הָנֵי מִילֵּי הֵיכָא דַּהֲרָגוֹ דֶּרֶךְ עֲלִיָּיה, שֶׁלֹּא נִיתְּנָה שִׁגְגָתוֹ לְכַפָּרָה. אֲבָל הֲרָגוֹ דֶּרֶךְ יְרִידָה, דְּנִיתְּנָה שִׁגְגָתוֹ לְכַפָּרָה, אֵימָא נִישְׁקוֹל מָמוֹנָא מִינֵּיהּ וְנִיפְטְרֵיהּ, קָא מַשְׁמַע לַן.

this principle, that one cannot pay in lieu of execution, **applies only when one** intentionally **killed him in an upward motion,**[NH] **for which no atonement is designated** in the Torah **for its unwitting** performance. **However,** with regard to one who intentionally **killed him in a downward motion, for which atonement,** i.e., exile, **is designated** in the Torah **for its unwitting** performance, **say: Let us take money from him and exempt him.** Therefore, the phrase "any *ḥerem*" **teaches us** that even in that case there is no payment in lieu of execution.

אֲמַר לֵיהּ רָבָא: הָא – מִדְּתָנָא דְּבֵי חִזְקִיָּה נָפְקָא, דְּתָנָא דְּבֵי חִזְקִיָּה: מַכֵּה אָדָם וּמַכֵּה בְהֵמָה,

Rava said to him: That principle **is derived** from that which the Sage **of the school of Ḥizkiyya taught,**[N] **as** the Sage **of the school of Ḥizkiyya taught:** The verse juxtaposes the cases of **one who smites a person, and one who smites an animal** (Leviticus 24:21).

מָה מַכֵּה בְהֵמָה לֹא חָלַקְתָּ בּוֹ בֵּין שׁוֹגֵג לְמֵזִיד, בֵּין מִתְכַּוֵּין לְשֶׁאֵין מִתְכַּוֵּין, בֵּין דֶּרֶךְ יְרִידָה לְדֶרֶךְ עֲלִיָּיה, לְפוֹטְרוֹ מָמוֹן אֶלָּא לְחַיְּיבוֹ מָמוֹן, אַף מַכֵּה אָדָם לֹא תַּחֲלוֹק בּוֹ בֵּין שׁוֹגֵג לְמֵזִיד, 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; 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; 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 obligate him** to pay **money but rather to exempt him** from paying **money.** Apparently, one who kills another in any manner is exempt from payment, and therefore no additional verse is required to derive that principle.

אֶלָּא אֲמַר רָמִי בַּר חָמָא: אִיצְטְרִיךְ; סָלְקָא דַּעְתָּךְ אָמִינָא: הָנֵי מִילֵּי – הֵיכָא דְּסִימֵּא אֶת עֵינוֹ וַהֲרָגוֹ בָּהּ, אֲבָל הֵיכָא דְּסִימֵּא אֶת עֵינוֹ וַהֲרָגוֹ בְּדָבָר אַחֵר – אֵימָא נִישְׁקוֹל מָמוֹנָא מִינֵּיהּ. אֲמַר לֵיהּ רָבָא: הָא נַמִּי מֵאִידָךְ תַּנָּא דְּבֵי חִזְקִיָּה נָפְקָא. דְּתָנָא דְּבֵי חִזְקִיָּה: "עַיִן תַּחַת עַיִן" וְלֹא עַיִן וָנֶפֶשׁ תַּחַת עַיִן!

Rather, Rami bar Ḥama said that the phrase "any *ḥerem*" (Leviticus 27:29) is **necessary, as it might enter your mind to say** that **this** *halakha*, that one who is liable to be executed is exempt from payment, **applies only** in a case **where one blinded** another's **eye and killed him with** that same blow. **However,** in a case **where one blinded** another's **eye and killed him by** means of a **different** blow, **say: Let us take money from him** to pay the damage inflicted to the eye. Therefore, the verse teaches that this is not the case. **Rava said to him: This** case of one who blinded another's eye and killed him **is also derived from** that which **another** ***tanna*** of **the school of Ḥizkiyya** taught, **as** the Sage **of the school of Ḥizkiyya taught** that the verse states: **"An eye for an eye"** (Exodus 21:24), from which it may be inferred, **but not an eye and a life**[NH] **for an eye.** When he gives his life for killing another while blinding him, he need not pay the worth of the eye as well.

NOTES

When one intentionally killed him in an upward motion – הֵיכָא דַּהֲרָגוֹ דֶּרֶךְ עֲלִיָּיה: *Tosafot* note that killing in an upward motion is considered a less severe crime than killing in a downward motion. The Rambam maintains that this is because an accident of this kind is unusual and it cannot be attributed to negligence. However, *Tosafot* continue, here only one particular aspect of the comparison is under consideration, whether or not atonement is available to one who commits this transgression. Other stringent or lenient elements are not taken into account. The reasoning is that if the Torah provided a remedy for the sin other than the prescribed punishment, it stands to reason that atonement for his transgression could be achieved through monetary payment.

