בְּשִׁלְמָא רַבִּי יוֹחָנָן לָא אָמַר כְּרֵישׁ לָקִישׁ – דְּקָא מוֹקִים לָהּ כְּרַבָּנַן. אֶלָּא רֵישׁ לָקִישׁ מַאי טַעְמָא לָא אָמַר כְּרַבִּי יוֹחָנָן? אָמַר 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.

אֲמַר רָבָא: וּמִי אִיכָּא לְמַאן דְּאָמַר חַיָּיבֵי מִיתוֹת שׁוֹגְגִין חַיָּיבִים? וְהָא תָּנָא דְּבֵי חִזְקִיָּה: מַכֵּה אָדָם וּמַכֵּה בְּהֵמָה,

Rava said: Is there anyone who said that **those** who **unwittingly** performed a transgression for which one is **liable to** receive the **death** penalty **are obligated** to pay? **But didn't** the Sage **of the school of Ḥizkiyya teach:**[N] The verse speaks of **one who smites a person, and** the verse speaks of **one who smites an animal.**[N] The two cases are juxtaposed in the verse "And one who smites an animal shall pay for it, and one who smites a person shall die" (Leviticus 24:21).

מַה מַּכֵּה בְּהֵמָה – לֹא חִילְּקָתָּ בּוֹ בֵּין בְּשׁוֹגֵג בֵּין בְּמֵזִיד, בֵּין מִתְכַּוֵּין לְשֶׁאֵין מִתְכַּוֵּין, בֵּין דֶּרֶךְ יְרִידָה לְדֶרֶךְ עֲלִיָּיה, לְפוֹטְרוֹ מִמָּמוֹן אֶלָּא לְחַיְּיבוֹ מָמוֹן – אַף מַכֵּה אָדָם לֹא תַּחֲלוֹק בּוֹ בֵּין בְּשׁוֹגֵג בֵּין בְּמֵזִיד, בֵּין מִתְכַּוֵּין לְשֶׁאֵין מִתְכַּוֵּין, בֵּין דֶּרֶךְ יְרִידָה לְדֶרֶךְ עֲלִיָּיה – לְחַיְּיבוֹ מָמוֹן, אֶלָּא לְפוֹטְרוֹ מָמוֹן.

Just as in the case of one **who smites an animal, you did not distinguish between** one who did so **unwittingly and** one who did so **intentionally,**[N] **between** one who acted **with intent and one who** acted **with no intent, between** one who smites **in** the course of **a downward motion and** one who smites **in** the course of **an upward motion,** and in all those cases it is not **to exempt** him from paying **money but rather to obligate him to** pay **money; so too, in** the case of one **who smites a person, do not distinguish between** one who did so **unwittingly and** one who did so **intentionally,**[H] **between** one who acted **with intent and one who** acted **with no intent, between** one who smites **in** the course of **a downward motion and** one who smites **in** the course of **an upward motion.** In all those cases as well it is not **to obligate him** to pay **money but rather to exempt him** from paying **money.** The *halakha* in both cases is unconditional; when he smites an animal he is always liable to pay and when he smites a person he is always exempt from payment, regardless of whether or not he is actually executed.

אֶלָּא, כִּי אֲתָא רָבִין אָמַר: חַיָּיבֵי מִיתוֹת שׁוֹגְגִין כּוּלֵּי עָלְמָא לָא פְּלִיגִי דִּפְטוּרִין. כִּי פְּלִיגִי בְּחַיָּיבֵי מַלְקוּת שׁוֹגְגִין וְדָבָר אַחֵר. רַבִּי יוֹחָנָן אָמַר: חַיָּיב, חַיָּיבֵי מִיתוֹת אִיתְקוּשׁ, חַיָּיבֵי מַלְקִיּוֹת – לָא אִיתְקוּשׁ. רֵישׁ לָקִישׁ אָמַר: פָּטוּר, בְּפֵירוּשׁ רִיבְּתָה תּוֹרָה חַיָּיבֵי מַלְקִיּוֹת כְּחַיָּיבֵי מִיתוֹת.

Rather, when Ravin came from Eretz Yisrael to Babylonia, **he said:** With regard to **those** who **unwittingly** performed a transgression for which one is **liable to** receive the **death penalty, everyone agrees that** they **are exempt,** as per the derivation of the Sages of the school of Ḥizkiyya. **When they disagree** it is **with regard to those** who **unwittingly** performed a transgression for which one is **liable to** receive **lashes, and another matter,**[H] for which he is liable to pay money. **Rabbi Yoḥanan said** that he is **obligated** to pay, as **those liable to** receive the **death penalty are juxtaposed** to cases of monetary payment and are unconditionally exempt from payment. However, **those liable** to receive **lashes are not juxtaposed.** Therefore, in the case of one who is liable to receive lashes, unless one is actually flogged, he is obligated to pay for the damage he inflicted. **Reish Lakish said:** He is **exempt, as the Torah explicitly included those liable to** receive **lashes, like those liable to** receive the **death** penalty, and unconditionally exempted them from payment.

