָל מַחְתֶּרֶת דְּאִיסּוּר שָׁעָה הוּא – אֵימָא לָא; וְאִי אַשְׁמְעִינַן מַחְתֶּרֶת – מִשּׁוּם דְּמַחְתַּרְתּוֹ זוֹ הִיא הַתְרָאָתוֹ, אֲבָל שַׁבָּת דְּבָעֵיָא הַתְרָאָה – אֵימָא לָא, צְרִיכָא.

The Gemara comments: **And** it was **necessary** for Rabba to state this *halakha* with regard to both Shabbat and burglary; **as, if he** had **taught us**[N] that one is exempt from payment only with regard to **Shabbat,** it is **because** Shabbat is severe since punishment for violation of **its prohibition is an eternal prohibition,** as whenever witnesses testify that one desecrated Shabbat, he can be executed. **However,** in the case of **burglary,** as punishment for violating its **prohibition is transitory,** e.g., it is permitted for the homeowner to kill the burglar only as long as the burglar remains on his property, **say** that he is **not** exempt from payment. **And if he taught us** the exemption only with regard to **burglary,** that would be **because his burglary is his forewarning.** Because he certainly intends to kill the homeowner, it is permitted for the homeowner to kill him without forewarning. In that respect, burglary is a severe prohibition and exempts one from payment. **However, Shabbat, which requires forewarning,** is a less severe prohibition, and in that case, **say** that one **is not** exempt from payment. Therefore, it was **necessary** for Rabba to state the exemption in both cases.

אָמַר רַב פַּפָּא: הָיְתָה פָּרָה גְּנוּבָה לוֹ וּטְבָחָהּ בְּשַׁבָּת – חַיָּיב, שֶׁכְּבָר נִתְחַיֵּיב בִּגְנֵיבָה קוֹדֶם שֶׁיָּבֹא לִידֵי אִיסּוּר שַׁבָּת. הָיְתָה פָּרָה שְׁאוּלָה לוֹ, וּטְבָחָהּ בְּשַׁבָּת – פָּטוּר. אֲמַר לֵיהּ רַב אַחָא בְּרֵיהּ דְּרָבָא לְרַב אַשִׁי: רַב פַּפָּא פָּרָה אַתָּא לְאַשְׁמוּעִינַן?!

Rav Pappa said: If one **had a stolen cow** in **his** possession that he had stolen previously **and he slaughtered it on Shabbat,** he is **liable** to pay four or five times the principal **as he was already liable for theft before he came to** violate **the prohibition of Shabbat.** If **a cow was lent to him and he slaughtered it on Shabbat,**[H] he is **exempt** from paying the fine. **Rav Aḥa, son of Rava, said to Rav Ashi:** Is **Rav Pappa coming to teach us** the case of **a cow?** In other words, what did Rav Pappa add that was not already clear from Rabba's statement? The same principle applies with regard to both a kid and a cow. If one was liable to pay for the theft when he stole the animal, he is liable to pay the fine for slaughter as well, even if he is liable to receive the death penalty.

אֲמַר לֵיהּ: רַב פַּפָּא שְׁאוּלָה אָתָא לְאַשְׁמוּעִינַן; סָלְקָא דַּעְתָּךְ אָמִינָא, הוֹאִיל וְאָמַר רַב פַּפָּא: מִשְּׁעַת מְשִׁיכָה הוּא דְּאִתְחַיַּיב לֵיהּ בִּמְזוֹנוֹתֶיהָ, הָכָא נַמִּי מִשְּׁעַת שְׁאֵלָה אִתְחַיַּיב בְּאוֹנָסֶיהָ. – קָא מַשְׁמַע לָן.