It is derived from that which the Sage of the school of Ḥizkiyya taught – מִדְּתָנָא דְּבֵי חִזְקִיָּה נָפְקָא: Rashi follows his earlier explanation: The main point of the derivation of the Sage of the school of Ḥizkiyya is that there is no monetary payment for violating any prohibition whose violation is punishable by death when it is performed intentionally. According to this, clearly no special derivation is required with regard to one who kills in a downward motion. However, according to the Ramban and others, who maintain that the Sage of the school of Ḥizkiyya is teaching that one does not receive two punishments, the Gemara's statement is difficult, as theoretically, one could be obligated to pay money and at the same time be exempt from any other punishment. The commentaries answer that according to all opinions, the *halakha* is derived from both the statement of the school of Ḥizkiyya and the derivation from the verse "And yet no harm follow" (Exodus 21:22).

An eye for an eye, but not an eye and a life, etc. – עַיִן תַּחַת עַיִן וְלֹא עַיִן וָנֶפֶשׁ וכו׳: This statement of the school of Ḥizkiyya is unrelated to liability for two punishments; rather, as explained by Rashi, it is one of the proofs that the verse "An eye for an eye" is not to be interpreted literally. Were the punishment of one who injured another's eye to have his own eye injured, there is the risk that he might die as a result, meaning that it was an eye and a life for an eye. The early commentaries therefore questioned the relevance of this source to the matter under discussion.

Various explanations of that relevance were proposed. *Tosafot* maintain that the point is from the continuation of the statement of the school of Ḥizkiyya. Just as one does not punished with an eye and a life for an eye, so too, one is not punished with a life and an eye for a life. Others explain that the principle underlying this statement of the school of Ḥizkiyya is that one does not receive two punishments for transgressions committed simultaneously (Rosh; Rabbi Aharon HaLevi; Ritva). An additional interpretation, attributed to one of the Tosafists, is that this is a form of juxtaposition: Just as with regard to the eye of the attacker, he is punished only with payment for one eye, so too, with regard to the eye of the victim, only one punishment is meted out. The Ritva cites Rabbeinu Menaḥem's version of the text: And not an eye for an eye and a life, which is explained like the explanations of the early commentaries.

HALAKHA

Killed him in an upward motion – הֲרָגוֹ דֶּרֶךְ עֲלִיָּיה: One who unintentionally kills another in an upward motion is not liable to be exiled, as detailed in the second chapter of tractate *Makkot* (Rambam *Sefer Nezikim*, *Hilkhot Rotze'aḥ* 6:13).

Not an eye and a life – לֹא עַיִן וָנֶפֶשׁ: One who injures another is not punished by having the same injury inflicted upon him; rather, he pays for the damage he caused. The reason is that inflicting an injury could cause the attacker's death. See *Bava Kama* 84a, where the Gemara derives this principle from this verse (Rambam *Sefer Nezikim*, *Hilkhot Ḥovel* 1:3).

אֶלָּא אָמַר רַב אַשִׁי: אִיצְטְרִיךְ; סָלְקָא דַּעְתָּךְ אָמֵינָא: הוֹאִיל וְחִידּוּשׁ הוּא שֶׁחִידְּשָׁה תּוֹרָה בִּקְנָס, אַף עַל גַּב דְּמִיקְטִיל מְשַׁלֵּם – קָא מַשְׁמַע לָן. וּלְרַבָּה דַּאֲמַר: חִידּוּשׁ הוּא שֶׁחִידְּשָׁה תּוֹרָה בִּקְנָס, אַף עַל גַּב דְּמִיקְטִיל מְשַׁלֵּם, הַאי ״כׇּל חֵרֶם״ מַאי עָבֵיד לֵיהּ? סָבַר לַהּ כְּתַנָּא קַמָּא דְּרַבִּי חֲנַנְיָא בֶּן עֲקַבְיָא.

Rather, after the Gemara rejected the above explanations, **Rav Ashi said:**[N] The phrase "any *ḥerem*" is nonetheless **necessary,** as **it might enter your mind to say: Since it is a novel element that the Torah introduced with regard to** the payment of **a fine,** which is not payment for any damage caused but is a Torah decree, in that case, **even though he is killed he pays** the fine. Therefore, the verse **teaches us** that one who is executed is exempt from payment of the fine. The Gemara asks: **And according to Rabba, who said** that this is indeed the *halakha*: Since **it is a novel element that the Torah introduced with regard to** the payment of **a fine, even though he is killed he pays** the fine, **what does** he **do with this** phrase: **"Any *ḥerem*"?** The Gemara answers: Rabba **holds** with regard **to** this matter **in accordance with** the opinion of **the first *tanna*,** who disagrees with **Rabbi Ḥananya ben Akavya** and explains that the phrase "Any *ḥerem*" teaches that the vow one takes to donate the valuation of one being taken to his execution is not binding.

