

מית תופס ארבע אמות לטוּמָה. ותנו:  
תנו: חצר הקבר, העומד בתוכה –  
טהו, והוא שיר באה ארבע אמות, דברי  
בית שמאי. בית הילל אומרים: ארבעה  
שיטחים; בפה וברם אמרום – שפתחה  
מלמעלה, אבל פתחה מן הצד – דברי  
הבל ארבע אמות.

**A corpse occupies four cubits<sup>NH</sup>** with regard to impurity, as the Sages decreed that one becomes impure when he stands within four cubits of a corpse. This measure protects priests and others who are forbidden to contract ritual impurity imparted by a corpse, so that they do not inadvertently become impure. **And the tanna** of the mishna taught in another mishna as well (*Oholot* 15:8): With regard to a courtyard adjacent to a grave,<sup>HB</sup> one who stands within it is ritually pure, provided that there are four cubits by four cubits within it. A courtyard this size constitutes its own space, according to the statement of **Beit Shammai**. **Beit Hillel** say: A space of four handbreadths by four handbreadths is enough. In what case is this statement said? Four handbreadths suffice when the entrance to the courtyard is from above. In such a case there is no concern that one will cover the grave with his body, and thereby become ritually impure, when entering the courtyard. However, if its entrance is from the side, everyone agrees the courtyard must be at least four cubits by four cubits in size.

The Gemara challenges the preceding resolution: In which direction [kelapei layya]<sup>1</sup> is there a distinction between the positions of the entrance? On the contrary, if one enters from the side, he can slip away and exit without becoming impure. However, if one enters from above it is impossible that he will not overlie the grave over the course of climbing in and out of the courtyard. Rather, it should say: In what case is this statement of **Beit Hillel**, according to which four handbreadths by four handbreadths are enough, said? It is when the entrance is from the side. However, if the entrance is from above, then the courtyard must be at least four cubits by four cubits according to all opinions. The Gemara further qualifies: And this statement applies in a courtyard adjacent to a grave whose partitions are delineated, but if there is only a corpse lying about without any enclosures, it certainly occupies and affects a surrounding area of four cubits.

**§** The mishna teaches among the statements that were said before battle: “What man is there that has betrothed a wife and has not taken her? Let him go and return to his house” (Deuteronomy 20:7). The Sages taught: “That has betrothed” is referring to one who betroths a virgin, and to one who betroths a widow, and to one whose *yevama* is a widow awaiting her *yavam*, i.e., this man in the military ranks, to perform levirate marriage. And even if there are five brothers, and one of them dies in the war, they all return for the widow. In addition, the verse could have singled out one who has not taken a wife. When the verse specifies: “and has not taken her,” this excludes men in forbidden marriages: A widow who is betrothed to a High Priest; either a divorcee or a *yevama* who performed *halitza* [*halutza*], who is betrothed to a common priest; a *mamzeret* or a Gibeonite woman who is betrothed to an Israelite; or an Israelite woman who is betrothed to a *mamzer* or to a Gibeonite.

The Gemara asks: Shall we say that this opinion is not in accordance with the opinion of **Rabbi Yosei HaGelili**? As, if it were in accordance with the opinion of **Rabbi Yosei HaGelili**, he says: When the verse singles out “fearful and fainthearted” (Deuteronomy 20:8), this is referring to one who is afraid because of sins that he has. According to this interpretation, one who marries a woman forbidden to him should return home from war because of his guilt, which seems to contradict the opinion mentioned above that such a man does not return from the ranks.

**NOTES**  
מית תופס ארבע אמות – Rabbeinu Yehonatan of Lunel maintains that this applies only to an exposed corpse, but not to a buried one. However, a dissenting opinion is presented in *Nimmukei Yosef*. The basic concern behind this halakha is that one may come too near to the dead body and extend either his whole body or a limb over the corpse. As such, the concern applies to a buried body in the same way that it applies to an exposed body, so long as there is no actual barrier separating the person from the corpse.

**HALAKHA**

מית תופס ארבע אמות: A corpse, as well as a grave, imparts ritual impurity within the four cubits surrounding it, and a priest who enters into this space is liable to receive lashes for rebelliousness, commensurate with violating a rabbinic prohibition. However, if the corpse or grave is surrounded by a wall ten handbreadths high or by a ditch ten handbreadths deep, a priest need not distance himself more than four handbreadths. The *Shakh* rules that when the body is clearly in a temporary position, as in when it is carried on a bed, it does not affect the four cubits surrounding it (*Rambam Sefer Shofetim, Hilkhos Evel* 3:13; *Shulchan Arukh, Yoreh De'a* 371:5).

**A courtyard adjacent to a grave** – **חצר הקבר**: When there is a grave within a cave and a courtyard in front of the cave, if the courtyard is uncovered, one does not contract ritual impurity merely by standing inside the courtyard. Even if the courtyard is covered, one who enters into the courtyard does not contract ritual impurity, so long as the courtyard has an area of at least of four handbreadths by four handbreadths. According to the *Ra'avad*, the area of four by four handbreadths must be uncovered and adjacent to the cave. However, if the covered courtyard does not have this area of four by four handbreadths, one contracts ritual impurity merely by entering into the courtyard, in accordance with the opinion of **Beit Hillel** (*Rambam Sefer Tahara, Hilkhos Tumat Met* 6:9).

**BACKGROUND**

Courtyard adjacent to a grave – **חצר הקבר**:



Grave with adjacent courtyard

**LANGUAGE**

**kelapei aliya**: This expression of puzzlement is generally understood to mean: Directed to where? That is to say: Where are you facing, or, more simply: How are you thinking about the given matter? The question implies: You are looking at the matter backward. Accordingly, some of the *ge'onim* understood the expression as: Facing the tail [kelapei aliya], as if to say: You are facing the direction of the tail, like a person who is riding backward on an animal. In any case, the term is understood to indicate: You are saying the opposite of what is logical.