Rav Ashi **said to him: Rav Pappa is coming to teach us** the *halakha* with regard to a **borrowed** cow, as **it could enter your mind to say** that **since Rav Pappa said:** It is **from the moment of pulling** the animal into his domain **that** the borrower **is obligated**[H] **to** provide the animal's **sustenance,** then **here too, from the moment of borrowing**[N] **he is liable** to pay **for its unavoidable accidents.** From that point, the animal is legally in his possession and therefore, even if he slaughtered the animal on Shabbat he should be liable. Therefore, **he teaches us** that one assumes liability for unavoidable accidents only when they actually occur, and if that is on Shabbat, he is exempt.

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And it was necessary; as, if he had taught us, etc. – וּצְרִיכָא דְּאִי אַשְׁמַעִינַן וכו׳: Rashi and several other commentaries explain that the Gemara here emphasizes that although one might have thought otherwise, in each of these cases one is exempt from punishment. Conversely, *Tosafot* and other early commentaries (Ramban; Rashba) contend that the opposite is true: The point is that one is obligated to pay the fine even though he violated a prohibition that is punishable by death.

Here too, from the moment of borrowing, etc. – הָכָא נַמִּי מִשְּׁעַת שְׁאֵלָה וכו׳: The reason for the difference between these two *halakhot* is that since one who borrows an animal is obligated to guard it from that moment, he is also obligated to see to the animal's sustenance. In contrast, liability to pay for accidental damage does not stem from his obligation to care for the animal; rather, there is an independent obligation to compensate the owner if there is an accident. Therefore, his liability begins only from the moment that the accident transpires.

HALAKHA

If a cow was lent to him and he slaughtered it on Shabbat – הָיְתָה פָּרָה שְׁאוּלָה לוֹ וּטְבָחָהּ בְּשַׁבָּת: One who borrowed a cow from another before Shabbat and stole and slaughtered it on Shabbat is exempt from payment, as the liability to be punished for theft and Shabbat desecration coincide. The *halakha* is in accordance with the opinion of Rav Pappa, as his opinion does not contradict the latter version of Rava's statement. The early commentaries disagree, both in terms of the understanding of the Gemara and in terms of the Rambam's ruling. Some (Meiri; *Netivot HaMishpat*, *Ḥoshen Mishpat* 341:9) state that he is exempt only from paying four or five times the principal but is liable to pay the principal, while others (Rabbi Meir HaLevi; *Nimmukei Yosef*) state that he is exempt from the principal as well (Rambam *Sefer Nezikim*, *Hilkhot Geneiva* 3:4; *Tur*, *Ḥoshen Mishpat* 350).

From the moment of pulling that he is obligated – מִשְּׁעַת מְשִׁיכָה הוּא דְּאִתְחַיַּיב לֵיהּ: One who borrows an animal is obligated to see to its sustenance and is liable for accidents (*Shakh*) from the moment he pulls the animal, as per the opinion of Rav Pappa. The Rema cites the opinion of Rabbeinu Yitzḥak and the Rosh that even without pulling the animal, he is liable from the moment its owners leave (Rambam *Sefer Mishpatim*, *Hilkhot She'ela* 1:4; *Shulḥan Arukh*, *Ḥoshen Mishpat* 340:4).

אָמַר רָבָא: הִנִּיחַ לָהֶן אֲבִיהֶן פָּרָה שְׁאוּלָה – מִשְׁתַּמְּשִׁין בָּהּ כָּל יְמֵי שְׁאֵלָתָהּ, מֵתָה – אֵין חַיָּבִין בְּאוֹנְסָהּ. כִּסְבוּרִין שֶׁל אֲבִיהֶם הִיא וּטְבָחוּהָ וַאֲכָלוּהָ – מְשַׁלְּמִין דְּמֵי בָּשָׂר בְּזוֹל. הִנִּיחַ לָהֶן אֲבִיהֶן אַחֲרָיוּת נְכָסִים – חַיָּבִין לְשַׁלֵּם.

