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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

### ***Sanctifying the Fetus***

The *Gemora* cites a dispute between Rav Huna and Rabbah about a first born which exited one third, which one sold to a non-Jew, followed by the next third. Rav Huna says that once the second third exited, most of it has exited, and the first third is retroactively sanctified as a bechor, rendering the sale invalid. Rabbah says that the sale is valid, since it was done before most of the bechor exited, and therefore the animal is not sanctified, since it is partially owned by a non-Jew.

The *Gemora* says that this is consistent with their dispute about a first born that was born one third by C-section, followed by the remainder naturally. Rav Huna says that it is not sanctified, since at the point of most of it exiting, we retroactively look at the birth until then, which was mostly born via C-section, while Rabbah says that it is sanctified, since most of it was born naturally, and we don't retroactively view the initial part of the birth.

The *Gemora* explains that they had to discuss both cases, to illustrate that each one maintains their position, whether it is strict (sanctifying the first born) or lenient (*not sanctifying*).

The *Gemora* asks on Rav Huna from our *Mishna*: If an animal had difficulty giving birth to its first offspring, one may slice off limbs of the fetus as they come out, and throw these to the dogs. Now, presumably this means that each limb is cut off and left where it is (*and after a majority of the fetus emerges, he throws the pieces to the dogs*). If you hold that the sanctity is retroactive, then it should be buried?

The *Gemora* answers: No! We are referring to a case where each limb was cut off and thrown (*immediately*) to the dogs (*before the emergence of the majority of the fetus*).

The *Gemora* asks: But what would be the *halachah* where each limb was cut off and left there? It would need to be buried? If so, why does the *Tanna* state in the latter clause (*a completely new case*), where the majority of the fetus emerged, it must be buried, and the mother is exempt from the laws of the firstborn? He should have made a distinction in the very same case, as follows: It may be thrown to the dogs only where each limb was cut off and thrown immediately to the dogs, but where each limb was cut off and left there, it must be buried!

The *Gemora* answers: That is actually what the *Mishna* meant: It may be thrown to the dogs only where each limb was cut off and thrown immediately to the dogs, but where each limb was cut off and left there, it is considered as if the majority emerged (*at the same time*), and must be buried. (69b – 70a)

### ***Fetus Inquiries***

Rava inquired: Do we apply the principle of 'the majority' with regard to limbs or not? What are the circumstances of the case? If you will suggest that he is referring to the following case, namely, that the majority of the fetus emerged from the womb, and this included a minority part of a certain limb, and the question was: Are we to reckon this minority part of the limb, which is outside, together with the majority part of its limb (*and then, the fetus would not be regarded as born, for the majority is still inside*), or do we reckon it with the majority part of the fetus (*and then it would be regarded as being born*)? This would be obvious that we do not ignore the majority part of the fetus and take into consideration the majority part of the limb!

Rather, the case must be as follows: Half of the fetus emerged and this included the majority part of a limb; the question therefore is as follows: Are we to reckon the minority part of the limb, which is inside, together with the majority part of the limb (*and then, the fetus would be regarded as born, for the majority is outside*), or not?

The *Gemora* attempts to resolve this from our *Mishna*: If the majority emerged, it must be buried. Now what is meant by the majority? It cannot mean actually the majority of the fetus, for surely we have learned before now the principle that the majority is like its entirety! It would mean therefore that only half emerged, but it included the majority part of a limb!

The *Gemora* deflects the proof: No, the *Mishna* is referring to a case where the majority of the fetus emerged and it included the minority part of a limb, and it is teaching us that we must not ignore the majority part of the fetus and consider the majority part of the limb. (70a)

### ***Firstborn Inquiries***

Rava raised the following inquiries (*regarding the sanctity of a firstborn, which is dependent upon "the opening of the womb"*):

- What is the law if one wrapped the fetus (*before its birth*) in bast (*and therefore, when it emerged, it did not come into contact with the womb, for the bast interposed between the fetus and the womb*)?
- What is the law if it was wrapped in a garment?
- What is the law if it was wrapped in the amniotic sac of another animal?
- What if she (*the woman assisting the delivery*) wrapped it up in her hands and got hold of it and drew it out? The *Gemora* notes that it cannot be referring to a case where it emerged with its head first, for then it has thereby 'opened the womb.' Rather, it is referring to a case where it emerged with its feet first.
- What if a weasel (*after inserting its head into the womb*) swallowed the fetus and then extracted it? The *Gemora* notes that if it extracted it in that manner, it is essentially the same inquiry as before, for it emerged from the womb without touching it. Rather, the inquiry was where the weasel swallowed the fetus and then

extracted it back into the womb, and then the fetus emerged from the womb on its own?