מתני׳ נַעֲרָה שֶׁנִּתְאָרְסָה וְנִתְגָּרְשָׁה, רַבִּי יוֹסֵי הַגְּלִילִי אוֹמֵר: אֵין לָהּ קְנָס, רַבִּי עֲקִיבָא אוֹמֵר: יֵשׁ לָהּ קְנָס, וּקְנָסָהּ לְעַצְמָהּ.

MISHNA With regard to **a young woman who was betrothed and divorced,**[NH] and then raped, **Rabbi Yosei HaGelili says: She does not** receive payment of a **fine** for her rape. **Rabbi Akiva says: She** receives payment of a **fine** for her rape **and her fine** is paid **to herself,** not her father, as since she was betrothed and divorced she is no longer subject to her father's authority.

גמ׳ מַאי טַעְמָא דְּרַבִּי יוֹסֵי הַגְּלִילִי? אָמַר קְרָא ״אֲשֶׁר לֹא אוֹרָשָׂה״, הָא אוֹרָסָה – אֵין לָהּ קְנָס. וְרַבִּי עֲקִיבָא: ״אֲשֶׁר לֹא אוֹרָשָׂה״ – לְאָבִיהָ, הָא אוֹרָסָה – לְעַצְמָהּ.

GEMARA **What is the rationale** for the opinion of **Rabbi Yosei HaGelili?** It is as **the verse states:** "If a man finds a young woman who is a virgin **who was not betrothed"** (Deuteronomy 22:28), from which it may be inferred: If **she was betrothed she does not have** a **fine** for rape. The Gemara asks: **And** how does **Rabbi Akiva** explain this verse? The Gemara answers that the verse states: If it is a young woman **who was not betrothed,** the fine is paid **to her father,** from which it may be inferred: If **she was betrothed,** the fine is paid **to** the betrothed woman **herself.**

אֶלָּא מֵעַתָּה ״נַעֲרָה״ וְלֹא בּוֹגֶרֶת, הָכִי נָמֵי דִּלְעַצְמָהּ? ״בְּתוּלָה״ וְלֹא בְּעוּלָה, הָכִי נָמֵי דִּלְעַצְמָהּ? אֶלָּא, לְגַמְרֵי – הָכָא נָמֵי לְגַמְרֵי!

The Gemara asks: **But if** that is **so,** that the inference from the verse is that the fine is levied on one who rapes **a young woman and not** on one who rapes **a grown woman,**[N] **so too,** there is the *halakha* in the latter case that the fine is paid **to** the grown woman **herself.** Similarly, with regard to the inference that the fine is levied on one who rapes **a virgin and not** on one who rapes **a non-virgin, so too,** there is the *halakha* that in the latter case the fine is paid **to** the non-virgin **herself.** A distinction of that kind has never been encountered. **Rather,** with regard to a grown woman and a non-virgin, the rapist is **completely** exempt from paying the fine; **here too,** with regard to a betrothed woman, the rapist is **completely** exempt from paying the fine.

אָמַר לָךְ רַבִּי עֲקִיבָא: הַאי ״לֹא אוֹרָשָׂה״ מִיבְּעֵי לֵיהּ לְכִדְתַנְיָא: ״אֲשֶׁר לֹא אוֹרָשָׂה״ – פְּרָט לְנַעֲרָה שֶׁנִּתְאָרְסָה וְנִתְגָּרְשָׁה, שֶׁאֵין לָהּ קְנָס, דִּבְרֵי רַבִּי יוֹסֵי הַגְּלִילִי. רַבִּי עֲקִיבָא אוֹמֵר: יֵשׁ לָהּ קְנָס, וּקְנָסָהּ לְאָבִיהָ. וְהַדִּין נוֹתֵן: הוֹאִיל וְאָבִיהָ זַכַּאי בְּכֶסֶף קִידּוּשֶׁיהָ, וְאָבִיהָ זַכַּאי בְּכֶסֶף קְנָסָהּ, מָה כֶּסֶף קִידּוּשֶׁיהָ, אַף עַל פִּי שֶׁנִּתְאָרְסָה וְנִתְגָּרְשָׁה – לְאָבִיהָ, אַף כֶּסֶף קְנָסָהּ, אַף עַל פִּי שֶׁנִּתְאָרְסָה וְנִתְגָּרְשָׁה – לְאָבִיהָ.

