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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

### **A Chatzitzah in a Window**

The *Gemara* asks a question (on *Shmuel*, who maintains that food will not diminish the size of an opening since there is a good possibility that it will be removed to be eaten; the *tumah* in one room will be transmitted to the other room through the window which is larger than one *tefach* by one *tefach*) from a *Baraisa*. The *Baraisa* states: Grass that was uprooted, grass that grew naturally by a window sill, pieces of cloth less than three by three fingers, limbs and/or flesh that is dangling off a domestic or wild animal or a bird, a gentile, a child who is eight months old, salt, pottery, and a *sefer torah* that are on a window sill all lessen the amount of space in the window sill regarding impurity (and the *tumah* cannot pass through). However, snow, ice, types of hail, and water do not lessen the amount of space. Isn't grass fit for his animal? [This means that he probably will remove it, and it therefore should not lessen the space according to *Shmuel*.]

The *Gemara* answers: The case is where the grass is poisonous.

The *Gemara* asks: The *Baraisa* also says a case where the grass grew by itself on the window sill. Won't he take such grass away, as it weakens the wall?

Rabbah answers: The wall is part of a ruin.

Rav Pappa answers: The case is regarding a normal house, where the grass bend only towards the wall (into the area

of the window sill), but actually grow three *tefachim* away from the wall (and therefore does not cause any damage).

The *Gemara* asks: The *Baraisa* also states a case of pieces of cloth that are less than three by three fingers. Aren't they fit to be a patch on someone's torn clothing (and they therefore will be removed)?

The *Gemara* answers: The case is where the pieces of cloth are too thick.

The *Gemara* asks: They can still be used for a bloodletter as a bandage!?

The *Gemara* answers: It is scratchy cloth that is not suitable to be used as a bandage.

The *Gemara* asks: If it is scratchy cloth, why does the *Baraisa* say it is less than three by three fingers (the size of clothing which would be susceptible to *tumah*)? Why doesn't it say it was less than four by four *tefachim* (the size of material that would be susceptible to *tumah* for a bag)?

The *Gemara* answers: It is not really that type of material, but similar to it (scratchy, but not suitable for a bag).

The *Gemara* asks: The *Baraisa* discussed a limb that was hanging off an animal. Won't the animal run away?

The *Gemara* answers: The case is where the animal is tied.



The *Gemara* asks: He will probably slaughter it!?

The *Gemara* answers: The case is where it is a non-kosher animal.

The *Gemara* asks: He will probably sell it to a gentile!?

The *Gemara* answers: It is a weak animal (*that nobody wants to buy*).

The *Gemara* asks: He will probably cut the limb off and throw it to (*feed to*) his dogs!?

The *Gemara* answers: Being that it will pain the animal, he won't do this (*as it is forbidden*).

The *Gemara* asks: The *Baraisa* discussed the limb of a bird on the windowsill that was loosely attached. Won't the bird fly away?

The *Gemara* answers: It is tied there.

The *Gemara* asks: He will probably slaughter it!?

The *Gemara* answers: The case is where it is a non-kosher animal.

The *Gemara* asks: He will probably sell it to a gentile!?

The *Gemara* answers: It is a *kalnisa* (*a weak type of bird*).

The *Gemara* asks: He will probably give it to a child (*as a pet*)!?

The *Gemara* answers: It scratches (*and therefore he will not give it to the child*).

The *Gemara* asks: A *kalnisa* doesn't scratch!?

The *Gemara* answers: It is similar to a *kalnisa* (*it is weak and it scratches*).

The *Gemara* asks: The *Baraisa* discussed a gentile who sits on a windowsill. Won't he go away?

The *Gemara* answers: The case is where he is tied up.

The *Gemara* asks: Won't his friend come and free him?

The *Gemara* answers: The case is where he is a leper (*and his friend's will not come near him to untie him*).

The *Gemara* asks: His friend who is a leper might come and free him!?

The *Gemara* answers: Rather, the case is referring to someone who is tied up by the government.

The *Gemara* asks: The *Baraisa* mentioned an infant born at eight months in the pregnancy (*which Chazal determined will clearly not live*). Won't his mother come and take him away?

The *Gemara* answers: The case is on *Shabbos* (*where he is muktzah*). This is as stated in the *Baraisa*: An eight month (*pregnancy*) baby is like a stone, and is *muktzah* on *Shabbos*. However, his mother may stand over him to nurse him because of the danger (*of her becoming too full with milk*).

The *Gemara* asks: The *Baraisa* mentions salt. Isn't salt useful (*and therefore he will take it away*)?

The *Gemara* answers: It is bitter salt.

The *Gemara* asks: It can still be used to process animal skin!?



