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Bechoros Daf 20

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Daf Notes is currently being dedicated to the neshamot of

**Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h**

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May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

### ***Birth Exempting, or even a mere Discharge?***

The *Gemora* cites a *braisa* (discussing one who buys an animal from a non-Jew, not knowing whether it has already given birth): That (a male) which is born from a goat in its first year, certainly belongs to the *Kohen* (for a goat cannot “kid” twice in its first year); after that, it is a questionable case (of a firstborn). That born of a ewe two years old certainly belongs to the *Kohen*; (for a ewe cannot “lamb” twice in its first two years) after that, it is a questionable case. That born of a cow three years old certainly belongs to the *Kohen*; after that, it is a questionable case. The rule for a she-donkey is the same as for a cow. Rabbi Yosi ben Yehudah, however, says that the offspring of a she-donkey four years old (certainly belongs to the *Kohen*).

The *braisa* continues: Thus far the rulings are those of Rabbi Yishmael. When they were reported to Rabbi Yehoshua, he said to them: Go and say to Rabbi Yishmael, you have made a mistake. If the animal were exempted only with the (actual) birth of an offspring, it would be as you say, but the Sages have declared: A sign of offspring in small cattle is a discharge (*soiling from the womb*); in large cattle, the afterbirth; and in a woman, the signs are an embryo or an afterbirth. [The Sages maintain that any of these occurrences makes the next child not a bechor, and these can happen at younger ages than Rabbi Yishmael listed.]

The *braisa* continues (with R’ Yehoshua’s own opinion): I do not, however, say like that, but rather, a goat which at six months discharged (*from the womb*) can give birth in its first year; that

a ewe which discharged within its first year can give birth in its second year.

Rabbi Akiva said: I have not gone as far as this (*to know whether an animal which discharged in six months can give birth in a year, so that even if it gives birth in the first year we are not certain that the offspring is a firstborn*), but what I hold is that whenever it is known that it had given birth (*previously*), the *Kohen* receives nothing; whenever it had never given birth, it (*the first male offspring*) belongs to the *Kohen*; and if it is uncertain (*if this is a firstborn or not*), it shall be eaten in its blemished state by the owner.

The *Gemora* asks: What is the point at issue between Rabbi Yishmael and Rabbi Yehoshua?

The *Gemora* suggests that the point at issue is as to whether a discharge (*from the womb*) exempts (*the future offspring from being a firstborn*). Rabbi Yishmael holds that a discharge does not exempt, whereas Rabbi Yehoshua holds that a discharge exempts?

The *Gemora* disagrees: If we actually saw it discharging, all would agree that a discharge exempts (*the future offspring from being a firstborn*). The point at issue, however, is whether we take into consideration the possibility of its having discharged. Rabbi Yishmael holds that we do not take into consideration the possibility of its having discharged, whereas Rabbi Yehoshua holds that we take into consideration this possibility.

The *Gemora* asks: But doesn’t Rabbi Yishmael take such a possibility into consideration? Didn’t Rava say above that it is clearer to say that Rabbi Yishmael follows Rabbi Meir’s position,

who takes the minority into consideration (*and therefore he should be concerned that the animal had a previous discharge*)?

The *Gemora* answers: Rabbi Yishmael takes (*the minority*) into consideration when the purpose is to rule stringently (*and therefore he rules that the offspring, even after the first year, is a questionable firstborn, for a minority of animals do not give birth in the first year, whereas if we went only by the majority, an animal born after the first year would be regarded as chullin, without any doubt as to whether it is a firstborn*), but when the purpose is to render a lenient ruling (*such as here, for if we were to take into consideration the minority that discharges and therefore regard the animal as a questionable firstborn even in its first year, that would be making the law of the firstborn more lenient, for if we would not be concerned about the minority, we would rule the animal to be a definite firstborn, which must be given to the Kohen and offered on the altar*), then he does not take into consideration the minority.

Alternatively, I may say as follows: Whether it is to rule leniently, or whether it is to rule stringently, he takes the minority into consideration; the difference of opinion, however, is whether an animal that discharges can subsequently give birth in its first year. Rabbi Yishmael holds that an animal which discharges does not subsequently give birth in its first year, and consequently, this one, since it gave birth, certainly did not discharge (*and it is therefore ruled to be a definite firstborn*). Rabbi Yehoshua, however, maintains that an animal which discharges can subsequently give birth in its first year (*and therefore, the offspring would be ruled as a questionable firstborn*).