The Gemara answers: **Rabbi Akiva** could have **said to you** that **this** verse: **"Who was not betrothed," is required by him** to teach another *halakha* **that is taught** in a different *baraita*. **"Who was not betrothed"** (Deuteronomy 22:28) comes to **exclude a young woman who was betrothed and divorced** and establish **that she does not** receive payment of a **fine** for her rape; this is **the statement of Rabbi Yosei HaGelili. Rabbi Akiva says: She** receives payment of a **fine** for her rape, **and her fine** goes **to her father,** contrary to the ruling attributed to Rabbi Akiva in the mishna. **And** ostensibly, no verse is required to derive this *halakha*, as **logic dictates** that it is so: **Since her father is entitled to the money of her betrothal**[N] if she is betrothed before she becomes a grown woman, **and** likewise **her father is entitled to the money of her fine; just as the money of her** subsequent **betrothal** as a young woman, **even though she was betrothed and divorced,** is paid **to her father,**[H] **so too, the money of her fine, although she was betrothed and divorced,** is paid **to her father.**

NOTES

Rather, Rav Ashi said, etc. – **אֶלָּא אָמַר רַב אַשִׁי וכו׳**: If, as Rav Ashi claims, the phrase "Any *ḥerem*" refers to the case of one who is liable to be executed and to pay a fine, it should have been cited as proof in the mishna, which deals with the fine of a rapist. Why did the mishna cite proof from the verse "And yet no harm follow"? One answer is that the mishna established a principle that one is exempt from payment, even payment of a fine, for a transgression punishable by death, and the *tanna* did not cite all relevant verses. Alternatively, since there is proof for the basic *halakha* from the verse that he cited, the *tanna* did not cite the verse that refers to that particular detail (Rabbi Aharon HaLevi; Ritva).

Who was betrothed and divorced – **שֶׁנִּתְאָרְסָה וְנִתְגָּרְשָׁה**: The same *halakha* applies if she was betrothed and widowed. Rabbi Yosei HaGelili does not agree with Rabbi Akiva even in that case, but consistently maintains that a young woman who was once betrothed is not entitled to the fine (*Shita Mekubbetzet*).

A young woman and not a grown woman, etc. – **נַעֲרָה וְלֹא בּוֹגֶרֶת וכו׳**: Rashi notes that since there is no source that requires payment of a fine to a grown woman or a non-virgin, even Rabbi Akiva agrees with this *halakha*. He does not, however, explain why Rabbi Akiva agrees with this *halakha*. One approach is that since ultimately there is a verbal analogy between the seduced and raped woman, the words "young woman" and "virgin" that appear in both passages come to emphasize that only a young woman who is a virgin is entitled to the fine (see *Or Same'aḥ*).

Since her father is entitled to the money of her betrothal – **הוֹאִיל וְאָבִיהָ זַכַּאי בְּכֶסֶף קִידּוּשֶׁיהָ**: This is problematic, as there is a distinction between a father's right to the money received for his daughter's betrothal and his right to her fine if she is raped. In the case of betrothal, he has the right to betroth her to the man of his choice, but he does not have the right to give her to a man for intercourse outside the context of marriage. Why, then, does he receive the money paid as a fine for her rape? One answer is that Rabbi Akiva maintains that the father's right to the money received for his daughter's betrothal is based on a source other than his discretionary rights with regard to her betrothal, and therefore just as the money of her betrothal goes to her father, so does her fine. As the Meiri stated, betrothal does not release a daughter from her father's authority (see *Shita Mekubbetzet*).

HALAKHA

A young woman who was betrothed and divorced – **נַעֲרָה שֶׁנִּתְאָרְסָה וְנִתְגָּרְשָׁה**: The fine of one who raped or seduced a girl who was betrothed and divorced is paid to her, as the *halakha* is in accordance with the opinion of Rabbi Akiva in disputes with an individual *tanna* (Rif; Rambam *Sefer Nashim*, *Hilkhot Na'ara Betula* 2:16).

The money of her betrothal is paid to her father – **כֶּסֶף קִידּוּשֶׁיהָ לְאָבִיהָ**: With regard to a daughter who was betrothed and divorced or widowed, as long as she remains a young woman, the money of any subsequent betrothal belongs to her father (Rambam *Sefer Nashim*, *Hilkhot Ishut* 3:11; *Shulḥan Arukh*, *Even HaEzer* 37:1).

אִם כֵּן, מַה תַּלְמוּד לוֹמַר ״אֲשֶׁר לֹא אוֹרָשָׂה״ – מוּפְנֶה לְהַקִּישׁ לוֹ, וְלָדוּן הֵימֶנּוּ גְּזֵירָה שָׁוָה: נֶאֱמַר כָּאן ״אֲשֶׁר לֹא אוֹרָשָׂה״ וְנֶאֱמַר לְהַלָּן ״אֲשֶׁר לֹא אוֹרָשָׂה״ מַה כָּאן חֲמִשִּׁים – אַף לְהַלָּן חֲמִשִּׁים; וּמַה לְהַלָּן שְׁקָלִים – אַף כָּאן שְׁקָלִים.