## HALAKHA

Until he engages in sexual intercourse with his wife – **עד שיבעל**: Even if a High Priest marries a widow, or a common priest marries a divorcee, lashes will not be administered until he engages in sexual intercourse with her (Rambam Sefer Kedusha, Hilkhos Issurei Bia 17:4).

The Torah has taught a person the desired mode of behavior – **לפניהם תורה פרור און און**: The way of sensible people is first to find an occupation to provide income; then, to buy a residence; and, finally, to marry a wife. The Ya'avetz writes that even if one does not find a sufficient income, he must still fulfill the mitzva of marrying a wife, and he should not delay to the degree that he may succumb and engage in forbidden sexual intercourse (Rambam Sefer HaMadda, Hilkhos Deot 5:11).

## LANGUAGE

**Row of stones [dimos]** – **דימוס**: From the Greek δόμος, *domos*, meaning, among other definitions, a row or a layer of bricks in a building.

## BACKGROUND

**Brick house in the Sharon** – **בית לבנים בשרון**: Apparently, one of the complications in building a sturdy house in the Sharon was related to the sandy earth in the plains of Eretz Yisrael, known as the *shefela*. The unstable and shifting sand, combined with a high subterranean water level, hindered the digging of deep foundations and caused the walls of the buildings to crack. Consequently, the houses needed to be practically rebuilt from time to time. The situation was so dire that it seems it was not unheard of for the houses in the Sharon to completely collapse on their inhabitants.

## NOTES

**Twice in seven years [shavua]** – **פעמים בשבע**: The term *shavua* denotes a unit of seven. Most commentaries understand this to mean that the house is rebuilt twice in a single seven-year Sabbatical cycle, which is necessary because of the lay of the land and the type of bricks used in the construction. In a similar vein, the High Priest would pray specifically for the people of the Sharon that their houses would not become their graves.

אֲפִילוּ תִּמְאָ רַבִּי יוֹסֵי הַגְּלִילִי, בְּרוּבָה,  
גְּאַמְרָו רַבָּה: לְעוֹלָם אִינוּ חִיב עַד שִׁבְעָל,  
מִה טָעַם "לֹא יִקַּח"? מִשּׁוּם "לֹא יַחֲלִל"  
מִשּׁוּם הַכִּי אִינוּ לְזָה עַד שִׁבְעָל.

The Gemara answers: Even if you say that the ruling is in accordance with the opinion of Rabbi Yosei HaGelili, such a man does not return, in accordance with the opinion of Rabba. As Rabba said: A man is never liable for a forbidden marriage until he engages in sexual intercourse with his wife.<sup>4</sup> With regard to the forbidden marriages of a High Priest, the Torah states: “A widow, or a divorcee, or a profaned woman, or a harlot, these he shall not take ... And he shall not profane his seed among his people” (Leviticus 21:14–15). What is the reason that “he shall not take” one of these women as a wife? It is due to: “He shall not profane his seed” by engaging in sexual intercourse. Due to that reason, he is not flogged until he engages in sexual intercourse with a woman who is forbidden to him. Therefore, even according to Rabbi Yosei HaGelili, one who merely betroths a forbidden wife might not return home from the ranks.

תַּנוּ רַבָּן: “אֲשֶׁר בָּנָה”, “אֲשֶׁר נָטַע”, “אֲשֶׁר  
אָרַשׁ” – לִימְדָה תּוֹרָה דָּרָךְ אָרַץ, שִׁיבָּנָה.  
אָדָם בֵּית וַיְשַׁע כְּרָם וְאַחֲרָכָר בְּשָׂא אָשָׁה.  
וְאֶיךָ שְׁלָמָה אָמָר בְּחִכְמָתוֹ: “הַכּוֹן בְּחוֹזֵ  
מִלְאַכְתָּן וְעַתְּדָה בְּשָׂדָה לְאַחֲרָ וּבְנִיתָ  
בֵּיתְךָ”. “הַכּוֹן בְּחוֹזֵ מִלְאַכְתָּן – זֶה בֵּיתָ  
וְעַתְּדָה בְּשָׂדָה לְאַחֲרָ – זֶה כְּרָם”; “אַחֲרָ וּבְנִיתָ  
בֵּיתְךָ – זֶה אָשָׁה”.

§ The Sages taught (*Tosefta* 7:20–21): The Torah states: “What man is there that has built” (Deuteronomy 20:5), and then “that has planted” (Deuteronomy 20:6), and finally “that has betrothed” (Deuteronomy 20:7). The Torah has taught a person the desired mode of behavior:<sup>4</sup> A person should build a house, then plant a vineyard, and afterward marry a woman. And even King Solomon said in his wisdom: “Prepare your work outside, and make it fit for yourself in the field; and afterward build your house” (Proverbs 24:27). The Sages explained: “Prepare your work outside”; this is a house. “And make it fit for yourself in the field”; this is a vineyard. “And afterward you shall build your house”; this is a wife.

דָּבָר אַחֲרָ: “הַכּוֹן בְּחוֹזֵ מִלְאַכְתָּן – זֶה  
מִקְרָא: “וְעַתְּדָה בְּשָׂדָה לְאַחֲרָ – זֶה מִשְׁנָה;  
אַחֲרָ וּבְנִיתָ בֵּיתְךָ – זֶה גִּמְرָא. דָּבָר אַחֲרָ:  
“הַכּוֹן בְּחוֹזֵ מִלְאַכְתָּן – זֶה מִקְרָא וּמִשְׁנָה;  
וְעַתְּדָה בְּשָׂדָה לְאַחֲרָ – זֶה גִּמְרָא”, אַחֲרָ  
וּבְנִיתָ בֵּיתְךָ – אַלְוֹ מַעֲשִׂים טוֹבִים. רַבִּ  
אַלְעֹזֶר בָּנוּ שֶׁל רַבִּי יוֹסֵי הַגְּלִילִי אָמָר:  
“הַכּוֹן בְּחוֹזֵ מִלְאַכְתָּן – זֶה מִקְרָא וּמִשְׁנָה  
גִּמְרָא”; “וְעַתְּדָה בְּשָׂדָה לְאַחֲרָ – אַלְוֹ מַעֲשִׂים  
טוֹבִים: “אַחֲרָ וּבְנִיתָ בֵּיתְךָ” – דָּרוֹשׁ וּקְבָּל  
שָׁכָר.

