

וְסָבַר רַבִּי יְהוּדָה בְּקִדּוּשְׁתָּהּ קִיּוּמָא? וְהִתְנַיָּא:
הַגִּיּוֹרֶת שֶׁנִּתְגַּיְיְרָה וְרָאָתָה דָּם, רַבִּי יְהוּדָה אוֹמֵר
דְּיָה שְׁעָתָה, רַבִּי יוֹסֵי אוֹמֵר: הֲרֵי הִיא כְּכֹל הַנְּשִׂיִם,
וּמִטְמָאָה מֵעַת לְעַת וּמִפְקִידָה לְפִקִּידָה,

וְצְרִיכָה לְהִמְתִּין שְׁלֹשָׁה חֳדָשִׁים, דְּבַרֵּי רַבִּי יְהוּדָה.
רַבִּי יוֹסֵי מַתִּיר לְיֹאֲרָם וְלִנְשָׂא מִיּוֹד! אָמַר לִיה:
גִּיּוֹרֶת אֲשֶׁר בִּיּוֹהָרָה קָא רְמִית? גִּיּוֹרֶת – לֹא מְנַטְרָא
נִפְשָׁה, שְׁבוּיָה – מְנַטְרָא נִפְשָׁה.

וְרַמִּי שְׁבוּיָה אֲשֶׁר בִּיּוֹהָרָה; דְּתַנַּיָּא: הַגִּיּוֹרֶת וְהַשְׁבוּיָה
וְהַשְּׁפָחָה שֶׁנִּפְדּוּ וְשֶׁנִּתְגַּיְיְרוּ, וְשֶׁנִּשְׁתַּחֲרָרוּ יִתְרוֹת
עַל בְּנוֹת שְׁלֹשׁ שָׁנִים וְיוֹם אֶחָד – צְרִיכוֹת לְהִמְתִּין
שְׁלֹשָׁה חֳדָשִׁים, דְּבַרֵּי רַבִּי יְהוּדָה. רַבִּי יוֹסֵי מַתִּיר
לְיֹאֲרָם וְלִנְשָׂא מִיּוֹד! אֲשֶׁר תִּיק.

And does Rabbi Yehuda maintain that a captive woman remains in her state of sanctity? But isn't it taught in a *baraita*: With regard to a female convert who converted and saw the flow of menstrual blood^N on that same day, Rabbi Yehuda says: Deeming her impure from the hour that she saw the menstrual flow is sufficient for her. There is no decree of retroactive impurity on objects that she touched earlier, due to the concern that the blood flow might have started earlier. Rabbi Yosei says: Her legal status is like that of all of the Jewish women, and she therefore transmits impurity retroactively for a twenty-four hour period following her conversion, or from examination to examination, i.e., from the last time she examined herself.

And a convert is required to wait^N three months after her conversion before marrying a Jew, due to the concern that she is pregnant, leading to confusion whether the child was conceived before or after her conversion; this is the statement of Rabbi Yehuda. Rabbi Yosei permits her to be betrothed and to be married immediately. Clearly, Rabbi Yehuda is concerned that she engaged in sexual relations prior to her conversion. Rav Yosef said to Rav Pappa bar Shmuel: Are you raising a contradiction from the *halakha* of a convert to that of a captive woman? A convert does not protect herself from engaging in sexual relations before conversion, whereas a captive protects herself, as she is conscious of the sanctity of the Jewish people and does not want to be violated.

And Rav Pappa bar Shmuel raised a contradiction from one *halakha* with regard to a captive to another *halakha* with regard to a captive, as it is taught in a *baraita*: The convert, or the captive woman or the gentile maidservant, who were redeemed, converted, or emancipated when they were more than three years and one day old,^N are required to wait three months before marrying; this is the statement of Rabbi Yehuda. Rabbi Yosei permits these women to be betrothed and to be married immediately. Apparently, Rabbi Yehuda is concerned that she engaged in sexual relations prior to her redemption, contradicting his opinion here. Rav Yosef was silent, unable to respond.^H

HALAKHA

Waiting with regard to a convert and a maidservant – הַמְתַּנָּה בְּגִיּוֹרֶת וּבְשִׁפְחָה: An emancipated maidservant and a convert must wait ninety days before they can marry. The *Mishne LaMelekh* claims that this applies only to women who were previously married and therefore took no steps to prevent conception. The same *halakha* applies to a male convert and his wife who converted together; they too must wait so that it can be determined whether conception predated or postdated conversion. That is the ruling in the *Shulhan Arukh* as well. Although the *Beit Yosef* questions this approach, apparently he reconsidered his ruling (Rambam *Sefer Nashim*, *Hilkhot Geirushin* 11:21; *Shulhan Arukh*, *Even HaEzer* 13:5 and *Beit Shmuel* there).