If so, and the *halakha* can be logically inferred, **why does the verse state: "Who was not betrothed"?** This verse is **free,** as it is superfluous in its own context, **and** it is written **to liken** another case to it, **and to derive from it a verbal analogy: It is stated here** with regard to a woman who was raped: **"Who was not betrothed," and it is stated below:** "And if a man seduce a virgin **who was not betrothed"** (Exodus 22:15). **Just as here,** with regard to rape, the Torah specifies that the payment is **fifty** silver pieces (Deuteronomy 22:29), **so too below,** with regard to seduction, the payment is **fifty. And just as below,** with regard to seduction, the payment is in **shekels,** as it is written: "He shall weigh [*yishkol*] money" (Exodus 22:16), **so too here,** the payment is in **shekels.**

וְרַבִּי עֲקִיבָא, מַאי חָזֵית דְּ״אֲשֶׁר לֹא אוֹרָשָׂה״ לִגְזֵירָה שָׁוָה, וּ״בְתוּלָה״ לְמַעוּטֵי בְּעוּלָה,

The Gemara asks: **And Rabbi Akiva, what did you see** that led you to utilize the phrase: **"Who was not betrothed" for a verbal analogy, and** the term **"virgin" to exclude a non-virgin** from the fine?

Perek **III**
Daf **38** Amud **b**

אֵימָא ״בְתוּלָה״ – לִגְזֵירָה שָׁוָה וַ״אֲשֶׁר לֹא אוֹרָסָה״ – פְּרָט לְנַעֲרָה שֶׁנִּתְאָרְסָה וְנִתְגָּרְשָׁה!

Say to the contrary; the term **"virgin,"** written with regard to both rape and seduction, is **to** derive **a verbal analogy,**[N] and not to exclude a non-virgin, **and** the phrase **"Who was not betrothed"** will be interpreted as Rabbi Yosei HaGelili interpreted it, to **exclude a young woman who was betrothed and divorced.**

מִסְתַּבְּרָא ״אֲשֶׁר לֹא אוֹרָסָה״ לִגְזֵירָה שָׁוָה, שֶׁהֲרֵי אֲנִי קוֹרֵא בָּהּ ״נַעֲרָה בְתוּלָה״. אַדְּרַבָּה, ״בְּתוּלָה״ לִגְזֵירָה שָׁוָה, שֶׁהֲרֵי אֲנִי קוֹרֵא בָּהּ ״אֲשֶׁר לֹא אוֹרָסָה״! מִסְתַּבְּרָא, הָא – אִישְׁתַּנֵּי גּוּפָהּ, וְהָא – לָא אִישְׁתַּנֵּי גּוּפָהּ.

The Gemara answers: **It stands to reason** that the phrase **"Who was not betrothed"** is utilized **to** derive **a verbal analogy,** and not to exclude one who was betrothed and divorced, **as** even after the divorce **I can** still **read** the phrase **"A young woman who is a virgin"** as applying **to her.** The Gemara asks: **On the contrary,** utilize the term **virgin to** derive **a verbal analogy, as** even if she is not a virgin, **I can** still **read** the phrase **"Who was not betrothed"** as applying **to her.** The Gemara answers: **It stands to reason** that the term "virgin" excludes a non-virgin, and the phrase "Who was not betrothed" is utilized to derive a verbal analogy, as **this** woman who engaged in relations, **her body changed,**[N] **and that** woman who was betrothed and divorced, **her body did not change,** and therefore her status with regard to the fine should similarly not change.

וְרַבִּי יוֹסֵי הַגְּלִילִי הַאי סְבָרָא מְנָא לֵיהּ? נָפְקָא לֵיהּ מִדְּתַנְיָא: ״כֶּסֶף יִשְׁקוֹל כְּמוֹהַר הַבְּתוּלֹת״ – שֶׁיְּהֵא זֶה כְּמוֹהַר הַבְּתוּלוֹת, וּמוֹהַר הַבְּתוּלוֹת כָּזֶה.

The Gemara asks: **And from where** does **Rabbi Yosei HaGelili** derive **this conclusion** with regard to the amount of the payment for seduction and the type of money used in the payment for rape? The Gemara responds: **He derives it from that which was taught** in a *baraita* that it is written with regard to seduction: **"He shall weigh money like the dowry of the virgins"** (Exodus 22:16), from which it is derived **that this** fine for seduction **will be like the dowry** paid **to the virgins** elsewhere for rape, fifty silver coins, **and the dowry** paid **to the virgins** for rape **will be like this** fine for seduction in shekels.

