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Sotah Daf 45

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Mishnah

The verses recited during the *eglah arufah* (the law is that upon finding a corpse, and being unable to solve the murder, the leaders of the city closest to the corpse are required to bring a calf to an untilled valley, decapitate it, wash their hands over it, and then they must recite a verse, declaring publicly that they did not kill the person) procedure must be recited in the Holy Tongue, as it is said: *If a corpse will be found in the land...then your elders and your judges shall go out* etc.

Three judges from the Great Court in Yerushalayim would go out (to the location where the corpse was found). Rabbi Yehudah says: Five, for it states: *your elders - two, and your judges* – another two; and as a court may not be composed of an even number, they would add one more.

If the corpse was found hidden in a heap of stones, or hanging from a tree, or floating upon the water, they would not decapitate a calf, as it is stated: *in the land*, but not hidden in a heap of stones; *fallen*, but not hanging from a tree; *in the field*, but not floating upon the water. If it was found near the border (of Eretz Yisroel), or near a city with a majority of idolaters, or a city which has no *Beis Din*, they would not decapitate a calf. They measure (to determine which is the closest city) only to a city which has a *Beis Din*. (44b5 – 44b6)

Explaining the Mishnah

The Gemora asks: What is the Mishnah saying (when it cited the Scriptural verse proving that the statements declared during the *eglah arufah* procedure are recited in the Holy Tongue; how is it derived from there)?

Rabbi Avahu said: This is what the Mishnah was saying: It is stated: *And they (the elders) shall speak up and say*, and elsewhere (regarding the blessings and curses that were declared at Mt. Gerizim and Mt. Eival) it is stated: *And the Levites shall speak up and say* etc. Just as the ‘speaking up’ mentioned in this latter passage was in the Holy Tongue, so here also it was in the Holy Tongue; and as to the procedure for the bringing of the *eglah arufah* (the Mishnah continues): *If a corpse will be found in the land...then your elders and your judges shall go out*. Three judges from the Great Court in Yerushalayim would go out (to the location where the corpse was found).

The Mishnah had stated: Rabbi Yehudah says: Five.

The Gemora cites a Baraisa: *And your elders and your judges shall go out. Your elders - two, and your judges* – another two; and as a court may not be composed of an even number, they would add one more. This proves that five judges are needed; these are the words of Rabbi Yehudah. Rabbi Shimon says: *Your elders - two*, and as a court may not be composed of an even number, they would add one more. This proves that three judges are needed.

[The Gemora discusses what each *Tanna* does with the other *Tanna*’s verse.] The Gemora asks: But for Rabbi Shimon also it is written ‘*and your judges*’? The Gemora answers: He requires that for the teaching that they must be the most select of your judges.

The Gemora asks: And (where does) Rabbi Yehudah (derive the teaching that they must be the most select)? The Gemora answers: It is derived from ‘*your*’ in ‘*your elders*.’

The Gemora asks: And Rabbi Shimon (what does he derive from this)? The Gemora answers: If the Merciful One had only written ‘elders,’ I might have thought that even old men from the marketplace (would suffice to perform the measurement); therefore, the Merciful One wrote ‘your elders.’ And if the Merciful One had only written ‘your elders,’ I might have thought that even (members of) a minor Sanhedrin (consisting of twenty-three judges would suffice); therefore, the Merciful One wrote ‘and your judges’ - the most select of your judges.

The Gemora notes: Rabbi Yehudah derives the teaching (that they must be members of the Great Sanhedrin) from an analogy (gezeirah shavah) between the use of the word ‘elders’ here and in the phrase ‘the elders of the Congregation’ (regarding the instruction to place their hands upon the head of the bull); just as it there denotes the most select men of the congregation, so here as well it denotes the most select men of the congregation.

The Gemora asks: If he expounds such an analogy, then let him derive the entire matter from there (including the requirement that five judges perform the measurement), and what is the necessity of ‘your elders and your judges’? The Gemora answers: Rather, the ‘and’ in ‘and your judges’ is used to teach the requisite number (of judges needed to measure).