NOTES

Who converted and saw the flow of menstrual blood – שֶׁנִּתְגַּיְיְרָה וְרָאָתָה דָּם: When a woman sees menstrual blood the concern is whether the blood flowed earlier but was not immediately obvious. Therefore, all pure items with which she came into contact during a previous period of time are rendered ritually impure. The precise length of this period of time is subject to a dispute between Hillel and Shammai at the beginning of tractate *Nidda*. The *halakha* is that this concern extends either for the twenty-four-hour period before she noticed the blood or from her most recent examination, whichever of the two periods is shorter. Consequently, if her last examination was more than twenty-four hours earlier, she renders the items impure retroactively for twenty-four hours, and if she examined herself more recently than that, any pure item with which she came into contact after that examination is impure.

Rashi and most commentaries explain that the convert referred to here saw blood on the day of her conversion. Rabbi Yosei maintains that she is like all Jewish women, and therefore renders items impure retroactively from the time of her conversion, whereas Rabbi Yehuda claims that since it cannot be for the entire twenty-four hour period, as she was a gentile for part

of that time, she does not render the items impure retroactively at all, but merely from the moment of her sighting; Deeming her impure from the hour that she saw the menstrual flow is sufficient.

The *Shita Yeshana*, cited in the *Shita Mekubbetzet*, suggests a slightly different interpretation. There it is claimed that the reference is to a convert who saw blood for the first time after her conversion. Accordingly, the dispute is whether a decree is issued in her regard like the decree that applies to all Jewish women, or whether they did not decree impurity in her case, due to her former gentile state.

And a convert is required to wait – וְצְרִיכָה לְהִמְתִּין: The Sages decreed that a woman who was married may not wed another man immediately after the end of her marriage, as she might be unknowingly pregnant from her first husband. In that case, if she gives birth seven months into her second marriage it will be unclear whether the child was born to the first husband after a pregnancy of nine months or to the second husband after a pregnancy of seven months. That would lead to complications with regard to prohibitions, lineage, and inheritance. The Sages therefore required her to wait three months, at which point a

pregnancy would be noticeable and it would be clear that the first husband is the father. The *tanna'im* disagreed whether this decree is applied to cases where there is no concern that there might be a previous pregnancy. A similar concern exists in the case of a woman who engaged in forbidden relations, or a convert, where it is necessary to determine whether or not the lineage of the child is flawed. In the case of a convert, there are halakhic ramifications dependent on whether or not the child was conceived and born in sanctity as a member of the Jewish people.

More than three years and one day old – יְתִירוֹת עַל בְּנוֹת שְׁלֹשׁ – שָׁנִים וְיוֹם אֶחָד: *Tosafot* question whether this phrase belongs here. First of all, it does not appear in other places in the Talmud where an identical discussion appears. In addition, it presents a difficulty for the opinion of Rabbi Yehuda, as he does not require a waiting period for a minor who was married. Although some commentaries (Ramban; Rashba) contend that there is no need to be particular in this regard, as adult women are included in this phrase, and the mention of three years and one day is merely the usual expression in this regard, most early commentaries agree that this version is inaccurate.

Waiting with regard to a captive, a raped or seduced woman, and one who engaged in promiscuous relations – באנוסה, במתנה בשבויה, באנוסה: A redeemed captive woman need not wait before marrying, even if she was an adult, since she turns over to prevent conception, as stated by Rabbi Yosei. For the same reason a rape victim and seduced woman need not wait three months either, and the same applies to any woman who engaged in promiscuous relations. The Rema states that some authorities, e.g., Rabbi Zerahya HaLevi, the Rosh, and the *Tur*, claim that in all cases, if a woman was capable of conception, she must wait, as Shmuel in the latter version of his statement in *Yevamot* (32b) rules in accordance with the opinion of Rabbi Yehuda that there is concern lest she did not turn over properly (Rambam *Sefer Nashim, Hilkhot Geirushin* 11:22; *Shulḥan Arukh, Even HaEzer* 13:6).

