

וי"ו לא משמע ליה. (מאי קאמר רחמנא?
המיוחדין שבשופטין.) אלא מעתה, "ויצאו" –
שנים; "ומדדו" – שנים, לרבי יהודה הרי כאן
תשעה, לרבי שמעון הרי כאן שבעה!

because he does not learn anything from the letter *vav*. Rather, what is the Merciful One saying in the Torah with the phrase “and your judges”? He is referring to the distinguished that are among your judges. The Gemara raises an objection: However, if that is so, if every plural form in the verse adds another two judges, then when it later states: “And they shall go out,” this should indicate another two. And: “And they shall measure” (Deuteronomy 21:2), should indicate yet another two. This means that according to the reasoning of Rabbi Yehuda there are nine judges enumerated here, while according to the reasoning of Rabbi Shimon there are seven judges enumerated here.

ההוא מיבעי ליה לכתנאי: "ויצאו" – הן ולא
שלוחיהן, "ומדדו" – שאפילו נמצא בעליל
לעיר היו מודדו, שמצוה לעסוק במדידה.

The Gemara responds: He requires that verse: “And they shall go out... and they shall measure,” for that which is taught in a *baraita*: “And they shall go out,” serves to emphasize that they themselves go out, and not their agents,^h i.e., they may not appoint an agent to measure the distance but must do it themselves. “And they shall measure,” teaches that even if the corpse was found clearly near to a particular city^h they would nevertheless measure the distance, as it is a *mitzva* to engage in this act of measurement.

מתניתין דלא כרבי אליעזר בן יעקב, דתנאי,
רבי אליעזר בן יעקב אומר: "וקנדך" – זו
סנהדרין; "שפטך" – זה מלך וכהן גדול; מלך,
דכתיב: "מלך במשפט יעמיד ארץ"; כהן גדול,
דכתיב: "ובאת אל הכהנים הלויים ואל השפט
אשר יהיה וגו'."

§ The Gemara comments: The mishna is not in accordance with the opinion of Rabbi Eliezer ben Ya’akov, as it is taught in a *baraita*: Rabbi Eliezer ben Ya’akov says: “Your Elders,” this is the Sanhedrin; “your judges,” this is the king and the High Priest. According to Rabbi Eliezer ben Ya’akov, the king and the High Priest need to participate in the ritual of breaking the neck of the heifer. From where is it learned that they are called judges? A king is called a judge, as it is written: “A king by justice establishes the land” (Proverbs 29:4). A High Priest is called a judge, as it is written: “If there arise a matter too hard for you in judgment... And you shall come to the priests the Levites, and to the judge who shall be in those days” (Deuteronomy 17:8–9).

איבעיא להו: רבי אליעזר בן יעקב – במלך
וכהן גדול הוא דפליג, אבל בסנהדרין אי כרבי
יהודה אי כרבי שמעון סבירא ליה? או דלמא
בסנהדרין נמי פליג עד דאיכא כולה סנהדרין?

A dilemma was raised before the Sages: Is it so that Rabbi Eliezer ben Ya’akov disagrees only with regard to a king and a High Priest, contending that they too must be present at the measurement, but that with regard to the Sanhedrin he holds either in accordance with the opinion of Rabbi Yehuda that three Elders suffice or in accordance with the opinion of Rabbi Shimon, that five are needed? Or, perhaps he also disagrees with regard to the Sanhedrin and claims that the ritual is not performed unless there is the entire Sanhedrin participating.

HALAKHA

They and not their agents – הן ולא שלוחיהן: The Rambam does not write this *halakha* explicitly, although he does indicate that he rules this way. The later authorities discuss whether the Elders of the Sanhedrin must actually perform the measurement themselves or whether it suffices for them to be present for the measuring (Rambam *Sefer Nezikim, Hilkhot Rotze’ah UShmirat HaNefesh* 9:1).

Even if it was found clearly near a city – אפילו נמצא בעליל לעיר: Even if the victim is discovered adjacent to a particular city, it is nevertheless a *mitzva* to measure the distance from the corpse to all the surrounding cities (Rambam *Sefer Nezikim, Hilkhot Rotze’ah UShmirat HaNefesh* 9:1).

A rebellious Elder – יקן ממרא: The rebellious Elder is a scholar who continues his dispute with the Sanhedrin even after the Sanhedrin has issued its ruling, in a matter of *halakha* that is written in the Torah and expounded by the Sages. Although he is not obligated to change his opinion, if he issues a practical ruling to others in opposition to that of the Sanhedrin, he is considered a rebellious Elder and is brought to Jerusalem, where he is executed by strangulation.

Let no mingled wine [mazeg] be wanting – אל יחסר: A hint for this *halakha* is found in the fact that it was common for wine to be diluted [mazug] to a ratio of two-thirds water to one-third wine. Here too, one-third of the Sanhedrin must remain. Furthermore, the numerical value of the letters in *mazeg* is fifty, which indicates that the absence of fifty members of the Sanhedrin is prohibited, but that it is permitted for fewer than fifty to leave (*Tosefot HaRosh; Tosafot on Sanhedrin*).

LANGUAGE

Beit Pagei – בני פגי: There are several opinions as to the identity of this place. It seems that two different places were known by that name. Some say that *pagei* is related to the Greek φαγεῖν, *fagein*, meaning eat. According to this explanation, Beit Pagei means the place where one is allowed to eat the sanctified meat of offerings, as it is considered to be within the borders of Jerusalem (*Arukh*).

From other sources, it seems that this was the name of a neighborhood next to Jerusalem, perhaps called so due to the small figs that grew there, as the word *pag* means small. It was outside the borders of the city.

אמר רב יוסף, תא שמימי: מציאן זקן ממרא אבי פגי והמרה עליהן, יכול תהא המראתו המראה? תלמוד לומר: "וקמת ועלית אל המקום", מלימד שהמקום גורם.