NOTES

Say virgin is to derive a verbal analogy – **אֵימָא בְּתוּלָה לִגְזֵירָה שָׁוָה**: There is a fundamental difficulty, as this question runs counter to one of the basic principles of verbal analogy, i.e., one may not derive a verbal analogy on his own; only those he has received as a tradition from his teachers are valid. All verbal analogies are based on ancient tradition, like a *halakha* transmitted to Moses from Sinai. Yet here, and in several other places, there appears to be no established tradition. The early commentaries suggest several answers. One approach (Ritva) is that there was a tradition linking two verses by verbal analogy, but it was not clear which particular words served as the basis of the analogy (see *Tosafot*). Others maintain that the terms in the analogy were also part of the tradition, but the meaning of the analogy was not always clear (see *Shita Mekubbetzet*).

This woman, her body changed – **הָא אִישְׁתַּנֵּי גּוּפָהּ**: This change is obvious in the case of a non-virgin. With regard to a grown woman, some commentaries explain that her body is also considered to have undergone changes over time, affecting her status as a virgin (see *Shita Mekubbetzet*).

קַשְׁיָא דְּרַבִּי עֲקִיבָא אַדְּרַבִּי עֲקִיבָא! תְּרֵי תַּנָּאֵי וְאַלִּיבָּא דְּרַבִּי עֲקִיבָא.

§ The Gemara comments: It is **difficult** as there is a contradiction between one statement **of Rabbi Akiva** and another statement **of Rabbi Akiva.**[N] In the mishna he ruled that the fine for the rape of a young woman who was betrothed and divorced is paid to the woman, and in the *baraita* he ruled that it is paid to her father. The Gemara answers: These are conflicting traditions of **two *tanna'im* in accordance with** the opinion of **Rabbi Akiva.**

בִּשְׁלָמָא רַבִּי עֲקִיבָא דְּמַתְנִיתִין – לָא אָתְיָא גְּזֵירָה שָׁוָה וּמַפְּקָא לֵיהּ לִקְרָא מִפְּשָׁטֵיהּ לְגַמְרֵי, אֶלָּא לְרַבִּי עֲקִיבָא דְּבָרַיְיתָא – אָתְיָא גְּזֵירָה שָׁוָה וּמַפְּקָא מִפְּשָׁטֵיהּ לְגַמְרֵי!

The Gemara observes: **Granted,** the statement of **Rabbi Akiva of the mishna** is reasonable, as **a verbal analogy does not come and divert the verse from its plain meaning entirely.** The plain meaning of the phrase: "Who was not betrothed" is that there is a difference between a young woman who was betrothed, who receives payment of the fine, and one who was not, whose father receives payment of the fine. **However,** according **to Rabbi Akiva of the *baraita*,** does **a verbal analogy come and divert the verse from its plain meaning entirely,**[N] and teach that there is no difference at all between a young woman who was betrothed and one who was not?

אֲמַר רַב נַחְמָן בַּר יִצְחָק: קְרִי בֵּיהּ "אֲשֶׁר לֹא אֲרוּסָה". אֲרוּסָה בַּת סְקִילָה הִיא! סָלְקָא דַּעְתָּךְ אָמִינָא: הוֹאִיל וְחִידּוּשׁ הוּא שֶׁחִידְּשָׁה תּוֹרָה בִּקְנָס, אַף עַל גַּב דְּמִיקְטִיל – מְשַׁלֵּם.

Rav Naḥman bar Yitzḥak said: Interpret the verse as: **Who is not betrothed.**[N] It does not mean that the young woman was not betrothed in the past, rather, that she is not currently betrothed. The Gemara asks: There is no need for a verse to derive that the rapist is exempt from paying a fine if the young woman is betrothed, as the rape of **a betrothed** young woman **is** punishable **by stoning,** and the rapist is certainly exempt from paying the fine. The Gemara answers: As **it might enter your mind to say: Since it is a novel element that the Torah introduced with regard to** the payment of **a fine, even though he is killed he pays** the fine. Therefore, the verse **teaches us** that one who is executed is exempt from payment of the fine.

וּלְרַבָּה, דַּאֲמַר: חִידּוּשׁ הוּא שֶׁחִידְּשָׁה תּוֹרָה בִּקְנָס, אַף עַל גַּב דְּמִיקְטִיל מְשַׁלֵּם – מַאי אִיכָּא לְמֵימַר? סָבַר לָהּ כְּרַבִּי עֲקִיבָא דְּמַתְנִיתִין.

The Gemara asks: **And according to Rabba, who said** that this is indeed the *halakha*: Since **it is a novel element that the Torah introduced with regard to** the payment of **a fine, even though he is killed he pays** the fine, **what is there to say?** What is derived from the verse that says that there is no fine if the young woman is betrothed? The Gemara answers: Rabba **holds in accordance with** the opinion of **Rabbi Akiva of the mishna,** who interpreted the verse as it is written, meaning that it is referring to one who was betrothed and divorced.