NOTES

A woman who engages in promiscuous sexual relations turns over, etc. – אשה מונה מתהפכת: רבו: Rashi maintains that this reason is accepted; a woman who is freed from enslavement by the loss of a tooth or eye would not have to wait either, as she too would turn over. In his opinion, no woman who engages in acts of promiscuous relations wants to conceive, and therefore she will turn over even if she has no particular reason to protect herself. However, many early commentaries, including *Tosafot* and the Ramban, contend that even Rabbi Yosei agrees that a maidservant is required to wait in that case, as she has no particular reason to prevent conception and therefore would not have turned over. They add that it is possible that she was married to a slave, and as such would certainly have had no reason to avoid conception, as she was engaging in legitimate conjugal relations.

It is derived from there: According to the measure of his iniquity – מהתם נפקא כדי רשעתו: The Ritva raises the question that although from the verse “According to the measure of his iniquity” it can be derived that one is not punished twice for a single transgression, which of the two punishments he receives cannot be derived. It is only from the verse “And yet no harm follow” that it is derived that he is executed and does not pay. He answers that it is logical that one would not be exempted from the severe punishment of execution, because there is additional liability to pay. The *Beit Aharon* suggests that the question is not why the verse “And yet no harm follow” is necessary; on the contrary, why not suffice with that verse alone, from which both principles can be derived? Although that interpretation resolves the Ritva’s question, it does not fit well with the language of the Gemara.

There is loss of life – דאיכא איבוד נשמה: Although the *halakha* concludes that he is exempt from any other punishment even if he is not actually executed, the exemption is due to the fact that a transgression that entails the loss of life is so serious that no other punishment would be appropriate. A careful reading of Rashi leads to a similar understanding (*Shita Mekubbetzet*).

BACKGROUND

Turns over – מתהפכת: According to modern medicine, turning over after intercourse would be ineffective in preventing conception. Therefore, it stands to reason that the Gemara is not referring merely to turning over; rather, it is referring to additional steps taken to prevent pregnancy. In terms of the language of the Gemara, perhaps it is referring to turning over during the sexual act, leading to an uncommon position that might significantly reduce the odds of conception.

אמר ליה: מידי שמיע לך בהא? אמר ליה, הכי אמר רב ששת: שראוה שגבעלה. אי הכי מאי טעמא דרבי יוסי? אמר רבה: קסבר רבי יוסי אשה מונה משמששת במוך שלא תתעבר.

בשלא מאי גזירת, בין דדעתה לאיגורי – מנטרא נפש; שבויה נמי, דלא ידעה היכא ממטו לה; שפחה נמי, דשמעה מפיי מרה; אלא יוצאה בשן ועין – מאי איכא למימר?

וכי תימא כל ממילא לא אמר רבי יוסי – הרי אנוסה ומפותה, דממילא, ותנא: אנוסה ומפותה עריכות להמתין שלשה חדשים, דברי רבי יהודה, רבי יוסי מתיי לרארס ולינשא מיד!

אלא אמר רבה: קסבר רבי יוסי: אשה מונה מתהפכת כדי שלא תתעבר. ואידך: חיישינן שמא לא נהפכה יפה יפה.

שנאמר “ולא יהיה אסון ענוש וענש” וכו’. והא מהכא נפקא? מהתם נפקא: “כדי רשעתו” – משום רשעה אחת אתה מחייבו, ואי אתה מחייבו משום שתי רשעיות!

חדא במיתה וממון, וחדא במלקות וממון. וצריכא: דאי אשמעין מיתה וממון – משום דאיכא איבוד נשמה, אבל מלקות וממון דליכא איבוד נשמה, אימא לא.

Later, Rav Yosef said to him: Have you heard anything with regard to this matter? Rav Pappa bar Shmuel said to him: This is what Rav Sheshet said: Rabbi Yehuda is referring to a captive whom witnesses saw engage in intercourse. The Gemara asks: If so, what is the rationale for the ruling of Rabbi Yosei that she may marry immediately? Shouldn’t he be concerned lest she is pregnant? Rabba said: Rabbi Yosei holds that a woman who engages in promiscuous sexual relations has relations with a contraceptive resorbent at the entrance of her womb, so that she will not become pregnant.

