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Bechoros Daf 46

Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

Daf Notes is currently being dedicated to the neshamot of

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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

MISHNAH: There is one who is [counted as] a bechor [with respect to] inheritance¹ but not with respect to redemption from a Kohen;² a bechor with respect to redemption from a Kohen but not a bechor [with respect] to inheritance; a bechor [with respect both] to inheritance and to redemption from a Kohen; and [as] a bechor [in respect neither] to inheritance nor redemption from a Kohen.

Which is a bechor [in respect] of inheritance but not of redemption from a Kohen? One which follows an untimely birth whose head came forth alive³ or one born in the ninth month whose head came forth dead,⁴ or when a

woman discharges something like an animal, beast or bird.⁵ These are the words of Rabbi Meir. But the Sages say: [it is not considered an opening of the womb] until [the discharge] has the form of a human being.⁶

If [a woman] discharges a sandal⁷ like fetus or a placenta⁸ or a fetus⁹ having an articulated shape, or if an embryo came out by pieces,¹⁰ [the infant] which follows after them is a bechor [with respect] to inheritance but not a bechor to redemption from a Kohen.

¹ Receiving a double share.

² Who receives five selas for the redemption.

³ In a case of twins, one a non-viable child and the other a viable one, where the former put forth its head alive and withdrew it and its companion anticipated it in coming out, the latter child is considered a first-born with the privileges of inheritance, the former not having prejudiced it in this respect. For although the emergence of the head of an embryo is considered a genuine birth, yet since Scripture calls the first-born who inherits: The beginning of his strength which is interpreted to mean, a child over whose death his father's heart is grieved, and since the untimely birth cannot live, the condition of inheritance i.e., being a first-born over which a father grieves, does not exist. The latter offspring, however, is exempted from the redemption from a Kohen, for what matters here is the opening of the womb, and this was done by the first offspring.

⁴ And was then withdrawn, the companion coming out subsequently. The first offspring therefore exempts the latter from

redemption, but since it is dead, the latter offspring is the first-born as regards inheritance.

⁵ The discharge is regarded as the opening of the womb to release the second offspring from redemption, but it is of no importance as regards inheritance.

⁶ And if not, the offspring which follows is a first-born also as regards redemption, for only the issue of the actual form of a human being is considered an opening of the womb exempting succeeding offspring from the law of redemption.

⁷ Not having any shape of limbs whatever.

⁸ There is no placenta except there be an embryo, only it has become mashed.

⁹ Together with its sac.

¹⁰ Limb by limb, but since the whole came forth, it is regarded as an opening of the womb. But if the head of the infant alone came forth by pieces, this is not considered an opening of the womb if its companion came forth afterwards before the majority of the limbs and pieces managed to emerge, and the latter offspring is regarded also as a first-born to be redeemed from a Kohen.

If one who never had children previously married a woman who had already given birth,¹¹ even if she had given birth when she was a Canaanite slavewoman, but is free [now], or [had borne a child] when she was an idolatress but has since become a convert, if after coming to the Israelite she bears to him, [the infant] is also considered a bechor [with respect] to inheritance but not a bechor to redemption from a Kohen.¹² Rabbi Yosi HaGellili says however: [the infant] is a bechor [with respect] to inheritance and also one who must be redeemed from a Kohen, because it is said in the scriptures: who opens the womb among the children of Israel, [intimating] until the opening of the womb is '[of the children] of Israel'.

If one had children already and married a woman who had never given birth previously or if she became a convert when pregnant or if she was freed when pregnant and she gave birth; [if there was some confusion between] her and a Koheness,¹³ [between] her and a Levite's daughter,¹⁴ [between] her and a woman who had already given

birth,¹⁵ and likewise [if a woman] who did not wait three months after her husband's death, married and gave birth and it is not known if the infant was born in the ninth month since the death of the first [husband] or in the seventh month since she married the second, it is a bechor to redemption from a Kohen¹⁶ but not a bechor [with respect] to inheritance.¹⁷

GEMARA: Said Shmuel: [The putting forth of] the head of an untimely birth does not release [the offspring which follows from redemption from a Kohen].¹⁸ What is the reason? [Scripture says]: All in whose nostrils was the breath of life, [intimating] that wherever there is the breath of life in the nostrils, the head is of importance [exempting the successor from redemption], but otherwise, the head is not considered of importance.