Alternatively, this verse may be understood as relating to Torah study: “Prepare your work outside”; this is the study of Bible. “And make it fit for yourself in the field”; this is the study of Mishna. “Afterward you shall build your house”; this is the study of Gemara, the analysis of and deliberation over the statements of the Sages. Alternatively: “Prepare your work outside”; this is the study of Bible and Mishna. “And make it fit for yourself in the field”; this is the study of Gemara. “Afterward you shall build your house”; these are good deeds. Rabbi Eliezer, son of Rabbi Yosei HaGelili, says: “Prepare your work outside”; this is the study of Bible, and Mishna, and Gemara. “And make it fit for yourself in the field”; these are good deeds. “Afterward you shall build your house”; expound upon new understandings of Torah and receive reward, which is possible only after the initial steps.

זִיאַלּוּ שָׁאַיְן חֹזְוֹרִין: הַבּוֹנָה בֵּית שַׁעַר כָּו.  
תַּנְאָ: אִם הַסִּיף בּוֹ דִימּוֹס אַחֲרָ – חֹזֵר.  
רַבִּי אַלְעֹזֶר אָזָמוֹ: אַף הַבּוֹנָה בֵּית לְבָנִים  
בְּשָׁרוֹן לֹא הָזֵר חֹזֵר. תַּנְאָ: מִפְנִי שְׁמָחָדִישׁ  
אוֹתוֹ פֻּעָמִים בְּשַׁבּוּעַ.

§ The mishna teaches: And these are the men who do not return from the ranks: One who builds a gateway, or an enclosed veranda, or a balcony... Rabbi Yehuda says: Even one who rebuilds a house as it stood originally would not return. A Sage taught (*Tosefta* 7:18): If one adds one additional row of stones [dimos]<sup>4</sup> to the original structure, he returns from the ranks. That is enough to render it a new building. The mishna further teaches: Rabbi Eliezer says: Even one who builds a new brick house in the Sharon<sup>b</sup> would not return. A Sage taught: This is because the owners renew it twice in a period of seven years,<sup>n</sup> and it is therefore not considered a permanent structure.

זִיאַלּוּ שָׁאַיְן זַיְן מִפְקָדָמָן: בְּנָה בֵּית חֲדָש  
חַנְכּוּ” וּכְי. תַּנוּ רַבָּן: “אַשָּׁה חֲדָשָׁה – אַיְן  
לִי אַלְאָ אַשָּׁה חֲדָשָׁה; אַלְמָנָה גַּרְוָשָׁה  
מִפְנִי תְּלִמּוֹד לוֹמָר: “אַשָּׁה”, מַכְלִ מִקְומָן;  
אִם בָּן, מִה תְּלִמּוֹד לוֹמָר: “אַשָּׁה חֲדָשָׁה”?  
מִי שְׁחַדְשָׁה לֹא, יֵצֵא מַחְזֵיר גַּרְוָשָׁתוֹ שָׁאַיְן  
חֲדָשָׁה לוֹ.

§ The mishna teaches: These are the men who do not even move from their places: One who built a house and dedicated it within the year; one who planted a vineyard and used its fruit for less than a year; one who marries his betrothed and one who marries his *yevama*, as it is stated: “When a man takes a new wife, he shall not go out with the army, neither shall he be charged with any business; he shall be free for his house one year, and shall cheer his wife whom he has taken” (Deuteronomy 24:5). With respect to a new husband’s exemption, the Sages taught a number of halakhot from this verse. From the term: “A new wife” I have derived only that a man returns only for a new virgin wife. From where do I derive that it applies to a widow or a divorcee? The verse states: “A wife,” in any case. If so, what is the meaning when the verse states: “A new wife?” It is referring to one who is new for him, excluding one who remarries his divorcee, who is not new to him.

**לֹא בָצַבָּא** – So that he will violate two prohibitions – **לֹא לְמִלְחָמָה**: A newly married man does not go to war during the first year of marriage; he need not aid the soldiers, and he is not charged with the various obligations and taxes of the city. If he does become involved in these matters he violates two prohibitions: “He shall not go out with the army,” and: “Neither shall he be charged” (Rambam Sefer Shofetim, Hilkhot Melakhim UMilhamotheihem 7:11).

**הַיְרָא וְרַק הַלְּבָב –** That is fearful and fainthearted – If one is deemed incapable of standing among the military ranks, he may be considered fearful and fainthearted, thereby allowing him to return from war. This is in accordance with the opinion of Rabbi Akiva, whose opinions are preferred over those of his contemporaries (Rambam Sefer Shofetim, Hilkhot Melakhim UMilhamotheihem 7:15).

**מַעֲמִידִין זַקִּיפִין**: Station guards – After all of the exempted men leave the military ranks, the leaders of the army stand at the head of the nation and position stout guards behind every platoon. These guards are armed with iron rods, and they are permitted to beat the thighs of anyone who attempts to leave the ranks from that point onward (Rambam Sefer Shofetim, Hilkhot Melakhim UMilhamotheihem 7:4).

#### NOTES

**קְשֵׁי הַמְלִחָמָה**: Following Rashi's lead, the commentaries explain that the phalanx, or knots [*kishrei*] of the war, denotes groups of soldiers bound and tied together in battle. For Rabbi Akiva, the fearful and fainthearted soldier is the one who sees this mass of enemy soldiers and becomes terrified. According to the alternative text in the Jerusalem Talmud, the soldier fears the difficulty [*kishui*] of war.

**גִּנְגִּישִׁים לְפִנֵּיהם**: Guards in front of them – Both Rashi and the Meiri explain that guards are stationed in the front to support the fighters and help the fighters back to their feet in the event that they fall. Another row of guards behind the fighters serves the purpose of preventing soldiers from fleeing. According to an alternate opinion, the two rows of guards are there to ensure that no one deserts (Arukha).