The Gemara asks: Granted, a convert uses the resorbent; since it is her intention to convert, she protects herself from pregnancy. A captive too uses the resorbent because she does not know where they are taking her, and she does not want to become pregnant. A maidservant uses the resorbent too, as she heard from her master that he intends to free her, and she seeks to avoid confusion with regard to the lineage of her offspring. However, with regard a maidservant who emerges from slavery with the extraction by her master of her tooth or her eye, what is there to say? She has no advance knowledge that she will be freed and therefore would not take precautions to avoid becoming pregnant, and Rav Sheshet explained that this is a case where she was seen engaging in sexual relations.

And if you say that with regard to any situation that occurs on its own, without advance knowledge, Rabbi Yosei concedes to Rabbi Yehuda and did not say that it is permitted for her to marry immediately, that cannot be so. There is the case of a raped or seduced woman, which happens on its own without advance knowledge, and it is taught in a *baraita*: A raped woman and a seduced woman must wait three months before marrying; this is the statement of Rabbi Yehuda; Rabbi Yosei permits these women to be betrothed and to be married immediately.

Rather, Rabba said: The rationale for the ruling of Rabbi Yosei is not because the woman uses a contraceptive resorbent that she inserts before engaging in relations. Rather, Rabbi Yosei holds: A woman who engages in promiscuous sexual relations¹¹ turns over¹² at the conclusion of the sexual act so that she will not become pregnant. Therefore, even if she engaged in unplanned sexual relations, she can take steps afterward to prevent unwanted pregnancy. The Gemara asks: And how does the other *tanna*, Rabbi Yehuda respond to this contention? The Gemara answers: We are concerned lest the semen remain in her womb because she did not turn over properly, and she will become pregnant.

The mishna states that one liable to receive the death penalty is exempt from payment, as it is stated: “And yet no harm follow, he shall be punished, etc.” (Exodus 21:22). The Gemara asks: And is this principle derived from here? Actually, it is derived from there: “And to be beaten before his face according to the measure of his iniquity” (Deuteronomy 25:2).¹³ From the term: His iniquity, it is inferred: You can hold one who performs one action liable for one iniquity, i.e., punishment for violating one prohibition, but you do not hold him liable for two iniquities, i.e., punishments for violating two prohibitions.

The Gemara answers: One of these derivations, from the verse “And yet no harm follow” is stated with regard to one who performed an action for which he is liable to receive the death penalty and to pay money, and the liability to be executed exempts him from payment. And one of these derivations, from the verse “According to the measure of his iniquity,” is stated with regard to one who performed an action for which he is liable to receive lashes and to pay money, and he receives only one punishment. The Gemara elaborates: And both derivations are necessary, as if the Torah taught us this *halakha* only with regard to death and money, one would assert that the exemption from payment is due to the fact that there is loss of life,¹⁴ the ultimate punishment, leaving no room for additional punishment; however, in the case of lashes and money, where there is no loss of life, say no, there is no exemption and he is flogged and pays.

ואי אשמעין מלקות וממון – משום דלא חמיר איסוריה, אבל מיתה וממון דחמיר איסוריה אימא לא, צריכא.

And if the Torah taught us this *halakha* only with regard to lashes and money, one would assert that the exemption from payment is due to the fact that the prohibition that he violated is not severe, as it is punishable by lashes, and for violating a prohibition that is not severe one does not receive two punishments. However, with regard to death and money, where the prohibition that he violated is severe, say no, he is not exempt from receiving two punishments. Therefore, it was necessary for the Torah to teach both derivations.

ולרבי מאיר, דאמר לוקה ומשלים, תיתי למה לי? חדא במיתה וממון

The Gemara asks: And according to Rabbi Meir, who said that one is flogged and pays in cases where he violated a prohibition punishable by both, why do I require two derivations teaching that one does not receive the death penalty and pay? The Gemara answers: One derivation is with regard to death and money, exempting one liable to be executed from payment,

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וחדא במיתה ומלקות. וצריכא: דאי אשמעין מיתה וממון – משום דחדא בגופיה וחדא בממוניה לא עבדינן, אבל במיתה ומלקות דאידי ואידי בגופיה – אימא מיתה אריכתא היא, ונעביד ביה.

and one derivation is with regard to death and lashes,^N exempting one liable to be executed from lashes. The Gemara comments: And both verses are necessary, as if the Torah taught us this *halakha* only with regard to death and monetary payment, one would assert that the exemption from payment is due to the fact that we do not administer one punishment to his body and one to his money. However, with regard to death and lashes, that both this, death, and that, lashes, are administered to his body, say it is an extended death penalty and let us administer lashes and then the death penalty to him so that his death will ensue from affliction.

