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Consecrating the Fetus

[The *Mishna* had stated that there is a manner in which one can circumvent the rights of a *Kohen* in a case of a potential *bechor* by saying that if what is in the womb is male, it is an *olah*, and if it is female, it is a *shelamim*. The *Mishna* concluded that if the offspring is a *tumtum*, whose genitals are covered, or *androgynous*, who has both male and female genitals, Rabban Shimon ben Gamliel says that it is not consecrated at all by his statement. The *Gemora* presumes that this is true even if the mother was a consecrated offering. The *Gemora* seeks to find the reasoning for this.]

The *Gemora* asks: Why is there no sanctity on the offspring (especially when the mother was a consecrated offering)?

The *Gemora* answers: Rabban Shimon ben Gamliel holds that the offspring of sacrifices become sanctified when they come into existence (after they are born, and not from the time of conception), for if we were to think that the offspring of sacrifices are sanctified even in the womb of their mother, why shouldn't sanctity take effect upon them, since they receive sanctity from the time of conception? This proves that the offspring of consecrated offerings become holy when they come into existence (and therefore the *tumtum* or *androgynous*, which are regarded as defective, and cannot receive sacrificial sanctity).

The *Gemora* notes that the *Tanna* of the following *braisa* holds that the offspring of sacrifices are sanctified in the womb of their mother, for it was taught as follows: [The verse states: *However, a bechor that becomes a firstborn for Hashem among livestock, a man shall not consecrate it. This verse teaches us that one cannot consecrate a bechor as another sacrifice. The following chart demonstrates the other rulings learned from this verse.*]

<i>a man (shall not consecrate) it</i>	“It” (a <i>bechor</i>) you cannot consecrate, but a person who is a <i>bechor</i> may consecrate things.
<i>among livestock</i>	Even others (besides a human <i>bechor</i>) may not consecrate an animal <i>bechor</i> as something else.
<i>that becomes a firstborn for Hashem</i>	While the ‘ <i>bechor</i> ’ is in the womb, it may be consecrated as something else.
<i>However</i>	An offspring of a consecrated animal cannot be consecrated as something else, while it is in its mother’s womb.

The last derivation proves that this *Tanna* holds that the offspring of sacrifices are sanctified in the womb of their mother (and that is why that cannot be consecrated as anything else while they are in their mother’s womb).

Rav Amram said to Rav Sheishes (based on the fact that a *bechor* receives its sanctity only at birth): If one declares that a *bechor*, at the moment that the greater part of it emerges from the womb should be an *olah* offering, is it an *olah* or a *bechor*? The *Gemora* explains: Is it an *olah*, since an *olah* is entirely burned on the altar (and therefore its sanctity is considered stronger than a *bechor*), or is it a *bechor*, since its sanctity comes automatically (and therefore its sanctity is considered stronger than that of an *olah*)?

Rav Sheishes replied to him: Why do you inquire this? Is this not identical with the inquiry of Ilfa, who inquires as follows: If one says in connection with *leket* (one or two ears of grain that fall from one’s hand while harvesting must be left for the poor) that when the greater part of the produce has slipped from my hand (which is usually the time that it would belong to the poor) let it be *hefker* – regarded as ownerless (in which case, even the rich people can take it)? Is it *leket*, or is it *hefker*? Is it *leket*, since its sanctity comes (automatically) from Heaven (and therefore its sanctity is considered stronger than that of *hefker*), or is it *hefker*, since the poor and rich may acquire it? And Abaye explained: Why is inquiring that? Whose word do we obey? That

of the Master (*Hashem, who commanded that such produce should become leket*), or that of the student (*the harvester, who wants it to become hefker*)? [Obviously, we obey the words of the Master, and therefore it is ruled to be leket, and not hefker.] Similarly here as well, whose word do we obey? [Obviously, we obey the words of the Master, and therefore the law of the bechor takes effect upon it.] (24b – 25a)