#### LANGUAGE

**זְקִיפִין**: Guards [zekifin] – The root zayin, kuf, peh means erect or cause to stand. The job of these zekifin is to stand steadfast at the edge of the military ranks and keep the soldiers standing together in place so that they will not flee and cause the ranks to collapse.

**כְּשַׁלְיִן**: Iron rods [kashilin] – This biblical word is also used in the Mishna, and it seems to refer to a type of heavy axe or pickaxe.

**לְקַפֵּעַ**: Beat [lekape'ah] – This verb seems to be borrowed from the Aramaic root whose primary meaning is hit and break.

The Sages taught with regard to the verse: “**He shall not go out with the army**” (Deuteronomy 24:5); one might have thought it is with the army that he does not go out, but he does go to supply water and food to the army and to repair the roads for them. Therefore, the verse states: “**Neither shall he be charged with any business**.” One might have thought that I include even one who has built a house and has not dedicated it, or one who has planted a vineyard and has not used its fruit, or one who has betrothed a woman and has not taken her as his wife? The verse states: “**Neither shall he be charged with any business**; you do not charge him with any responsibilities, but you do charge others. The Gemara asks: And since the Torah states: “**Neither shall he be charged with any business**, why do I need to be taught: “**He shall not go out with the army**”? The Gemara answers: The Torah adds this clause so that he will violate two prohibitions<sup>h</sup> if he goes out to war: “**He shall not go out with the army**,” and: “**Neither shall he be charged**.”

**MISHNA** The mishna continues its discussion of the speech given before battle. “**And the officers shall speak further to the people**, and they shall say: What man is there that is fearful and fainthearted? Let him go and return unto his house” (Deuteronomy 20:8). **Rabbi Akiva** says: “**That is fearful and fainthearted**<sup>h</sup> is to be understood as it indicates, that the man is unable to stand in the battle ranks<sup>n</sup> and to see a drawn sword because it will terrify him. **Rabbi Yosei HaGelili** says: “**That is fearful and fainthearted**; this is one who is afraid because of the sins that he has; he, too, returns. Therefore, the Torah provided him with all these additional reasons for exemption from the army so he can ascribe his leaving to one of them. In this way, the sinner may leave the ranks without having to publicly acknowledge that he is a sinner.

**Rabbi Yosei says:** With regard to one who has betrothed a woman forbidden to him, including a widow betrothed to a High Priest; a divorcée or a *yevama* who performed *halitza* [*halutza*] betrothed to a common priest; a *mamzeret* or a Gibeonite woman betrothed to an Israelite; or a daughter of an Israelite betrothed to a *mamzer* or a Gibeonite; this man is he whom the verse calls “fearful and fainthearted.” He fears that his sin will jeopardize his safety in the war.

The mishna continues its discussion. The verse states: “**And it shall be, when the officers conclude speaking to the people, that captains of legions shall be appointed at the head of the people**” (Deuteronomy 20:9). The mishna adds: As well as at the rear of the people. The officers station guards [zekifin]<sup>hl</sup> in front of them,<sup>n</sup> and other guards behind them, and they have iron rods [kashilin]<sup>l</sup> in their hands. And with regard to anyone who attempts to turn back and flee from the war, the guard has license to beat [lekape'ah]<sup>l</sup> his legs

תַּנִּינָה רְבָנָה: “לֹא יֵצֶא בָצַבָּא” – **יכּוֹל בָצַבָּא** הוּא דָלָא יֵצֶא, אֲבָל קְפִיקָם מִים וּמִזְוֹן וּמִתְּקָנָה הַדוֹּרוֹכִים? תַּלְמוֹד לוֹמֶר: “וְלֹא יַעֲבֹד עַלְיוֹן דָּבָר.” **יכּוֹל שָׁאַמִּן מְרֻבָּה אֶרְךְ הַבּוֹנָה בֵּית וְלֹא חַנְכָה, נְטַע בָּרָם וְלֹא חַלְלוּ, אֲרָס אַשְׁה וְלֹא לְקַהַה? תַּלְמוֹד לוֹמֶר: “עַלְיוֹן, עַלְיוֹן אֵי אַתָּה מַעֲבֵר, אֲבָל שָׁאַמִּן מְרֻבָּה אֶרְךְ עַלְיוֹן אֵלֶיךָ” מַאֲחָרִים. וּמַאֲחָרִים דָּכְתָב “לֹא יַעֲבֹר עַלְיוֹן, לֹא יֵצֶא בָצַבָּא” לְמַה לִ? לְעַבּוֹר עַלְיוֹן.**

בְּגִלְעָן.

רַבִּי יוֹסֵי אָמָר: אַלְמַנְהָה לְכַהֵן גָּדוֹל, גְּרוּשָׁה וְחַלְוִצָּה לְכַהֵן הַדָּרוֹת, מִמְּוֹתָה וּמִנְתָּחָה לִשְׂרָאֵל, בֶּת יְשָׁאָה לְמִמְוֹר וּלְבָתִין – הַיְיָ הַיְרָא וְרַק הַלְּבָב.

רַבִּי יוֹסֵי הַגְּלִילִי אָמָר: “הַיְרָא וְרַק הַלְּבָב”.