ואי אשמעין מיתה ומלקות – דתיתי בגופיה לא עבדינן, אבל מיתה וממון דחדא בגופיה וחדא בממוניה – אימא נעביד ביה, צריכא.

And if the Torah taught us this *halakha* only with regard to death and lashes, one would assert that the exemption from lashes is due to the fact that we do not administer two punishments to his body. However, with regard to death and money, where one is administered to his body and one is administered to his money, say: Let us administer both to him. Therefore, both verses are necessary, to teach that one receives only one punishment in both cases.

ולא תקחו כופר לנפש רוצח" למה לי? דאמר רחמנא: לא תשקול ממונא מיניה ותפטריה מקטלא – "לא תקחו כופר לנפש אל עיר מקלט" למה לי? דאמר רחמנא: לא תשקול ממונא מיניה ותפטריה מן גלות.

The Gemara asks with regard to the verse "And you shall take no ransom for the life of a murderer, who is guilty of death" (Numbers 35:31), which means that one does not take payment from a person sentenced to death, why do I require this verse, if that principle was already derived from another verse? The Gemara explains that the Merciful One says: Do not take money from him and exempt him from the death penalty.^H Similarly, the following verse: "And you shall take no ransom for him that is fled to his city of refuge" (Numbers 35:32), why do I require this verse? The Gemara explains that the Merciful One says: Do not take money from him and exempt him from exile.^H

ותיתי קראי למה לי? חד בשוגג וחד במזיד, וצריכי; דאי אשמעין מזיד – משום דחמיר איסוריה, אבל שוגג דלא חמיר איסוריה – אימא לא. ואי אשמעין שוגג – משום דליכא איבוד נשמה, אבל מזיד דאיכא איבוד נשמה – אימא לא, צריכא.

The Gemara asks: And why do I require two verses to teach the same principle? The Gemara explains: One verse refers to one who killed unwittingly, and one verse refers to one who killed intentionally. The Gemara comments: And both verses are necessary, as if the Torah taught us this *halakha* only with regard to an intentional murderer, one would assert that payment is not accepted due to the fact that the prohibition that he violated is severe. However, with regard to an unwitting killer, where the prohibition is not severe, say no, he may pay in lieu of exile. And if the Torah taught us this *halakha* only with regard to an unwitting killer, one would assert that payment is not accepted due to the fact that there is no loss of life, as the killer is not executed, and therefore, there is no reason to allow payment in lieu of exile. However, with regard to an intentional killer, where there is loss of life, as he will be executed, say no, he may pay in lieu of execution. Therefore, both verses are necessary.

NOTES

וחדא – אין בופר לרוצח – במיתה ומלקות: The Rabbis maintain that no special verse is required for this principle, as it stands to reason that if one is not punished with both lashes and payment, all the more so is he not punished with lashes and execution, as the death penalty is a far more severe punishment than lashes (Rashba; Ritva).

HALAKHA

אין בופר לרוצח – אין בופר לרוצח: The court may not accept a ransom payment from a murderer in order to exempt him from the death penalty. They may not do so even if he offers all the money in the world, and even if the avenging relative of the victim agrees, as the soul of the murderer does not belong to the avenger but to God (Rambam *Sefer Nezikim, Hilkhot Rotze'ah* 1:4).

אין בופר לגלות – אין בופר לגלות: The court may not accept a ransom payment from an unintentional murderer in order to exempt him from exile (Rambam *Sefer Nezikim, Hilkhot Rotze'ah* 5:1).

NOTES

From where is it derived that one does not exempt him – מנין שאין פוטרין אותו – Tosafot note that Rashi on the Torah cites a verse as the source of this halakha other than the one cited by the Gemara. They explain that this is related to the dispute concerning whether decapitation or strangulation is the more severe death penalty; Tosafot add that the Gemara here does not correspond to the ultimate halakhic ruling. The Ritva and Meiri indicate that the early commentaries had a different version of this passage in Sanhedrin, and perhaps Rashi relied on that text. The Rambam, like Rashi on the Torah, cites the verse “And you shall clear away the innocent blood” (Deuteronomy 19:13) as the proof text.