The Gemora notes: Rabbi Shimon draws no deduction from ‘and.’

The Gemora asks: But from now (that we have asserted that a plural expression denotes two), it is written: *and they shall go out* – that is (an additional) two (judges), *and they shall measure* - that is (an additional) two; according to Rabbi Yehudah, then, there must be nine, and according to Rabbi Shimon, there must be seven!?! The Gemora answers: No; the two phrases are required for that which was taught in the following Baraisa: *and they shall go out* - they and not their agents; *and they shall measure* - even if it (the corpse) is found clearly near to a particular city, they must still

measure, since it is a mitzvah to carry out the measurement. (44b6 – 45a1)

Sanhedrin, Melech, and Kohen Gadol

The Gemora notes: Our *Mishnah* is unlike the opinion of Rabbi Eliezer ben Yaakov in the following *Baraisa*. Rabbi Eliezer ben Yaakov says: “Your elders” refers to the Sanhedrin (*High Court of seventy-one elders that sat in a special chamber in the Beis Hamikdash*). “Your judges” refers to the king and *Kohen Gadol*. A king is referred to as a judge, as the verse states, “A king with judgement will make the land stand.” A *Kohen Gadol* is compared to a judge as the verse states, “And you will come to the Kohanim and Levites and the judge who are in those days.”

The Gemora inquires: Is Rabbi Eliezer ben Yaakov arguing only regarding the fact that he holds that the king and *Kohen Gadol* must also go? Or is he also arguing that the entire *Sanhedrin* must go (*not merely three or five of them as stated in our Mishnah by Rabbi Shimon and Rabbi Yehudah*)?

Rav Yosef attempts to resolve this from the following *Baraisa*: If an elder refutes a halachic ruling of the *Sanhedrin* meets the *Sanhedrin* at Beis Pagi (*in Yerushalayim, but not where they would normally sit for judgment*), and he does not listen to their ruling, one might have thought that this is enough to classify him as a *Zaken Mamrei* (*elder who issues halachic rulings opposite those of the Sanhedrin even though Sanhedrin has told him he is wrong*); the verse therefore states, “And you will get up and go up to the place.” This tells us that the place (*where the Sanhedrin normally holds court by the Beis Hamikdash*) is essential in the ruling of a *Zaken Mamrei*. [This means that unless Sanhedrin tells him he is wrong in their normal place where they sit, he is not classified as a *Zaken Mamrei*.]

Rav Yosef asks: How many of *Sanhedrin* left (*and went to Beis Pagi*)? If only some of them went, it is possible that the others agree with the *Zaken Mamrei* (*and therefore it is clear he cannot be classified as a Zaken Mamrei*)! It is therefore obvious that all of them must have left their regular area

where they hold court. Why did they leave? If it was for a regular (*non-mitzvah*) purpose, are they all allowed to leave? Doesn't the verse say, "Your navel (*meaning the Sanhedrin*) is like a pond of water (*referring to the half-circle shape of the Sanhedrin*), it should not stop giving drink (*Sanhedrin should always be there teaching Torah*)." This verse teaches that if one of the judges has to leave for a mundane matter, he must ascertain that there are at least twenty-three left like the size of a small *Sanhedrin*. If there are not, he may not leave. [This is derived from the words "Al Yechsar Hamazeg" – "it should not stop giving drink." Being that *Mezigah* also means mixing water and heavy wine, and the amount is usually a ratio of one part wine to two parts water, the "Mazeg" is considered the part wine that must stay. This means that two thirds of the *Sanhedrin* may leave, but not more. This is why twenty-three judges must stay out of seventy-one.] Accordingly, Rav Yosef says, if the entire *Sanhedrin* met this person, it must have been that they left their place for a *mitzvah*! What *mitzvah* do they have to leave for? It must be *eglah arufah*, and the *Baraisa* must have been authored by Rabbi Eliezer ben Yaakov!