The *braisa* had stated above: I do not, however, say like that, but rather, a goat which at six months discharged (*from the womb*) can give birth in its first year; that a ewe which discharged within its first year can give birth in its second year.

The *Gemora* asks: What is the difference between what he had on tradition (*where he said that a sign of offspring in small cattle is a discharge; in large cattle, the afterbirth; and in a woman, the signs are an embryo or an afterbirth*) and his own opinion

(*where he said that a goat which at six months discharged can give birth in its first year; that a ewe which discharged within its first year can give birth in its second year*)?

The *Gemora* answers: A difference would be in a case where the animal discharged at the end of six months (*after six months – at the beginning of the seventh month*), and they disagree regarding Ze'iri's ruling, for Ze'iri said: The period of discharge is not less than thirty days (*and during that time, it will not allow a male to mate with it*). What he had on tradition agrees with Ze'iri's ruling, whereas his own opinion does not agree with Ze'iri's ruling. [*If we would hold like Ze'iri, it would be impossible for the goat to give birth in the first year. This is because the gestation period of a goat is five months. The earliest it could have conceived was the beginning of the eighth month. Counting five months from there would lead us to the beginning of the thirteenth month; after the first year has concluded already.*]

Alternatively, you may say that they all accept Ze'iri's ruling, and the point at issue here, however, is whether an animal can give birth in abbreviated months (*before the due number of months is completed*). According to what we have on tradition, we do not say that it can give birth in abbreviated months, but according to his own opinion we maintain that it does give birth in abbreviated months. [*If five complete months are not necessary, it is possible that the animal discharged at the end of six months, and it did not conceive until the beginning of the eighth month, but nevertheless, it could have given birth before the conclusion of the first year.*]

Alternatively, you may say that they all agree that an animal cannot give birth in abbreviated months, and the point at issue here is, however, whether a portion of the day is considered as equivalent to the entire day. According to his own opinion, we say that a portion of the day is considered equivalent to the entire day, whereas according to what he had on tradition, we do not say that a portion of the day is considered as the entire day. [*Either we can say that a portion of the last day of the thirty-day discharge period is considered as an entire day, and therefore we can say that it conceived on that very day, and it*



so that the animal was born on the last day of its first year, even after allowing for five complete months for the pregnancy, or we can say that a portion of the last day of the five-month gestation period is considered as an entire day, and therefore we can say that the animal was born on the last day of its first year, even after allowing for five complete months for the pregnancy.]

The *braisa* had stated: Rabbi Akiva said: I have not gone as far as this (to know whether an animal which discharged in six months can give birth in a year, so that even if it gives birth in the first year we are not certain that the offspring is a firstborn), but what I hold is that whenever it is known (that it had given birth previously, the Kohen receives nothing; whenever it had never given birth, it belongs to the Kohen; and if it is uncertain, it shall be eaten in its blemished state by the owner).

The *Gemora* asks: What is the difference between Rabbi Akiva and Rabbi Yehoshua?

Rabbi Chanina of Sura answered: The difference between them is whether milk (the animal lactating) exempts (the future offspring from being a firstborn). Rabbi Akiva holds that milk exempts, for we follow the majority of animals, and the majority of animals do not give milk unless they have given birth. Rabbi Yehoshua, however, holds that there exists a minority of animals which give milk although they have not yet given birth.

The *Gemora* asks: But does Rabbi Yehoshua concern himself with the minority? Have we not learned the following in a *Mishna*: [If a childless woman had a mother-in-law who went overseas, we do not need to be concerned that the mother-in-law gave birth to a son, and now the woman will be subject to *yibum* to her husband's new brother.] If the mother-in-law went overseas when she was pregnant, we are concerned that she gave birth to a son, and the woman will be subject to *yibum*. Rabbi Yehoshua said: We are still not concerned, and she is permitted to marry anyone. And we explained the reason of Rabbi Yehoshua as follows: The majority of women conceive and bear viable children, while a minority miscarry, and, since all those who give birth, half bear males and half bear females, the minority of those who miscarry should be added to the half

of those who bear females, and so the males would constitute a minority, and a minority is not taken into consideration!?

The *Gemora* answers: Rather, reverse the names (so that it is R' Yehoshua who maintains that a discharge exempts, and the same applies to the giving of milk, whereas R' Akiva only exempts where it is definitely known that it had given birth, but when it is not known, even if it discharges or gives milk, it is a doubtful firstborn).