וְזֹהִיא כְּכָלַת הַשְׁׁטוּרִים לְדֹבֶר אֶל הָעָם וּפְקוּדוּ שְׁוֹרְצָות בְּרַאשׁ הָעָם” בְּעַקְבֵּינוּ שֶׁל עַם. מַעֲמִידִין זַקִּיפִין לְפִנֵּיהם הַמְלִחָמָה וְאֶחָרִים מְאַחֲרָיוּם וּבְשִׁילּוּן שֶׁל בְּרוּל בְּרוּלָן. וְכָל הַמְבָקֵשׁ לְחוֹרֹו – הַרְשָׁת בִּידֵי לְקַפֵּח אֶת שׁוֹקֵן

שְׁתַחְיִילָת נִסְתָּחָה נִפְלָה, שְׁנִיאָרָה: “עַם יִשְׂרָאֵל לְפִנֵּי פְּלִשְׁתִּים וְגַם מִגְּפָה גָּדוֹלָה הַיְתָה בָּעַם”, וְלֹהֲלֹן הַזָּה אָמָר: “וַיַּעֲשֵׂה אֱנֹשׁ יִשְׂרָאֵל מִפְנֵי פְּלִשְׁתִּים וַיַּפְלֹא חֲלִילִים” גּוֹי.

because the beginning of fleeing is a downfall on the battlefield, as it is stated: “Israel has fled before the Philistines, and there has been also a great slaughter among the people” (I Samuel 4:17), and likewise it says further on: “And the men of Israel fled from before the Philistines, and fell down slain in Mount Gilboa” (I Samuel 31:1).

In wars whose mandate is a mitzva everyone goes – בָּמִלְחָמֹת מֵזֶה הַכְּלָיוֹן: Whatever is said with regard to the men who return from the ranks applies only to elective wars. However, everyone goes out to wars whose mandate is a mitzva, even a groom from his room and a bride from her wedding canopy (Rambam Sefer Shofetim, Hilket Melakhim UMilhemoteihem 7:4).

If one spoke between donning the phylactery of the arm and the phylactery of the head – שַׁח בֵּין אַפְּנִיהָ לְתִפְלִילָה: It is prohibited to speak between donning the phylactery of the arm and that of the head, and one who does so is required to recite the blessing: Blessed are You...about the mitzva of phylacteries. The custom of most Ashkenazim is to recite this blessing for the phylactery of the head *ab initio*, although they follow the blessing by saying: Blessed be the name of His glorious kingdom forever and all time. This utterance is commonly recited in order to avoid mentioning God's name in vain, and implicitly acknowledges that the blessing for the head phylactery may be superfluous. The Rema notes that according to this custom, if one spoke before donning the phylactery of the head, he must subsequently recite both of the blessings: Blessed are You...To don phylacteries, and: Blessed are You...about the mitzva of phylacteries (Rambam Sefer Ahava, Hilket Tefillin 4:6; Shulhan Arukh, Orah Hayyim 25:9).

## BACKGROUND

ים שותתנן לו על ברכוי: People may experience any of a number of common physiological responses when they enter a state of extreme fear. Aside from trembling or shaking, a common response is the loss of control over certain muscles. This may lead to the loss of control over the excretory system, causing either urination or defecation.

במה דברים אמורים – במלחיםות הרשות, אבל במלחיםות מצוה – הכל יוציאין, אףלו חתן מהדרו וכלה מחופטה; אמר רבי יהודה: במה דברים אמורים – במלחיםות מצוה, אבל במלחיםות חובה – הכל יוציאין, אףלו חתן מהדרו וכלה מחופטה.

**גמ' מאי איכא בין רבוי יוסף לביבי יוסף היגלי?** איכא בינוינו עבירה דרבנן.

כמאן אולא הד רתניא: שח בין תפילה לתפילה – עבירה היא בידיו וחוזר עליה בעורכי המלחמה, כמאן? ברבי יוסף היגלי.

מן תנא להא דתנו רבנן: שמע קול קרננות והרטיע, הגפת תריסין והרטיע, צחציח הרבבות ומים שותתנן לו על ברכוי – חזו. כמאן? ליבא, רבוי עקיבא היא ולא רבוי יוסף האגולי בהא אפללו רבוי גאלוי מזודה, משום דכתיב: "ולא ימס את לבב אחוי לבבו".

The mishna adds: In what case are all of these statements, with regard to the various exemptions from war, said? They are said with regard to elective wars. But in wars whose mandate is a mitzva, everyone goes,<sup>4</sup> even a groom from his room and a bride from her wedding canopy.<sup>5</sup> Rabbi Yehuda said: In what case are all of these statements, with regard to the various exemptions from war, said? They are said with regard to wars whose mandate is a mitzva. But in obligatory wars, everyone goes, even a groom from his room and a bride from her wedding canopy.

## GEMARA

The Gemara asks: With regard to their understanding that the “fearful and fainthearted” is referring to one harboring sins, what difference is there between the opinion of Rabbi Yosei and the opinion of Rabbi Yosei HaGelili? The Gemara answers: There is a practical difference between them with regard to a sin which violates a prohibition by rabbinic law. According to Rabbi Yosei HaGelili, one who has violated a rabbinic law returns home, whereas Rabbi Yosei maintains that one returns home only if he has violated a Torah law, as in the case of a priest who has married a divorcee.

The Gemara asks: In accordance with whose opinion is that which is taught in a *baraita*: If one spoke between donning the phylactery of the arm and the phylactery of the head,<sup>6</sup> he has a sin on his hands, and due to that sin he returns from the ranks of soldiers waging war. In accordance with whose opinion does this man return? It is in accordance with the opinion of Rabbi Yosei HaGelili, who maintains that one returns even due to a minor transgression.

The Gemara asks: Who is the *tanna* who taught this *halakha* that the Sages taught in a *baraita*: If one heard the sound of trumpets and trembled; or he heard the knocking of shields and he trembled; or he heard the sharpening of swords, and urine was trickling down his knees<sup>8</sup> in fear, he returns from the battle-front. In accordance with whose opinion is this? Shall we say that it is the opinion of Rabbi Akiva, who interprets “fearful and fainthearted” literally, and it is not the opinion of Rabbi Yosei HaGelili? The Gemara answers: In this case even Rabbi Yosei HaGelili would concede that he should return, because it is written: “What man is there that is fearful and fainthearted? Let him go and return...lest his brethren’s heart melt as his heart” (Deuteronomy 20:8). Someone so clearly frightened invariably spreads his fear to those around him.

## NOTES

A bride from her wedding canopy – כלה מחופטה: Some commentaries find the mishna’s statement surprising: Are we to understand from this singular, passing reference that women are supposed to go to war? They explain that the mishna does not say that the bride goes out to fight, but rather, that women are obligated to provide non-combat assistance in the war effort (Rashash; *Tiferet Yisrael*). Others write that the mishna does not mean to require women to participate in the war at all, asserting that the *tanna* is simply employing a turn of phrase from the Bible (see Joel 2:16).