HALAKHA

So too, in the case of one who smites a person, do not distinguish between one who did so unwittingly and one who did so intentionally – אַף מַכֵּה אָדָם לֹא תַּחֲלוֹק בּוֹ בֵּין בְּשׁוֹגֵג בֵּין בְּמֵזִיד: If one performed a transgression punishable by death and simultaneously performed an action for which he is liable to pay, he is exempt from that payment even if he sinned unwittingly or with no intent, as per the statement of the Sage of the school of Ḥizkiyya (Rambam *Sefer Nashim*, *Hilkhot Na'ara Betula* 1:13; *Sefer Nezikim*, *Hilkhot Ḥovel* 4:7; *Shulḥan Arukh*, *Ḥoshen Mishpat* 423:4).

When they disagree it is with regard to those who unwittingly performed a transgression for which one is liable to receive lashes, and another matter – כִּי פְּלִיגִי בְּחַיָּיבֵי מַלְקוּת שׁוֹגְגִין וְדָבָר אַחֵר: One who commits a transgression for which he is liable both to be flogged and to pay is flogged and is exempt from payment. However, if he is not flogged for his transgression, e.g., if he performed it unwittingly or without forewarning, he is obligated to pay. The *halakha* is in accordance with the opinion of Rabbi Yoḥanan in his dispute with Reish Lakish (Rambam *Sefer Nashim*, *Hilkhot Na'ara Betula* 1:11 and *Sefer Nezikim*, *Hilkhot Geneiva* 3:1).

NOTES

But didn't the Sage of the school of Ḥizkiyya teach – וְהָא תָּנָא דְּבֵי חִזְקִיָּה: *Tosafot* and other early commentaries discuss whether this statement of the school of Ḥizkiyya is undisputed. In the Jerusalem Talmud there is no dispute in this regard, and both Rabbi Yoḥanan and Reish Lakish accept this exposition completely. The commentaries ask: Couldn't Rabbi Yoḥanan prove from the mishna that one who is liable to receive the death penalty is exempt from paying the fine, as he maintains that the mishna is referring to a sinner who received no forewarning? Why, then, is it necessary for him to cite proof from a different source? The answer is that the difficulty raised from the statement of the school of Ḥizkiyya is also based on this inference from the mishna. The Rashba claims that the Gemara could have cited proof from the mishna, but it preferred to cite an explicit teaching rather than rely on an inference. Furthermore, unlike the statement of the school of Ḥizkiyya, the mishna does not provide the biblical source for the *halakha*.

One who smites a person and one who smites an animal – מַכֵּה אָדָם וּמַכֵּה בְּהֵמָה: This exposition is based on the fact that both parts of the verse "And one who smites an animal shall pay for it, and one who smites a person shall die" are superfluous, as the *halakhot* of causing injury to an animal and killing another person are both stated elsewhere. The purpose of this verse, therefore, must be to equate the two *halakhot* (Ramah). It cannot be that the Torah is teaching that one who smites a person is also liable to pay in all cases, as clearly one who commits intentional murder receives the greater of the two punishments and is exempt from payment. He therefore derived that just as one who strikes an animal is liable to pay in every case, so too, one who kills a person is exempt from payment in every case (Ritva).

Between one who did so unwittingly and one who did so intentionally – בֵּין בְּשׁוֹגֵג בֵּין בְּמֵזִיד: *Tosafot* explain that these three categories: Unwitting versus intentional, with intent versus with no intent, and one who smites in the course of a downward motion versus one who smites in the course of an upward motion, refer to three different types of monetary liability. Other early commentaries, and *Tosafot* elsewhere, elaborate on this point. Specifically, they explain that unwitting versus intentional relates to intention to kill, generally determined by forewarning; with intent versus with no intent refers to one who intended to kill one person but killed another; in the course of a downward motion versus in the course of an upward motion is relevant to exile. It is a Torah decree that one is liable to be exiled to a city of refuge only if he killed another in a downward movement, e.g., if one fell on the victim or dropped an object upon him. If one killed another in an upward motion, e.g., one who struck another with an ax while lifting it upward, he is exempt, as explained at length in tractate *Makkot*.

הֵיכָן רִיבְּתָה תּוֹרָה? אֲמַר אַבַּיֵי: אָתְיָא ״רָשָׁע״ ״רָשָׁע״. רָבָא אֲמַר: אָתְיָא ״מַכֵּה״ ״מַכֵּה״. אֲמַר לֵיהּ רַב פָּפָּא לְרָבָא: הֵי מַכֵּה? אִילֵימָא ״וּמַכֵּה בְּהֵמָה יְשַׁלְּמֶנָּה וּמַכֵּה אָדָם יוּמָת״ – הַאי בְּקַטָּלָא כְּתִיב! אֶלָּא הַאי ״מַכֵּה״: ״מַכֵּה נֶפֶשׁ בְּהֵמָה יְשַׁלְּמֶנָּה נֶפֶשׁ תַּחַת נָפֶשׁ״ וּסְמִיךְ לֵיהּ ״וְאִישׁ כִּי יִתֵּן מוּם בַּעֲמִיתוֹ [כַּאֲשֶׁר עָשָׂה כֵּן יֵעָשֶׂה לוֹ]״.