The *Gemora* notes: And it has been taught similarly in a *braisa*: Milk exempts from the law of the firstborn; this is the ruling of Rabbi Yehoshua. Rabbi Akiva, however, Says: Milk does not exempt. (20a – 20b)

## INSIGHTS TO THE DAF

### ***Chazakah is not an all-inclusive solution for all doubts***

A serious question bothered the greatest authorities. Tosfos on our *sugya* (s.v. *Chalav*) and on other *sugyos* (Yevamos 119, s.v. *Machvarta*; Chulin 11b, s.v. *LeRabbi Meir*) discuss the halachah of a doubtful firstborn of a pure animal – i.e., an animal gave birth and we don't know if this was the first time. If it were surely known that it was a firstborn, its owner should give it to a *kohen* as it is sanctified with the sanctity of the firstborn. Tosfos mention that the matter has two points of view and the aspect to be lenient is based on a few reasons, including that the offspring is assumed to be *chulin* (mundane): "Set the offspring upon its previous *chazakah* that it is not a firstborn, as it was *chulin* in the womb." In other words, since we have a doubt, we should determine the status of the doubtful article according to the last time when its status was clear. A firstborn becomes sanctified only when it is born. Therefore, we determine that its status is that of a mundane animal without sanctity, like it was while still a fetus (in practice, it is impossible to use this *chazakah* in our case because the mother has the *chazakah* that it hasn't given birth; see *ibid*).

**A doubtful kohen must be strict:** An explicit Gemara in Yevamos 100b apparently contradicts this rule. A person who doesn't know if his father was a *kohen* or a *Yisrael* has a doubtful status. The Gemara rules that he should behave strictly – for example, concerning *terumah*, he is not permitted to eat it, but he should be wary of the impurity of the deceased like a *kohen*.

Apparently, a kohen's fetus is not sanctified with the sanctity of the *kehunah*, which only takes effect when he is born. Hence, its status is identical to that of a calf that is a doubtful firstborn: both are not sanctified as long as they haven't been born. Therefore, just as Tosfos rule that a doubtful firstborn is not sanctified because as long as we have a doubt, we don't change its last known status, as a fetus, we should similarly determine that this doubtful *kohen* should keep his last known certain status as a fetus, not sanctified with the sanctity of a *kohen*. Why, then, does his definition remain in doubt?

**The difference between a kohen's fetus and an animal's:** HaGaon Rabbi Yerachmiel Gershon Edelstein zt"l, the Rabbi of Shumayetz, explains the issue finely (*Chidushei Ben Aryeh*, II, 21). There is a prominent difference between the fetuses. Both are not sanctified till their birth but for utterly different reasons. An animal's firstborn becomes sanctified because it is the first **to leave the womb**. That is the reason that until it is born, it is not sanctified. On the other hand, a fetus of a *kohen* bears all the characteristics required for the sanctity of *kehunah* and lacks none of them but in his present condition he follows his mother's halachic status.

Now we shall examine the *chazakah* by which Tosfos ruled that a doubtful firstborn is surely mundane. The logic at the basis of this *chazakah* is that as long as we don't know if the status of an article changed, then that certain definition adheres to it and continues to determine its status even if a doubt arises.

**The *chazakah* leaves its impression that the calf is not firstborn:** Indeed, if we examine the fetus of a pure animal, this definition fits well. When it was a fetus, it **in essence** wasn't a firstborn as it didn't leave the womb and this definition remains

with it also after its birth: it is not a firstborn as it could be that its mother already gave birth and it is not the first to leave her womb. We are thus left with the same definition and the same reason for exemption all the way.

**We cannot say that the doubtful kohen remains a fetus:** However, the fetus of a *kohen* does not bear the sanctity of *kehunah* merely because it is a fetus. Can we give him this label also after his birth? Is there any logic in claiming that just as he lacked sanctity when he was a fetus, this situation should continue forever? (See Vol. 264 in the article "The firstborn in our era" the statement of HaGaon Rav Y. Kanterovitz; according to this explanation, it is clear that the *chazakah* of a firstborn before its birth doesn't help in case of a doubtful sale).

## DAILY MASHAL

### *In Rabbi Meir's Merit*

Once Rabbi Tzvi Hirsh of Ziditchov became ill till he was bedridden and his situation became worse. When he was almost about to die, he immediately gave a coin for charity and prayed, "G-d of Meir, answer me." The danger soon passed and he became healthy. He later explained his action: "Most of those on a deathbed are doomed to die" and he therefore prayed, "G-d of Meir, answer me" as Rabbi Meir takes into account the minority (*Al HaTzadikim* by the Munkacser Rebbe).