We have learned in our Mishnah: One which follows an untimely birth whose head came forth alive or one born in the ninth month whose head came forth dead. At any rate, the Mishnah says: 'whose head'?¹⁹ - 'Whose head' means

¹¹ The infant in this case is a first-born in respect of inheritance but not of redemption, since the right of inheritance is determined by the father, Scripture saying: 'The beginning of his strength', whereas for redemption it is the opening of the womb which is necessary.

¹² Since he did not have children previously, the present infant is a first-born as regards inheritance, but is not a first-born to be released by redemption. As the Jewish woman, the gentile woman and the maid-servant have already had children.

¹³ If an Israelite woman giving birth for the first time and a Koheness giving birth for the first time had their offspring mixed and it was not known which was the child of the Israelite. The offspring of a Kohen is exempt from the law of redemption.

¹⁴ A daughter of a Levite or a Levite's wife is also exempted from redeeming a son.

¹⁵ If the child of a woman who had already given birth previously was mixed up with a first-born infant, and the latter could not be identified, we are here informed that the husband of the woman

who gave birth for the first time is yet obliged to give five selas redemption money to the Kohen, for at all events he has a first-born male son somewhere, whereas in the case of inheritance as he does not know who is the first-born, there can therefore be no first-born privileges of inheritance.

¹⁶ When he grows up, he redeems himself.

¹⁷ Because it is not known whose first-born he is and from what inheritance he should take a double portion.

¹⁸ If an embryo in its eighth month put forth its head alive and withdrew it and its twin companion then anticipated it in coming forth, the latter is a bechor to be redeemed from the Kohen, because a non-viable birth does not exempt its successor from redemption until the head and the greater part of the body came forth.

¹⁹ Implying that an untimely birth releases his successor from redemption with the putting forth of the head, thus contradicting the opinion of Shmuel.

its greater part.²⁰ Why then not say its greater part? — By rights [the Tanna of our Mishnah] should have stated ‘its greater part’. But as he had to state in the second clause ‘or one born in the ninth month whose head came forth dead,’ and he wishes to argue that the reason is because its head was dead but that if its head was alive, the one who follows is not even a bechor [with the privileges] of inheritance,²¹ he therefore also states in the first clause ‘whose head’.

Now what then does the Mishnah inform us? That since he put forth his head it is considered a birth.²² But have we not learned this already: If the embryo put forth its head, although he withdrew it again, it is considered a birth?²³ And should you reply that [the Tanna] teaches us this

²⁰ But where only the embryo's head emerged, it does not exempt the one who follows from redemption from a Kohen.

²¹ Now if the Tanna of the Mishnah had said ‘its greater part came forth dead’ in the second clause, I should have inferred that if the greater part came forth alive then the latter offspring would not even be a first-born in respect of inheritance, but I could not have deduced that where the head came forth alive the latter offspring loses the privilege of inheritance, which is a well-established rule. It is therefore for this reason that both in the first and second clauses mention is only made of the head, although in the second clause itself the ‘head’ means the head together with the greater part of the body.

²² If the Mishnah means specifically the head and so teaches us that the head of an untimely birth releases the offspring which follows from redemption, in the second clause it mentions the head on account of the first clause. But if you maintain that the mention of the head in the first clause is not strictly meant, since the head does not release from redemption in the case of non-viable births, then from the second clause we are enabled to make the following inference: The reason why it is not a first-born of inheritance is because its head came forth dead, but if the head came forth alive the successor is not a first-born as regards inheritance, for since an embryo in the ninth month is not an untimely birth, the emergence of the head, even if it is again withdrawn, is considered a genuine birth.

ruling²⁴ [separately] both for the case of an animal and for that of a human being, because we do not infer the case of a human being from that of an animal, as the latter has no forepart of female genitals,²⁵ and again we do not infer the case of an animal from that of a human being, as the latter's full face is important — have we not learned this as well in a Mishnah: If an infant came forth in the natural way,²⁶ [it is not considered a birth] till the greater part of its head comes forth? And what is the greater part of its head? When its forehead comes forth.²⁷ Shall we then say that this refutes Shmuel? — It is indeed a refutation.²⁸

Rabbi Shimon ben Lakish said: The [emergence of] forehead is regarded as birth in all cases except in that of inheritance.²⁹ What is the reason? — But he shall

²³ And therefore the shechitah of the mother does not make the offspring permissible to be eaten.

