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**Mishna**

One who is at the throes of death or is going out to be put to death cannot be the subject of a *damim* vow, nor be the subject of an *erech* vow. Rabbi Chanina ben Akavia said: He may be made the subject of an *erech* because his worth is fixed (*in the Torah*). Rabbi Yosi said: He may vow regarding another’s worth, declare an *erech* vow, and consecrate, and if he caused damage, he is obligated to make restitution. (6b)

**No Value at the Time of Death**

The *Gemora* asks: It is understandable that one at the throes of death cannot be subject to a *damim* vow, because he has no monetary value; nor can he be made the subject of an *erech* vow, because he is not fit for “standing and evaluating.” But regarding one who is about to be put to death, while it is true that he cannot have his worth vowed since he has no monetary value, but why should he be unfit to be made the subject of an *erech* vow?

The *Gemora* answers by citing a *braisa*: From where do we know that if one, who is about to be put to death, says, “The *erech* of myself is upon me,” he has said nothing? It is written: *Any condemned one . . . shall not be redeemed*. One might have thought that this is true even if he pronounced this vow before the sentence was finalized, therefore it is written: *from a man*, i.e., but not all men.

The *Gemora* asks: But what will Rabbi Chanina ben Akavia, who holds that he may be made the subject of an *erech* vow because his worth is fixed (*in the Torah*), do with this verse?

The *Gemora* answers: He needs this for that which was taught in the following *braisa*: Rabbi Yishmael the son of Rabbi Yochanan ben Berokah said: Since we find that those who are to be put to death by the hand of heaven (*if his mu’ad ox killed a person*) can give money and thereby obtain atonement, as it is written: *when an atonement payment shall be assessed upon him*; I might have thought the same should be applied to those who are to be put to death by the hand of man (*perhaps you should take money from him and thus exempt him from the death penalty*), therefore it is written: *Any condemned one . . . shall not be redeemed*. From here I may derive this teaching only with regard to severe penalties of death – for those which even when committed unintentionally, no atonement is possible (*such as one who curses God or his father*); But from where do I know that it applies also to lesser penalties of death - for those which at least when committed unintentionally, atonement is possible (*such as one who desecrates the Shabbos*)? It is therefore written: *Any condemned one*. (6b)

**Damaging at Execution Time**

The *Mishna* had stated: Rabbi Yosi said: He may vow regarding another’s worth, declare an *erech* vow (*and consecrate, and if he caused damage, he is obligated to make restitution*).

The *Gemora* asks: But did the *Tanna Kamma* say that he may?

The *Gemora* explains: Rather, there is no dispute whatsoever that he may vow regarding another's worth, declare an *erech* vow and consecrate; the dispute is only regarding the case of him damaging: the *Tanna Kamma* holds that if he had caused damage he is not obliged to make compensation, whereas Rabbi Yosi holds that he is obligated to make compensation when he has caused damage.

Rav Yosef explains their dispute: They are disputing whether an oral debt (*such as one who damages*) can be collected from the heirs; the *Tanna Kamma* holds that an oral debt cannot be collected from the heirs, whereas Rabbi Yosi maintains that it can be collected.

Rabbah said: All agree that an oral debt cannot be collected from the heirs, and what they are here arguing about is a debt which is written in the Torah (*such as the obligation to pay for damages*); the *Tanna Kamma* holds that a debt arising from that which is written in the Torah is not to be considered equal to one that is written in a document, while Rabbi Yosi maintains that it like one acknowledged in a document.

There are those who taught this (*dispute between Rav Yosef and Rabbah*) regarding the following matter: If one, who was going out to be executed, wounded others, he is obligated to pay for the damages, but if others have wounded him, they are exempt (*for he has no value at this time*). Rabbi Shimon ben Elozar said: Even if he has wounded someone he is exempt, because he may not be returned to stand before a court (*for that would cause a delay in his execution*).

The *Gemora* asks: From this it would appear that the *Tanna Kamma* holds that he may be returned to stand before a court (*which cannot be, for this would delay his execution*)!?

Rav Yosef explains their dispute: They are disputing whether an oral debt (*such as one who damages*) can be collected from the heirs; the *Tanna Kamma* holds that an oral debt

may be collected from the heirs, whereas Rabbi Shimon ben Elozar maintains that it cannot be collected.