דנפוק במה? אילימא דנפוק מקצתן, דלמא הנך דאיכא גויאי בוותיה סבירא להו! אלא פשיטא דנפוק כולהו.

ולמאי? אי לדבר הרשות, מי מצו נפקי? והכתוב: "שוררך אגן הסהר אל יחסר המגו", שאם נצרך אחד מהם לצאת, אם יש שם עשרים ושלשה כנגד סנהדרין קטנה – יוצא, ואם לאו – אינו יוצא!

אלא פשיטא לדבר מצוה. למאי? לאו למדידת עגלה, ורבי אליעזר בן יעקב היא? אמר ליה אביו: לא, דלמא להוסיף על העיר ועל העורות, כדתנן: אין מוסיפין על העיר ועל העורות אלא בבית דין של שבועים ואחד.

תנא בוותיה דרב יוסף: מציאן אבית פגי והמרה עליהן, כגון שיצאו למדידת עגלה או להוסיף על העיר ועל העורות, יכול תהא המראתו המראה? תלמוד לומר: "וקמת ועלית", מלימד שהמקום גורם.

Rav Yosef said: Come and hear a proof from a *baraita*: If a rebellious Elder^N found the Sanhedrin not in the Hewn Chamber, which was their usual place, but in Beit Pagei,^L near Jerusalem, and he rebelled against them there, by teaching in opposition to their ruling, one might have thought his rebellion should be considered a rebellion, rendering him liable to punishment. The verse therefore states: "And you shall arise and go up to the place" (Deuteronomy 17:8), which teaches that it is the place where the Sanhedrin resides that causes^H the *halakha* of a rebellious Elder to take effect.

The Gemara analyzes this statement: In this case, how many members of the Sanhedrin were there who went out to Beit Pagei? If we say that only a minority of them went out, why should he be considered a rebellious Elder? Perhaps those judges who are inside the Hewn Chamber hold in accordance with his opinion, which would mean that the Elder in question ruled with the majority. Rather, it is obvious that they all went out.

The assumption that they all went out leads to the following question: And for what purpose did they all leave the Hewn Chamber? If it was for an optional matter, may they leave? But isn't it written: "Your navel [shorerekh] is like a round goblet, let no mingled wine be wanting" (Song of Songs 7:3).^{NH} This verse is interpreted as referring to the Sanhedrin, the ministers [*sarei*] of Israel who sit in a semicircle, like half of a round goblet. The words "let no mingled wine be wanting" teach that if one of the great Sanhedrin needed to leave, then if there are still present in the Hewn Chamber twenty-three members, corresponding to the number of a lesser Sanhedrin, he may leave; and if not, he may not leave. This indicates that it is prohibited for the entire Sanhedrin to leave for an optional matter.

Rather it is obvious that they left for a matter of a mitzva. For what particular mitzva did they venture out? Is it not for the measurement associated with the ritual of the heifer, and it is in accordance with the opinion of Rabbi Eliezer ben Ya'akov? This would prove that Rabbi Eliezer ben Ya'akov holds that the entire Sanhedrin goes out to measure the distance from the corpse to the nearby cities. Abaye said to Rav Yosef: No, this is not a proof, as perhaps they went out for a different mitzva, to expand the city of Jerusalem or the courtyards of the Temple, as we learned in a mishna (*Sanhedrin* 2a): They may expand the sanctified area of the city of Jerusalem or of the Temple courtyards only^H with the court of seventy-one.

It is taught in a *baraita* in accordance with the opinion of Rav Yosef, that Rabbi Eliezer ben Ya'akov disagrees even with regard to the number of judges: If the rebellious Elder found the Sanhedrin in Beit Pagei and rebelled against them, for example, if they went out for the measurement of the ritual of the heifer or to expand the area of the city or that of the courtyards, one might have thought that his rebellion should be a rebellion. Therefore, the verse states with regard to the requirement to follow the rulings of the Sanhedrin: "And you shall arise and go up to the place" (Deuteronomy 17:8). This teaches that the place causes the *halakha* of a rebellious Elder to take effect, indicating that the entire Sanhedrin participates in the measurement of the distance from the corpse to the cities.

HALAKHA

Teaches that the place causes – מלימד שהמקום גורם: A scholar can become a rebellious Elder only if he disputes rulings of the Sanhedrin issued when they are seated in the Chamber of Hewn Stone (*Rambam Sefer Shofetim, Hilkhot Mamrim* 3:5).

Let no mingled wine be wanting – אל יחסר המגו: The full court of seventy-one does not have to sit in the Chamber of Hewn Stone at all times, but all must be present when the court is in session. The rest of the time, the judges may leave to attend to their business,

as long as at least twenty-three remain. Before a judge leaves, he must make sure that he has left at least twenty-three others there (*Rambam Sefer Shofetim, Hilkhot Sanhedrin* 3:2).

They may expand the city...only, etc. – אלא...אין מוסיפין על העיר: The size of Jerusalem and of the Temple courtyards may be increased only by means of the king, a prophet, the *Urim VeTumim*, and the Sanhedrin of seventy-one (*Rambam Sefer Avoda, Hilkhot Beit HaBehira* 6:11).

לְרִבּוֹת אֶת הַטְּמוֹן – לְרִבּוֹת אֶת הַטְּמוֹן – Even a concealed sheaf is considered to be forgotten, in accordance with the opinion of the Rabbis (Rambam *Sefer Zera'im, Hilkhot Mattenot Aniyyim* 5:1).

To include the forgotten stalks of standing grain – לְרִבּוֹת שְׂכַחַת קֶמֶה: The *halakha* of forgetting applies to standing produce just as it does to cut produce. Therefore, if one forgot to harvest part of his field, the produce there belongs to the poor (Rambam *Sefer Zera'im, Hilkhot Mattenot Aniyyim* 1:6).