Abaye said to him: No, it is possible that they left their normal place in order to formally add more space onto Yerushalayim and the courtyards of the Beis Hamikdash. This is as stated in the *Mishnah*: no additions may be made to Yerushalayim or to the Temple Courtyard except by (the decision of a King, prophet, *Urim ve'tumim* and) a *Sanhedrin* of seventy-one.

The following *Baraisa*, however, indeed is clearly like Rav Yosef suggested: If an elder refutes a halachic ruling of the *Sanhedrin* meets the *Sanhedrin* at Beis Pagi and does not listen to their ruling; for example, the *Sanhedrin* might have left to measure regarding *eglah arufah* or add onto Yerushalayim and the courtyards of the Beis Hamikdash. One might have thought that this is enough to classify him as a *Zaken Mamrei*. The verse therefore states, "And you will get up and go up to the place." This tells us that the place is essential in the ruling of a *Zaken Mamrei*. (45a1 – 45a3)

Forgotten Stalks and Hidden Bodies

The *Mishnah* had stated: If the corpse was found hidden in a heap of stones, or hanging from a tree.

The *Gemora* asks: Let us say our *Mishnah* follows Rabbi Yehudah and not with the Rabbis, for it was taught in the following *Baraisa*: "And you will forget the stalks in the field." This excludes stalks that are hidden; these are the words of Rabbi Yehudah. The *Chachamim* say: *in the field* - it includes stalks that are hidden. [Rabbi Yehuda seems to be the one who excludes hidden things from the words "in the field."]

Rav answers: No, the *Chachamim* could agree with our *Mishnah*. They understand each verse differently depending on the context. Regarding *eglah arufah* where the verse states, "When you will find," this implies anywhere you will find him. Therefore, when the verse makes a point of saying, "on the ground," it must mean as opposed to a body that is hidden. Regarding stalks, the verse states, "When you will harvest your harvest in the field and you will forget stalks." This implies that the forgetting is like a normal harvest. Just as a normal harvest is in the open, so too the forgotten stalks must be in the open. However, the verse then states, "in the field." It must be saying this to counter the previous implication, and say that hidden stalks are included in the law of forgotten stalks.

The *Gemora* asks: According to Rabbi Yehudah, why not derive that stalks have to be in the open because the forgotten stalks are compared to the harvest? The *Gemora* answers: He in fact does derive this.

The *Gemora* asks: If so, why did the Torah say "in the field?" The *Gemora* answers: Rabbi Yehudah understands that this word has a different implication, and includes forgotten stalks that have not yet been harvested (*that they too are called forgotten stalks*).

The *Gemora* asks: What is the *Chachamim's* source that forgotten stalks that have not been harvested also have this

law? The *Gemora* answers: They derive it from a different verse, “When you will harvest your harvest in your field.”

The *Gemora* asks: What does Rabbi Yehudah do with this verse? The *Gemora* answers: He derives from it the teaching of Rabbi Avahu in the name of Rabbi Elozar, that stalks that are blown into someone else’s field and land on something else above the ground do not have a law of forgotten stalks. [This is how the *Gemora* presently understands this law. It will change the definition shortly.]

The *Gemora* asks: How do the *Chachamim* derive this law? From the word “in your field” (the extra “your”). Rabbi Yehudah does not agree that this can be used for extrapolating this law.

Rabbi Yirmiyah inquired: If stalks were blown onto a surface above his own field, what is the law? Is the air of the field like the field itself, or not?

Rav Kahana said to Rav Pappi, and some say Rav Kahana said to Rav Zevid: You should be able to derive this from Rabbi Avahu’s statement in the name of Rabbi Elozar. He said that stalks that are blown into someone else’s field and land on something else above the ground do not have a law of forgotten stalks. This implies that it is only if they are blown on someone else’s land, not if they are blown onto your land.