Rabbah said: All agree that an oral debt cannot be collected from the heirs, and what they are here arguing about is a debt which is written in the Torah (*such as the obligation to pay for damages*); the *Tanna Kamma* holds that a debt arising from that which is written in the Torah is to be considered equal to one that is written in a document, while Rabbi Yosi maintains that it is not like one acknowledged in a document.

The *Gemora* asks from the following *braisa*: If one was digging a pit in a public domain, and an ox fell upon him and killed him, the owner of the ox is exempt (*from paying kofer, for it was completely the digger's fault*), and even more so, if the ox should die, then the heirs of the owner of the pit must repay the ox's value to the owner of the ox! [*Evidently, the heirs must pay for damages!*?]

Rav Il'la answered in the name of Rav: We are dealing with a case where the owner of the pit stood before the court (*and was found liable to pay for the damages; this then is regarded as an obligation written in a document and the heirs are obligated to pay*).

The *Gemora* asks: But the *braisa* stated that the ox killed him!?

Rav Adda bar Ahavah answered: It means that he was rendered a *tereifah*.

The *Gemora* asks: But didn't Rav Nachman say that Chaga taught this *braisa* to say that the ox killed him and buried him (*so obviously he didn't stand before a court*)!?

The *Gemora* answers that the law is that the heirs are obligated to pay where the judges were sitting at the opening of the pit (*and ruled that he is liable before he died*).

The Gemora cites a *braisa*: If one is going out to be executed, we sprinkle for him the blood of a *chatas* offering or the blood of an *asham* offering (to obtain for him atonement for a different sin; he is not considered dead in that regard). But if he sinned at that time, we are not obliged to attend to him, for that, said Rav Yosef, would delay his execution.

Abaye asks: If so, then concerning the first part of the *braisa* as well (we should not sprinkle for him the blood of his offering)!?

The Gemora answers: That refers to the case where his offering was slaughtered already (and the sprinkling of the blood is an inconsequential delay). (6b – 7a)

### Mishna

If a (pregnant) woman is going out to be executed, we do not wait for her until she gives birth (for the fetus and the mother are regarded as one body), but if she had already sat on the birthstool (which Rashi learns is referring to a case where she went into labor before she was sentenced), we wait for her until she gives birth (for then, the fetus is not regarded as being part of the mother).

If a woman has been executed, one may benefit from her hair. If an animal has been put to death it is forbidden for benefit. (7a)

### Status of a Fetus

[The Mishna had stated: If a (pregnant) woman is going out to be executed, we do not wait for her until she gives birth.]

The Gemora asks: But this *halachah* is obvious, for the fetus is regarded as her body (so why does the Mishna need to teach this)?

The Gemora answers: It is necessary to teach it, for one might have thought that since the Torah writes (concerning a case where two fellows were fighting and one fellow inadvertently

struck a pregnant woman causing her to abort the fetus): as the woman's husband shall cause to be assessed against him (and the one who killed the babies must pay the husband) – perhaps the fetus is the husband's property, and therefore (in the Mishna's case, where the pregnant woman is about to be executed) he should not be deprived (of 'his' fetus); the Mishna informs us that this is not so.

The Gemora asks: But perhaps that is the law?

Rabbi Avahu answered in the name of Rabbi Yochanan: The Torah says (regarding adultery): And also both of them shall die – that includes the child (that the fetus should die when the woman is sentenced to death).

The Gemora asks: But this verse is required to teach us that they (the adulterer and the woman) must both be equal (that they will not be punished unless both of them are adults); these are the words of Rabbi Yoshiyah?

The Gemora answers: We derive it from the word 'also.'

The Mishna had stated: But if she had already sat on the birthstool, we wait for her until she gives birth.

The Gemora explains the reason for this: As soon as it moves, the fetus is not regarded as being part of the mother. (7a)

### Who Dies First?

Rav Yehudah said in the name of Shmuel: If a (pregnant) woman is about to be executed, one strikes her against her womb so that the child may die first, to avoid her being disgraced (for if it would remain alive, it would exit from the dead mother's womb).

The Gemora notes: This means to say that (if we would not do this), she would die first!