- What is the law if one joined two wombs (*of two animals*) to each other and the fetus emerged from one womb and entered the other (*and then, it emerged from the second*)? Shall we say that it (*the fetus*) opens the womb of only its own (*mother from the law of the firstborn*), but it does not open the womb of another animal (*which is not its mother*), or perhaps it opens the womb of another animal as well? All these questions remain unresolved.

Rav Acha inquired: What is the law if the walls of the birth canal opened wide (*and the fetus fell out if it in such a manner that it never came into contact with the womb*)? Is it the air space of the birth canal that sanctifies the firstborn, a condition which exists in our case, or is it the contact with the birth canal that sanctifies - a condition which is lacking in our case?

Mar bar Rav Ashi inquired: What is the law if the walls of the birth canal were torn away? The *Gemora* notes that he cannot be referring to a case where it was actually torn away, for then, there is no birth canal here at all (*and there is no way that the firstborn can be sanctified*). Rather, he meant that the walls of the birth canal were torn away and they now rested on the neck of the fetus. The inquiry is: Can the birth canal sanctify the firstborn only when it is in its natural place and not when it is out of its place, or perhaps, it may sanctify it even when it is out of its place?

Rabbi Yirmiyah inquired of Rabbi Zeira: What is the law if the walls (*its inner layer*) of the birth canal were peeled?

He replied: You are touching upon a question which we have already inquired, for Rabbi Zeira had inquired, and others say that Rabbi Zeira had inquired to Rav Assi: What is the law if (*part of it was peeled away, and*) what was left of the birth canal was more than what was gone, but the fetus passed through the part that was gone; or, if that which was gone was more than what was left, but the fetus passed through that part that was left of it? Now, there was uncertainty here, only in such a case as where that which was gone was more than that which was left, for at least something was left of it. But in the case where

the walls of the birth canal were entirely peeled away, there is no inquiry at all (*and the firstborn would not be sanctified*). (70a)

### **Mishna**

If a fetus had died within the womb of its mother, and the shepherd inserted his hand (*into the womb*) and touched it, he is *tahor*, whether it was a kosher or nonkosher animal. Rabbi Yosi HaGelili says: If it was a nonkosher animal, he would be *tamei*, and if it was a kosher animal, he would be *tahor*.

### **Sources**

Rav Chisda uses the following *kal vachomer* to explain the *Tanna Kamma's* opinion (*as to why the dead fetus in the womb does not contaminate the shepherd*). If the mother (*when slaughtered*) has the effect of rendering (*the fetus*) permitted to be eaten (*when it was inside the womb*), then surely (*while alive*), it will at least have the effect of rendering it *tahor* with regards to (*the tumah of*) *neveilah*.

The *Gemora* cites his source for nonkosher animals as well.

The *Gemora* explains why Rabbi Yosi HaGelili disagrees. (70b)

### **Tumas Neveilah**

The *Gemora* cites a *braisa*: Rabbi Yonasan said: I said to Ben Azzai: We have learned that the carcass of a kosher animal conveys *tumah*, and that the carcass of a nonkosher animal conveys *tumah*; but we have not learned it regarding the carcass of kosher wild animals. From where do we know it? He said to me: It is written: *Everyone that walks upon its paws, among any chayah that walks on four hooves*. I said to him: The verse does not say '*any chayah*,' it says '*among any chayah*,' and this teaches us the rule concerning animals that walk upon their paws (*nonkosher*) and have been found dead within the wombs of living animals (*that they are subject to the tumah of neveilah*)!? He said to me: And what does Yishmael say in this matter? I said to him: It is written: *And if any animal shall die*.

This is referring to a nonkosher animal. *That which is fit for you to eat*. This is referring to a kosher animal. And we have learned that wild animals (*chayah*) are included under the term animal (*beheimah*) and a *beheimah* is included under the term *chayah*. He continued: A kosher *chayah* is included in the category of a kosher *beheimah*, and a nonkosher *chayah* is included in the category of a nonkosher *beheimah*. A nonkosher *beheimah* is included in the category of a nonkosher *chayah*, and a kosher *beheimah* is included in the category of a kosher *chayah*. He (Ben Azzai) then said to me these very words: Alas for Ben Azzai, that he did not attend upon Rabbi Yishmael. (70b – 71a)

### **INSIGHTS TO THE DAF**

#### ***The ben peku'ah: disagreements, proofs and rejections***

A *ben peku'ah* is the fetus of an animal which was found in the womb after the mother animal was slaughtered. Though the fetus was not slaughtered, *Chazal* interpreted from the verse "everything... in the animal, you may eat" (Vayikra 11:3) that a *ben peku'ah* is allowed to be eaten upon its mother's slaughtering. Ramban explains (Shemos 15:10) that sometimes the letters *beis* and *pei* express the same meaning. A *ben peku'ah* is then a *ben beku'ah*, which emerged when its mother's abdomen was split open.