The *Gemara* answers: The case is where it is mixed with thorns (*and it will hurt him if he tries to mix it into the skin*).

The *Gemara* asks: Being that it causes damage to the wall, he will take it away!?

The *Gemara* answers: It is sitting on earthenware.

The *Gemara* asks: The earthenware itself should then serve as the *chatzitzah* (i.e. *to fill up the space of the window and block the impurity from spreading*)!?

The *Gemara* answers: The case is where there is not enough earthenware to create a *chatzitzah*. This is as the *Mishnah* states: One is liable for carrying a piece of earthenware on *Shabbos* if it is of a size he can put between the window panes.

The *Gemara* asks: The *Baraisa* mentions earthenware. Won't he use it?

The *Gemara* answers: The case is where it is dirty.

The *Gemara* asks: A bloodletter could still use it (*as he does not care whether or not it is dirty*)!

The *Gemara* answers: It has holes in it.

The *Gemara* asks: The *Baraisa* mentions a *sefer Torah*. Won't he use that for reading?

The *Gemara* answers: The case is where it is worn out.

The *Gemara* asks: Doesn't it require to be placed in safekeeping?

The *Gemara* answers: This is where it is put away. (20a1 – 20b1)

### **Wall made from Salt**

Rav says: A wall could be made out of anything besides salt and wax. Shmuel says: Even salt can be used.

Rav Pappa says: There is no argument. One is talking about salt from Sedom which is very hard (*and could be used as a wall*), and one is talking about salt from Istaroknis (*regular loose salt*).

Now that Rabbah says that a person can make two piles of salt and put a beam on top of them (*to make an eiruv*), as the salt stabilizes the beam and the beam stabilizes the salt, one can even use salt from Istaroknis. They still do not argue, as one is talking about a case where there is a beam on top, and one is talking about a case where there is no beam. (20b1)

### **Distancing**

The *Mishnah* had stated: One must distance his grindstone three *tefachim* from the lower stone, which is four *tefachim* from the higher stone.

The *Gemara* asks: What is the reason for this?

The *Gemara* answers: It is due to the vibrations that weaken the wall.

The *Gemara* asks: Doesn't the *Baraisa* state that a grindstone powered by a donkey must be distanced three *tefachim* from the base and four from the funnel. What vibrations are caused by this type of grindstone?

The *Gemara* answers: Rather, it is because of the noise (*of the grindstone or donkey*). [See *Ramban* for a different explanation of the *Gemara*.]

The *Mishnah* had stated: He must distance the foundation of his earthenware oven three *tefachim* from his friend's

wall, which is four *tefachim* from the top of the foundation.

Abaye says: We see from here that the edge of an oven is one *tefach* of space. The difference is regarding buying and selling (*an oven must include a tefach between the two parts*). (20b1 – 20b2)

### **Mishnah**

A person should not put an oven in his house unless there is four *amos* between the top of the oven and his ceiling. If he puts it in an attic, he should make sure there is plaster three *tefachim* thick underneath it. If it is a stove, he requires plaster a *tefach* thick. If, nevertheless, it damages, he must pay for what he damages. Rabbi Shimon says: The point of all of these distances is that if he did do so and caused damage anyway, he does not have to pay for the damages.

A person cannot open a bakery or place where he cooks dye under the storehouse of his friend. He also cannot open a barn there. Truthfully, they permitted opening a bakery or place for cooking dye under a wine storehouse, but not a barn (*only the latter affects the wine*). (20b2)

### **Hazards**

The *Gemara* asks: Doesn't the *Baraisa* say that one must distance his oven four *tefachim* from the floor, and his stove three *tefachim* from the floor (*of his attic*)?

Abaye answers: The *Baraisa* is referring to a baker's oven and stove, as our ovens are like a baker's stove.

The *Mishnah* had stated: A person should not open a store etc.

The *Baraisa* states: If the barn was present before the storehouse existed, it may continue to be there.

Abaye inquired swept and cleaned the area, but did not move in yet, and a store then opened underneath him, what is the law? If he made more windows (*but did not yet bring in his produce*), what is the law (*for the other person to open his store*)? If he made a porch under the storehouse, what is the law? If he built an extra floor over his house (*usually used for a storehouse*), what is the law? The *Gemara* leaves this question unresolved.

Rav Huna the son of Rabbi Yehoshua inquired: If he already brought in dates and pomegranates, what is the law? [*Is a storehouse only considered a storehouse when he brings in the main products such as wine, oil, or grain, or not?*] The *Gemara* leaves this question unresolved.

The *Mishnah* had stated: Truthfully they permitted for wine etc.

The *Baraisa* states: They permitted this for wine because it even makes the wine better. They did not permit a barn under the storehouse because it makes the wine smell bad.