The *Gemora* asks: If we are to deduce from Rabbi Avahu’s statement, then only stalks that are on a surface above someone else’s field should not have a law of forgotten stalks, as opposed to stalks that are on his actual field. However, how can this be? His law is derived from the word “in your field” and they are not in your field!

The *Gemora* answers: It must be that whenever they are in your friend’s field they are exempt. Why did Rabbi Avahu say they were “blown onto” implying on a surface? He merely meant that they were blown into the field, as that is how they would normally get there.

The *Gemora* asks a question from the following *Baraisa*. Stalks that a person had already gathered to bring to the city, and he forgot and left two of them behind one on top of the other, the bottom one has the law of forgotten stalks and the top one does not. Rabbi Shimon ben Yehudah says in the name of Rabbi Shimon: They both do not have this law. The bottom one because it is hidden, and the top because it is “floating.” Their argument is only regarding the bottom one, but everyone agrees the top one does not have this law because it is “floating” (implying that “floating” on top of something else is an exemption, as opposed to what we said previously). The *Gemora* answers: This case is different as he has already acquired the stalks for himself.

The *Gemora* asks: Why, then, does it have to be on top of another stalk? Even if it was on the field it would not have this law! The *Gemora* answers: This is true. It only said the case of one on top to tell us the argument about the bottom one.

The *Gemora* asks: But the *Baraisa* explicitly said that the top was exempt because it was “floating?” The *Gemora* answers: It meant that it is floating regarding its ownership (it is still connected to its owner, just as something floating does not have its full weight on what it is floating on).

Abaye says: I am like Ben Azai in the marketplace of Teveryah (that I will answer any question today). A young scholar said to him: If there are two dead bodies one on top of the other, where do we measure from? Do we say that being that the two bodies are of the same type, the bottom body is considered hidden but the top body is not considered floating, and therefore the measuring is done from the top body? Or do we say that the bottom body is not considered hidden but the top body is considered floating, and therefore the measuring is done from the bottom body? Or do we say that they are considered both hidden and floating, and therefore there is no measurement?

Abaye answered from the *Baraisa*. Stalks that a person had already gathered to bring to the city, and he forgot and left

two of them behind one on top of the other, the bottom one has the law of forgotten stalks and the top one does not. Rabbi Shimon ben Yehudah says in the name of Rabbi Shimon: They both do not have this law. The bottom one because it is hidden, and the top because it is “floating.” It must be that these *Tannaim* hold like Rabbi Yehudah that hidden stalks are exempt, and they argue regarding whether the fact that they are both stalks means that the bottom one is considered hidden!

The *Gemora* answers: No, it is possible they do not both hold of Rabbi Yehudah and everyone holds that this is considered hidden. They argue in the same argument as Rabbi Yehudah and the *Chachamim* whether or not there is an exemption when something is hidden.

The *Gemora* asks: Why, then, is the case when both are stalks? The case could even be when the bottom one is covered with rocks or dirt? The *Gemora* answers: It could have said it, but it wanted to tell us the strong opinion of Rabbi Yehuda that even when they are both stalks it is considered hidden.

The *Baraisa* states: “A dead body,” meaning not strangled and not flailing (in death throes). “In the ground,” and hidden in a pile. “Fallen” and not hung in a tree. “On the field” and not floating on the water. Rabbi Elozar says: In all these cases as long as he fits the definition of “A dead body,” an *eglah arufah* is brought.

The *Baraisa* states: Rabbi Yosi the son of Rabbi Yehudah said: They told Rabbi Elozar: Do you not agree that a dead body in the garbage would not be reason to bring an *eglah arufah* (as you derive “A dead body” and not strangled)? [Yes:] consequently [you must agree that] ‘slain’ indicates one who is not strangled; similarly ‘in the earth’ indicates one who is not hidden in a heap of stones, ‘lying’ one who is not hanging on a tree, ‘in the earth’ one who is not floating upon the surface of the water!