Mishna

If one says, “The offspring of shall be an *olah* and it (*the animal itself*) shall be a *shelamim*,” his words stand. [His declaration is valid, for he consecrated the offspring before its mother.] If, however, he says, “It (*the animal*) shall be a *shelamim* and its offspring shall be an *olah*,” the fetus is regarded as the offspring of a *shelamim*; these are the words of Rabbi Meir. [R’ Meir holds that we accept a person’s first statement. And here the principle of sanctity commencing only at birth does not apply, as this only refers to a case where the animal became pregnant subsequent to consecration, but where one consecrates a pregnant animal, the fetus is considered apart from its mother and is able to receive sanctity on its own account.] Rabbi Yosi says: If he intended to say this at first, since it is impossible to mention both sacrifices simultaneously, his words stand (*and the mother is a shelamim and the offspring is an olah; this is because R’ Yosi maintains that we accept even the latter part of one’s statement, and both parts of his statement takes effect*); but if after he already said that this shall be a *shelamim*, he changed his mind and says that its fetus shall be an *olah*, the fetus is regarded as the offspring of a *shelamim*. (25a)

Rabbi Yochanan’s Ruling

Rabbi Yochanan says that if one consecrated a pregnant animal as a *chatas*, and it then gave birth, he can choose whether to atone by offering the mother or the offspring.

The *Gemora* explains the reasoning for this: Rabbi Yochanan holds that if he excluded the fetus (*when consecrating a pregnant animal*), the act is valid (*and the fetus remains in a chullin state*), and a fetus is not regarded as part of the thigh of its mother (*and that is why he can exclude it from being consecrated*). The case (*when he does not explicitly exclude the fetus*) is therefore like one who designates two *chatas* offerings for security’s sake, where if he wishes, he can obtain atonement through it (*the mother*), and if he wishes, through the other (*the offspring*).

Rabbi Elozar asked on Rabbi Yochanan from our *Mishna*: If, one says, “It (*the animal*) shall be a *shelamim* and its offspring shall be an *olah*,” the fetus is regarded as the offspring of a *shelamim*. Now, if we assume that if he excluded the fetus, the act is valid, why does it say that the fetus is regarded as the offspring of a *shelamim*? Should it not say that the fetus is a *shelamim* (*for its sanctity does not stem from its mother, but from it itself*)?

Rav Tavla said: Ask no question from this *Mishna*, for Rav said to the *Tanna*: The *Mishna* should be emended to say: The fetus is a *shelamim*.

The *Gemora* asks on Rabbi Yochanan from the following *braisa*: If a man said to his Canaanite slave (as he handed her an emancipation document for her fetus), “You are still my slave, but your fetus is free,” if she was indeed pregnant at that time, her fetus gains its freedom. Now, this creates no difficulty if you hold that if one excludes the fetus (*when consecrating the mother*) the action is not valid (*and the fetus will automatically be consecrated*), for a fetus is considered as the thigh of its mother; it is for this reason that she obtains freedom on his behalf (*of the fetus*), since it is similar to the case where one freed a half of his slave (*where the slave acquires possession of that half, and so here the slave is able to secure the freedom of her fetus*), and this will represent the opinion of Rebbe, as it has been taught in the following *braisa*: If one frees half of his slave, he has acquired freedom for that half. This is because his emancipation document and his hand (*giving him the right to acquire the document comes simultaneously; accordingly, the slave also acquires her ‘hand’ and the document on behalf of her fetus simultaneously*). But if you say that if one excludes the fetus (*when consecrating the mother*) the action is valid (*and the fetus will not be consecrated*), for a fetus is not considered as the thigh of its mother, why then does the slave obtain freedom on behalf of her fetus? Has it not been taught in a *braisa*: It would seem that a slave can accept an emancipation document for another slave from that slave’s master, but he cannot accept one from his own master. [*This is because his hand is like the hand of the master; he therefore cannot acquire the document for his fellow slave, for it never left the owner’s possession.*] You can therefore learn from this that if one excluded the fetus, the act is not valid (*for the fetus is regarded as the thigh of the mother*)! Shall we say that this refutes Rabbi Yochanan’s ruling?

The *Gemora* notes that indeed it is a refutation.

The *Gemora* asks: Shall we say that the opinion whether, if one excluded the fetus the act is valid (*or not*), is a point at issue between *Tannaim*? For it has been taught in the following *braisa*: If one says to



his slavewoman, “Behold, you are free (*with this document*), but your child will remain a slave,” the child is free like her; these are the words of Rabbi Yosi HaGelili. The Rabbis, however, say: His words are valid. The verse “*the woman (the slavewoman) and her children shall belong to her master*” supports Rabbi Yosi HaGelili’s opinion, for it implies that as long as the woman belongs to her master, the offspring is her master’s as well.