Rav Yosef says: Our wine is negatively affected by the smoke of a candle.

Rav Sheishes says: Our slightly grown animal feed (*i.e. storing it under a storehouse*) is like a barn. (20b3)

### **Mishnah**

If a person opens a store in the courtyard, a neighbor can stop him as he can claim that he cannot sleep due to the noise of people coming and going. However, a person can make vessels in his house and go sell them in the marketplace. His neighbor cannot stop him with the complaint that he cannot sleep due to the noise of the hammer, grindstone, or children. (20b4)



## INSIGHTS TO THE DAF

### PREMATURE BABIES

The Gemara states that a child born in its eighth month will not survive. In today's day and age, that does not seem to be the case. How are we to understand this?

Rabbi Gil Student wrote an essay regarding the halachic responses to scientific development. Here is an excerpt from his discussion. (It can be found in its entirety here: <http://www.aishdas.org/toratemet/science.html>)

As we already mentioned, the Talmud claims that babies born in their eighth month from conception are not viable. The Chazon Ish (Yoreh Deah 155:4) explains that the sages observed that babies born in their seventh month rarely survived. However, a small but significant percentage lived. In the eighth month, the survival rate dropped even lower. But in the ninth month, the survival rate rose sharply. This phenomenon is reflected in other ancient medical works such as those by Hippocrates and Galen (see J. Preuss, *Biblical and Talmudic Medicine*, 14:14). Keep in mind that until recently infant mortality was very high. Many newborns never lived past their first month. Indeed, this is reflected in halacha in that parents do not fully mourn a baby that dies in its first month alive. Before the month passed, there was a strong likelihood that the baby would not survive.

To explain this drop in infant survival in the eighth month, the sages adopted the medical explanation that babies develop along two paths - a seven month path and a nine-month path. Babies in the seven-month path progress at a rate so that they are fully developed after seven months while babies in the nine-month path are only fully developed after nine months. A nine-month baby born in its seventh or eighth month cannot survive because it is not sufficiently developed. However, the rabbis observed that there were still some very few babies born in their

eighth month who survived. These babies, it was explained, were seven-month babies who were born late.

With all this in mind, we can understand the following from Tosefta Shabbat 16:4.

Who is an eight-month [baby]? Any [baby] who has not completed his months. Rebbe says: His signs identify him - his hair and fingernails... Rabban Shimon ben Gamliel says: Whoever has lasted thirty days is not a stillborn...

According to the first anonymous opinion, any baby born in its eighth month, i.e. who has not completed its nine-month development period, is considered to be an eight-month baby that will not survive. According to Rebbe, only a baby that is born in its eighth month and is not developed enough to have fingernails and hair is considered to be an eight-month baby. Even if a baby is born in its eighth month, if it is fully developed it is deemed viable and treated appropriately. According to R' Shimon ben Gamliel, any baby that survives its first thirty days is deemed viable. In Shabbat 136a, Shmuel rules like R' Shimon ben Gamliel. Whether R' Shimon ben Gamliel is coming to add to Rebbe's criteria, so that even a partially developed eight-month baby is deemed viable if it survives thirty days, or he is coming to subtract from Rebbe's criteria, or a number of other possibilities is discussed by the commentaries. For summaries of these discussions see R' Aharon Yaffin's footnotes to Mossad HaRav Kook's edition of the Ritva on Yevamot 80b and Minchat Yitzchak 4:123:3. Regardless, the Shulchan Aruch (Orach Chaim 330:7-8, Yoreh Deah 266:11) rules that a baby born in its eighth month that has fingernails and hair is considered viable in regard to the laws of Shabbat. What is significant is that the rabbis recognized that a baby born in its eighth month can live a full and long life. However, based on their observations and medical knowledge, they said that the overwhelming majority does not.

### Halachic Ramifications

The non-viability of an eight-month baby has halachic ramifications. A widow whose only child is a non-viable eight-month baby is considered childless in regard to the levirate marriage. If she had given birth to a viable child she would not be obligated to perform the levirate marriage or chalitzah ceremony. However, since her child's chances of living are so remote she is considered childless and is prohibited from remarrying until she fulfills the necessary biblical requirements (Yevamot 80a-b).

Additionally, the needs of a seriously ill person may be cared for even if they require violating the laws of Shabbat. A newborn baby, in particular, requires great care. While most of those needs do not require violating Shabbat, if they did Shabbat could be violated. However, for a non-viable baby that has essentially no chance of survival, Shabbat may not be violated. The concerns of an eight-month baby that does not have fully grown fingernails and hair do not override Shabbat (Shabbat 136a).

