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What’s a first born?

The *Mishna* says that if an animal first had a child via C-section, and then another one naturally, Rabbi Tarfon says we have a doubt whether each is a *bechor* - sanctified as the first born, and therefore may only be eaten once they have a blemish. Rabbi Akiva says neither is a *bechor*, as the first one was not *peter rechem* – the first from the womb, and the second one was not the first child born.

The *Gemora* explains that Rabbi Tarfon is unsure if an animal that is first in one aspect (e.g., to natural births, to all children) is a *bechor*, while Rabbi Akiva says that a *bechor* is only sanctified when it is the first in all aspects. (19a)

Verses defining a first born

The *Gemora* cites a *braisa* which explains the different terms the verse uses to identify a *bechor* which is sanctified. The *braisa* lists two logical constructs of the Torah:

1. A general category, which needs clarification by a detail
2. A detail, which needs clarification by a general category

Although a category followed by a detail includes only the detail, and a detail followed by a category includes the whole category, this is not true when the detail or the category is a necessary clarification.

The verse states that

“one must sanctify:

Kol bechor – all first born

Peter kol rechem – the first to leave any womb”

Another verse says that “any first born animal which is born among your cattle, *hazachar* - which is male, you should sanctify”

The *braisa* analyzes these verses in three stages:

1. The first verse is a general category, which would include male and female first born. The last verse is a detail limiting that category to male first born only.
2. However, from this detail, we may have thought that a male animal born after females would be sanctified, as it is the first male born to this animal. Therefore, the second verse specifies that only the one that was first out of the womb is sanctified.
3. From the second verse, we still may have thought that the first animal born naturally is sanctified, even if it came after a child born via C-section, since it opened the womb. Therefore, the first verse specifies that only the *bechor* – first born is sanctified, excluding this case, since it was not the first child that came from this animal. (19a)

Bechor – in any way or all ways?

Rav Shrivia asked Abaye about a seeming contradiction in the the *braisa* as to whether the word *bechor* implies first in all ways. In the second stage, the *braisa* excluded a male born after a female from the phrase *peter rechem*, but not from the word *bechor*. This implies that the *braisa* assumed that *bechor* does not mean an animal which is first in all ways, and therefore would not exclude this case. However, in the last stage of the *braisa*, it excludes an animal born naturally after one born via C-section from the word *bechor*. This implies that the *braisa* assumes *bechor* means first in all ways, excluding this case.

Abaye answered that the *braisa* assumes that *bechor* means first in all ways. The second stage of the *braisa* must be amended. Instead of discussing the first male born after females, it is discussing a first animal, which was born via C-section. The *braisa* was saying that from the verse that specifies male, we would have thought that it includes a first born male born via C-section. The *braisa* then states that *peter rechem* excludes this case. The *braisa* could not learn this from *bechor*, as this animal is first born in all ways, but simply is not born naturally.

Ravina answered that the *braisa* assumes that *bechor* means first in any way. However, the last stage of the *braisa* still said that *bechor* excludes an animal born naturally after one born via C-section, since otherwise the word *bechor* is unnecessary. If a male is born after a female, we can already exclude it, since it is not the first from the womb. Therefore, *bechor* must exclude the case of an animal born naturally after one born via C-section.

Rav Acha Midifti challenges this explanation. An animal can be first in one of three ways: first male born, first born naturally, and first child at all. We don't need a verse to teach to exclude an animal that is just first of the males, since it is not first to open the womb, but we do need a verse to exclude an animal that is just first of the naturally born (i.e., a male born naturally after a male born via C-section). Once we use the word *bechor* to exclude this case, we cannot use it to exclude an animal which is both the first male and the first born naturally (i.e., a male born naturally after a female born via C-section), yet this is also not sanctified.