The Gemara asks: **Where did** the **Torah include** those liable to be flogged? **Abaye said:** It is **derived** by means of a verbal analogy between the term **wicked** in the verse "That he is wicked and liable to die" (Numbers 35:31), and the term **wicked**[N] in the verse "That he is wicked and liable to be flogged" (Deuteronomy 25:2). **Rava said:** It is **derived** by means of a verbal analogy between the term **smites** in one verse and the term **smites**[N] in another verse. **Rava Pappa said to Rava:** To **which** term **smites** are you referring? **If we say** that it is the verse **"And one who smites an animal shall pay for it, and one who smites a person shall die"** (Leviticus 24:21), clearly that is not so, as **that is written with regard to death.** Smiting a person in that verse is referring to murder. **Rather,** it is to **this** term **smites** that Rava is referring: **"And he who smites an animal shall pay for it, a life for a life"** (Leviticus 24:18), **and juxtaposed to it,** it is written: **"And a man who places a blemish upon his counterpart, as he has done so shall be done to him"** (Leviticus 24:19). The verses liken those liable to receive lashes to those obligated to pay money, from which it is derived that those liable to receive lashes are exempt from payment.

וְהַאי לָאו ״מַכֵּה״ הִיא! אֱנַן הַכָּאָה הַכְּאָה קָאָמְרִינַן. וְהָא כִּי כְּתִיב – בְּחוֹבֵל בַּחֲבֵירוֹ הוּא דִּכְתִיב, וְחוֹבֵל בַּחֲבֵירוֹ בַּר תַּשְׁלוּמִין הוּא! אִם אֵינוֹ עִנְיָן לְהַכָּאָה שֶׁיֵּשׁ בָּהּ שְׁוֵה פְּרוּטָה – תְּנֵהוּ עִנְיָן לְהַכָּאָה שֶׁאֵין בָּהּ שְׁוֵה פְּרוּטָה.

The Gemara raises a difficulty: **But this** term that appears in the latter verse **is** "places a blemish," **not smites.** How, then, can one derive a verbal analogy? The Gemara answers: This is not a verbal analogy based on identical terms; rather, it is based on identical concepts. **We are saying** that it is a verbal analogy between **smiting** an animal in the first verse and **smiting** a person in the latter verse. The Gemara asks: **However, when** the second verse **is written, it is written with regard to one who injures another, and one who injures another is subject to payment** and not to lashes. This undermines the proof, as lashes are not mentioned in either verse. The Gemara answers: **If it is not a matter of smiting that** causes damage equivalent to the **value of a *peruta*,** in which case he would pay and would not be flogged, **apply it** to the **matter of smiting that** causes damage that is not equivalent to the **value of a *peruta*.**[H] Since in that case there is no payment for the injury, one is flogged for striking that blow.

NOTES

It is derived by means of a verbal analogy between the term wicked and the term wicked – אָתְיָא רָשָׁע רָשָׁע: The Gemara does not specify the verses upon which this verbal analogy is based, as it appears in several places. Although the meaning is not the same in all of those places, the basic comparison between those liable to be executed and those liable to be flogged is an accepted principle, and the Gemara did not find it necessary to elaborate (see *Shita Mekubbetzet*).

It is derived by means of a verbal analogy between the term smites and the term smites – אָתְיָא מַכֵּה מַכֵּה: The early commentaries discuss the precise nature of this derivation. At first glance, it appears that it is based on juxtaposition of the verses. However, if that is the case, how does the Gemara proceed to reject it based on the term smites when the derivation is not based on a verbal analogy? The Ritva explains that the Gemara was merely questioning the fact that Rava stated that the term smites appears in both verses. *Tosafot* conclude that Rava's derivation is in fact a verbal analogy, which accounts for the question of the Gemara. Accordingly, the phrase: And juxtaposed to it, does not mean that it is a derivation based on juxtaposed verses but is merely noting that the other verse appears adjacent to the first. The notion that a verbal analogy can be based on similar concepts rather than identical terms is well established, as the school of Rabbi Yishmael derives verbal analogies from different words with the same meaning.

HALAKHA

Smiting that causes damage that is not equivalent to the value of a *peruta* – הַכָּאָה שֶׁאֵין בָּהּ שְׁוֵה פְּרוּטָה: One who struck another with a blow that causes damage that is not the equivalent of a *peruta* is liable to be flogged, as he is exempt from payment. The *halakha* is in accordance with the opinion of Rabbi Yoḥanan (Rambam *Sefer Nezikim*, *Hilkhot Ḥovel* 4:9, 5:3; *Shulḥan Arukh*, *Ḥoshen Mishpat* 420:2).

Perek **III**
Daf **35** Amud **b**

סוֹף סוֹף לָאו בַּר תַּשְׁלוּמִין הוּא! לָא צְרִיכָא, דְּבַהֲדֵי דְּמַחְיֵיהּ קָרַע שִׁירָאִין דִּילֵיהּ.

The Gemara raises a difficulty: **Ultimately,** one who injured another and is flogged **is not subject to payment,** as he inflicted damage worth less than a *peruta*. How then can a principle be derived that one who is liable to receive lashes does not pay even when he is not actually flogged? The Gemara answers: The juxtaposition of the verses is **necessary only** with regard to a situation **where at the** same **time that he struck**[N] **him he tore his silk.** In that case, where he performed a transgression for which he is liable to be flogged and is also liable to pay damages, it is derived that he would be exempt from paying damages even if he is not actually flogged.