And you shall love your neighbor as yourself – ואהבת – לרעה כמור: At first glance, this derivation is difficult, as it applies this significant Torah principle of loving one's neighbor to the choice of an agreeable means of execution. However, the concept is that the mitzva: And you shall love your neighbor, applies to all Jews, even to a wicked person facing execution. Therefore every effort must be expended to provide him with an agreeable death. In a homiletic vein, Rabbeinu Meir HaLevi in Sanhedrin (52b) reads the term: Your neighbor [re'akha], as your wicked [ra'akha], meaning that one must love even the wicked members of the Jewish people.

An agreeable death – מיתה יפה: The use of a cleaver is a less agreeable death as it does not immediately sever all the blood vessels. Furthermore, a cleaver is duller than a sword, and therefore inflicts greater pain (Rabbi Meir HaLevi in Sanhedrin 52b).

BACKGROUND

The beheaded calf – עגלה ערופה: When a murder victim's corpse is found outside a town and the identity of the person who caused his death is unknown, the Torah mandates a course of action (Deuteronomy 21:1-9): First, members of the Great Sanhedrin measure the distance between the corpse and the nearest town, to determine which town must perform the rite of the beheaded calf. This measurement is carried out even if it is obvious which town is closest. Afterward, the elders of that town bring a calf that has never been used for any labor, and they behead it in a riverbed that is not tilled. The elders wash their hands and make a statement absolving themselves of guilt. If the murderer is discovered before the calf was killed, the rite is not performed.

Cleaver – קופיץ:



Ancient Roman cleaver

LANGUAGE

Cleaver [kofitz] – קופיץ: From the Greek κοπίς, kopis, meaning a thick, large knife.

“ולארץ לא יכופר לדם אשר שופך בה כי אם בדם שופכו” למה לי?

מבעי ליה לכדתנא: מנין שאם נתערפה עגלה ואחר כך נמצא ההורג, מנין שאין פוטרין אותו – שנאמר “ולארץ לא יכופר לדם אשר שופך בה” וגו’,

“ואתה תבער הדם הנקי מקרבך” למה לי? מבעי ליה לכדתנא: מנין למומתים בסייף שהוא מן הצואר – תלמוד לומו “ואתה תבער הדם הנקי מקרבך”, הויקשו כל שופכי דמים לעגלה ערופה, מה להלן מן הצואר – אף שופכי דמים מן הצואר.

אי מה להלן בקופיץ, וממול עורף. אף כאן בקופיץ וממול עורף? אמר רב נחמן אמר רבה בר אבובה: אמר קרא “ואהבת לרעה כמורך” – ברור לו מיתה יפה.

“כל חרם אשר יחרם מן האדם לא יפדה” למה לי? מבעי ליה לכדתנא. מנין לויצא ליהרג ואמר אחד “ערכו עלי”, מנין שלא אמר כלום,

The Gemara asks with regard to the following verse: “And no expiation can be made for the land for the blood that is shed therein, but by the blood of him that shed it” (Numbers 35:33), which also indicates that he cannot be exempted by money, why do I require another verse to teach that one cannot absolve himself from the death penalty by means of payment?

The Gemara explains: It is necessary to teach that which is taught in a baraita with regard to the matter of the calf that is beheaded. If a corpse whose murderer is unknown is found between two towns, the elders of the town nearest to the corpse bring a heifer and behead it in a riverbed, after which they pray for atonement for this murder. The baraita states: From where is it derived that if the calf was beheaded and the murderer was found thereafter,^H it is derived that one does not exempt him^N from punishment? It is as it is stated: “And no expiation can be made for the land for the blood that is shed therein, but by the blood of him that shed it” (Numbers 35:32), from which it is inferred: And not by the blood of the calf.

The Gemara asks: What about the following verse, from the conclusion of the chapter of the heifer: The verse “And so shall you put away the innocent blood from your midst” (Deuteronomy 21:9) appears to be teaching the very same halakha, that a murderer must be executed. Why do I need it? The Gemara answers that it is necessary to teach that which is taught in a baraita: From where is it derived that with regard to those executed by sword, e.g., murderers, their execution is administered from the neck, and nowhere else? The verse states: “And so shall you put away the innocent blood from your midst” (Deuteronomy 21:9), likening all spillers of blood to the beheaded calf^B brought for an unresolved murder. Just as there, the calf is beheaded from the neck, so too, murderers are beheaded from the neck.