It excludes sheaves that floated – פָּרַט לְשָׁצְפוּ עוֹמְרִין – If sheaves were blown by the wind into the field of another and were left there by their owner, they are not considered to be forgotten, in accordance with the opinion of Rabbi Abbahu. If one forgot a sheaf after the wind dispersed his sheaves in his own field, it is classified as forgotten (Rambam *Sefer Zera'im, Hilkhot Mattenot Aniyyim* 5:5).

§ The mishna teaches: If the corpse was found concealed in a pile of stones or hanging on a tree, they would not perform the ritual of the heifer. The Gemara suggests: **Let us say that the mishna is in accordance with the opinion of Rabbi Yehuda and not in accordance with the opinion of the Rabbis.** This is as it is taught in a *baraita* with regard to the *halakha* that sheaves of grain forgotten in the fields must be left for the poor: **“And you forget a sheaf in the field”** (Deuteronomy 24:19). This **excludes a concealed sheaf**; it is not considered forgotten and it may be collected by the owner, even if he did forget it. This is **the statement of Rabbi Yehuda. And the Rabbis say:** The phrase **“in the field”** serves to **include the concealed sheaves**, and these must be left for the poor. Rabbi Yehuda holds, like the ruling in the mishna here, that when the verse states **“in the field”** it excludes a concealed corpse.

Rav said: **You can even say that the mishna is in accordance with the opinion of the Rabbis, as here they expound the halakha based on the context of the verse, and there too they expound the halakha based on the context of the verse.**

In this case, as it is written: **“If one be found slain”** (Deuteronomy 21:1), the default assumption is that the *halakha* applies no matter **where it is found.** When the verse then states: **“In the ground,”** it must be serving to **exclude a matter, i.e., a concealed corpse. And similarly, there, in the case of forgotten sheaves, they also expound based on the context of the verse, as it is written:** **“When you reap your harvest in your field, and you forget a sheaf”** (Deuteronomy 24:19). This indicates that **forgotten sheaves are similar to those of the harvest: Just as the harvest is performed with revealed objects, i.e., the growing grain, so too, the halakhot of forgetting pertain to revealed sheaves.** Consequently, when the Merciful One writes in the Torah **“in the field,”** it must be in order to **include the concealed sheaves.**^h

In light of this explanation, the Gemara asks: **According to Rabbi Yehuda as well, let him derive that covered sheaves are not included from the fact that forgotten sheaves are similar to those of the harvest.** Why does he have to derive it from the words **“in the field”**? The Gemara answers: **Yes, it is indeed so, he does not derive that halakha from the phrase “in the field.”**

The Gemara therefore inquires: **But then why do I need the phrase “in the field,”** which indicates either an exclusion or an inclusion? The Gemara answers: **He requires it in order to include the forgotten stalks of standing grain.**^h Produce that one forgot to reap is considered forgotten, even if it is still attached to the ground. The Gemara asks: **And the Rabbis, from where do they learn the halakha of forgotten stalks of standing grain?** The Gemara answers: **They derive it from the verse: “When you reap your harvest in your field, and you forget,”** which indicates that the *halakha* includes one who forgot to harvest part of his field.

The Gemara asks: **And what does Rabbi Yehuda derive from this verse?** The Gemara answers: It is **necessary for him in order to learn that which Rabbi Abbahu says that Rabbi Elazar says, as Rabbi Abbahu says that Rabbi Elazar says: This verse excludes sheaves that floated^h through the air from his field into another’s field.** Such sheaves are not classified as forgotten and may be retrieved later by the owner. **And the Rabbis, from where do they derive this halakha? They derive it from the fact that the verse could have stated: In the field,** but instead states **“in your field,”** to include sheaves situated only in one’s own field. The Gemara continues to ask: **And what does Rabbi Yehuda learn from this phrase?** The Gemara answers: **He does not learn anything from the difference between: In the field, and “in your field,”** as he holds it is not a significant difference.

”נמצא טמון בגל או תלוי באילן.” לִימָא. מִתְנַתִּין רַבִּי יְהוּדָה הֵיא וְלֹא רַבְנָן! דִּתְנָא: ”וְשָׁכַחַת עֹמֵר בְּשָׂדֶה” – פָּרַט לְטְמוֹן, דְּבִרַי רַבִּי יְהוּדָה: וְחֻכְמִים אוֹמְרִים: ”בְּשָׂדֶה” – לְרִבּוֹת אֶת הַטְּמוֹן!

אָמַר רַב: אֶפְיָלוּ תִּמְיָא רַבְנָן. הֵכָא מִעֲנִינִי דְקָרָא, הֵתָם מִעֲנִינִי דְקָרָא;

דְּכַתִּיב: ”כִּי יִמָּצֵא חָלָל”, הֵיכָא דְמִשְׁתַּבַּח; ”בְּאֲדָמָה” – פָּרַט לְטְמוֹן; וְהֵתָם מִעֲנִינִי דְקָרָא. דְּכַתִּיב: ”כִּי תִקְצֹר קִצְיֶיךָ בְּשָׂדֶךְ וְשָׁכַחַת עֹמֵר”, שְׁכַחַת דְּוִמְיָא דְקָצִיר: מַה קָצִיר בְּגֵלוֹי אִף שְׁכַחַת בְּגֵלוֹי. פְּתַב רַחֲמָנָא ”בְּשָׂדֶה” – לְרִבּוֹת אֶת הַטְּמוֹן.

לְרַבִּי יְהוּדָה נִמְי תִּיפּוּק לִיָּה מִשְׁכַּחַת דְּוִמְיָא דְקָצִיר! אִין הָכִי נִמְי.

וְאֵלֹא ”בְּשָׂדֶה” לְמָה לִי? מִיבְּעִי לִיָּה: לְרִבּוֹת שְׁכַחַת קֶמֶה. וְרַבְנָן, שְׁכַחַת קֶמֶה מִנָּא לְהוּ? נִפְקָא לְהוּ מִ”כִּי תִקְצֹר קִצְיֶיךָ בְּשָׂדֶךְ”.