What is Rabbi Elozar’s reply? There is an extra word “chalal.”

The Mishnah had stated: If it was found near the border (of *Eretz Yisroel*), or near a city with a majority of idolaters.

“When it will be found,” excludes when dead bodies are always found there.

The Mishnah had stated: Or a city which has no *Beis Din*.

The city requires a *Beis Din*, as the verse states, “Elders of the city,” and there are none (*in this city*).

The Mishnah had stated: They measure (*to determine which is the closest city*) only to a city which has a *Beis Din*.

The *Gemora* asks: Once the *Mishnah* stated that a city that does not have a *Beis Din* cannot bring an *eglah arufah*, isn’t it obvious that the measurement is only done by a city where there is a *Beis Din*? The *Gemora* answers: The *Mishnah* is communicating the novelty of the following *Baraisa*. The *Baraisa* states: How do we know that if he is near a city that does not have a *Beis Din* that we measure from the closest city with a *Beis Din*? The verse states, “And the elders of that city will take,” even if they are further (*than a city that does not have a Beis Din*). (45a – 45b)

Mishnah

If he is exactly between two cities, both cities bring an *eglah arufah*. These are the words of Rabbi Eliezer. Yerushalayim does not bring an *eglah arufah*. If his head was found in one place and his body is in another, the head is taken to the body. These are the words of Rabbi Eliezer. Rabbi Akiva says: The body is taken to the head. Where would they measure from? Rabbi Eliezer says: From the belly button. Rabbi Akiva says: From his nose. Rabbi Eliezer ben Yaakov says: From where he became dead, from his neck. (45b)

Gemora

The *Gemora* asks: What is Rabbi Eliezer’s reasoning? The *Gemora* answers: He holds that it is possible that we can



measure and they are equidistant. "Close," can also mean two close cities.

Yerushalayim does not bring an *eglah arufah* because the verse says, "to inherit," and this *Mishnah* is according to the opinion that Yerushalayim was not given as an inheritance to specific tribes.

The *Mishnah* had stated: If his head was found in one place [and his body is in another, the head is taken to the body. These are the words of Rabbi Eliezer. Rabbi Akiva says: The body is taken to the head.]

The *Gemora* asks: What is their argument? It can't be regarding measuring, as the end of the *Mishnah* says, "where would they measure from," implying that the previous discussion was not regarding measuring!

Rabbi Yitzchak answers: They argue regarding a *meis mitzvah* acquiring the place where he fell for his burial. Where his head and body fell in different places, his head is taken to his body according to Rabbi Eliezer and the opposite according to Rabbi Akiva. What is their argument? One holds that his body fell where he was killed and his head rolled away. The other holds that his head fell where he was killed and his body moved somewhere else.

The *Mishnah* had stated: Where would they measure from? [Rabbi Eliezer says: From the belly button. Rabbi Akiva says: From his nose.]

What is the argument (*about where to measure from*)? One says the main life is in the nose (*sign of breathing*), the other says from the belly button.

The *Gemora* asks: This should be the same argument as the following argument. The *Baraisa* states: Where does a child start to be created? He is created from his head, as the verse states, "From my mother's stomach you are "gozi," and the verse also states, "Gozi" – "cut off" your crown (*hair*) and throw it." [This implies that "gozi" is from the head.] Abba

Shaul says: He is created from his belly button, and he grows from his roots both ways.

The *Gemora* says: Even Abba Shaul can agree that we measure from one's nose (*breathing*). Abba Shaul only stated that he grows from his belly button, but everyone will agree that his life source is from his nose. This is as the verse states, "Anything that has the wind of life in its nostrils."