If one spoke between donning the phylactery of the arm and the phylactery of the head – שח בין אפניה לתפילה: According to Rashi, this is a case of one who spoke between donning the phylactery of the arm and that of the head; his sin was that he did not subsequently recite a blessing for the phylactery of the head. However, many commentaries challenge Rashi’s interpretation. One commentary contends that the omission of a blessing on the phylactery of the head cannot be the sin, as the mere act of speaking is a sin in that it forces one to recite an extra blessing unnecessarily (*Tosefot HaRosh*).

Early commentaries discuss this fundamental issue of whether the blessing for the phylactery of the head is always mandated. Sephardic authorities presume that the blessing is mandated only in the instance of an interruption between donning the phylactery of the arm and that of the head. By contrast, Rabbeinu Tam marshals a number of proofs to demonstrate that the blessing for the phylactery of the head is to be recited as a matter of course, even without any interruptions. Accordingly, this practice is accepted in most Ashkenazi communities. Significantly, according to this opinion, in the event of an interruption one is then required to recite two blessings over the phylactery of the head. Therefore, according to both opinions, an interruption requires an additional blessing to be said unnecessarily.

It seems that the Rambam understands, in contrast to Rashi’s opinion, that the mere act of speaking between the donning of the two phylacteries is itself a sin. This is in accordance with the explanation of the Ran, which is as follows: Since the verse connects the two phylacteries: “And it shall be for a sign upon your hand, and for frontlets between your eyes” (Exodus 13:16), apparently the phylactery of the head must be donned immediately after that of the hand (*Keren Ora*).

**מלחמות יהושע:** At first a king is permitted to wage only those wars that are in fulfillment of a mitzva, e.g., a war against the seven Canaanite nations, against Amalek, or to save the Jewish people from an enemy who is attacking them. Thereafter, a king may wage wars that are elective, e.g., a war against other nations with the intention of expanding the boundaries of Eretz Yisrael (Rambam *Sefer Shofetim*, *Hilkhot Melakhim UMilhemoteihem* 5:1 and *Lehems Mishne* there).

## BACKGROUND

One who is engaged in a mitzva is exempt from performing another mitzva – **העוסק במצוות פטור מן המצווה**. According to the Gemara (*Sukka* 25a), one who is actively engaged in a mitzva is exempt from performing another mitzva. For example, one who is traveling to study Torah or to greet his teacher is exempt from the obligation to dwell in a *sukka*. The principle derives from the obligation to study Torah, which applies “when you sit in your house, and when you walk by the way” (Deuteronomy 6:7). The Sages understand that the mitzva is limited to times that one is involved in personal activities, and it does not apply when one is involved in performing a mitzva. The Rambam suggests that the underlying reason for this principle is that since one cannot distinguish between the respective weight of different mitzvot (see *Avot* 2:1), an individual is obligated to complete the mitzva in which he is involved before turning his attention to another.

**§** The mishna teaches: **“And it shall be, when the officers conclude speaking to the people, that captains of legions shall be appointed at the head of the people”** (Deuteronomy 20:9), and that the guards have the license to beat the legs of anyone who attempts to turn back and flee from the war, because the beginning of fleeing is a downfall. The Gemara is puzzled by the language of the mishna: This phrase: **Because the beginning of fleeing is a downfall**, appears to be backward. The mishna should have said the opposite: **Because the beginning of the downfall is the act of fleeing**. The Gemara concedes: Indeed, say that the mishna means: **Because the beginning of the downfall is the act of fleeing**.

**במה דברים אמורים – במלחמות הרשות כו.** אמר רבי יוחנן: רשות דרבנן זו היא מצוה דרבבי יהודה; מצוה דרבנן זו היא חובה דרבבי יהודה.

**אמור ורא:** מלחמות יהושע לכבש – דברי הפל חובה; מלחמות בית דוד לוויחה – דברי הפל רשות ב' פל – למעוני נרירים שלא ליתי עלייה: מך קרי לה מצוה, ומך קרי רשות; נפקא מינה לעסוק במצוות שפטור מן המצוה.

הדור על מושוח מלחמה

**מתני'** עגלה ערופה – בְּלֹשׁוֹן הַקּוֹדֶשׁ,  
שׂוֹנָא מָרָ: כִּי יִמְצֵא חַלֵּל בְּאָרוֹמָה... וַיַּצְאָ  
וַיַּקְרֵן שְׁעִטְפִּים: שְׁלַשָּׁה מִבֵּית דָּין הַגּוֹלָ  
שְׁבָרוֹשָׁלִם הִי יוֹצְאִין. רַبִּי יְהוּדָה  
אָוֹרֶם: חַמְשָׁה, שְׁנָאָרֶם: "וַיַּקְרֵן"  
– שְׁנִים; נָשָׁנִים, וְאַנְיָ בֵּית דָּין שְׁקוֹלָ  
מוֹסִיףִין עֲלֵיכֶן עוֹד אַחֵר.

בְּמִצְאָתָם בְּגַל, או תָּלוּ בְּאַיִלָּן, או צָרָ  
עַל פְּנֵי הַמְּפִימִים – לֹא הִי עֹרֶפֶן, שְׁנָאָרֶם:  
בְּאָרוֹמָה – וְלֹא טָמֵן בְּגַל, "נַפְלָה"  
וְלֹא תָּלוּ בְּאַיִלָּן; "בְּשָׂדָה" – וְלֹא צָרָ  
עַל פְּנֵי הַמְּפִימִים.

בְּמִצְאָתָם סְמוֹךְ לְסֶפֶר, או לְעִיר שְׁרוּבוֹת  
כְּבָרִים, או לְעִיר שְׁאֵין בָּה בֵּית דָּין –  
לֹא הִי עֹרֶפֶן. אַיִן מַוְדָּרִין אֶלָּא לְעִיר  
שְׁיִשְׁ בָּה בֵּית דָּין.