The Gemora asks: But we have an established principle that

the child dies first, for we learned in a *Mishna*: A child who is one day old inherits (*from his father*) and bequeaths (*to his inheritors*). And Rav Sheishes explains this to be referring to the following case: The child is inheriting the estate of his mother in order to transmit it (*after his death*) to his paternal brothers. This can only happen when he is one day old, but a fetus cannot. What is the reason? It is because the fetus dies first (*when the pregnant mother dies*), and a son in the grave cannot inherit from his mother in order to transmit the inheritance to his paternal brothers (*but if the mother would die first, the fetus would inherit in accordance with Rav Sheishes in order to transmit the inheritance to its paternal brothers*). [Evidently, the fetus dies first; why was it necessary to strike the mother?]

The *Gemora* answers: The fetus dies first when the mother dies a natural death, because the child's life is very frail, the 'drop' (*of poison*) from the Angel of Death enters and cuts its vital organs, but in the case of death by execution, she dies first.

The *Gemora* asks: Do you mean to say that (*when the pregnant mother dies*) it dies first? But surely there was a case when (*a fetus was born after its mother died*) it made three convulsive movements (*indicating that it did live for some time*)?

The *Gemora* replies: Those were only muscle spasms, similar to those of the tail of the lizard which moves convulsively (*even after it has been cut off*). (7a – 7b)

### **Desecrating Shabbos for the Fetus**

Rav Nachman said in the name of Shmuel: If a woman, who has been sitting on a birthstool, died on *Shabbos*, we may bring a knife and cut her womb open to take out the child.

The *Gemora* asks: Is that not obvious? What is he doing? He is merely cutting flesh (*and there is no liability unless one cuts the flesh of a living being, which causes bleeding*)?

Rabbah answers: It is necessary to permit the carrying of the knife by way of a public domain.

The *Gemora* asks: But what is he informing us? That in case of doubt, one may desecrate the *Shabbos*!? Surely, we have learned already in a *Mishna*: If a building falls down upon a person and there is doubt whether he is there or not, or whether he is alive or dead, whether he is a Canaanite or a Jew, one may remove the rubble from above him (*which involves a Biblically forbidden labor*)!?

The *Gemora* answers: You might have thought that there permission was given because the person in question had a legal presumption of having been alive, but here, where the fetus never had such a presumption, one might say that the desecration of *Shabbos* is forbidden; therefore we are informed that it is. (7b)

### **Hair of a Dead Person**

The *Mishna* had stated: If a woman has been executed, one may benefit from her hair.

The *Gemora* asks: But why? These things (*the hair of a dead person*) are forbidden for benefit!?

Rav said: The *Mishna* is referring to a case where she had said, "Give my hair to my daughter."

The *Gemora* is puzzled: But if she had said, "Give my hand to my daughter," would we have given it to her? [No, we wouldn't! So why is her hair different?]

Rav said: The *Mishna* is referring to a hairpiece (*which, if she would not have said anything, would be forbidden for benefit, for it was an accessory to her body; however, if she specifically declared beforehand that it should go to her daughter, it is not recognized as being part of her body*).



The *Gemora* asks: Now, the reason for this permission is that she had said, "Give it," but if she had not said anything, it would have been regarded as part of her body and forbidden for benefit; but this issue was questioned by Rabbi Yosi the son of Rabbi Chanina, for Rabbi Yosi the son of Rabbi Chanina inquired: What is done with the hair of the righteous women within an *ir hanidachas* (*subverted city*)? And Rava explained that the inquiry refers to a hairpiece.

The *Gemora* answers: The inquiry is necessary only if it is hanging on a nail (*it is not being worn and attached to her; it is regarded as other possessions of the righteous within the town, and destroyed; or perhaps, since it is worn and taken off, it is as her garments*); but here, the wig is attached to her head, therefore the reason it is permitted is because she said, "Give it," but if she had not said anything, it would have been regarded as part of her body and forbidden for benefit.

This explanation appeared difficult to Rav Nachman bar Yitzchak, for it should be similar to the law concerning an animal (*for the Mishna juxtaposes the two laws*); therefore, just as there, its hair is part of the body, here too it should be part of the body?

Rather, said Rav Nachman: In the case of the woman, it is the actual death which renders the body prohibited for any benefit (not the mere sentencing; and since hair does not die, it remains permitted), whereas in the case of the animal, the verdict (*the pronouncement of the death sentence*) renders it prohibited for any benefit (and therefore the hair is forbidden).