The Gemara asks: If so, just as there, in the case of the beheaded calf, it is beheaded with a cleaver [kofitz]^{BL} and at the nape of the neck,^H here too the court executes murderers with a cleaver and at the nape of the neck. Rav Nahman said that Rabba bar Avuh said that the verse says: “And you shall love your neighbor as yourself” (Leviticus 19:18),^N from which it is derived: Choose for him an agreeable death.^N It is prohibited to abuse a guilty person while executing him, and chopping off his head with a cleaver is an unseemly death. The murderer is beheaded from the neck, not with a cleaver, and not by the other methods employed in beheading the calf.

The Gemara asks with regard to the following verse: “Anything dedicated [herem], that may be dedicated of men, shall not be redeemed; he shall surely be put to death” (Leviticus 27:29), which is interpreted here as: Anyone sentenced to be executed shall not be redeemed; this appears to teach the same halakha as above, so why do I need it? The Gemara explains: It is necessary to teach that which is taught in a baraita: From where is it derived with regard to one taken to be executed, and one person said: His valuation^H is upon me to donate to the Temple, that he did not say anything and his vow is not binding?

HALAKHA

The calf was beheaded and the murderer was found thereafter – נתערפה עגלה ואחר כך נמצא ההורג: Even if the murderer was discovered only after the calf was beheaded, he is executed (Rambam Sefer Nezikim, Hilkhot Rotze'ah 10:8).

The manner of beheading the calf – דרך ערפת העגלה: The calf is beheaded by cutting it with a large knife on the back of its neck (Rambam Sefer Nezikim, Hilkhot Rotze'ah 9:3).

ערכו של הויצא ליהרג – Valuation of one taken to be executed – One condemned to death by a Jewish court has no valuation. In other words, if he or anyone else takes a vow to donate his valuation, the vow does not take effect, in accordance with the opinion of the first tanna (Rambam Sefer Hafla'a, Hilkhot Arakhin 3:1).

Payment of ransom for death at the hand of Heaven – כּוֹפֵר לְמוֹמְתִים בְּיַד שָׁמַיִם – The owner of a forewarned ox that killed a person is liable to receive death at the hand of Heaven, in accordance with the verse “And its owner shall also be put to death” (Exodus 21:29). If he pays ransom equivalent to the value of the victim, he thereby gains atonement (Rambam *Sefer Nezikim, Hilkhot Nizkei Mamon* 10:4).

שֶׁנֶּאֱמַר “כָּל חֵרֶם אֲשֶׁר יִחְרַם מִן הָאָדָם לֹא יִפְדֶּה.” יָכוֹל אֶף קוֹדֶם שֶׁנִּגְמַר דִּינוֹ בֶּן – תִּלְמוּד לומר. “מִן הָאָדָם” – וְלֹא כָּל הָאָדָם.

It is derived as it is stated: “Anything dedicated [*herem*], that may be dedicated of men [*yohoram*], shall not be redeemed” (Leviticus 27:29). This verse is taken to mean that anything dedicated, through which a man who is condemned [*yohoram*] is valuated, shall not be redeemed, as the person in question is already considered dead. One might think that even before his verdict is issued this should be so, and that one who said: The valuation of so-and-so on trial for murder is upon me, said nothing of consequence. Therefore, the verse states: “That may be dedicated of men,” implying “of men,” but not entire men. If it is valuation of an entire man, one not yet sentenced to death, it is binding. If it is valuation of a partial man, one sentenced to death, it is not binding.

וְלִרְבֵי חֲנַנְיָא בֶּן עֲקִיבָא, דְּאָמַר: נַעֲרָךְ, מִפְּנֵי שְׂדֵמְיֵי קְצוּבִין, הָאִי “כָּל חֵרֶם” מֵאֵי עֲבִיד לִיהִי?

The Gemara asks: And according to Rabbi Hananya ben Akavya, who said that even a person taken to his execution is valuated,^N and the vow is binding, because the money of his valuation is fixed. The sum of the valuation established in the Torah is not based on the worth of the individual; rather, there is a fixed sum determined by age and gender. Therefore, one may be valuated as long as he is alive. According to that opinion, the question remains with regard to this verse: “Anything dedicated,” what does he derive from it?

מֵיבְעֵי לִיהִי לְכַדְתַּנְיָא, רַבִּי יִשְׁמַעֵאל בֶּנִי שֵׁל רַבִּי יוֹחָנָן בֶּן בְּרוּקָה אָמַר: לְפִי שְׂמִיעֵינוּ לְמוֹמְתִים בְּיַד שָׁמַיִם שְׁנוֹתֵינוּ מִמוֹן וּמִתְכַּפֵּר לְהוֹ, שֶׁנֶּאֱמַר “אִם כּוֹפֵר יוֹשֵׁת עָלָיו,” יָכוֹל אֶף בְּיַד אָדָם בֶּן – תִּלְמוּד לומר “חֵרֶם מִן הָאָדָם לֹא יִפְדֶּה.”