תָּנוּ רַבָּנַן: קְנָסָהּ לְמִי – לְאָבִיהָ, וְיֵשׁ אוֹמְרִים: לְעַצְמָהּ. לְעַצְמָהּ אַמַּאי? אֲמַר רַב חִסְדָּא: הָכָא בְּנַעֲרָה שֶׁנִּתְאָרְסָה וְנִתְגָּרְשָׁה עָסְקִינַן, וְקָמִיפַּלְגִי בִּפְלוּגְתָּא דְּרַבִּי עֲקִיבָא דְּמַתְנִיתִין וְרַבִּי עֲקִיבָא דְּבָרַיְיתָא.

The Sages taught: With regard to a young woman who was raped, **to whom** is **her fine** paid? It is paid **to her father; and some say:** It is paid **to her.** The Gemara asks: **To her? Why?** The verse explicitly states that the fine is paid to her father. **Rav Ḥisda said: Here we are dealing with a young woman who was betrothed and divorced, and** these *tanna'im* in the *baraita* **disagree in the dispute between Rabbi Akiva of the mishna and Rabbi Akiva of the *baraita*,** with regard to whom the rapist pays the fine in that case.

NOTES

It is difficult as there is a contradiction between one statement of Rabbi Akiva and another statement of Rabbi Akiva – קַשְׁיָא דְּרַבִּי עֲקִיבָא אַדְּרַבִּי עֲקִיבָא: Why did the Gemara postpone raising this contradiction instead of raising it immediately, especially as it provides no novel resolution but merely affirms that these are two opinions? In the *Shita Mekubbetzet* it is explained that since the Gemara elaborates on and provides a source for Rabbi Akiva's opinion, it was necessary to cite the *baraita* in order to explain his reasoning, which appears contrary to the verses. As the *baraita* includes a detailed explanation, the Gemara cannot be dismissed as corrupted and thereby rejected in favor of the mishna (*Shita Mekubbetzet*).

Divert the verse from its plain meaning entirely – מַפְּקָא מִפְּשָׁטֵיהּ לְגַמְרֵי: Even though the ideal verbal analogy is free, i.e., the words that serve as the basis of the analogy are superfluous in their context, the meaning of these words cannot be entirely disregarded just because they were written primarily for the verbal analogy. *Tosafot* note that there are other cases where this is more problematic, as here it is merely the inference of the verse, that a young woman who was betrothed and divorced does not receive the fine, that runs counter to the halakhic conclusion. In other places, the verbal analogy appears to subvert the meaning of the verse entirely (see *Shita Mekubbetzet*).

Interpret the verse as: Who is not betrothed – קְרִי בֵּיהּ אֲשֶׁר לֹא אֲרוּסָה: This does not require adapting the letters or vowels of this word. Rather, the expression "not betrothed" should not be understood in the past tense: Who was not betrothed; rather it is a kind of present participle: One who is not betrothed. This is a common usage in the Bible, particularly in the language of the prophets (Ritva; Rabbeinu Crescas Vidal).

HALAKHA

If one had intercourse with a young woman, and she died – בָּא עָלֶיהָ וּמֵתָה: If the young woman died before the rapist or seducer stood trial, he is exempt from the fine. The *halakha* is in accordance with the opinion of Abaye, as his conclusion is not rejected due to Rava's dilemma (Rambam *Sefer Nashim*, *Hilkhot Na'ara Betula* 1:15 and the *Kesef Mishna* there; *Tur*, *Even HaEzer* 177).

אָמַר אַבַּיֵי: בָּא עָלֶיהָ וּמֵתָה – פָּטוּר, שֶׁנֶּאֱמַר ״וְנָתַן לַאֲבִי הַנַּעֲרָה״ – וְלֹא לַאֲבִי מֵתָה. מִלְּתָא דִּפְשִׁיטָא לֵיהּ לְאַבַּיֵי, מִיבַּעְיָא לֵיהּ לְרָבָא.

§ **Abaye said:** If **one had intercourse with** a young woman, **and she died**[H] before he was sentenced, he is **exempt** from paying the fine, **as it is stated: "And** the man who lay with her **shall give to the father of the young woman"** (Deuteronomy 22:29), from which it is inferred, **and not to the father of a dead** girl.[N] The Gemara comments: This **matter that** was **obvious to Abaye** was **raised as a dilemma to Rava.**[N]

דְּבָעֵי רָבָא: יֵשׁ בֶּגֶר בַּקֶּבֶר אוֹ אֵין בֶּגֶר בַּקֶּבֶר? יֵשׁ בֶּגֶר בַּקֶּבֶר – וְדִבְנָהּ הָוֵי, אוֹ דִּלְמָא אֵין בֶּגֶר בַּקֶּבֶר – וּדְאָבִיהָ הָוֵי?