**MISHNA** In certain cases of unsolved murder, the Torah prescribes a ritual performed with a heifer whose neck is broken. During the course of this ritual, the judges say a confession in the sacred tongue,<sup>H</sup> Hebrew, as it is stated in 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, and it is not known who has smitten him; then your Elders and your judges shall come forth” (Deuteronomy 21:1–2). What is the procedure for this ritual? Three members of the High Court [Sanhedrin] that is in Jerusalem<sup>B</sup> would go out to see the corpse. Rabbi Yehuda says: Five<sup>H</sup> would go out, as it is stated: “Your Elders,” in the plural form, indicating at least two; and it is written: “And your judges,” in the plural form, indicating another two judges; and a court may not be comprised of an even number of judges because they need to be able to issue a majority ruling. Consequently, they add to them one more Elder.

If the corpse was found concealed<sup>H</sup> in a pile of stones, or hanging on a tree, or floating on the surface of the water, then the judges would not break the neck of the heifer, as it is stated: “If one be found slain in the land” (Deuteronomy 21:1), and not concealed in a pile of stones;<sup>N</sup> “lying” on the ground and not hanging on a tree; “in the field,” and not floating on the surface of the water.

If a corpse was found close to the border<sup>H</sup> of the country, or close to a city in which the majority of its inhabitants are gentiles,<sup>N</sup> or close to a city that is without a rabbinical court of twenty-three judges, then the judges would not break the heifer’s neck. Additionally, the Elders measure the distance from the corpse only to a city that has a rabbinical court<sup>H</sup> with twenty-three judges.<sup>B</sup>

**BACKGROUND**  
The High Court [Sanhedrin] that is in Jerusalem – בֵּית דָּין הַגּוֹלָם: The Sanhedrin, also referred to as the court of seventy-one, was the Jewish people’s supreme legislative and religious body in antiquity. It met in the Chamber of Hewn Stone in the Temple courtyard and was vested with the power to decide all matters of national importance. Its enactments were binding on the entire nation, and it issued both permanent decrees and temporary regulations. It decided cases left undecided by the lower courts and was the final authority on halakha.

A lesser Sanhedrin – סְנָהָדְרִי קָטָנָה: A lesser Sanhedrin is a court of twenty-three judges, which has the authority to try capital cases. Such courts were established in larger Jewish communities both in Israel and in the Diaspora.

### NOTES

And not concealed in a pile of stones – גַּלְגָּל טָמֵן בְּגַל: The Meiri writes that this halakha excludes from the ritual not only a corpse found concealed in a pile of stones but also a corpse that had been concealed in any way, even in the earth.

In which the majority of its inhabitants are gentiles – שְׁרוּבוֹת נָוִים: In the *Minhat Hinukh* the following objection is raised: If the majority of inhabitants of the city are gentiles, shouldn’t the majority be followed, as it is in other cases? If so, the assumption should be that the victim was not killed by a Jew. Why, then, would the mishna need to teach this obvious halakha? The answer given there is that because of this objection, the Rambam reads the Gemara here in accordance with the text in the Jerusalem Talmud: A city in which there are gentiles. Consequently, the mishna is teaching the novelty that the ritual is not performed even in a case where there is a minority of gentiles in the nearest city.

### HALAKHA

A heifer whose neck is broken, a confession in the sacred tongue – עַגְלָה עֲרֻפָה בְּלֹשׁוֹן הַקּוֹדֶשׁ: Both the confession of the city’s Elders upon the broken neck of a heifer and the recitation of the priests (see Deuteronomy 21:8) may be recited only in Hebrew (Rambam *Sefer Nezikim*, *Hilkhot Rotze’ah UShmirat HaNefesh* 9:3).

**Five – חמשה:** Five Elders from the great Sanhedrin in Jerusalem go to measure the distance from the corpse to the closest city. In the *Kesef Mishne* it is asked why the Rambam ruled in accordance with the opinion of Rabbi Yehuda and not in accordance with the unattributed opinion in the mishna that only three Elders go to measure the distance. It is answered: Since this issue is recorded as a dispute in tractate *Sanhedrin*, this is an unattributed opinion that is followed by a dispute. It therefore follows the principle that the halakha is in accordance with Rabbi Yehuda in his disputes with Rabbi Shimon. *Tosefot Yom Tov* explains that the Rambam based his ruling on the Jerusalem Talmud, which cites Rabbi Yehuda HaNasi as saying that the halakha follows Rabbi Yehuda in this case (Rambam *Sefer Nezikim*, *Hilkhot Rotze’ah UShmirat HaNefesh* 9:1).

The corpse was found concealed – נִמְצֵא טָמֵן: If the corpse was found buried under a pile of stones, hanging from a tree, or floating in water, the ritual of breaking the heifer’s neck is not performed (Rambam *Sefer Nezikim*, *Hilkhot Rotze’ah UShmirat HaNefesh* 9:11).

Was found close to the border – נִמְצֵא קָטוּן לְגַל: If the corpse was found close to a border or close to a city where gentiles live, measurements are not taken, and the ritual of breaking the heifer’s neck is not performed (Rambam *Sefer Nezikim*, *Hilkhot Rotze’ah UShmirat HaNefesh* 9:5).

To a city that has a court – לְשָׁעַר שִׁישָׁ בָּה בֵּית דָּין: The Elders measure the distance from the corpse only to a city that has a rabbinical court of twenty-three judges. Even if there is another city that is closer to the corpse, but it does not have a rabbinical court of twenty-three judges, it is not taken into consideration for the measurements (Rambam *Sefer Nezikim*, *Hilkhot Rotze’ah UShmirat HaNefesh* 9:4).

And a court may not be composed of an even number of judges – **אין בית דין שקלוי**: This is to prevent a dispute among the judges from becoming deadlocked. Although here the judges are taking measurements and not issuing judgment, it is still possible for them to disagree about how to measure and about the exact point from which they should measure (*Minha Hareva*).

