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Bechoros Daf 49

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**Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h**  
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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

### **Redemption Refund**

[The Mishna had stated: If two women who had never before given birth married two men and gave birth to two males, one father gives five sela'im to the Kohen and the other gives five sela'im to the Kohen. If one of the children died within thirty days (of its birth), if they gave the redemption money to one Kohen alone, he returns five sela'im to them (for he is only entitled to five, and the two fathers divide the money amongst themselves), but if they gave the money to two Kohanim, they are not able to take the money from them (because each Kohen can deflect the father's claim by saying that he is retaining the redemption money on account of the surviving child).] The Gemora asks: What is the reason that in the case of two Kohanim, they cannot demand a refund for the redemption money of one? Presumably, it is because of the following: if the father goes to one Kohen, he can deflect him (by saying that the child for whom he received the money is still alive), and if the other father goes to the other, his claim can be deflected as well. Why then should we not apply the same principle to the case of one Kohen, so that if one father goes to the Kohen, his claim can be deflected (by saying that it was the child of the other father that died), and if the other one goes to the Kohen, his claim can be deflected as well?

Shmuel answers: We are dealing here with a case where one of the fathers wrote out a *harsha'ah* (power of attorney) to the other (and therefore, he can come and claim as follows: If it was my son that died, return my redemption money, and if it was the child of friend who died, return me his five sela'im, for I am his authorized agent to collect it).

The Gemora asks: But didn't the Nehardeans say: We do not write out a *harsha'ah* to take possession of movable property?

The Gemora answers: This is the case only where the defendant denies the claim (to the creditor), but where there is no such denial, we do write one. (48b – 49a)

### **Mishna**

If the son dies within thirty days (of his birth), although the father gave the Kohen (the five sela'im), he must return them. If, however, he dies after thirty days, although he has not yet given the five sela'im, he must give them. If he dies on the thirtieth day, it is as if he died on the previous day (and if the money was given, it must be refunded). Rabbi Akiva, however, says: if he already gave it (the five sela'im), he cannot take it back, but if he had not yet given it, he does not need to give it (for it is a matter of uncertainty, and we leave the money in its present status; and the burden of proof rests upon whoever is trying to exact money from his friend). (49a)

### **Thirtieth Day**

The Gemora cites the Scriptural sources for the opinion of the Rabbis and Rabbi Akiva.

Rav Ashi said: All agree that with respect to the laws of mourning, the thirtieth day is regarded as being like the previous day (and if a child died on the thirtieth day, the laws of mourning need not be observed by the father, as one can say that he was possibly a neifel), for Shmuel said: The law is in accordance with the more lenient opinion in matters of mourning. (49a)

### **Mishna**

If the father died within the thirty days (of his firstborn son's birth), the presumption is that the firstborn has not been redeemed (for the obligation to redeem him is not until thirty days), unless proof is brought to the contrary. If he died after thirty days, he is presumed to have been redeemed, unless they (the neighbors) tell him that he was not redeemed.



If he and his son both need to be redeemed, he takes precedence over his son. Rabbi Yehudah says: His son takes precedence, for his father has the *mitzvah* to redeem him, but it is his *mitzvah* to redeem his son. (49a)

## Redemption before Thirty Days

It has been stated: If one redeems his son within thirty days (*of his birth*), Rav said: His son is redeemed, whereas Shmuel says that he is not redeemed.

The *Gemora* notes that all agree that if he said that his son's redemption should take effect 'from now,' his son is not redeemed (*and the money is considered only as a gift, for redemption within thirty days cannot take effect*). They also agree that if he said to the *Kohen* that the redemption should take effect after the thirty days and the money is still then in existence, the son is certainly redeemed (*for it is as if he had given it now – after thirty days*). They disagree in a case where he said to the *Kohen* that the redemption should take effect after the thirty days and the money had been consumed (*by that time*). Rav said: His son is redeemed, for this is comparable to the law of betrothal of a woman. [*If a man gave a woman something and said to her, "Become betrothed to me after thirty days," in which case the marriage is effective.*] There, although the money was consumed, is not the betrothal yet valid? In this case too, it is the same. Shmuel, however, can say that there (*in the case of betrothal*), he can effect the betrothal from now (*and therefore he can make it so it can take effect later*), whereas here (*in the case of redemption*), redemption cannot take effect 'from now' (*and therefore he cannot make it so it can take effect later*).

The *Gemora* rules: And although we have an established rule that wherever Rav and Shmuel differ in prohibitory law, the ruling adopted is that of Rav, and in monetary cases, the ruling adopted is that of Shmuel, here (*with respect of redemption*), however, the ruling adopted is that of Shmuel (*although redeeming one's son is a mitzvah – a matter concerning prohibitory law*).

The *Gemora* asks on Shmuel from a *Mishna* (*cited above*): If the son dies within thirty days (*of his birth*), although the father gave the *Kohen* (*the five sela'im*), he must return them. The reason is because he died, but if he did not die, the son is redeemed (*although the money for redemption was given before thirty days*)!?

The *Gemora* answers: We are dealing here with the case where the money is still in existence.

The *Gemora* asks on Shmuel from our *Mishna*: [*If the father died within the thirty days (of his firstborn son's birth),*] the presumption is that the firstborn has not been redeemed, unless proof is brought to the contrary. [*If, however, he does bring proof, the redemption is valid. This proves that he can be redeemed before thirty days!?*]

The *Gemora* answers: There too, we are dealing here with the case where the money is still in existence.