The Gemara answers: He requires it to teach that which is taught in a *baraita*: Rabbi Yishmael, son of Rabbi Yoḥanan ben Beroka, says: Because we found with regard to those executed at the hand of Heaven, and not through court-administered execution, that they give money and their sins are atoned, as it is stated: “The ox shall be stoned, and its owner shall also be put to death. If there be laid upon him a ransom then he shall give for the redemption of his life whatsoever is laid upon him” (Exodus 21:29–30). One whose ox kills a person is essentially liable to receive the death penalty at the hand of Heaven, and pays money instead.¹⁴ You might think that even with regard to those liable to receive the death penalty at the hands of man it is so, and one can pay in lieu of execution. Therefore, the verse states: “Dedicated of men shall not be redeemed” (Leviticus 27:29). One who is executed by man cannot be redeemed with money.

וְאִין לִי אֶלְא מִיתוֹת חֲמוּרוֹת, שְׁלֵא נִתְּנָה שְׁגָגָתָא לְכַפֵּרָה, מִיתוֹת קְלוֹת, שְׁנִיתְּנָה שְׁגָגָתָא לְכַפֵּרָה מִנֵּן – תִּלְמוּד לומר “כָּל חֵרֶם.”

And I have derived this restriction only with regard to prohibitions punishable by severe penalties of death,¹⁵ e.g., striking one’s father, for which no atonement is designated in the Torah for their unwitting violation. However, with regard to prohibitions punishable by less severe penalties of death, e.g., performing labor on Shabbat, for which atonement, a sin-offering, is designated in the Torah for their unwitting violation, from where is it derived that there is no payment in lieu of execution? The verse states: “Anything dedicated,” to include all prohibitions punishable by court-administered execution.

וְלֹא מִמְּיֵלָא, מִ“לֹא תִקְחוּ כּוֹפֵר” שְׂמִיעַת מִיָּנָה: לֹא תִשְׁקוּל מִמוֹנָא מִיָּנָה וְתִיפְטְרִיהִי, “כָּל חֵרֶם” לְמָה לִּי? אָמַר רַמִּי בַר חַמָּא: אִיצְטְרִיךְ; סְלִקָא דַּעְתְּךָ אָמִינָא:

The Gemara asks: And didn’t you incidentally learn the following conclusion from the verse “And you shall take no ransom for the life of a murderer, who is guilty of death” (Numbers 35:31): Do not take money from him and exempt him from death? Why, then, do I require the phrase: Any *herem*? Rami bar Hama said: It is necessary, as it might enter your mind to say

NOTES

Is valuated – נַעֲרָךְ: The *halakhot* of valuations are detailed in the Torah (Leviticus 27), and an entire tractate, *Arakhin*, is devoted to it. There is a fundamental difference between one who vows to give the monetary worth of a particular person and one who vows to donate his valuation. The former is a vow to donate the monetary value of that person, which is typically determined by his worth in the slave market. In that regard, everyone agrees that one taken to be executed has no monetary value. Valuations, in contrast, are unrelated to one’s worth on the slave market, but are fixed sums determined by the age and gender of the subject. The dispute, then, is whether

the legal status of one taken to be executed is that of a dead person, who has no valuation, or whether as long as he remains alive he can still be valuated.

Severe penalties of death – מִיתוֹת חֲמוּרוֹת: Rashi and *Tosafot* disagree over whether a murderer is considered one whose punishment is lenient or one whose punishment is severe. They both agree, though, that the determining factor of severity or leniency is whether there is atonement for unwitting transgressors. If that is the case, why doesn’t the Gemara explicitly distinguish between capital crimes for unwitting sinners, for

which there is atonement, and capital crimes for which there is no atonement; why refer to them cryptically as severe and lenient? Moreover, those transgressions characterized in the Gemara as lenient, e.g., performing prohibited labor on Shabbat, are typically punishable by the more severe penalties of death, stoning, and burning. The *Shita Mekubbetzet* suggests that a prohibition with regard to which the Torah did not specify that it is punishable by *karet* receives a punishment from Heaven as well, rendering his punishment more severe than the punishment of one liable to receive *karet*.