**גמ'** מאי קאמר? אמר רבי אביה: **הכי** קאמר – שנאמר: "וְעַנְוּ הַלּוּס וְאָמְרוּ", וְלֹהֲלוּ הוּא אומר: "וְעַנְוּ הַלּוּס וְאָמְרוּ" וגו', מה ענייה האמורה להלן בלשון הקודש, אף כאן בלשון הקודש.

## GEMARA

The Gemara asks: What is the first sentence in the mishna saying? The mishna is attempting to prove that the verses read during the ritual of breaking a heifer's neck are to be recited in Hebrew, yet the verse does not offer any proof of this. Rabbi Abbahu said that this is what the mishna is saying: The confession is recited in Hebrew, as it is stated with regard to the ritual of the heifer whose neck is broken: "And they shall speak and say" (Deuteronomy 21:7), and later it is stated with regard to the curses stated on Mount Ebal: "And the Levites shall speak and say" (Deuteronomy 27:14). Just as the word "speak" that is said later with regard to the Levites is referring to a speech that is recited in the sacred tongue, so too here the declaration is recited in the sacred tongue.

וסדר עגלה ערופה ביצד? "כִּי יִמְצֵא חֶלְלָה בָּאָדָם... וַיֵּצְאוּ זָקְנִים וְשָׁפְטִים". שלשה מבית דין הגדול שבירושלים הוא יוצאים. רבי יהודה אומר: חמישה וכו'.

The mishna continues to answer the question of: And how is the ritual of the heifer whose neck is broken ordered? The mishna states: It is written in the Torah: "If one be found slain in the land which the Lord your God has given you to possess it, lying in the field, and it is not known who has smitten him; then your Elders and your judges shall come forth, and they shall measure unto the cities which are round about him that is slain" (Deuteronomy 21:1-2). Three members of the High Court that is in Jerusalem would go forth. Rabbi Yehuda says: Five.

תנו רבנן: "וַיֵּצְאוּ זָקְנִים וְשָׁפְטִים". ז' קמינו – שנים; "וְשָׁפְטִים" – שנים, ואין בית דין שקלול, מוספין עליהם עוד אחד – הרי כאן חמישה – דברי רבי יהודה; רבי שמעון אומר: "ז' קמינו" – שנים, ואין בית דין שקלול, מוספין עליהם עוד אחד – הרי כאן שלשה.

The Sages taught: "And your Elders and judges shall come forth." "Your Elders" indicates two; "and your judges" also indicates two; and a court may not be composed of an even number of judges,<sup>N</sup> so they add to them one more judge. Therefore, there are five judges. This is the statement of Rabbi Yehuda. Rabbi Shimon says: "Your Elders" indicates two, and as a court may not consist of an even number of judges they add to them one more. Therefore, there are three.

ורבי שמעון נמי ה'आ כתיב: "וְשָׁפְטִים"! ההוא מיבעי ליה: למ' יודין שבשופטין. וברי יהודה? מ"זקנין", ז' קמינו נפקא.

The Gemara asks: But according to Rabbi Shimon as well, isn't it written: "And your judges"; why does he not agree that this indicates a need for two more judges? The Gemara answers: He requires that additional word "Elders" in order to teach that they must be the distinguished among your judges, i.e., judges from the Sanhedrin. And how does Rabbi Yehuda, who derives from the phrase "and your judges" that there is a need for two additional judges, know that they need to be from the Sanhedrin? He derives it from an extra letter. The verse could have simply stated: The Elders. Instead, it adds a letter and states: "Your Elders," to teach that they must be the distinguished among the Elders of Israel.

ורבי שמעון? אי כתוב רחמנא ז' קמינו, היה אמינו אפילו ז' קמינו השוק, כתוב רחמנא ז' קמינו, ואוי כתוב רחמנא ז' קמינו, היה אמינו אפילו סנהדרי קטנה, כתוב רחמנא ז' קמינו – למ' יודין שבשופטין.

And Rabbi Shimon could say: If the Merciful One had written in the Torah: The Elders, I would say that it includes even the Elders of the marketplace, meaning any honorable people. Therefore, the Merciful One writes in the Torah: "Your Elders," to indicate specifically Torah Sages, who are revered by all. And if the Merciful One had written in the Torah only: "Your Elders," I would say that it includes even Elders from a lesser Sanhedrin. Therefore, the Merciful One also writes: "And your judges," to teach that they must be the distinguished among your judges, from the Great Sanhedrin.

ורבי יהודה? גמור ז' קמינו, ז' קמינו מזקни העדרה. מה להלן מividin שבעדיה, אף כאן מividin שבעדיה.

And what is the source of Rabbi Yehuda that the judges may not come from a lesser Sanhedrin? He derives this halakha from a verbal analogy between "Elders," written here, and "Elders," written with regard to the offering that the Sanhedrin brings when the nation has sinned as a result of a mistaken ruling. This offering is brought by "the Elders of the congregation" (Leviticus 4:15). Just as there, "the Elders of the congregation" are the distinguished among the congregation, from the Great Sanhedrin, so too, here the verse is referring to the distinguished among the congregation.

**אֵינֶנּוּ מִלְּתָא מַהֲתָּמָן!**  
**זִקְנִיךְ וְשֻׁפְטִיךְ לְמַה לִי? אֶלָּא וַיֹּוֹצֵא שֻׁפְטִיךְ לְמַנְנָא.**  
**וּרְבִּי שָׁמְעוֹן?**

The Gemara asks: If he derives this *halakha* from this verbal analogy, then he should derive the entire matter from there, including the requirement for five judges. If so, why do I need the phrase “**your Elders and your judges**”? Rather, it must be that Rabbi Yehuda does not derive the *halakha* from this verbal analogy. Instead, he understands that the phrase “**your Elders**” indicates two, and that “**your judges**” indicates that they must be the distinguished among your judges, and the letter *vav* in the phrase “**and your judges [veshofetekha]**” is to add two more to the count of the judges. And Rabbi Shimon does not accept this derivation