²⁴ That the coming forth of the head constitutes a birth.

²⁵ Lit., ‘ante-chamber’. Its vagina does not lie between the feet and therefore the coming forth of the head is accounted a birth, for it is open, whereas in the case of a woman, since the legs cover it, the putting forth of the head is not accounted a birth.

²⁶ I.e., the head coming first and not the legs.

²⁷ And although the head was withdrawn, and the infant is not born till the next day, we count the period of pure and impure days from the first day when the forehead came forth. Therefore there is no need even in the second clause of the Mishnah to teach us that the putting forth of the head in a human being constitutes a birth, as this is already stated in the Mishnah in Niddah. Why then does the first clause in our Mishnah say ‘its head’? Therefore it must not be on account of the second clause, and the reference to the head in the first clause is meant to be taken exactly. Therefore we can deduce from this clause that the emergence of the head of a non-viable birth is considered a birth, exempting the offspring which follows from redemption, contrary to the opinion of Shmuel.

²⁸ As assuredly the reference to the head in the first clause is meant to be taken in its exact sense.

²⁹ I.e., the one who follows is the first-born with the privileges of inheritance, unless the face of the first infant came forth.

acknowledge the bechor, says the Merciful One. But Rabbi Yochanan says: Even as regards inheritance.³⁰ What does 'in all cases' imply? — It implies what our Rabbis have taught [as follows]: In the case of a convert woman, if the forehead of her infant came forth from the womb when she was an idolatress and she subsequently became a convert,³¹ we do not subject her to periods of impurity and purity³² and she does not bring the offering for confinement.

An objection was raised: [Scripture says]: But he shall acknowledge, [this intimates] the recognition of the face.³³ And what is a recognizable face? The full face with the nose!³⁴ — Read: 'Unto the nose'. Come and hear: Evidence may not be given [in identification of a corpse]³⁵ except by [proof afforded by] the face with the nose. Read: Unto the nose. Come and hear: No evidence may be given [by identification of] the forehead without the face or the face without the forehead; it must be by both together with the nose. And Abaye said, or as some say, Rav Kahana: Where is the scriptural authority for this? [Scripture says]: The show of their countenance' does witness against them.³⁶ It is different with regard to testimony on behalf of a woman,³⁷ as the Rabbis made the law stringent in her case.³⁸ But have the Rabbis indeed

made it stringent? Have we not learnt: If they were generally presumed established to permit a woman to re-marry on the evidence of a witness testifying to what he heard from an eye-witness, or from a woman, from a slave or a slavewoman? — The Rabbis were only lenient in the end³⁹ but were not lenient in the beginning.⁴⁰ And if you prefer [another solution] I may say: [The phrase] 'But he shall acknowledge' is one thing and the phrase 'The show of their countenance' is another.

³⁰ The coming forth of the forehead is regarded as a birth even for this purpose.

³¹ Before the face and the other part of the body came forth.

³² The period when discharges of blood make her impure and the period when such discharges do not make her impure. The reason is because the putting forth of the forehead is regarded as a birth and therefore she was confined when she was an idolatress, in which state she is not subject to the laws of confinement.

³³ Whoever's face is first recognized is the bechor as regards inheritance.

³⁴ There is consequently here a difficulty regarding Rabbi Yochanan's view, for we see that the putting forth of the forehead alone is not regarded as a birth.

³⁵ Of a dead husband, so that the woman can re-marry.

³⁶ Scripture therefore teaches us that the showing of the full face is alone counted as an identification. There is again a difficulty here as regards Rabbi Yochanan's opinion.

³⁷ To declare her a widow and enable her to marry again.

³⁸ And therefore the full face must be recognized, but elsewhere, as in the case of a birth, only the forehead might be sufficient.

³⁹ Once the body of the husband is claimed to have been clearly identified, the Sages were lenient as regards who gave the evidence to that effect.

⁴⁰ The actual identification of the dead husband must be clear beyond the peradventure of a doubt.