Rava said: If **their father** died and **left them a borrowed cow,**[H] **they may use it** for **the entire** duration of the **period** for which **it was borrowed.** The right to use a borrowed article continues even after the borrower himself dies. However, if the cow **died, they are not liable** to pay **for its unavoidable accident,**[N] as they did not borrow the animal themselves. Similarly, if **they thought** the cow **was their father's**[H] **and they slaughtered it and ate it, they pay only a reduced** assessment of the **price of the meat.**[N] They are required to pay only for the benefit they received, not the damage they caused the owner. However, if **their father left them**[N] **property** as a **guarantee**[N] for return of the borrowed item, i.e., there was a lien on the father's property during his lifetime, **they are obligated to pay** the entire sum of the damage.

אִיכָּא דְּמַתְנֵי לָהּ אֲרֵישָׁא, וְאִיכָּא דְּמַתְנֵי לָהּ אַסֵּיפָא. מַאן דְּמַתְנֵי לָהּ אֲרֵישָׁא – כָּל שֶׁכֵּן אַסֵּיפָא, וּפְלִיגָא דְּרַב פַּפָּא, וּמַאן דְּמַתְנֵי לָהּ אַסֵּיפָא – אֲבָל אֲרֵישָׁא לָא, וְהַיְינוּ דְּרַב פַּפָּא.

The Gemara comments: **Some teach this** statement, that if the father left property as a guarantee his heirs are liable to pay the entire damage, **with regard to the first clause** of this *halakha*, **and some teach it with regard to the latter clause.** The Gemara elaborates: According to the **one who teaches it with regard to the first clause,**[N] when the animal died, **all the more so** would he teach this *halakha* **with regard to the latter clause,** as since they slaughtered the animal they must pay full damages. **And** this approach **differs** with the opinion **of Rav Pappa,** who said that a borrower is liable for accidents only when the incident occurs. **And** according to the **one who teaches it with regard to the latter clause,** this *halakha* applies only when they slaughtered and ate it; **however, with regard to the first clause,** when it died, they would **not** be liable, as the *tanna* too maintains that liability for unavoidable accidents begins only when the incident occurs, not from when the cow was borrowed. **And this is** consistent with the ruling **of Rav Pappa.**

HALAKHA

If their father left them a borrowed cow – הִנִּיחַ לָהֶן אֲבִיהֶן פָּרָה שְׁאוּלָה: If one borrowed an animal and died, his heirs may use the animal until the end of the period for which it was borrowed. If the animal dies, they are not liable to pay for the accident, as per the opinion of Rava. However, their liability is like that of paid bailees, as the Gemara states that they are exempt only from accidents, from which it may be inferred that they are liable for theft and loss (*Baḥ*). The Rosh writes that if the lender says to the heirs: Return the article I lent or assume responsibility to pay for accidents, it is binding upon the heirs (Rambam *Sefer Mishpatim*, *Hilkhot She'ela* 1:5; *Shulḥan Arukh*, *Ḥoshen Mishpat* 341:3).

If they thought the cow was their father's, etc. – כִּסְבוּרִין שֶׁל אֲבִיהֶם וכו': If the heirs inherited no property from their father and slaughtered and ate the borrowed cow under the mistaken impression that it belonged to their father, they are required to pay only for the benefit they received, not the damage they caused the owner. If their father bequeathed property to them and the borrowed cow died or they slaughtered it, they reimburse the owner the full value of his cow from the inherited property. This is the opinion of the Rambam. His view is disputed by the Ramban and the Rashba, who contend that the Rambam's approach corresponds with neither the first version nor the latter version in the Gemara. They rule in accordance with the latter version, and Rava's ruling is parallel to that of Rav Pappa. Therefore, if the cow dies the heirs are exempt from payment even if their father left them property as a guarantee. The Rosh agrees. The *Kesef Mishne* and other commentaries explain that the Rambam had a variant version of the Gemara. The *Shulḥan Arukh*, like most authorities, rules in accordance with the latter version of Rava's statement to exempt the heirs (Rambam *Sefer Mishpatim*, *Hilkhot She'ela* 1:5; *Shulḥan Arukh*, *Ḥoshen Mishpat* 341:4).