וְרַבִּי יְהוּדָה – מִיבְּעִי לִיָּה לְכַדְרַבִּי אָבָהוּ אָמַר רַבִּי אֶלְעָזָר, דְּאָמַר רַבִּי אָבָהוּ אָמַר רַבִּי אֶלְעָזָר: פָּרַט לְשָׁצְפוּ עוֹמְרִין לְתוֹךְ שָׂדֶה חִבְיָו. וְרַבְנָן – מִ”בְּשָׂדֶה, בְּשָׂדֶךְ”. וְרַבִּי יְהוּדָה – ”בְּשָׂדֶה, בְּשָׂדֶךְ” לֹא מִשְׁמַע לִיָּה.

Into another's field – לתוך שדה חבירו: The early commentaries disagree over the reason for this *halakha*. Rashi indicates that they are not considered to be forgotten because one purposely does not take them, as he cannot be sure the sheaves belong to him. The Meiri maintains that it is a Torah edict that only sheaves located in one's own field can be considered forgotten, and that sheaves in the field of another are not classified as forgotten even if one knows that they are there. The *Devar Shaul* interprets Rav Yirmeya's inquiry as based on these two possibilities.

HALAKHA

A sheaf that had been held – עומר שהחזיק בו וכו': In a case where the owner of a field picked up a sheaf to take it to the city, placed it on another sheaf, and then forgot both sheaves, if he remembered the upper one before he came across it, the lower one is not considered to be forgotten. If not, the lower sheaf is considered to be forgotten.

This ruling follows the Jerusalem Talmud in tractate *Pe'a*. The Ra'avad maintains that the distinction between one who remembers and one who fails to do so applies only according to Rabbi Shimon, and is not accepted as *halakha* (Rambam *Sefer Zera'im, Hilkhot Mattenot Aniyyim* 5:4).

בעי רבי ירמיה: צפו עומרין לתוך שדהו, מהו? אומר שדה בשדה דמי, או לא בשדה דמי?

אמר ליה רב כהנא לרב פפי, ואמר ליה רב כהנא לרב זביד: תפשוט ליה מדדבי אבהו אמר רבי אלעזר, דאמר: פרט לשצפו עומרין לתוך שדה חבירו, דחבירו – אין, לתוך שדהו – לא!

ולישעמך, לתוך שדה חבירו – צפו אין מונחין לא, והא בעינן "בשדך" וליכא!

אלא, לתוך שדה חבירו ואפילו מונחין, והאי דקאמר צפו? דלא משכחת לה אלא בצפו.

תא שמע: עומר שהחזיק בו להוליכו לעיר, והניחו על גבי חבירו ושכחו – התחתון שכחה, והעליון אינו שכחה. רבי שמעון בן יהודה אומר משום רבי שמעון: שניהם אינן שכחה, התחתון – מפני שהוא טמון, והעליון – מפני שהוא צף; עד כאן לא פליגי אלא בתחתון, אבל בעליון – דברי הכל לא הואי שכחה.

שאני התם, מין דאחזיק ביה, וכה ביה. אי הכי, מאי איריא על גבי חבירו? אפילו בשדה נמי! אין הכי נמי, והאי דקתני על גבי חבירו – משום תחתון.

והא "מפני שהוא צף" קאמר! אימא: "מפני שהוא בצף".

Rabbi Yirmeya raises a dilemma: If sheaves floated into his field, i.e., if one sheaf landed on another sheaf or on another item, what is the *halakha*? Is the airspace of a field considered to be like it is the field itself, in which case one sheaf on top of another meets the legal requirements to be deemed forgotten? Or, is it not considered like the field, in which case one sheaf on top of another does not meet the legal requirements to be deemed forgotten?

Rav Kahana said to Rav Pappi, and some say Rav Kahana said it to Rav Zevid: Let him resolve the dilemma from the statement of Rabbi Abbahu, who says that Rabbi Elazar says: This excludes sheaves that floated into another's field.^N If they floated into another's field, yes, Rabbi Elazar said that they are not deemed forgotten, but if they floated into his own field, they are not discussed by Rabbi Elazar, and therefore they are deemed forgotten.

The Gemara refutes this proof: And according to your reasoning that the *halakha* of the *baraita* is limited to the case stated, one could infer: In a case where the sheaves drifted into another's field, then if they were floating, yes, they are not deemed to be forgotten, but if they were resting directly on the ground in another's field, no, they are deemed to be forgotten. But this cannot be the *halakha*, as we require the sheaves to be "in your field," and these sheaves are not in his field.

Rather, you must admit that the words: Into another's field, include not only those sheaves which are lying on other items, but even those resting directly on the ground. And the reason that Rabbi Abbahu states: Floated, is that you find a situation where sheaves end up in the field of another only in a case where they floated through the air and fell there. Since the term floated was not used to teach a *halakha*, no inference can be made from this *baraita* with regard to sheaves that floated in one's own field.

The Gemara again attempts to resolve the dilemma: Come and hear a proof from a *baraita* (*Tosefta, Pe'a* 3:7): In the case of a sheaf that had been held^H by its owner in order to take it to the city, and he placed it on top of another sheaf, and he forgot both sheaves, the lower sheaf is deemed to be a forgotten sheaf, and the upper one is not deemed to be a forgotten sheaf. Rabbi Shimon ben Yehuda says in the name of Rabbi Shimon: Both of them are not deemed to be forgotten sheaves; the lower one because it is concealed, and the upper one because it is floating and not directly touching the field. The Gemara points out: They disagree only with regard to the lower sheaf, but with regard to the upper one all agree that it is not deemed a forgotten sheaf. This demonstrates that a sheaf located in the airspace of the field is not deemed to be forgotten.

The Gemara rejects this proof: There it is different, as, since the owner had held it to take it to the city, he acquired it. The reason it is not deemed to be a forgotten sheaf is not because it is not touching the field but because the owner had already acquired that particular sheaf before forgetting it. The Gemara raises an objection to this explanation: If so, why specifically state the case of a sheaf that was placed on top of another? The same would hold true in a case where one put the sheaf down directly in the field as well, as he has already acquired it. The Gemara answers: Yes, it is indeed so, and the reason that the *baraita* teaches: On top of another, is due to the lower sheaf rather than the upper one, in order to teach the dispute concerning the lower sheaf.