A *braisa* was taught by a teacher of *braisos* in the presence of Rav Yehudah: If one redeems his son within thirty days (*of its birth*), the son is redeemed. He said to him: Shmuel said that the son is not redeemed, and you say that the son is redeemed!? [*It must be emended to read that the son is not redeemed.*]

The *Gemora* rules: And although we have an established rule that wherever Rav and Shmuel differ in prohibitory law, the ruling adopted is that of Rav, and in monetary cases, the ruling adopted is that of Shmuel, here (*with respect of redemption*), however, the ruling adopted is that of Shmuel. (49a – 49b)

## Precedence; Him or his Son?

The *Mishna* had stated: If he and his son both need to be redeemed, he takes precedence over his son. [*Rabbi Yehudah says: His son takes precedence, for his father has the mitzvah to redeem him, but it is his mitzvah to redeem his son.*]

The *Gemora* cites a *braisa*: If he and his son both need to be redeemed, he takes precedence over his son. Rabbi Yehudah says: His son takes precedence, for his father has the *mitzvah* to redeem him, but it is his *mitzvah* to redeem his son.

Rabbi Yirmiyah said: Everyone would agree that he takes precedence over his son in a case where he only has five *sela'im* (*enough to redeem only one person*), for a *mitzvah* which concerns himself takes priority over someone else's *mitzvah*.

They argue in the following case: There are five *sela'im* worth of land that were sold to someone else and five *sela'im* worth of land that are "free" (*the father still owns it*). Rabbi Yehudah holds that a debt which is written in the Torah (*such as the obligation to redeem the firstborn*)

is similar to one that is written in a document (*and it can therefore be collected from mortgaged property*). He redeems his son with the five *sela'im* of "free" land and then the *Kohen* can seize the five *sela'im* of mortgaged property for the father's obligation. [*The "beholden" property is only mortgaged for the father's obligation, but not for the son's. This is because the father sold it before there was any obligation to redeem his son.*] The *Chachamim*, however, maintain that that a debt which is written in the Torah is not like one that is written in a document (*and therefore he only has five available sela'im for redemption*). Since a *mitzvah* which concerns himself takes priority over someone else's *mitzvah*, he uses the money to redeem himself. (49b)

## DAILY MASHAL

### ***"Avraham Chananyah ben Chananyah z"l is a firstborn who hasn't been redeemed"***

A child walked the streets of Yerushalayim about a hundred years ago with a silver plate on which was written that Avraham Chananyah ben Chananyah z"l is a firstborn who wasn't redeemed and that he should he should redeem himself when he grows up.

The child was an orphan and was named Chananyah for his father, who passed away before he could redeem or circumcise him. The silver plate was hung on his neck at the order of HaGaon Rabbi Shmuel Salant z"l, who instructed his mother to take care not to remove the plate till he would be redeemed. He also told a *sofer* to write on a nice sheet of paper in golden letters: **"And you shall remember all Hashem's mitzvos and you shall do them (Bemidbar 15:39). This page will remind me, Avraham Chananyah ben Chananyah zt"l from Zichron Tuvyah, Yerushalayim, that I am a firstborn to my mother Yenta Rachel and that I have not yet been redeemed. I was born on 18 Sivan 5666 and when I shall become bar mitzvah, on 18 Sivan 5679, I shall perform the mitzvah of redeeming the firstborn. And may it be His will that the *kohen* who will receive my redemption will be the *kohen gadol* who will serve in the Temple to be built speedily in our days, amen."** This sign was meant to serve as another reminder to the orphan to redeem himself.

According to this custom, one doesn't redeem an orphan who requires a redemption but one waits till he becomes an adult and redeems himself. Actually, the issue is not agreed upon by all *poskim*.

The mitzvah of *pidyon haben* is incumbent on the father and according to many *Rishonim*, the mitzvah does not leave the father even after his son becomes an adult and is still not redeemed (see *Sefer HaChinuch*, mitzvah 392, and *Responsa Rashba*, II, 321). Still, the father's obligation does not exempt the son from redeeming himself if it becomes apparent that his father doesn't do so (*Kidushin* 29a).

If the infant's father passes away, there is a great disagreement among the *poskim* as to how one should act. The *Shach* believes (305, S.K. 20) that "it is better for a *beis din* to redeem him". The *Taz*, however, contends (*ibid*, S.K. 11) that by doing so we rob the child of the mitzvah as he must perform it when he becomes an adult. Therefore many *poskim* adopted the custom mentioned by the *Remo* (*ibid*, *se'if* 15), that a silver plate should be hung on the child's neck to remind him to redeem himself when he becomes an adult, so that this *mitzvah* shall not be neglected (see *Otzar Pidyon HaBen*, Ch. 8:4-8).

Therefore, when little Chananyah's father passed away, Rabbi Salant summoned his mother, asked her to bring him a silver spoon and gave it to a craftsman to make thereof a plate with the above inscription. In addition, on the thirtieth day after his birth he summoned ten *kohanim* and informed that this firstborn had not been redeemed. This was not for nothing. The *Gemara* in *Kesubos* 7b explains that he who wants to make something public should announce it before ten people. He summoned *kohanim* because they have the right to the five *sela'im* of the *pidyon* and he informed them of this right. He also instructed to write the sign to dispel claims that the silver plate might be lost and forgotten and he therefore ruled that the sign should be hung in a prominent place.

Historians point out in amazement that until Chananyah's bar mitzvah nine of the *kohanim* passed away and only one remained (*Toras Rabeinu Shmuel Salant*, I, 345-346).