NOTES

If it died they are not liable for its unavoidable accident – מֵתָה אֵין חַיָּבִין בְּאוֹנְסָהּ: The Ra'avad states that the heirs are exempt from payments for accidents even if they actually use the animal. He explains that the heirs inherit the rights to use the animal, whereas the obligation to pay for accidents is a personal obligation assumed by the borrower, which lapses upon his death. The heirs never accepted responsibility to pay for accidents. The Rashba questions this approach, in light of the *halakha* that one who borrowed from a hirer is considered to have borrowed from the owner himself. Accordingly, heirs should also be viewed as having borrowed from their father and therefore should be obligated to pay the owner of the animal for accidents. The Ritva answers that even in a case of a second borrower, his liability does not stem from his use of the object but from the fact that he actually borrowed it and thereby incurred the responsibility, as opposed to heirs, who never assumed that. A different explanation is suggested by Rabbi Avraham *Av Beit Din*. He contends that heirs are exempt from financial responsibility for accidents only if they had not made use of the animal, but if they had used it they are considered to have borrowed it themselves. See HALAKHA for further elaboration. The Ra'avad adds that even if they did not use the animal, their responsibility is no less than the responsibility of paid bailees, stemming from their right to use the animal.

Reduced assessment of the price of the meat – דְּמֵי בָּשָׂר בְּזוֹל: Based on *Bava Kamma* 146b, Rashi explains that this means that they return the hide to the owner and pay two-thirds of the standard market price of the meat. The Rid agrees. The Ramban maintains that even in *Bava Kamma* that ruling is a later addition by the early *ge'onim*. Therefore, he asserts that there is no connection between the two passages, and the Gemara here simply means the value of meat sold at a reduced price.

If their father left them, etc. – הִנִּיחַ לָהֶן אֲבִיהֶן וכו': The rationale for the opinion that this statement relates to the latter clause is subject to dispute among the early commentaries. According to most versions of Rashi's commentary, the heirs are liable due to the fact that they neglected to assess the situation properly, although some (*Shita Mekubbetzet*; Rashash) cite a variant reading that aligns Rashi's opinion with that of most of the other commentaries. The Ramban questions Rashi's interpretation: If that is the reason for their liability, what is the difference whether or not their father left them property? He therefore agrees with *Tosafot* that the heirs' father should have informed them that this cow did not belong to him. Since he neglected to do so, payment is collected from his property, if any of his property remains. Most early commentaries explain in this way, despite the difficulty raised by the Rashba, that it is conceivable that he neglected to inform them due to circumstances beyond his control, e.g., if he died suddenly, a difficulty that does not exist according to Rashi's explanation. Rabbi Meir HaLevi explains that had their father not left them property, there would be no need to consider the possibility that there is some obligation incurred by their father when they come to slaughter the animal, as he left them no property from which it could be collected. Since they did not know the cow was borrowed, they are not liable. If, however, they inherited property from their father, they know that if he was liable, e.g., because he stole the animal, they are obligated to pay due to their own assumption of responsibility for the animal and due to their father's obligation as well.

Property as a guarantee – אַחֲרָיוּת נְכָסִים: According to Rashi this refers specifically to property that can be mortgaged to guarantee a loan, i.e., land. Although there are different versions of the Rambam's ruling, apparently he maintains that after the ordinance instituted by the *ge'onim* that when one takes a loan there is a lien on all of one's property, there is no difference between land and other types of property. The commentaries state that this dispute is related to the issue of whether the ordinance that the debts of the father are bequeathed to an heir is limited to a debt due to a loan or whether it applies to all debts.

The one who teaches it with regard to the first clause, etc. – מַאן דְּמַתְנֵי לָהּ אֲרֵישָׁא וכו': The Rambam rules that if the heirs thought the cow was their father's and their father left them property, they are obligated to pay even if the cow died. Other early commentaries question this ruling, as it appears to correspond neither with the first nor with the second version of the Gemara. See HALAKHA for further elaboration. The Meiri claims that the duty of the heirs to pay for the dead cow does not result from their liability to pay for accidents, but from their father's obligation to return the article he borrowed. According to his opinion, this *halakha* is unrelated to the Gemara's discussion with regard to the relationship between the statement of Rava and Rav Pappa.