The Gemara asks: But Rabbi Shimon said: Because it is floating. How can one then say that the reason for his ruling is because the owner of the field has acquired it? The Gemara answers: Say instead: Because it is like it is floating. In other words, it is as though the upper sheaf had not been put down at all, but remains in the owner's hands.

Slain but not strangled – חָלַל וְלֹא חָנֵק: The Meiri explains that if a person was found with indications that he died due to obstruction of the airways, there is always a possibility that he was not murdered but suffocated due to illness or choked to death. Based on *Tosafot* (*Nazir* 23b), some explain that the lexical meaning of “one slain [*halal*]” is something cut, and that the phrase consequently refers only to one who was killed by means of cutting (see *Devar Shaul*). The Malbim claims that “*halal*” means one whose blood was shed, as opposed to one who was strangled or died by other means.

HALAKHA

Slain but not strangled – חָלַל וְלֹא חָנֵק: The ritual of breaking the neck of the heifer is performed only if the victim was killed by being wounded, not if he was strangled. Likewise, the heifer is not brought if the victim was found in the throes of death, in accordance with the opinion of the Rabbis (Rambam *Sefer Nezikim*, *Hilkhot Rotze'ah UShmirat HaNefesh* 9:11).

לא. אי פרבי יהודה סבירא להו – דכולי עלמא מין במינו הוי טמון. והכא בפלוגתא דרבי יהודה ורבנן קמיפלגי, דרבנן כרבנן, ורבי שמעון בן יהודה כרבי יהודה.

אי הכי, מאי איריא על גבי חבירו? אפילו בעפר ובעצור נמי! אין הכי נמי, ולהודיעך כחו דרבי יהודה, דאמר: אפילו מין במינו הוי טמון.

תנו רבנן: “חלל” – ולא חנוק, “חלל” – ולא מפרפר, “באדמה” – ולא טמון בגל, “נפל” – ולא תלוי באילן, “בשדה” – ולא צף על פני המים. רבי אלעזר אומר: בכלן, אם היה חלל – עורפין.

תניא: אמר רבי יוסי בר יהודה, אמרו לו לרבי אלעזר: אי אתה מודה שאם היה חנוק ומוטל באשפה שאין עורפין? אלמא “חלל” – ולא חנוק; הכא נמי “באדמה” – ולא טמון בגל, “נפל” – ולא תלוי באילן, “בשדה” – ולא צף על גבי מים. ורבי אלעזר: “חלל” יתירא בתוב.

“נמצא סמוך לספר או לעיר שרובה נכרים” כו. דכתוב: “כי ימצא” – פרט למצוי.

“או לעיר שאין בה בית דין”. דבעינא “זקני העיר”, וליכא. “אין מודדין אלא לעיר” כו. פשיטא, כיון דתנא “לעיר שאין בה בית דין”, אנא ידעינא דאין מודדין אלא לעיר שיש בה בית דין!

The Gemara refutes this claim: **No, if they hold in accordance with the opinion of Rabbi Yehuda, then it could be that everyone agrees that a substance in contact with the same type of substance is considered to be concealed, and they would maintain this with regard to the two corpses as well. And here they disagree with regard to the issue that is the subject of the dispute of Rabbi Yehuda and the Rabbis, in that the opinion of the Rabbis of this *baraita* is in accordance with the opinion of the Rabbis there, which claims that the *halakha* of a forgotten sheaf applies even to a concealed sheaf, and Rabbi Shimon ben Yehuda holds in accordance with the opinion of Rabbi Yehuda, who maintains that a concealed sheaf is exempt from the *halakha* of forgotten sheaves.**

The Gemara asks: **If that is so, that their dispute is with regard to the *halakha* of concealed sheaves, why did they specifically disagree in the case of a sheaf that was on top of another sheaf; the same would hold true even in a case where the sheaf was concealed in dirt and pebbles?** The Gemara answers: **Yes, it is indeed so.** They disagree with regard to all concealed sheaves, and their dispute is stated with regard to a case of one sheaf on top of another in order to convey to you the far-reaching nature of the opinion of Rabbi Yehuda, who says that even a substance that is in contact with the same type of substance is considered concealed. Therefore, a substance concealed in a different type of matter is all the more so considered concealed.

§ The Gemara returns to discuss when the ritual of breaking the neck of the heifer is performed. **The Sages taught, expounding the verse “If one be found slain in the land which the Lord your God has given you to possess it, lying in the field” (Deuteronomy 21:1): “Slain” indicates one killed by a sword, but not one who was strangled;^{NH} “slain,” but not one who was found twitching in his death throes; “in the land,” but not concealed in a pile of stones; “lying,” but not hanging on a tree; “in the field,” but not floating on the surface of the water.** Rabbi Elazar says: **In all these cases, if a person was slain by the sword, the judges break the neck of the heifer, and it does not matter where the corpse was found.**

It is taught in a *baraita*: **Rabbi Yosei bar Yehuda says that the Sages said to Rabbi Elazar: Do you not concede that if he was strangled and left in a garbage heap, that they do not break the heifer’s neck? Apparently, “slain” is a precise term that means slain but not strangled.** If you accept that, here too the words “in the land” should indicate: In the land, but not concealed in a pile of stones; “fallen” should indicate: Fallen but not hanging on a tree; and “in the field” should indicate in the field but not floating on the surface of the water. **And Rabbi Elazar holds that those other situations are not excluded, and that because in that first case the Torah writes “slain” an extra time in the next verse: “About him that is slain” (Deuteronomy 21:2), this repetition teaches that a victim of strangulation is not included in this *halakha*.**

§ The mishna taught: **If a corpse was found close to the border of the country or close to a city in which the majority of its inhabitants are gentiles, the judges would not break the heifer’s neck, as it is written: “If one be found slain” (Deuteronomy 21:1).** This excludes places where murdered bodies are commonly found, such as the aforementioned locations.