NOTES

Necessary only with regard to a situation where at the same time that he struck, etc. – לָא צְרִיכָא, דְּבַהֲדֵי דְּמַחְיֵיהּ וכו׳: Based on the formulation of the Gemara, this appears to be a continuation of the previous statement, i.e., it is dealing with a blow that caused damage that is not the equivalent of a *peruta*. This is the implied meaning, as the Gemara did not introduce this section with the term: Rather. The Maharshal, however, claims that this solution renders it unnecessary to explain the verse as referring to a blow that caused damage that is not the equivalent of a *peruta* (see *Penei Yehoshua*). The rationale is that the Torah exempted one who injured another from being punished with lashes only if the obligation to pay stems from that very same transgression. If the obligation for payment results from violation of a different prohibition, the injurer is not exempt from being punished with lashes.

אָמַר לֵיהּ רַב חִיָּיא לְרָבָא: וְלַתַּנָּא דְּבֵי חִזְקִיָּה, דַּאֲמַר: ״מַכֵּה אָדָם וּמַכֵּה בְּהֵמָה״ מְמַאי דְּבַחוֹל כְּתִיב, וְלֵיכָּא לְאֵיפְלוגֵי, דִּילְמָא בְּשַׁבָּת כְּתִיב, דִּבְבְהֵמָה גּוּפָהּ אִיכָּא לְאֵיפְלוגֵי?

§ **Rav Ḥiyya said to Rava: And according to the** derivation **of** the *tanna* **of the school of Ḥizkiyya, who said:** The verse speaks of **one who smites a person, and** the verse speaks of **one who smites an animal. From where** does that *tanna* know **that it is written with regard to a weekday and** therefore **there is no** reason **to distinguish** between an unwitting and a purposeful sinner; **perhaps** this case **is stated with regard to** one who injured an animal on **Shabbat,**[N] **when concerning the animal itself there is** reason **to distinguish** between one who did so unwittingly and one who did so intentionally. In the case of one who acted unwittingly, he is not liable to receive the death penalty and should therefore be obligated to pay, whereas one who acted intentionally is exempt from payment because he receives the death penalty for desecrating Shabbat. If so, there is no source to exempt from payment one who is not actually executed.

לָא סָלְקָא דַּעְתָּךְ, דִּכְתִיב ״וּמַכֵּה בְּהֵמָה יְשַׁלְּמֶנָּה וּמַכֵּה אָדָם יוּמָת״. הֵיכִי דָּמֵי? אִי דְּלָא אַתְרוּ בֵּיהּ – מַכֵּה אָדָם אַמַּאי יוּמַת? אֶלָּא פְּשִׁיטָא – דְּאַתְרוּ בֵּיהּ, וְאִי בְּשַׁבָּת – מַכֵּה בְּהֵמָה יְשַׁלְּמֶנָּה?! אֶלָּא לָאו – בַּחוֹל.

The Gemara answers: That notion **should not enter your mind, as it is written: "And one who smites an animal shall pay for it, and one who smites a person shall die"** (Leviticus 24:21). **What are the circumstances** discussed in this verse? **If** it is a case **where** the witnesses **did not forewarn him,** i.e., when **one who smites a person** is not forewarned, **why should he be executed?** There is no corporal punishment, neither lashes nor execution, without forewarning. **Rather,** it is **obvious that they forewarned him. And if** the verse is referring to one who sinned **on Shabbat** after forewarning, would **one who smites an animal** be obligated to **pay for it?** He is executed and certainly exempt from payment. **Rather, isn't** the verse clearly referring to a case **during the week?**

אָמַר לֵיהּ רַב פַּפָּא לְאַבַּיֵי: לְרַבָּה, דְּאָמַר: חִידּוּשׁ הוּא שֶׁחִידְּשָׁה תּוֹרָה בִּקְנָס, וְאַף עַל גַּב דְּמִיקְּטִיל מְשַׁלֵּם, מַתְנִיתִין כְּמַאן מוֹקִים לָהּ? אִי כְּרַבִּי מֵאִיר – קַשְׁיָא בִּתּוֹ, אִי כְּרַבִּי נְחוּנְיָא בֶּן הַקָּנָה – קַשְׁיָא אֲחוֹתוֹ, אִי כְּרַבִּי יִצְחָק – קַשְׁיָא מַמְזֶרֶת!

§ **Rav Pappa said to Abaye: According to Rabba,** who **said: It is a novel element that the Torah innovated with regard to** the halakhic category of **fine, and even though he is executed he pays** the fine; **in accordance with whose** opinion **does** Rabba **establish the mishna? If** it is **in accordance with** the opinion of **Rabbi Meir,**[N] it is **difficult;** why is he exempt if he raped **his daughter?** According to Rabba, Rabbi Meir is of the opinion that even one liable to receive the death penalty pays the fine. **If** it is **in accordance with** the opinion of **Rabbi Neḥunya ben HaKana,** it is **difficult,** as why does the mishna rule that he pays the fine for raping **his sister?** Rabbi Neḥunya holds that one liable to receive *karet* is exempt from the fine, like those liable to receive the death penalty. **If** the mishna is **in accordance with** the opinion of **Rabbi Yitzḥak,**[N] who rules that lashes are not administered to those liable to receive *karet* and therefore they are obligated to pay the fine; however, one who is flogged is exempt from payment, it is **difficult,** as why did the mishna rule that he is obligated to pay the fine for raping **a *mamzeret*,**[N] for which he is liable to receive lashes?