Today, modern science gives us a different understanding of a fetus' development than that of the sages. Babies develop steadily until their last month. Those born in their seventh month are less likely to survive than those born in their eighth month. Premature babies can suffer from difficulty in modulating temperature and underdeveloped capillaries and lungs which can be alleviated with respirators and incubators. Today, babies born in their eighth month routinely survive. How should halacha respond to this change?

### Defining an Eight-Month Baby

Before we address this question, let us first discuss an often overlooked issue - a definition of terms.

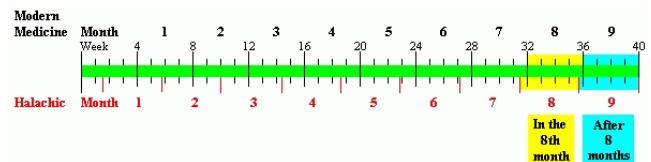
What is an eight-month baby?

The Talmud says that a normal (nine-month) gestation period is approximately 271 days from conception. Modern medicine places the due date of a baby at approximately 280 days from the mother's last menstrual cycle. Since a religious woman may only have marital relations beginning with 12 days after starting to menstruate (after she immerses in a mikva), the 271 days translate into approximately 283 days, which is essentially equal to modern medicine's 280.

Modern medicine divides the 280 days into ten months of 28 days. What is generally called the ninth and final month is really the tenth month - from weeks 36 to 40. The eighth month is from weeks 32 to 36 and the seventh month is from weeks 28 to 32.

Halacha divides the 271 days into nine months of about 30 days each (Responsa Rashbash 513). Translating that into the weeks we used above (from the last menstruation), the ninth month is from weeks 35.7 to 40. The eighth month is from weeks 31.4 to 35.7 and the seventh month is from 27.1 to 31.4.

Additionally, the simple understanding of the Talmud is that an eight-month baby is one born after eight full months, i.e. after 35.7 weeks. This is the understanding of most commentators with only the Ramban dissenting (Responsa Rivash 446).



It is a daily occurrence for babies to be born at 36 weeks and survive without the assistance of respirators or incubators. With their assistance, the survival rate is



greater than 95%. How should the halachic community react to this undeniable reality?

The first point that needs to be made is that halacha only needs to address those babies born without fully grown fingernails and hair. Only those born between 35.7 and 40 weeks who are under-developed are an issue. Never the less, the problem remains.

## **2b. Nature Changed**

The Rashbash (R' Shlomo ben Shimon Duran; early 15th century) quotes the authors of Tosafot as saying that already by their time nature had changed. While in the days of the Talmud babies' months were determined by how many months had been completed, they are now calculated by which month the baby is in. While for the Talmud a baby born in weeks 35.7 to 40 (after eight months) was premature, this baby would now be considered full-term (a nine-month baby). Now, only babies born in weeks 31.4 to 35.7 (in their eighth month) are considered premature (Responsa Rashbash 513). This is how the Rama ruled in Shulchan Aruch (Even HaEzer 156:4). The Chazon Ish (Yoreh Deah 155:4) continued along this line and noted that today a significant number of babies born in their eighth month are viable on their own. This must mean that nature has changed, although he does not speculate as to whether it is due to better prenatal care, healthier diets, or other causes. Since nature has changed and eight-month babies are no longer inherently at risk, the halacha as it relates to current nature is different than it is in regard to talmudic nature. Since eight-month babies are deemed viable, Shabbat may be violated for their needs and women who give birth to such a baby are not considered childless.

There were two issues that we pointed out above. One is that babies born after eight months are not only viable but are more viable than those born after seventh months. The other is that with modern medical care even

premature babies can survive. The Chazon Ish solved both issues by ruling that nature has changed and that eight-month babies are no longer born non-viable. Any baby that can survive, whether on its own or with medical help, is considered a viable baby.

## **Alternate Solution**

The Minchat Yitzchak (4:123:19-20) refused to go that far. He was not ready to say that the talmudic understanding of the development of babies is no longer true. Of the two issues above, he only addressed the second. Even though eight-month babies are inherently less viable than others, modern medical care can help those babies survive. Since these babies become viable through medical assistance they are therefore viable. It is not that nature has changed. Rather, modern medicine has found techniques to help the non-viable survive.

## **DAILY MASHAL**

### **Who founded maternity wards in Egypt?**

“When the midwives feared Hashem, he made them houses” (Shemos 1:21). Shifrah and Puah wanted to evade Pharaoh’s decree to kill the male newborn and claimed that neighbors opposed their occupation as there was a constant flow of people loudly coming to summon them to women in labor. Pharaoh, though, had a “humane” solution: “...he (Pharaoh) made them houses” – a clinic in non-residential areas...