The mishna taught: **Or if the victim was discovered close to a city that is without a rabbinical court of twenty-three judges, they would not measure the distance to that city.** The Gemara explains: **This is because the verse requires “the Elders of that city” (Deuteronomy 21:3), and this is not the case here; therefore the rite was not performed.** The mishna also taught that the Elders measure the distance from the corpse only to a city that contains a rabbinical court of twenty-three judges. The Gemara asks: **This is obvious. Since the mishna taught that they do not measure the distance to a city that does not have a rabbinical court of twenty-three judges, I know that they measure the distance only to a city that has a rabbinical court of twenty-three judges.**

הא קא משמע לן, כדנתנא: מנין שאם נמצא
 סמוך לעיר שיש בה בית דין, שמנחין אותה
 ומודדין לעיר שיש בה בית דין? תלמוד לומר:
 "ולקחו וקני העיר ההיא", מכל מקום.

The Gemara answers: **This tanna teaches us the halakha as it is taught in a baraita: From where is it derived that if the corpse was found close to a city that does not have a rabbinical court of twenty-three judges, that they leave the city aside and measure the distance from the corpse to a city that has a rabbinical court^H of twenty-three judges? The verse states: "And the Elders of that city shall take"** (Deuteronomy 21:3), which indicates that the Elders of a city are involved in any case, and the measurement is taken even if it is not to the city closest to the body.

מתני' נמצא מכוון בין שתי עירות – שתייהן
 מביאות שתי עגלות, דברי רבי אליעזר. ואין
 ירושלים מביאה עגלה ערופה. נמצא ראשו
 במקום אחד וגופו במקום אחר – מוליכין
 הראש אצל הגוף, דברי רבי אליעזר; רבי
 עקיבא אומר: הגוף אצל הראש. מאין היו
 מודדין? רבי אליעזר אומר: מטיבורו, רבי
 עקיבא אומר: מחוטמו. רבי אליעזר בן יעקב
 אומר: ממקום שנעשה חלל מצאורו.

MISHNA If the slain person is found precisely between two cities,^H the inhabitants of the two of them bring two heifers total; this is the statement of Rabbi Eliezer. And the inhabitants of Jerusalem do not bring a heifer^H whose neck is broken, even if Jerusalem is the city closest to the slain victim. If the head of the corpse was found in one place and his body was found in a different place, they bring the head next to the body; this is the statement of Rabbi Eliezer. Rabbi Akiva says: They bring the body next to the head.^H From where on the body would they measure the distance? Rabbi Eliezer says: From his navel. Rabbi Akiva says: From his nose.^H Rabbi Eliezer ben Ya'akov says: From the place where he became a slain person, which is from the neck.

גמ' מאי טעמא דרבי אליעזר? קסבר: אפשר
 לצמצם, ו"קרובה" – ואפילו קרובות.

GEMARA The Gemara explains: **What is the reasoning of Rabbi Eliezer**, that when a body is found precisely between two cities, the inhabitants of each city bring a heifer? His ruling is based on two factors. First, he holds that it is possible to measure precisely and that it is a real possibility to determine that both cities are exactly the same distance from the corpse. And second, he interprets the term **"That is nearest"** (Deuteronomy 21:3), to be referring not only to one city. It can even be understood as: **That are nearest,**^N so that the *halakhot* apply to more than one city.

"ואין ירושלים מביאה עגלה ערופה".
 דאמר קרא: "לרשתה", וקסבר: ירושלים לא
 נתחלקה לשבטים.

The mishna taught: **And the inhabitants of Jerusalem do not bring a heifer whose neck is broken.** The Gemara explains: This is because the verse states: "If one be found slain in the land which the Lord your God has given you to possess it" (Deuteronomy 21:1), and this *tanna* holds that **Jerusalem was not divided among the tribes** in the division of Eretz Yisrael. It was not given as a possession to any particular person but belongs to all; therefore the *halakha* of the heifer whose neck is broken does not apply to it.

"נמצא ראשו במקום" כו'. במאי קמיפלגי?
 אילימא לענן מדידה קמיפלגי, הא מדדקתני
 סיפא "מאין היו מודדין", מכלל דרישא לא
 במדידה עסקינן! אמר רבי יצחק: במת מצוה
 קנה מקומו קמיפלגי.

§ With regard to the *halakha* of a corpse whose head was found in one place and its body elsewhere, the Gemara asks: **With regard to what halakha do they disagree? If we say they disagree with regard to whether the measurement is taken from the head or the body, from the fact that the latter clause teaches: From where would they measure the distance, it may be inferred that in the first clause we are not dealing with measurement.** Rabbi Yitzhak said: **They disagree with regard to a different matter, the question of whether a corpse with no one to bury it [*met mitzva*]^B acquires its place,^H meaning if an unattended corpse must be buried where it is found.**

Measure the distance to a city that has a rabbinical court – מודדין לעיר שיש בה בית דין – If the corpse was found near a city that does not have a court, the measurement is taken to a city that does have a court (Rambam *Sefer Nezikim, Hilkhhot Rotze'ah UShmirat HaNefesh* 9:5).

Is found precisely between two cities – נמצא מכוון: If the corpse was found equidistant to two cities that contain an equal number of inhabitants, the inhabitants of the two cities bring in partnership a heifer whose neck is broken and make the following stipulation: The heifer belongs to the nearer city and the portion of the heifer owned by the farther city is given to the nearer one as a gift. They state this condition because it is impossible for any two things to be precisely equal (Rambam *Sefer Nezikim, Hilkhhot Rotze'ah UShmirat HaNefesh* 9:8).