The *Gemora* cites a supporting *braisa* for each opinion. (7b)

WE SHALL RETURN TO YOU, HAKOL MA'ARICHIN

## INSIGHTS TO THE DAF

### ***Violating the Shabbos to Save a Life***

The *Gemora* states that one can violate the Shabbos if there is a possibility that one's life will be saved. The *Aruch HaShulchan* in Orach Chaim 328:3 notes that there is a debate amongst the Rishonim if the violation of Shabbos is totally permitted or if the laws of Shabbos are merely overridden because of the life-threatening situation. This debate would be analogous to the ruling that the laws regarding *tumah*, ritual impurity, are suspended regarding the community. The *Gemora* stated earlier that a *korban* belonging to the community can be offered even if the *Kohanim* are *tamei*. The *Gemora* records a debate regarding the need to find a *Kohen* who is *tahor* to perform the *avodah*. The argument is predicated on the question if the laws of *tumah* are totally permitted or if they are merely overridden because of the current situation. The same rationale can be applied with regard to saving a life on Shabbos. If saving a life is totally permitted, it is not necessary to seek a means of saving a life in a manner that the Shabbos would not be violated. If, however, we say that saving a life merely overrides the Shabbos prohibitions, then one must first ensure that there is no other means of saving the person's life before one violates the Shabbos. The commentators wonder according to the opinion that maintains that saving a life on Shabbos is totally permitted, why is there a *halachah* that one must seek the more lenient prohibition?

### ***When a Dead Ewe Gave Birth to a Live Lamb***

One day a truck delivered a pregnant ewe at Shaarei Tzedek Hospital in Yerushalayim and a large team of doctors and nurses accompanied it to an operating room. It was a research program about determining the moment of death.

This halachic issue is difficult and complicated and we do not attempt to solve it in this article but we shall address one point concerning it, stemming from our *sugya*. The basic question about determining the moment of death is according to which signs may we determine if a patient is alive or dead.

**Life after brain death:** Someone wanted to prove from our *Gemora* that a person is still not defined as dead even after complete brain death. Our *Gemora* explains that as a fetus has no independent life but derives its food and life from its mother, it cannot be that the mother dies and the fetus continues to live – “the fetus dies first”. Thus when a pregnant woman stops living, her fetus dies immediately with her. But in our era there have been cases where women suffered from terminal diseases and even died a brain death with no apparent signs of life aside from the breathing machines which activated the body’s systems yet the doctors succeeded in delivering a healthy infant. We thus have solid proof that even a person with brain death is considered alive by the Torah for if not so, how can those fetuses stay alive?

**The deceased’s body functions with the aid of machines:** However, some rejected this proof with the claim that although a fetus can’t continue to live after its mother’s death, if the mother is attached to life-supporting machines, the fetus continues to live by their force even after her death. They asserted that the fetus is merely like an infant in an incubator and therefore there’s no proof that this situation is defined as life according to *halachah*.

The issue was brought before HaGaon Rabbi Shlomo Zalman Auerbach zt”l (Responsa *Minchas Shlomo*, 2nd edition, II, 86), who examined the idea and approved the following experiment to prove or disprove this assumption.

A pregnant ewe was brought to the hospital and attached to breathing machines when the aim was to end its life for sure according to all the criteria and see if her fetus would live. Due to the lack of experience in delivering a lamb in this rare condition, 15 experts gathered from the fields of neurology, cardiology, gynecology, physiology, veterinary medicine, anesthesiology and so on. Everyone voluntarily devoted long hours to clarify the halachic question. Once it was determined that the ewe was dead, the doctors waited 25 minutes and took out the fetus, live and healthy! It was proven beyond all doubt that breathing machines can supply the body with its needs to enable it to continue to function though the body may not be alive.

As we said, this experiment was performed to clarify if a dead ewe can pass life to its fetus by means of machines attached to it. Once it was proven that it was possible, the proof that there’s life even after brain death was negated, as all those children born after their mothers’ death get their life from medical instruments.

The proof was negated and therefore the doubt remained. Indeed, Rabbi Auerbach emphasizes: “I shall stand by my watch, as I wrote before, that one mustn’t rely for sure on medical science as long as there’s a heartbeat though it is almost certain that it is due only to the machine.”