NOTES

Perhaps this case is stated with regard to Shabbat – דִּילְמָא בְּשַׁבָּת כְּתִיב: Some commentaries explain that the Gemara is not suggesting that the verse refers only to Shabbat, but rather states a principle that applies equally to blows struck on weekdays and those struck on Shabbat. Once it is established that the verse refers to Shabbat as well, an additional distinction can be made between unwitting and intentional actions. If that is the case, this superfluous verse could teach that there is indeed a distinction between unwitting and intentional acts both in the case of one who kills an animal and one who kills a person (Ritva; *Shita Mekubbetzet*).

In accordance with whose opinion…if it is in accordance with Rabbi Meir – מַתְנִיתִין כְּמַאן...אִי כְּרַבִּי מֵאִיר: *Tosafot* note that the Gemara did not list all the Sages whose opinions did not correspond with the mishna. Rather, it mentions those opinions cited earlier, and which were suggested as the opinion of the *tanna* of the mishna. Only after listing those *tanna'im* does the Gemara mention Rabbi Yitzḥak, whose opinion was not cited earlier, even though the *mamzeret* appears first in the mishna, (*Shita Mekubbetzet*).

The opinion of Rabbi Yitzḥak – שִׁיטַת רַבִּי יִצְחָק: His opinion, which is merely alluded to here, is that even though most of those liable to receive *karet* violate a prohibition, they do not receive lashes. The reason is that just as prohibitions punishable by death at the hands of the court do not render the offender liable to be flogged, the same applies to prohibitions punishable by death at the hand of Heaven, e.g., *karet*.

If the mishna is in accordance with the opinion of Rabbi Yitzḥak, it is difficult…a *mamzeret* – אִי כְּרַבִּי יִצְחָק קַשְׁיָא מַמְזֶרֶת: Ostensibly, it could be explained that Rabbi Yitzḥak agrees with Rabbi Meir that one receives lashes and pays, in which case there would be no difficulty from the case of a *mamzeret*. Why then does the Gemara say that it is difficult? Various answers were suggested. The Rashba explains that the Gemara did not want to establish Rabbi Yitzḥak's opinion in accordance with the individual opinion of Rabbi Meir. In the *Shita Mekubbetzet* there is an inference from *Tosafot* that even though the opinion of Rabbi Neḥunya was established in accordance with that of Rabbi Meir, as is indicated in the language of his statement, there is no indication from the statement of Rabbi Yitzḥak that he agrees with Rabbi Meir. Rabbeinu Ḥananel contends that according to Rabbi Yitzḥak lashes are a more severe punishment than *karet*, and those liable to receive *karet* are exempt from lashes only because it is derived from the verses to be lenient in their regard. He therefore maintains that just as those liable to be executed are exempt from payment, the same applies to those who receive lashes. All this is in accordance with the approach of the Gemara.

In the Jerusalem Talmud, it is explained that there is no difficulty, as the mishna can be understood as referring to a *mamzer* who raped a *mamzeret*, in which case there is no liability to receive lashes at all. The Ramban and other commentaries explain that the Gemara does not understand the mishna in this manner because in the case of a *mamzer* who raped a *mamzeret* there is nothing novel, as she is permitted to him, and therefore it is no different from a case of a Jew who rapes a Jewish woman.

הָנִיחָא אִי סָבַר לָהּ כְּרַבִּי יוֹחָנָן – הוּא נַמִּי מְתָרֵץ לָהּ כְּרַבִּי יוֹחָנָן, אֶלָּא אִי סָבַר כְּרֵישׁ לָקִישׁ – הֵיכִי מְתָרֵץ לָהּ? עַל כָּרְחָךְ כְּרַבִּי יוֹחָנָן סְבִירָא לֵיהּ.

This works out **well if** Rabba **holds in accordance with** the opinion of **Rabbi Yoḥanan,** who says that one who did not receive forewarning is obligated to pay even if he performed a transgression for which he is liable to be flogged, as **he can explain** the mishna **as well, in accordance with** the opinion of **Rabbi Yoḥanan,** that he is obligated to pay in cases where there was no forewarning. **However, if he holds in accordance with** the opinion of **Reish Lakish,** that one who violated a prohibition for which one is liable to be flogged is exempt from payment even if he was not forewarned, **how does** he **explain** the mishna? The mishna does not correspond to any of the aforementioned opinions. The Gemara answers: **You** must say **perforce** that **he holds in accordance with** the opinion of **Rabbi Yoḥanan**[N] in this regard.

אֲמַר לֵיהּ רַב מַתָּנָא לְאַבַּיֵי: לְרֵישׁ לָקִישׁ, דְּאָמַר: בְּפֵירוּשׁ רִיבְּתָה תּוֹרָה חַיָּבֵי מַלְקוּיוֹת כְּחַיָּבֵי מִיתוֹת, מַאן תַּנָּא דְּפָלֵיג עֲלֵיהּ דְּרַבִּי נְחוּנְיָא בֶּן הַקָּנָה – אִי רַבִּי מֵאִיר, אִי רַבִּי יִצְחָק.