בְּשִׁלָּמָא רַבִּי יוֹחָנָן לָא אָמַר כְּרֵישׁ לָקִישׁ – דְּקָא מוֹקִים לָהּ כְּרַבָּנַן. אֶלָּא רֵישׁ לָקִישׁ מַאי טַעְמָא לָא אָמַר כְּרַבִּי יוֹחָנָן? מָאַמַר לָךְ: כֵּיוָן דְּאֵילּוּ אַתְרוּ בֵּיהּ – פָּטוּר, כִּי לָא אַתְרוּ בֵּיהּ – נַמִי פָּטוּר.

Several possible solutions were proposed to resolve the apparent contradiction between the mishna here that says that one who rapes his sister pays a fine and the mishna in *Makkot* that says that he is flogged. The Gemara comments: **Granted, Rabbi Yoḥanan,** who explains the mishna as referring to a case where he was not forewarned, **did not state** his opinion **in accordance with** the opinion of **Reish Lakish,** who explains that the mishna is in accordance with the opinion of Rabbi Meir, **as he establishes** the mishna **in accordance with** the opinion of **the Rabbis,** a preferable option, as that aligns the unattributed mishna with the *halakha*. **However, what is the reason** that **Reish Lakish didn't state** his opinion **in accordance with** the opinion of **Rabbi Yoḥanan?**[N] The Gemara answers: Reish Lakish could have **said to you: Since if they forewarned him** he is **exempt** from payment, **when they did not forewarn him,** he is **exempt as well.**

וְאָזְדוּ לְטַעֲמַיְיהוּ: דְּכִי אֲתָא רַב דִּימִי אָמַר: חַיָּיבֵי מִיתוֹת שׁוֹגְגִין וְחַיָּיבֵי מַלְקוּיוֹת שׁוֹגְגִין וְדָבָר אַחֵר, רַבִּי יוֹחָנָן אָמַר: חַיָּיב, וְרֵישׁ לָקִישׁ אָמַר: פָּטוּר. רַבִּי יוֹחָנָן אָמַר: חַיָּיב, דְּהָא לָא אַתְרוּ בֵּיהּ. רֵישׁ לָקִישׁ אָמַר: פָּטוּר, כֵּיוָן דְּאֵילּוּ אַתְרוּ בֵּיהּ – פָּטוּר, כִּי לָא אַתְרוּ בֵּיהּ נַמִי פָּטוּר.

And Rabbi Yoḥanan and Reish Lakish each **follow their** standard lines of **reasoning** in this regard, **as when Rav Dimi came** from Eretz Yisrael to Babylonia, **he said:** With regard to **those** who **unwittingly** performed a transgression for which one is **liable**[N] **to** receive the **death** penalty, or **those** who **unwittingly** performed a transgression for which one is **liable** to receive **lashes, and** that transgression also involved **another matter,** monetary payment, **Rabbi Yoḥanan said:** He is **liable** to pay; since he sinned unwittingly he did not receive the severe punishment. **And Reish Lakish said** he is **exempt.** The Gemara clarifies the rationales for their statements. **Rabbi Yoḥanan said** he is **liable; since they did not forewarn him,** he sinned unwittingly. **Reish Lakish said** he is **exempt; since if they forewarned him** he is **exempt** from payment, **when they did not forewarn him,** he is **exempt as well.**

אֵיתִיבֵיהּ רֵישׁ לָקִישׁ לְרַבִּי יוֹחָנָן: ״וְלֹא יִהְיֶה אָסוֹן עָנוֹשׁ יֵעָנֵשׁ״

Reish Lakish raised an objection to the opinion of **Rabbi Yoḥanan** from the following verse, which describes a case where two people fought and during their struggle they hurt a pregnant woman, causing her to miscarry: **"And yet no harm follow, he shall be punished** as imposed upon him by the woman's husband" (Exodus 21:22).