The inhabitants of Jerusalem do not bring a heifer – אין ירושלים מביאה עגלה: Measurements are not taken from a corpse to Jerusalem because its inhabitants do not bring a heifer whose neck is broken, as Jerusalem was not given to any tribe as an inheritance (Rambam *Sefer Nezikim, Hilkhhot Rotze'ah UShmirat HaNefesh* 9:4).

The body next to the head – הגוף אצל הראש: If the victim's head was found in one place and his body elsewhere, the body is brought to the head for burial there. Any *met mitzva* is treated in this manner, as the *halakha* follows Rabbi Akiva (Rambam *Sefer Nezikim, Hilkhhot Rotze'ah UShmirat HaNefesh* 9:9).

From his nose – מחוטמו: The measurement is performed from the victim's nose, in accordance with Rabbi Akiva (Rambam *Sefer Nezikim, Hilkhhot Rotze'ah UShmirat HaNefesh* 9:9).

A *met mitzva* acquires its place – מת מצוה קנה מקומו: One of the conditions Joshua stipulated with those inheriting the land was that a *met mitzva* acquires its place for the purpose of burial. However, if a corpse is found on the boundary between fields or in a city, it is removed to a cemetery. While the *halakha* of a *met mitzva* applies outside Eretz Yisrael as well, the *Shakh* notes that the common practice there is to take the corpse to a cemetery in all cases (Rambam *Sefer Nezikim, Hilkhhot Nizkei Mammon* 5:3; *Shulhan Arukh, Yoreh De'a* 364:3).

NOTES

קרובה ואפילו – That is nearest, even that are nearest: Two related and conflicting *baraitot* are cited in tractate *Bekhorot*. According to one *baraita*, if the corpse is measured to be precisely between two cities, the ritual is not performed at all. The reason is that the *tanna* of that *baraita* holds that although it is possible to perform an exact measurement, the verse states: "That is nearest," and not: That are nearest, limiting the performance of the ritual to the inhabitants of one city.

The other *baraita* states that if the corpse is measured to be equidistant to the two closest cities then the inhabitants of both cities bring a single heifer in partnership and stipulate that the ritual is on behalf of whichever city is in truth nearer. The latter *baraita* holds that it is impossible to measure precisely, so the inhabitants of one city are obligated to bring the heifer, and it is uncertain which city it is. With regard to the exposition of the verse, Rashi points out that the singular form in the Torah is often used also in reference to an entire group or type.

BACKGROUND

A corpse with no one to bury it [*met mitzva*] – **מת מצוה**: It is an important religious obligation to take part in the burial of the dead. If the deceased has no acquaintances or relatives to bury him, everyone is obligated to assist in his burial. The *halakha* is that a corpse with no one available to bury it acquires its place, i.e., the corpse is interred where it is found. However, if that place is not an

honorable location the corpse is buried in the nearest cemetery. This religious duty is so important that even priests and nazirites, who are ordinarily prohibited from coming into contact with a corpse, may bury a *met mitzva* if there is no one else available to do so. Likewise, the obligation to bury this corpse takes precedence over nearly all other religious obligations.

והבי קאמר: לקוברו קנה מקומו. והיכא דנמצא ראשו במקום אחד וגופו במקום אחר – מוליכין הראש אצל הגוף, דברי רבי אליעזר. רבי עקיבא אומר: הגוף אצל הראש. במאי קמיפלגי? מר סבר: גופיה בדוכתייה נפיל, רישא דנאדי ונפיל; ומר סבר: רישא היכא דנפיל נפיל, גופא הוא דרהיט אפיל.

”מאין היו מודדין?” במאי קמיפלגי? מר סבר: עיקר חיותא באפיה, ומר סבר: עיקר חיותא בטיבוריה.

לימא בי הי תנאי: מהיכן הולד נוצר? מראשו. וכן הוא אומר: ”ממעני אמי אתה גוזי”, ואומר: ”גזי נורד והשליכי” וגו’. אבא שאול אומר: מטיבורו, ומשולח שרשו אילך!

אפילו תימא אבא שאול. עד כאן לא קאמר אבא שאול אלא לענן יצירה, דכי מיתצר ולד – ממציאתיה מיתצר, אבל לענן חיותא – דכולי עלמא באפיה הוא, דכתיב: ”כל אשר נשמת רוח חיים באפיו” וגו’.

”רבי אליעזר בן יעקב אומר: במקום שנעשה חלל, מצוארו”. מאי טעמא דרבי אליעזר בן יעקב? בדכתיב: ”לתת אותך אל צוארי חללי רשעים”.

And this is what the mishna is saying: With regard to burying him, the victim acquires his place, and he is buried there. The mishna continues: And in a case where his head is found in one place and his body is found in a different place, they bring the head next to the body and bury him there; this is the statement of Rabbi Eliezer. Rabbi Akiva says: They bring the body next to the head. The Gemara explains: With regard to what do they disagree? They both agree that he should be buried in the place where he was killed, but one Sage, Rabbi Eliezer, holds that his body fell in its place, and it was the head that rolled away and fell. And one Sage, Rabbi Akiva, holds that his head fell where it fell, and it was the body that went and continued onward. Therefore, the body is brought to the head.

S The mishna taught that there is a dispute concerning the question: From where on the body would they measure the distance? The Gemara asks: With regard to what do they disagree? One Sage, Rabbi Akiva, holds: A person’s life is sustained mainly in his nose,^N in his respiratory system. And one Sage, Rabbi Eliezer, holds: His life is mainly in the area of his navel, in his digestive system.

The Gemara suggests: Shall we say that these *tanna'im* are like those *tanna'im*, who had a dispute as it is taught in a *baraita*: From where is an embryo formed?^N From its head, and so the verse states: “Out of my mother’s womb You pulled me [gozi]” (Psalms 71:6). And the proof that “gozi” is referring to the head is from the verse that states: “Cut off [gozi] your hair, and cast it away” (Jeremiah 7:29). In this verse, the term *gozi* relates to the hair of the head. Abba Shaul says: An embryo is formed from its navel, and it sends its roots forth. This dispute concerning the initial formation of an embryo also appears to depend on where the main source of life in a person is.