The *Gemora* therefore rejects Ravina's answer, and states that Abaye's answer is the clearly correct one. (19a – 19b)

WE SHALL RETURN TO YOU, HALOKEI'ACH UBBAR PARASO

Buying an animal

The *Mishna* discusses one who buys an animal from a non-Jew, not knowing whether it has already given birth. Rabbi Yishmael

says that the status of the animal's next child depends on the age of the animal. A ram one year old or younger, a sheep two years old or younger, and a cow or donkey three years old or younger, are assumed to have never given birth, and their next child is given to the *Kohen*. If the animal is older than those ages, its first child born next is a doubt. Rabbi Akiva challenges this, as even a small animal passing blood, a large animal's afterbirth, and a woman's passing afterbirth or sac at the end of a pregnancy makes the next child not a *bechor*, and these can happen at younger ages than Rabbi Yishmael listed. The *Mishna* summarizes:

1. If an animal is known to have given birth, the *Kohen* gets nothing of its next child
2. If an animal is known to not yet have given birth, the *Kohen* gets the next child
3. If we do not know whether it gave birth, its next child is a doubt, which may be eaten by the owners after it gets a blemish

The *Gemora* asks why Rabbi Yishmael considers a child born to an older animal to possibly be a *bechor*, as we should assume that this animal already had a child in its early life, like most animals.

The *Gemora* suggests that this indicates that Rabbi Yishmael follows the position of Rabbi Meir, who is concerned about the possibility that something is in the minority (e.g., animals that do not give birth in their early life).

The *Gemora* tries to deflect this, suggesting that even the Sages, who dispute Rabbi Meir's position, only follow a majority which is in front of us, like meat found on a street, which has mostly kosher butchers. However, a majority which we cannot directly observe, like the majority of animals giving birth early, is not sufficient for the Sages.

The *Gemora* rejects this, as the case of Rabbi Meir's dispute is about whether a child who is not physically mature can do *yibum* – marrying a brother's childless widow. Rabbi Meir says that the child may not, as we are concerned that the child will be found to be a *seris* – sterile, who is not obligated in *yibum*,

and the marriage will therefore be prohibited. The Sages say that we can assume the child is like most people, who are not sterile, and therefore we permit the marriage. The majority in this case is one which we cannot directly observe, and yet the Sages say we can follow it. Therefore, Rava says it is clearer to say that Rabbi Yishmael follows Rabbi Meir's position.

Ravina says that Rabbi Yishmael may follow the Sages' position, but even they do not follow a majority which depends on an action being performed. An animal's conceiving depends on its mating, and therefore Rabbi Yishmael says that we cannot rely on this majority. (19b – 20a)

INSIGHTS TO THE DAF

General vs. specific

The *Gemora* cites a *braisa* discussing how we know exactly which first born animal is sanctified. The *braisa* opens with the constructs:

1. *Kelal hatzarich l'prat* – a general category that needs the specific item
2. *Perat hatzarich l'klal* – a specific item that needs the general category

It then proceeds to explain what each of the three terms used in connection with the *bechor* teaches us.

Rashi and Tosfos differ on their understanding of how the content of the *braisa* relates to the introduction. Rashi says that the first stage of the *braisa*, which limits the sanctity to male first born animals, is a standard category followed by a specific item, which limits the category to only that item. However, the second stage, which limits *bechor* to the first out of the womb, is an instance of a category (*bechor*) which needs to be defined by the item (*peter rechem*). Rashi explains that without the *peter rechem*, we wouldn't have known what type of *bechor* the category meant, and therefore the item is necessary just to explain what the category itself means. Rashi cites another example of this in the verse which mandates that one must cover the blood of a bird or beast. The verse states *v'chisahu* –

and he will cover it [general] *be'afar* – in dust [specific]. This also is a case where the specific item is necessary to understand the general statement, as covering can either mean placing something large (e.g., a stone or vessel) on top of something, or smothering it (e.g., with dust). The item therefore is necessary to explain what the general statement means. Rashi continues to say that the third stage of the *braisa*, which states that the word *bechor* excludes an animal born naturally after one born via C-section, is an instance of a specific item which needs the general category to explain it. If not for the general category *bechor*, we may have thought that any animal that was the first out of the womb is sanctified.

Tosfos (19a kaitzad) challenges Rashi's explanation, as the *Gemora* concludes that the word *bechor* implies an animal that is first in all ways. Therefore, it is incorrect to say that the general category *bechor* is limited by the verse which specifies the first of the womb.