Rav Mattana said to Abaye: According to Reish Lakish, who said that **the Torah explicitly included those** who are **liable to** receive **lashes** and accorded them legal status **like those** who are **liable to** receive the **death** penalty, unconditionally exempting them from payment; **who is the *tanna* who disagrees**[N] **with Rabbi Neḥunya ben HaKana** and obligates one who is liable both to receive *karet* and to be flogged to pay, and the lashes do not exempt him from payment? The Gemara answers: He holds in accordance with **either Rabbi Meir,** who says that one who is liable to receive lashes is liable to pay a fine, **or Rabbi Yitzḥak,** who rules that those liable to receive *karet* are not flogged.

תָּנוּ רַבָּנַן: עֲרָיוֹת וּשְׁנִיּוֹת לַעֲרָיוֹת אֵין לָהֶן לֹא קְנָס וְלֹא פִּיתּוּי. הַמְּמָאֶנֶת אֵין לָהּ לֹא קְנָס וְלֹא פִּיתּוּי. אֲיֻלּוֹנִית אֵין לָהּ לֹא קְנָס וְלֹא פִּיתּוּי, וְהַיּוֹצֵאת מִשּׁוּם שֵׁם רַע אֵין לָהּ לֹא קְנָס וְלֹא פִּיתּוּי.

§ The Gemara turns its attention to a related issue. **The Sages taught:** Women who are **forbidden relatives and secondary forbidden relatives**[B] receive **neither** payment of **a fine**[H] for rape **nor** payment of a fine for **seduction.**[N] Similarly, a girl **who refuses**[N] to remain married to her husband receives **neither** payment of **a fine** for rape **nor** payment of a fine for **seduction.**[N] Because she was married, she no longer has the presumptive status of a virgin. **A sexually underdeveloped woman** [***ailonit***] who will never reach puberty and therefore her legal status is not that of a young woman, receives **neither** payment of **a fine** for rape **nor** payment of a fine for **seduction. And one who leaves** her husband **due to a bad reputation** receives **neither** payment of **a fine** for rape **nor** payment of a fine for **seduction.**

BACKGROUND

Secondary forbidden relatives – שְׁנִיּוֹת לַעֲרָיוֹת: These are relatives with whom relations are prohibited as incestuous by rabbinic decree. The Torah (Leviticus, chapters 18 and 20) lists many forbidden incestuous relationships. The Sages expanded this list to include relations with one's maternal and paternal grandmother; the mother of one's maternal and paternal grandfather; the wife of one's maternal and paternal grandfather, even though she is not one's grandmother; the wives of one's father's maternal brothers, while his paternal brother's wives are prohibited by Torah law; the wives of one's maternal uncles; one's son's or daughter's daughter-in-law; one's great-granddaughters; one's wife's great-granddaughters from previous marriages; and one's wife's maternal and paternal great-grandmothers. Relations with these forbidden relatives are also referred to as prohibitions resulting from a mitzva. Violation of these prohibitions is punishable by lashes for rebelliousness administered for transgression of a rabbinic decree.

HALAKHA

These do not have a fine – אֵלּוּ שֶׁאֵין לָהֶן קְנָס: The Rambam writes that one who refuses her husband, a sexually underdeveloped woman [*ailonit*], and a woman with a bad reputation as a minor are not entitled to payment of the fine. The Ra'avad states that the ruling that an *ailonit* does not receive the fine is not the *halakha*, as it is the opinion of Rabbi Meir; while the Rabbis maintain that she is considered a minor until the age of twenty, and she is therefore entitled to the fine. The *Tur* agrees (Rambam *Sefer Nashim*, *Hilkhot Na'ara Betula* 1:9; *Tur*, *Even HaEzer* 177).

NOTES

You must say perforce that he holds in accordance with the opinion of Rabbi Yoḥanan – עַל כָּרְחָךְ כְּרַבִּי יוֹחָנָן: The early commentaries ask: Why not say that Rabba explains the mishna in accordance with the opinion of Ulla that one always pays and is not flogged? Rashi resolves this difficulty and explains that one who does not accept Rabbi Yoḥanan's opinion certainly would not accept Ulla's opinion. Rabbi Aharon HaLevi proves that Ulla's opinion cannot be reconciled with that of Reish Lakish, and the two Sages certainly disagree. The Ramban maintains that it is theoretically possible for Rabba to interpret the mishna in accordance with the opinion of Ulla, but the Gemara does not seek to completely clarify the matter at this juncture. Instead, it merely notes that with regard to the dispute between Reish Lakish and Rabbi Yoḥanan, Rabba's statement is in accordance with the opinion of the latter.

Who is the *tanna* who disagrees, etc. – מַאן תַּנָּא דְּפָלֵיג וכו': Rashi infers that although Reish Lakish maintains that the mishna disagrees with Rabbi Neḥunya, he cannot establish it in accordance with the opinion of Rabbi Yitzḥak, as explained above with regard to Rabba's statement, but only in accordance with the opinion of Rabbi Meir. Rashi's explanation here is consistent with his opinion that this question does not relate specifically to this mishna in particular, but rather relates to several *mishnayot* that clearly indicate that those liable to receive *karet* must pay as well. Those *mishnayot* correspond to the opinion of Rabbi Yitzḥak. The Ritva agrees. Rabbeinu Ḥananel explains that Reish Lakish maintains that since Rabbi Yitzḥak is of the opinion that no lashes are administered to those liable to receive *karet*, a person can be liable both to receive *karet* and to pay, but not to receive lashes and pay. In the Jerusalem Talmud, it is similarly explained that a person does not receive two punishments for a single transgression if he was convicted by a court, but a liability to be punished at the hand of Heaven does not exempt him from a debt to others.