The Gemara refutes this comparison: You can even say that both *tanna'im* of the mishna agree with Abba Shaul, as Abba Shaul says his opinion only with regard to the forming of an embryo, that when an embryo is formed, it is formed from its middle. But with regard to life, everyone, i.e., both *tanna'im* in the *baraita*, agree that it is in his nose, as it is written: “All in whose nostrils was the breath of the spirit of life” (Genesis 7:22).

The mishna taught another opinion. Rabbi Eliezer ben Ya’akov says: The distance should be measured from the place where the victim became a slain person,^N from his neck. The Gemara poses a question: What is the reason of Rabbi Eliezer ben Ya’akov? The Gemara answers: As it is written: “To lay you upon the necks of the wicked who are to be slain” (Ezekiel 21:34), which shows that being slain occurs at the neck.

NOTES

Life is sustained mainly in his nose – עיקר חיותא באפיה – The Jerusalem Talmud provides a different explanation of this dispute than the one offered here. The Gemara there explains that according to Rabbi Akiva the nose is the most important location on the body because facial identification is enabled by the structure of the center of the face. Conversely, Rabbi Eliezer holds that the navel is the most important location on the body because life is dependent on the internal organs, and the navel marks the center of the internal organs.

From where is an embryo formed – מהיכן הולד נוצר – It could be explained that the dispute is how to categorize the

growth of the embryo. On the one hand, when the cells begin to join and take shape, the head is the first part of the body to be recognizable. On the other hand, the fetus is sustained by means of the umbilical cord, so it could be said that its life begins there and spreads from there to the rest of the body.

From the place where he became a slain person – ממקום חללי – **שנעשה חלל**: In other words, since the neck is mentioned in the description of a slain person, a slain victim is categorized by what occurred to his neck, even if he happened to have been fatally wounded on a different part of his body.

Cleaver [*kofitz*] – קופיץ: From the Greek *κοπίς*, *kopis*, meaning a large knife with a thick blade. It was used for chopping in addition to cutting.



Ancient cleaver

MISHNA The mishna continues to describe the ritual. After they would take the measurement, the Elders of Jerusalem took their leave^H and went away. The Elders of the city that is closest to the corpse bring a heifer from cattle, which has not pulled a yoke. But a blemish does not disqualify it,^H because, unlike the description of the red heifer, the Torah does not state that it must be without blemish. And they bring it down to a stream that is *eitan*.^{HN} *Eitan* in this context means as the word generally indicates, powerful. The stream must have a forceful flow. The mishna comments: Even if it is not forceful, it is a valid site for the ritual. And they break the neck of the heifer^{NH} from behind with a cleaver.^L And with regard to its place, where the heifer was standing when its neck was broken, it is prohibited for that ground to be sown or to be worked, but it is permitted to comb flax there or to cut stones there.

The Elders of that city would then wash^H their hands in water in the place of the breaking of the neck of the heifer, and they would recite: “Our hands did not spill this blood, nor did our eyes see” (Deuteronomy 21:7). The mishna explains: But did it enter our minds that the Elders of the court are spillers of blood, that they must make such a declaration? Rather, they mean to declare that the victim did not come to us and then we let him take his leave without food, and we did not see him and then leave him alone to depart without accompaniment. They therefore attest that they took care of all his needs and are not responsible for his death even indirectly.

HALAKHA

The Elders of Jerusalem took their leave, etc. – נפטר וקני: After the Elders measure the distances and determine the nearest city, the corpse is buried where it is, and the Elders of Jerusalem return to their place. Then, the Elders of the nearest city bring a heifer of cattle, paid for by the city’s inhabitants (Rambam *Sefer Nezikim, Hilkhhot Rotze’ah UShmirat HaNefesh* 9:2).

A blemish does not disqualify it – אין המום פוסל בה: A heifer whose neck is broken is not disqualified if it has a blemish. However, it is noted in the Jerusalem Talmud that if the animal has a condition that will cause it to die within twelve months [*tereifa*], it is disqualified (Rambam *Sefer Nezikim, Hilkhhot Rotze’ah UShmirat HaNefesh* 10:2).

ומורידין – *eitan*: אותה לנחל איתן: The calf is brought down to a stream that flows forcefully (Rambam *Sefer Nezikim, Hilkhhot Rotze’ah UShmirat HaNefesh* 9:2).

ועורפין אותה וכו’: The heifer’s neck is broken from behind with a cleaver (Rambam *Sefer Nezikim, Hilkhhot Rotze’ah UShmirat HaNefesh* 9:3).

וקני אותה העיר רוחצין וכו’: All Elders of the nearest city’s court, even if there are one hundred of them, wash their hands in the place where the neck was broken. They recite there: “Our hands did not spill this blood, nor did our eyes see.” The meaning of the passage is that they had not neglected to provide the victim with food and accompaniment (Rambam *Sefer Nezikim, Hilkhhot Rotze’ah UShmirat HaNefesh* 9:3).

NOTES

Stream [*nahal*] that is *eitan* – איתן: Most commentaries explain that *nahal eitan* refers to a *nahal*, a valley, that has water in the rainy season but is dry in the summer (Rashi; Rashbam; Rash; Ramban; Rosh). Accordingly, the term *eitan* means strong or firm, and is referring to land that is not able to be sown. The Rambam, however, holds that *nahal eitan* refers to a stream that flows powerfully, with the term *eitan* referring to the strength of its current. According to this approach, the prohibition against sowing does not refer to the stream itself, which is not fit for sowing, but to its bank. The Radak accepts this interpretation,

adding that the Elders would wash their hands with the water that flowed there.

And they break the neck of the heifer – ועורפין אותה: The wording of the mishna indicates that it does not matter who breaks the neck, as all are fit to do so. Rabbi Shimon in tractate *Menahot* states that the heifer’s neck is broken by a priest, but the Rambam does not cite this minority opinion as *halakha* (Rashash).