Now, does this not mean that these *Tannaim* differ regarding the following: Rabbi Yosi HaGelili holds that if one excluded the fetus the act is not valid (*and therefore the fetus is free as well*), whereas the Rabbis hold that the act is valid?

The *Gemora* rejects this reasoning, for Rabbi Yochanan can say to you that all the *Tannaim* concerned hold that if one excluded the fetus the act is valid, and the reason here (*why Rabbi Yosi HaGelili holds that the fetus has the status of the mother is not because the fetus is the thigh of the mother, but rather it*) is because the Torah explicitly states: *The woman and her children shall belong to her master.*

The *Gemora* asks: But then definitely the matter would be a point at issue between the following *Tannaim*, for it was taught in a *braisa*: If one slaughtered a *chatas* and found a four months’ old fetus alive inside, one *braisa* states: It is only eaten by male *Kohanim*, within the curtains of the Courtyard, and for one day (*and a night*). [*It is treated exactly as a chatas. The shechitah of the mother is effective for the fetus as well.*] A different *braisa*, however, taught: It is eaten by all people (*not only Kohanim*), and it can be eaten everywhere (*not only in the Courtyard*), and it may be eaten forever. Now (*assuming that the fetus was present at the time of the consecration*), isn’t the difference of opinion among *Tannaim* explained as follows: One master holds that if one excluded the fetus it is valid (*for the fetus is not like the thigh of the mother, and therefore, here, where he did not exclude the fetus, he consecrated the fetus by itself and that is why it is treated as a chatas*), whereas the other master maintains that if one excluded the fetus it is not valid (*for it is like the thigh of the mother, and its sanctity stems from the mother, and since the fetus can only become sanctified when it comes into being, and here where it is not fully developed, it is not regarded as ‘coming into being,’ and does not become holy when it leaves its mother’s womb*)?

The *Gemora* rejects this reasoning, for Rabbi Yochanan can say to you that all the *Tannaim* concerned hold that if one excluded the fetus the act is valid, and that these *Tannaim* differ on the following point (*and they are referring to a case where the animal conceived after it was designated as a chatas*): One *Tanna* holds that the offspring of

sacrifices become sanctified when they come into existence (*after they are born, and not from the time of conception*), while the other *Tanna* maintains that the offspring of sacrifices are sanctified even in the womb of their mother.

Alternatively, the *Gemora* suggests: Both *braisos* are the teaching of one *Tanna* (*and he holds like R’ Yochanan that one can consecrate a fetus, for it is regarded as separate entity, and he also maintains that if a consecrated animal becomes pregnant, the fetus becomes consecrated only when it comes into being, but there is no contradiction between the two braisos, for they are referring to two different cases*): One *braisa* deals with a case where one consecrated an animal and then it became pregnant (*and therefore it can only become consecrated as the offspring of a chatas when it comes into being*), and the other *braisa* refers to a case where he consecrated it in a pregnant condition (*and therefore he directly consecrated the fetus at that time, and that is why the braisa rules that it is treated as a chatas*).

Rava asked: How do we know that the reason of Rabbi Yochanan (*when he says that if he designated a pregnant chatas and it gave birth, if he wishes he can obtain atonement through its mother or its offspring*) is because if one excluded the fetus the act is valid? Perhaps his reason is because he is of the opinion that a man may receive atonement with an animal (*the offspring*) which is regarded as a benefit to *hekdesh* (*for it will either be offered as a sacrifice instead of its mother, or it will be offered as a remnant sacrifice*)?

Rav Hamnuna said: Rabbi Elozar, a student of Rabbi Yochanan, was in the presence of Rabbi Yochanan, and Rabbi Yochanan did not give him that answer, and yet you say that the reason of the ruling of Rabbi Yochanan is because a man may receive atonement with an animal (*the offspring*) which is regarded as a benefit to *hekdesh*!?! (25a – 25b)

INSIGHTS TO THE DAF

A Female Slave and her Fetus: The Half that is a Whole

By: Meoros HaDaf HaYomi

Our *sugya* treats various possibilities of freeing slaves. According to the *Chachamim*, and thus the halachah was ruled, a person cannot write a

writ of liberation for his slave in which he only frees half of him. A writ of liberation can only serve to free a whole slave.