Tosfos cites Ri, who says that the two phrases *bechor* and *peter rechem* are simultaneously general categories and specific items. *Bechor* is a more general category than *peter rechem*, as it includes an animal born first via C-section, while *peter rechem* is a more general category than *bechor*, as it includes an animal born naturally after one born via C-section. Therefore, *peter rechem* limits *bechor* to one born naturally, and *bechor* limits *peter rechem* to the first animal born to this mother.

Rabbeinu Tam says that the *braisa* is only explaining an instance of a specific item that needs to be clarified by the general category, as Rashi explains the third stage of the *braisa*. However, the second stage is not an instance of a general category which needs to be clarified by the specific item, as even a category which can be understood in many ways, and is then followed by a specific item, is a standard case of a category followed by a specific. In the case of covering the blood, Rabbeinu Tam says that the only aspect in which the category needs the specific item is for the extra letter *be'afar* – in dust, which teaches that the dust must be both below and above the blood.

A girl doing chalitzah

The *Gemora* cites the *Mishna* in which Rabbi Meir and the Sages differ on whether a man and his brother's childless widow can perform *yibum* before they have matured. Rabbi Meir says they may not do *yibum* or *chalitzah*. The Sages respond that he is correct about *chalitzah*, as the verse refers to *ish* – a man, implying mature, and we equate the woman doing to *chalitzah* to the man. However, they see no reason why they may not do *yibum*.

Tosfos (19b ish) discusses the status of a girl who is not mature doing *chalitzah*. From this dialogue, it seems that the Sages and Rabbi Meir say that such a *chalitzah* is invalid from the Torah, as the Sages cite a verse. However, the Yerushalmi states that it is valid, and need not even be repeated when she matures.

Tosfos concludes that it is only prohibited Rabbinically, either as a decree lest a boy who is not mature do *chalitzah* or (according to Rabbi Meir) as a decree lest she do *yibum*. See Tosfos for a more detailed discussion of the text we have in the *Mishna*, as well as why this case was not listed among other cases of *chalitzah* which are only invalid Rabbinically.

Mating

Ravina says that even if Rabbi Yishmael follows the Sages, who follow a majority that we cannot observe, this only applies to majorities that do not depend on an action. Therefore, he still says that an animal above a year may not have had a child yet, since this depends on the animal mating.

Tosfos (20a Ravina) notes that in the case of whether a woman conceived, we do follow a majority, and assume that she did conceive, even though this also depends on an action of physical relations. Tosfos explains that for an animal to conceive, a person sometimes must manually mate the male on the female, making this dependent on an action. However, the necessity of a husband and wife having relations is not considered an action per se, and we therefore follow the majority.

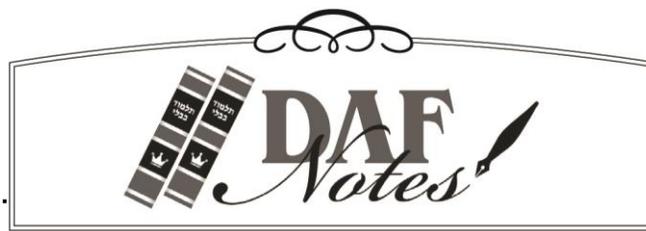
A change in the halachah due to changes in nature

A cow and a donkey do not give birth till they reach the age of three years. Our *Gemora* states this fact as a means to determine whether a cow or donkey already gave birth for the first time and their present offspring is exempt from the *bechorah*, or if they never gave birth and the present offspring is a firstborn.

Cows give birth early: A farmer would surely wonder how to fit this information with their distinct knowledge that cows give birth before the age of three years, a long time before then. It turns out that not only modern cows give birth early but also did their ancestors, at least those who lived 800 years ago, as Tosfos already had difficulty with this question ('Avodah Zarah 24b, s.v. *Parah*): "And one should ponder as it is a daily occurrence that a two-year-old cow gives birth." Tosfos reply: "One can say that certainly the age has now changed from how it was in previous generations." In other words, nature has changed.