Neither a fine for rape nor a fine for seduction – לֹא קְנָס וְלֹא פִּיתּוּי: *Tosafot* explain that the term fine is more suitable for a rape, as the perpetrator is also penalized with the obligation to marry his victim. In the *Shita Mekubbetzet* it is explained according to Rashi that the payment is not called a fine in the case of a seduction, as he acted with her consent. Furthermore, a seducer is liable for speaking, whereas a rapist is punished for acting.

A girl who refuses – הַמְּמָאֶנֶת: A girl who refuses her husband is a fatherless girl who was married off by her mother or brothers when she was a minor. That marriage is not valid by Torah law, and the Sages ruled that if the minor expresses that she does not wish to remain with her husband, not only does she leave the marriage but the marriage is retroactively negated, and it is as though she was never married. Rashi claims that the reason there is no fine with regard to a girl who refused is that she is no longer considered a virgin because she was married. According to his opinion, this *halakha* contains no novel element, and it is only stated to enable the Gemara to infer that other minors are entitled to the fine.

The Ramban asks: If there are witnesses that she never entered into seclusion with her husband, why shouldn't she be entitled to the fine? And if there are no witnesses to that effect, this *halakha* is obvious. He answers that even if there were witnesses that there was seclusion, one might have thought that since she claims she is a virgin, the rapist should not receive the benefit of the doubt and should be required to pay the fine. The Rashba contends that even if witnesses testified that she was never in seclusion with her husband, she still does not receive the fine, as the witnesses are unable to achieve a degree of certainty that would remove all doubt; the rapist is not required to pay in a case of uncertainty.

Tosafot question Rashi's interpretation, as they point out that according to his approach there is no difference whether he raped or seduced her when she was a minor or whether he did so when she was a young woman, and therefore perhaps the inference should have been that all other young women receive the fine. In the *Shita Mekubbetzet* that assertion is rejected: One who refuses, in present tense, indicates a minor, as she cannot refuse her husband once she reaches puberty. Were the *baraita* referring to a young woman, it should have said: One who refused, in past tense. In any case, *Tosafot* explain otherwise: The Gemara is referring to one who was raped or seduced by her husband while she was still married to him. The novel element is that one does not say that if she refuses him his act is retroactively rendered rape or seduction. Later commentaries explain that the reason that this is not considered rape is that it is deemed rape or seduction only if it is outside the framework of marriage. Otherwise, the categories of rape and seduction are inapplicable.

Nor seduction – וְלֹא פִּיתּוּי: *Tosafot* explain that these words are merely added because the terms are usually listed together, as this *halakha* applies to a young woman as well, and one who seduces a fatherless young woman certainly is not liable to pay the fine, as she consented. The Rashba and the Rosh maintain that even a fatherless minor is not entitled to receive the fine for seduction, as a competent minor can also relinquish her right to the fine, and she does so by agreeing to be seduced. The Ritva disagrees and contends that it can be learned from here that the legal status of the seduction of any minor is like that of rape, as even though she has a certain measure of competency in terms of forgiving a debt, she is not considered to be fully competent in terms of complicity with seduction.

מַאי עֲרָיוֹת וּמַאי שְׁנִיּוֹת לַעֲרָיוֹת? אִילֵימָא עֲרָיוֹת

The Gemara elaborates. **What is** the meaning of **forbidden relatives, and what is** the meaning of **secondary forbidden relatives** in the context of this *baraita*? **If we say** that **forbidden relatives** means

Perek **III**
Daf **36** Amud **a**

עֲרָיוֹת מַמָּשׁ, שְׁנִיּוֹת – מִדִּבְרֵי סוֹפְרִים, כֵּיוָן דְּמִדְּאוֹרַיְיתָא חַזְיָא לֵיהּ – אַמַּאי אֵין לָהֶן קְנָס? אֶלָּא: עֲרָיוֹת – חַיָּבֵי מִיתוֹת בֵּית דִּין, שְׁנִיּוֹת – חַיָּבֵי כָּרֵיתוֹת, אֲבָל חַיָּבֵי לָאוִין – יֵשׁ לָהֶן קְנָס, וּמַנִּי – שִׁמְעוֹן הַתִּימְנִי הִיא.

actual forbidden relatives[N] prohibited by Torah law, and **secondary relatives** means, as it does in most cases, relatives prohibited **by rabbinic law,**[N] that cannot be, for **since** those secondary relatives **are suitable for him** to marry and are not prohibited **by Torah** law,[N] **why do they not** receive **a fine** if they are raped or seduced? **Rather,** the meaning of these terms in this context is different: **Forbidden relatives** are **those** for which one is **liable** to receive a **court-imposed death** penalty; **secondary relatives** are **those** for which one is **liable** to receive ***karet,*** which are relatively less severe than those for which one is executed. **However, those liable for** violating regular **prohibitions** receive payment of a **fine** if they are raped or seduced. **And** according to **whose** opinion is the *baraita* taught? **It is** the opinion of **Shimon HaTimni,** who exempts from paying a fine only one who rapes a woman with whom betrothal is ineffective.