Rabbi Eliezer ben Yaakov says that the measuring is done from his neck. What is the reasoning of Rabbi Eliezer ben Yaakov? This is as the verse states, "To put you on the neck of the dead evildoers." (45b)

INSIGHTS TO THE DAF

Eglah Arufah from Yerushalayim

The *Mishnah* had stated: The city of Yerushalayim does not bring an *eglah arufah* (*the law is that upon finding a corpse, and being unable to solve the murder, the leaders of the city closest to the corpse are required to bring a calf to an untilled valley, decapitate it, wash their hands over it, and then they must recite a verse, declaring publicly that they did not kill the person*).

The *Gemora* explains the reason for this: It is written: *If a corpse will be found on the land that Hashem your God gives you to inherit it.* The *Tanna* of our *Mishnah* holds that Yerushalayim was not apportioned among the tribes. It was given to all of *Klal Yisroel*, and therefore, it is not included in the verse of being "land that was given to inherit it."

The *halachah* would be that the city, which is next closest to the spot where the body was found, would bring the *eglah arufah*.

The *Gemora* in *Bava Basra* (23b) states that the *halachah* of *eglah arufah* is only applicable when the city is located between two mountains, and therefore, people do not frequent that area. For if it would be a city where many people from the world pass through, we would say that the

murderer did not come from the nearest city; but rather, he came from the majority of the world.

Tosfos there asks: If so, why is it necessary to exclude Yerushalayim from bringing an *eglah arufah* based upon the verse “to inherit it”? Yerushalayim should be excluded because it is a city where all people from the world pass through. They come for the pilgrimage and they come during the year to offer their sacrifices and to eat their *ma’aser!* It emerges that we would never attribute the murderer to the residents of Yerushalayim, for most of the people there are from the rest of the world!?

Tosfos answers that there were streets in Yerushalayim that were only frequented by the residents of Yerushalayim, and it is on account of those areas that the verse is necessary to exclude Yerushalayim from bringing an *eglah arufah*.

HaRav Elyashiv derives from this Tosfos the following *halacha*: If there would be a city that a portion of it would not be fit to bring an *eglah arufah*, but a different part of the same city would be suitable to bring it, that city would be required to bring an *eglah arufah*.

Accordingly, if they would add on to the city of Yerushalayim (like the *Gemora* in Shavuot 14b states that this can be done with a *Beis Din* of seventy-one and the *Kohen Gadol*), and the added area would be apportioned to all the tribes, Yerushalayim would be required to bring an *eglah arufah* on account of the extra area.

DAILY MASHAL

Location, location, location

The laws of the Rebellious Elder are suspended if the Great Sanhedrin are not in their designated location of the Chamber of Hewn Stone in the Temple complex. This teaches us that the full significance of their authority derives partially from the holiness of the Beis Hamikdash.

King David had set aside large amounts of gold and silver to be used in the construction of the Beis Hamikdash. However, when the time came for his son, King Solomon, to build the Beis Hamikdash, he refrained from using those funds and put them all into *genizah* because the funds should have been used to support Torah scholars for it is a higher purpose.

The Chasam Sofer asks in Parshas Pekudei based on our Gemara that those funds should have been used because the building of the Beis Hamikdash also served the purpose of disseminating Torah. This is also borne out by the verse “For from Zion will Torah go out”. Similarly, the Temple Mount was called Mt. Moriah because from there legal decisions (*hora’ah*) were disseminated.

He answers that King Solomon knew he was building a House for the Shechinah but he did not know that this was the permanent dwelling of the Shechinah in this world. This can be seen from the verse in Melachim I 8:12-13 “Then Solomon said, Hashem sought to dwell in the thick darkness. I have surely built You a house to dwell in.” Only after the construction was concluded, when the presence of the Shechinah filled the Temple and the *Cohanim* were unable to stand on their feet, did he realize that this was the site of Akeidas Yitzchak and the place where Yaakov had the dream of the ladder. Then he regretted his decision and wished to appease his father, as the verse continues (ibid. 8:15) “Blessed be the Lord, the G-d of Israel who spoke with His mouth to David, my father.” The holiness of the Beis Hamikdash was a security that the Sanhedrin would not err in their rulings.