In this article we shall focus on a fine *chakirah* - investigation by the greatest Acharonim, and on the remarkable proofs that the disagreeing sides presented.

The question is whether a *ben peku'ah* is permitted because the Torah taught us that slaughtering its mother's is like *shechitah* of the fetus or perhaps it is the Torah's decree (*gezeiras hakasuv*) that the fetus is permitted but it shouldn't be considered slaughtered.

The author of *Zecher Yitzchak* zt"l, known as Rav Itzele Ponovzher, cites the *Gemora* in Temurah 12a which discusses a fetus that was sanctified for a sacrifice while in its mother that is not a sacrifice. The *Gemora* has a doubt if the mother animal was slaughtered outside the Temple, whether the fetus is

considered a sacrifice slaughtered outside the Temple. He says that if a *ben peku'ah* is not considered as slaughtered at all, there's no question. The fetus was not slaughtered so there could be no doubt about considering it "slaughtered outside".

Similarly, the author of *Makor Baruch* zt"l proved (l, 34, os 15) from the opinion of *Chachamim* in the *Mishna* (Parah 12:1, according to the Rosh and the Rash) that a pregnant cow is unfit to serve as a red heifer because one animal must be slaughtered and not two. We thus see that a *ben peku'ah* is considered slaughtered.

On the other hand, the author of *Lev Aryeh* (on Chulin 74a, Rashi, s.v. *De'ubar*) proves the opposite from the mishnah (ibid) which says that a *ben peku'ah* may be eaten even if it was found dead. As slaughtering a dead animal is not considered *shechitah*, it is obvious that a *ben peku'ah* is not permitted because it is considered slaughtered but it is the Torah's decree that anything found within a slaughtered animal is permitted.

The author of *Neos Ya'akov* (22, os 6) proves from the *Gemora* (74b) that a *ben peku'ah* is permitted because of the Torah's decree and is not considered slaughtered. The Amoraim disagree as to if the fat of a *ben peku'ah* is forbidden, like the fat of any animal. If the reason for permitting a *ben peku'ah* is because it is considered slaughtered, we cannot understand why its fat should be allowed as how does it differ from any ordinary slaughtered animal? We must concede that the Torah decreed that a fetus found in a slaughtered animal is permitted and therefore the Amoraim disagreed as to if the fetus' fat is included therein.

We thus have solid proofs on both sides, which can lend a certain understanding about the wonderful world of the yeshivah and kollel students, who continue to discuss these opinions and examine how each *gaon* would reject the outstanding proof against his opinion. To savor the world of Torah we have chosen to conclude with an apparently victorious proof, and its rejection.

The *geonim* Rabbi Yechezkel Avramski zt"l and Rabbi Yitzchak Zeev Soloveitchik zt"l exchanged letters about this topic. In a certain letter the author of *Chazon Yechezkel* contended that a *ben peku'ah* is not considered slaughtered for if so, we cannot understand the *Gemora* (75b) which says that a *ben peku'ah*, found in a slaughtered animal revealed to be *treifah*, is forbidden. If a *ben peku'ah* is considered slaughtered, why should it be forbidden?

Rabbi Yitzchak Zeev of Brisk rejected this proof (*Chidushei Maran Riz HaLevi*, p. 158), basing himself on the statement of his father, HaGaon Rav Chayim of Brisk zt"l, that slaughtering a *treifah* is not considered a *shechitah* that permits something to be eaten. As a result, though the fetus was slaughtered, the slaughtering was to no avail (see *ibid* as to what he added to explain the subject and see *Asvan Deoraisa* by HaGaon Rabbi Yosef Engel zt"l, 14, and see *Kehilos Ya'akov*, 19, as for his reconciliation of the opinions).

#### DAILY MASHAL

The *Gemora* cites a *braisa*: Rabbi Yonasan said: I said to Ben Azzai: We have learned that the carcass of a kosher animal conveys *tumah*, and that the carcass of a nonkosher animal conveys *tumah*, and that the carcass of a nonkosher wild animal conveys *tumah*; but we have not learned it regarding the carcass of kosher wild animals. From where do we know it? The *Gemora* concludes: He (Ben Azzai) then said to me these very words: Alas for Ben Azzai, that he did not attend upon Rabbi Yishmael.

Rashi writes: Alas for Ben Azzai, it is a loss and destruction in this world, a disciple like myself did not merit to attend (and learn from) Rabbi Yishmael.

The Mashgiach, HaGaon Reb Chaim Shmuelwitz commented that this is the same Ben Azzai who said that all the Sages of Israel are in comparison with myself, like a garlic peel, except for the bald one (*R' Akiva*). So, why was it such a loss? It seems that he could get **something** from Rabbi Yishmael. The loss of that something, as small as it may be, is a loss not only to Ben Azzai, but it is a loss to the entire world! A trifling of spirituality! (*Sichos Musar*, 18, 5731).