אִיכָּא דְּאָמְרִי: עֲרָיוֹת – חַיָּבֵי מִיתוֹת ב״ד וְחַיָּבֵי כָּרֵיתוֹת, שְׁנִיּוֹת – חַיָּבֵי לָאוִין, מַנִּי – רַבִּי שִׁמְעוֹן בֶּן מְנַסְיָא הִיא.

Some say that we can explain **that forbidden relatives** refers to all relatives with whom relations are forbidden by severe prohibitions, both **those** for which one is **liable to death** by the **court and those** for which he is **liable to *karet,*** and **secondary** relatives refers to **those** relatives with whom one who engages in relations is **liable for** violating regular **prohibitions.** According to this approach, **whose** opinion does this follow? **It is** that of **Rabbi Shimon ben Menasya,** who maintains that even a woman raped by a man forbidden to her by a regular prohibition is not entitled to the fine, despite the fact that betrothal is effective in that case.

״הַמְמָאֶנֶת אֵין לָהּ לֹא קְנָס וְלֹא פִּיתּוּי״. הָא קְטַנָּה בְּעָלְמָא – אִית לָהּ, מַנִּי – רַבָּנַן הִיא, דְּאָמְרִי: קְטַנָּה יֵשׁ לָהּ קְנָס. אֵימָא סֵיפָא: אֲיֵילוֹנִית אֵין לָהּ לֹא קְנָס וְלֹא פִּיתּוּי. אַתָּא לְרַבִּי מֵאִיר, דְּאָמַר: קְטַנָּה אֵין לָהּ קְנָס, וְהָא – מְקַטְנוּתָהּ יָצְתָה לְבָגֶר. רֵישָׁא רַבָּנַן וְסֵיפָא רַבִּי מֵאִיר!

§ The *baraita* stated: A girl **who refuses** to remain married to her husband receives **neither** payment of **a fine** for rape **nor** payment of a fine for **seduction,** because she was married and therefore lost her presumptive status as a virgin. The Gemara infers: But **an ordinary minor** girl **has** a fine for rape. If so, in accordance with **whose** opinion is the *baraita* taught? **It is** the opinion of **the Rabbis, who say: A minor** girl **has** a fine for rape. The Gemara asks: **Say the latter clause** of the *baraita*: **A sexually underdeveloped woman** [***ailonit***] **has neither a fine** for rape **nor** a fine for **seduction,** as she will not develop the signs of puberty and her legal status is that of a minor until she is twenty, at which point she assumes the status of a grown woman. In that *halakha*, the *baraita* **comes to** the opinion of **Rabbi Meir, who said: A minor** girl **does not have** a **fine** for rape, **and** the same is true for **this** *ailonit*, who **emerged from her** status as a **minor** at the age of twenty **to** the status of **a grown woman,** skipping the stage of a young woman. **The first clause** of the *baraita* **is** in accordance with the opinion of **the Rabbis, and the latter clause is** in accordance with the opinion of **Rabbi Meir.**

NOTES

Actual forbidden relatives – עֲרָיוֹת מַמָּשׁ: The phrase: Actual forbidden relatives, refers to those relatives with whom relations are prohibited by Torah law (see Leviticus, chapter 18). An intermediate category of people with whom relations are prohibited by Torah law, even though they do not fall into the category of actual forbidden relatives, is omitted from the *baraita*, which is an additional reason the term: Secondary relatives, should not be interpreted in the standard manner.

Secondary relatives by rabbinic law – שְׁנִיּוֹת מִדִּבְרֵי סוֹפְרִים: As explained by Rashi, there is a list of secondary forbidden relatives, women who are not close relatives by Torah law but are prohibited by rabbinic decree as a safeguard to Torah law. In the second chapter of *Yevamot*, sixteen women are listed as secondary relatives, with whom marriage takes effect but the man is required to divorce her; the Sages penalized these women by stripping them of the right to a marriage contract and other rights to which a married woman is entitled. However, a child born of such a relationship is not rendered unfit, and the woman herself is not disqualified from marrying a priest due to this marriage.

Since they are suitable for him by Torah law – כֵּיוָן דְּמִדְּאוֹרַיְיתָא חַזְיָא לֵיהּ: The question is raised: With regard to a woman in the category of a secondary forbidden relative, the assertion that since she is suitable for him by Torah law, she is entitled to the fine, is by no means obvious. It could be asserted that since he is required to divorce her and is not allowed to sustain her as his wife, even though it is by rabbinic decree, he does not fulfill the requirement "And to him she shall be as a wife" (Deuteronomy 22:19). The fact is that a Gibeonite woman, who is prohibited by rabbinic law, is listed in the mishna together with a *mamzeret*.

The answer given is that there is a distinction between the *halakha* of a Gibeonite, with regard to whom there is a general rabbinic decree prohibiting her from entering the congregation of Israel, and secondary prohibitions, prohibited as a safeguard, with regard to which the Sages certainly did not deny them their right to the fine (*Shita Mekubbetzet*; *Beit Aharon*).