As Rava raised a dilemma: Is there achievement of **grown-woman status in the grave or is there not** achievement of **grown-woman status in the grave?**[N] The *halakha* is that if a young woman is raped and the rapist did not pay the fine until she became a grown woman, the rapist pays the fine to her and not to her father. Rava's dilemma is in a case where a young woman dies and her rapist was convicted only after the time elapsed that were she alive she would have reached grown-woman status. **Is there** achievement of **grown-woman status in the grave, and** therefore she is entitled to the fine and **it is** the property of **her son**[N] as his mother's heir? **Or perhaps there is no** achievement of **grown-woman status in the grave, and the fine is** the property of **her father,** as she was a young woman when she died.

NOTES

And not to the father of a dead girl – וְלֹא לַאֲבִי מֵתָה: The early commentaries point out that the Gemara does not interpret the term young woman consistently. Sometimes it interprets a young woman as referring to one who was a young woman, even though she is already a grown woman. *Tosafot*, the Rosh, and others explain that it would have been sufficient for it to have been written in the verse: And he gives to her father. The use of the phrase "To the father of the young woman" indicates that she remains a young woman at the time of the rapist's conviction. The *Penei Yehoshua* asks: Wasn't it necessary to write: "To the father of the young woman" to exclude the father of a grown woman? Conceivably, both conclusions may be derived as they emanate from the same principle: The time that determines the father's right to the payment is when the rapist is convicted. If his daughter's status then is no longer what it was at the time of the rape, he forfeits that right.

Raised as a dilemma to Rava – מִיבַּעְיָא לֵיהּ לְרָבָא: Rashi explains later that Rava's dilemma exists neither according to the first version nor according to the second version of Rava's teaching, as in both versions he clearly maintains that death does not release the rapist from the obligation to pay the fine. Rather, the dilemma raised is according to Mar bar Rav Ashi's explanation of Rava's statement.

Is there achievement of grown-woman status in the grave – יֵשׁ בֶּגֶר בַּקֶּבֶר: There are different aspects to the definition of the daughter as a grown woman, both in terms of the changes to her body and in terms of her legal status. The dilemma of whether there is achievement of grown-woman status in the grave is not in terms of her physical state but in terms of her legal status. More specifically, it is with regard to the fact that a grown woman is entirely removed from her father's authority. The problem stems from the fact that a young woman is transformed into a grown woman six months after puberty, which is the time at which she becomes a young woman. The dilemma is as follows: Is the daughter's exit from her father's authority dependent on her development during those six months, which would lead to the conclusion that there is no achievement of grown-woman status in the grave; or is it merely dependent on the passage of time, and once the six months pass she is no longer subject to her father's authority, leading to the conclusion that there is achievement of grown-woman status in the grave (*Birkat Avraham*)?

It is the property of her son – דִּבְנָהּ הָוֵי: The Meiri notes that this son must have been born out of wedlock, as had the daughter been married, her marriage itself would have fully removed her from her father's authority, leaving him with no rights over her.

Many early commentaries question the matter of the son inheriting his mother's fine, as it appears to contradict the principle that one does not bequeath a fine to his heirs, as stated at the start of the next chapter. *Tosafot* discuss this issue at length and provide various resolutions. One approach, attributed to Rabbeinu Yitzḥak, and cited by the Ritva and other early commentaries, is that the principle that one does not bequeath a fine to his heirs refers only to a fine that is not his by right, but which he receives due to actions done to others. Consequently, a father's right to the fine paid by the man who raped his daughter is not inherited by his sons. However, since the rape victim is herself entitled to the fine, she does bequeath it to her heirs. *Tosafot* explain that the discussion here is with regard to payments accompanying the fine, e.g., compensation for humiliation and degradation, and not the fine itself. These are standard monetary payments and therefore are bequeathed to others.

Rabbi Aharon HaLevi states, in the name of Rabbi Zeraḥya HaLevi, that this statement in the Gemara is according to Rabbi Shimon's opinion that if she became a grown woman after the trial she receives the fine herself. Here too, she died after the trial but before she became a grown-woman. The dilemma then is whether she is considered to have achieved grown woman status in the grave, and therefore the money is transferred to her heirs, or perhaps she did not achieve that status, and the money remains her father's. The Rashba rejects this approach. A different interpretation is suggested by the Ramban. He contends that the statement: It is her son's, does not mean literally that it belongs to her son, as a fine cannot be bequeathed. Instead, it means that if there is achievement of grown-woman status in the grave the father no longer has rights to it, as she would have received it, which would have afforded her the theoretical right to give it away or bequeath it. The Ra'avad suggests simply that initially, Rava maintained that a person can bequeath his rights to a fine, and the Gemara could have responded by challenging that assumption. However, the Gemara cited better reasons for rejecting the dilemma. Many early commentaries, including the Ramban and the Rashba, believe that the Ra'avad's answer is the most suitable in the context of the discussion in the Gemara.