NOTES

What is the reason that he didn't state his opinion in accordance with the opinion of Rabbi Yoḥanan – מַאי טַעְמָא לָא אָמַר כְּרַבִּי יוֹחָנָן: Although ostensibly the Gemara could have said that Reish Lakish bases his opinion on the fact that a careful reading of the mishna leads to the conclusion that it is in accordance with the opinion of Rabbi Meir, it was already proven above that it cannot be said that the entire mishna is in accordance with the opinion of Rabbi Meir. Therefore, that is not sufficient to clarify why he explained it according to Rabbi Meir's opinion (Ritva). In the *Shita Mekubbetzet* it is explained at length that all of the problems of the mishna are resolved by Rabbi Yoḥanan's explanation, including contradictions with other *mishnayot*. That is not the case with the explanation of Reish Lakish.

Those unwittingly liable – חַיָּיבֵי...שׁוֹגְגִין: The word unwittingly is inaccurate here because the same *halakha* applies even if they sinned intentionally, as according to Rabbi Yoḥanan the decisive factor is not their state of mind but whether or not they received a warning and consequently whether or not they are punished. However, it could be explained that Rabbi Yoḥanan deems anyone who acted without forewarning as one who acted unwittingly (Ritva).

Perek **III**
Daf **35** Amud **a**

מַאי לָאו אָסוֹן מַמָּשׁ? לָא, דִּין אָסוֹן. אִיכָּא דְּאָמְרִי, אֵיתִיבֵיהּ רַבִּי יוֹחָנָן לְרֵישׁ לָקִישׁ: ״וְלֹא יִהְיֶה אָסוֹן עָנוֹשׁ יֵעָנֵשׁ״ מַאי לָאו – דִּין אָסוֹן? לָא, אָסוֹן מַמָּשׁ.

Is this **not** referring to **actual harm,** i.e., the woman's death? And the verse states that he pays only if she did not die, but if she died is he exempt, even if he was not forewarned? The Gemara answers: **No,** the verse can be explained to mean: If there is no **sentence of harm.**[N] If the court does not actually sentence him to death, he pays the damages for the miscarried fetus. He is exempt from payment only if he is actually executed. **Some say** a different version of this exchange: **Rabbi Yoḥanan raised an objection to** the opinion of **Reish Lakish: "And yet no harm follow, he shall be punished"** (Exodus 21:22); **is** this **not** referring to **a sentence of harm?** The Gemara answers: **No,** the verse can be explained to mean: If there is no **actual harm.**

NOTES

Harm and sentence of harm – אָסוֹן וְדִין אָסוֹן: Rashi explains that the harm referred to in the verse is that of the woman dying. He therefore explains that according to the opinion that the verse refers to actual harm, when it says: "And yet no harm follow, he shall be punished" (Exodus 21:22), it means that whenever the woman dies, the one who caused the miscarriage is not liable. According to the opinion that the verse refers to a sentence of harm, it means that the fact that the woman dies is not sufficient to exempt the aggressor from payment, as there must be a sentence of death for her killer, which can be administered only if there was forewarning.

Rabbeinu Ḥananel's version of the text has the names in the text reversed. Rabbi Yoḥanan asks the first version of the question: Is this not referring to actual harm? Reish Lakish asks the second version: Is this not referring to sentence of harm? Accordingly, he understands the harm mentioned in the verse to be the fate of the killer; Rabbi Yoḥanan asks: Is it not only when the killer experiences actual harm, when he is executed by the court, as there were witnesses and forewarning, that he is exempt from payment? The Gemara's response in defense of Reish Lakish's opinion is that no, the verse is referring to the sentence of harm, i.e. to an action for which one is potentially liable to be executed.