This is not the only change that we witness. The *Gemora* determines (Nidah 27a) that birth in the ninth month can only occur at the end of the month but not in the middle of the month. *Tashbetz* remarks (Responsa, II, 101): "But I have seen that the matter has changed in our generation". He finds support in Tosfos' aforesaid statement, "that many things have changed their nature with the change of the generations." Indeed, the Remo rules (*E.H.* 156:4) that in our era an infant born in the middle of the last month of pregnancy is considered as though it will live (*ben kayama*) "because now the matter has changed and so it is in several issues."

Washing an infant on the third day after birth: *Shulchan 'Aruch* (*O.C.* 331:9) asserts so concerning washing an infant on the third day after birth. The *Mishnah* rules (*Shabbos* 134b): "One may wash an infant on the third day which falls on Shabbos". That is, one may ignite a fire on Shabbos to heat water to wash an infant on the third day after birth for if not so, it may be in danger. However, *Shulchan 'Aruch* writes: "In the era of the Talmudic sages if they wouldn't wash the infant before circumcision and



after circumcision and on the third day after circumcision with warm water, it would be dangerous...but now people are not wont to do so at all” as “it is known that there is no danger in such” (*Beis Yosef*, *ibid*).

Eating salt after a meal: There are many more examples. The *Gemora* says (Berachos 40a) “After every time you eat, eat salt” and so the halachah was ruled (*Shulchan Aruch*, O.C. 179:6): “If he ate any food but didn’t eat salt...he should worry...because of *askarah* (a life-threatening throat infection).” But *Magen Avraham* points out (S.K. 8) that natures have changed in our era and there’s no need to worry (see Responsa *Igros Moshe*, C.M., II, 73, os 4).

A cow which hasn’t given birth gives no milk: We conclude with an opposite example, where we would assert that nature has certainly changed but the author of *Terumas HaDeshen* understood, with his Torah wisdom, the opposite. Our *Gemora* cites another sign to find out if an animal has given birth for the first time: Most animal don’t give milk before they give birth and there are different opinions in the *Gemora* as to if we need to consider the minority of animals that give milk before they give birth. As for the halachah, opinions differ and some Rishonim (see Tosfos, s.v. *Chalav*; Rosh, Ch. 3, §2) rule according to the strict opinion, that one must consider the minority and therefore, even if the present animal gives plenty of milk, one should not rely on this as proof that it already gave birth for the first time: it could be that it belongs to the minority that gives milk without giving birth (see *Shulchan Aruch*, Y.D. 316:3 in the *Mechaber* and the Remo).

The research conducted by the author of *Terumas HaDeshen*: The author of *Terumas HaDeshen* addressed this issue and conducted some research (Responsa, I, 271): “I asked many Jews and gentiles, men and women, if they ever saw a cow giving milk that hadn’t given birth and I didn’t hear from any of them that they ever saw such.” He therefore concludes: “We can say that their animals differed from ours.” Apparently, he should have concluded his research by determining that since natures have changed in our era, there’s no greater sign than an animal that gives milk, to determine that it surely gave birth. But

he writes: “However, it doesn’t seem (correct) to permit for this reason at all, to rely on our research, which opposes that accepted from the Talmud and to say that it (nature) has changed in our era.”

Not everything which one doesn’t see doesn’t exist: If we try to clarify why the *Terumas HaDeshen* didn’t see fit to rule a change in the halachah since nature has changed, the reasoning is that a proven change in nature does not resemble an unproven one. In other words, if we **see** a two-year-old cow giving birth, it is obvious that nature has changed. However, if we **don’t** see cows giving milk before they give birth, there’s still no clear proof that such cows don’t exist. Maybe such animals, which give milk before they give birth, are hidden from us. Therefore, as long as the great halachic experts have not agreed upon a clear decision that things have changed, nothing must be changed (see *Terumas HaDeshen*, *ibid*, for a further discussion). It is self-understood that those authorized to determine if nature has changed are only the *chachamim*, who have been charged with decisions affecting all our lives and behavior (see at length in *Minchas Yitzchak*, III, 38).

DAILY MASHAL

Everyone Is a Firstborn

The Apter Rebbe, the *Ohev Yisrael*, interpreted a fine hint: “Sanctify to Me” – if you want to be sanctified to Me – “every firstborn” – you should feel that everyone is my firstborn and shouldn’t seek out others’ sins or lord over them.