Now read Rambam's following statement and discover the obvious contradiction in his words. Rambam rules (*Hilchos 'Avadim 7:5*): "If someone wrote to his pregnant *shifchah* (female slave) 'You are free and your fetus is a slave', his statement is valid; 'You are a slave and your fetus is free', he said nothing as it is as if he frees half of her."

At first he rules that one can free her without her fetus. She becomes free but the fetus remains a slave. Then he rules that one cannot free the fetus alone, as it is like freeing half a slave. But if freeing the fetus is considered like freeing half the slave and therefore is invalid, as one cannot free half a slave with a writ of liberation, how does he succeed in freeing the slave alone, without the fetus? After all, he is only freeing half a slave, without the fetus (see the Raavad's remarks).

We shall now focus on a learned solution suggested by the Acharonim. Rabbi Chayim HaLevi of Brisk zt"l says that everyone agrees that one cannot free half a slave with a writ of liberation. But we must examine the reason for this halachah and define it. Indeed, the problem does not stem from the result but from the act. In other words, nothing prevents a situation where a person is half a slave and half a free person – we encounter many such people in various *sugyos* in *Shas*. The halachah which concerns us, then, relates to the act of liberation by means of a writ, which cannot apply to half a slave and which therefore doesn't free him.

Let us continue to the pregnant slave. Rabbi Chayim says that Rambam holds that a fetus is a limb of its mother. Therefore, someone who tries to free the fetus is regarded as freeing half of her. However, if we concentrate on the definition of "a fetus is a limb of its mother", we notice that no one ever said that the mother is also part of her fetus but that the fetus is part of its mother – as everyone understands, that growing fruit is part of the tree but the tree is not part of its fruit. The mother expands her halachic definitions to her fetus but this fact doesn't subtract from her status - she doesn't depend on it.

Thus Rambam's statement is very simple. It is possible to free the mother alone because her owner is freeing a whole slave. But it is impossible to free the fetus alone as it derives its definitions from its mother and it's as though he is freeing half a slave (see *Lechem Mishneh, Chidushei Rabeinu Chayim HaLevi* and *Or Sameiach*; and *Kehilos Ya'akov*, Temurah, §9, os 9).

To broaden our general knowledge, we should mention that this explanation of Rambam is a mere introduction to a ramified discussion concerning his statement as it explicitly contradicts our Gemara, which explains that one cannot free a female slave and retain her fetus! Many toiled to solve the quandary. *Sefer HaMaftaiach*, which cites the Acharonim who address Rambam's rulings, mentions over 50 works that discuss the issue!

DAILY MASHAL

Happening Simultaneously

In the sefer, *Pirurim Mei'shulchan Gavoha*, the following Medrash is explained according to this principle: Avraham asked the *Ribbono shel Olam*: Who will circumcise me? The *Ribbono shel Olam* responded: You will do it yourself. Thereupon, Avraham took a knife, took hold of his *arlah*, and was about to begin the cutting when he became concerned that perhaps he was too old (and his hand would not remain steady). Hashem stretched His hand out and held the knife together with Avraham, and Avraham performed the circumcision.

It emerges from this Medrash that Avraham circumcised himself. This is difficult, for an *arel* (usually - one who has not been circumcised, but here it means a gentile) is disqualified from performing a circumcision, and Avraham did not accept to become a Yisroel until his circumcision (like the Ramban in *Parashas Emor* explains), so how could Avraham be qualified to circumcise himself?

The answer is that since through the circumcision he became a Yisroel, he becomes qualified as he is performing the circumcision.

Chazal write that anyone who comes to convert will be accepted unless he is a descendent of Amalek. R' Yosef Engel asks: The Gemora in *Brachos* (28a) states that Sanheriv came and mixed up all the nations of the world. Accordingly, the halachah should be that we should not accept converts at all, for we should be concerned that perhaps they are from Amalek? Perhaps you will say that we should apply the principle of 'rov' and follow the majority (and most of the gentiles do not descend from Amalek); that will not be satisfactory, for the Acharonim write that the principle of majority applies only by a Yisroel, and not by a gentile!?

He answers that since by converting he becomes a Yisroel, we can say that the right to use the principle of majority and the conversion comes simultaneously, and the conversion is a valid one.