

## OVERVIEW of the Daf

1) **MISHNAH:** R' Tarfon and R' Akiva dispute the status of a firstborn animal that was delivered by caesarean section followed by one born naturally.

### 2) Clarifying the dispute

The Gemara explains the point of dispute between R' Tarfon and R' Akiva.

A Beraisai derives from pesukim that an animal must be a firstborn in all aspects to be halachically categorized as a bechor.

R' Shrivaya notes an inconsistency in the Beraisai.

Abaye resolves the contradiction.

Ravina suggests an alternative resolution to the contradiction.

R' Acha of Dift successfully refutes Ravina's resolution and the Gemara concludes that Abaye's resolution is more acceptable.

### הדרן עלך הלוקח עובר פרטו

3) **MISHNAH:** The Mishnah discusses different uncertainties that could arise when an animal is purchased from a non-Jew.

### 4) Clarifying R' Yishmael's position

The Gemara infers that since R' Yishmael maintains that after an animal reaches that age at which it could give birth its next offspring is a doubtful bechor, he follows R' Meir's position that one has to be concerned for a minority and thus he is concerned that this animal is from the minority of animals that would not have already had an offspring.

It is suggested that R' Yishmael could also follow the opinion of Rabanan.

This suggestion is rejected. ■

## REVIEW and Remember

1. What is the point of dispute between R' Tarfon and R' Akiva ?  
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2. What is an example of a generalization that needs a specification ?  
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3. How does one know whether the offspring of a purchased animal is a bechor ?  
.....
4. What is an example of a רובא דליתיה קמן ?  
.....

## Distinctive INSIGHT

### R' Tarfon's doubt regarding a birth following a caesarean birth

רבי טרפון מספקא ליה בכור לדבר אחד אי הוי בכור אי לא הוי בכור

The Torah records two pesukim regarding the mitzvah of the firstborn. In Shemos (13:2) the Torah says that the firstborn is the first one who exits from its mother's womb. In Devarim (15:19) the Torah describes that the bechor is the firstborn of its mother, but that verse does not indicate that it must be the one who exits the womb first. In our Mishnah, the Tannaim disagree regarding how to interpret the details of this halacha.

If the firstborn of an animal is born by caesarean section, R' Tarfon holds that it and the next to be born, via the womb, are both doubtful bechorim, and they are to graze until they develop a blemish. This is because R' Tarfon is unsure whether the law of bechor applies to a caesarean or only to one born naturally. R' Akiva holds that neither of these animals is a bechor. As he explains, the law of bechor only applies to an animal born naturally. Here, the first was not from the womb, and the second one was not the firstborn.

Sefer Chok Nossan explains that it is clear that the first possuk states that a bechor must exit the womb, but R' Tarfon understands that the subsequent verse which uses the word bechor more generally might be coming to teach that the mitzvah applies to a non-natural birth as well. We might have thought that a bechor must be not only the firstborn, but also the first one which exits the womb. If R' Tarfon's interpretation of the word bechor was correct, the lesson would be that a firstborn is considered a bechor even if it has only one of these features. Accordingly, the firstborn by caesarean might be a bechor, because it was born first, and the next one born might also be a bechor, because it was the first from the womb, and this one feature is enough for it to be a bechor.

Tosafos notes that according to the question of R' Shrivaya later in the Gemara, the rule of defining an animal as a bechor even when it has only one characteristic should lead us to say that a male born after a female should also be a bechor, because it is the first male to be born. Why does R' Tarfon's doubt extend to this case as well?

Sfas Emes explains that R' Tarfon had no doubt regarding the meaning of the word bechor, and that it refers to an offspring which is the first one to be born. Therefore, a male born after a female is certainly not included in this mitzvah. The only thing R' Tarfon considered as part of this doubt was the meaning of "petter rechem - the first to exit the womb." Perhaps this term includes the first natural birth following a caesarean birth. Even though this male is the second born, it is still a bechor in one respect, in that it is the first out of the womb, and perhaps that is enough to be included in this mitzvah. ■

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by Mr. and Mrs. Josh England, North Woodmere, NY

# HALACHA Highlight

## *A woman delivering a viable fetus in her ninth month*

פרה וחמור בנות שלש וגוי

*A cow or donkey within her first three years etc.*

It happened once in the time of Rashbash (16<sup>th</sup> century) that a man died on the eighth of Elul. At the time of his death his wife was pregnant and he had a brother who lived in some foreign country but his exact whereabouts were unknown. On the first of Iyar the widow gave birth to a son and witnesses examined the newborn and confirmed that he had hair and fingernails indicating that he was fully developed. When the baby was six days old he became ill and he died a couple of days later. The question the child's death raised was whether the child was considered viable and his mother is not subject to yibum or perhaps the child was not viable and as such the mother would be subject to yibum.

Rashbash<sup>1</sup> developed three approaches to exempt the mother from yibum and one of them had to do with the duration of the pregnancy. If one calculates the days from when the father became ill until his son was born it amounts to more than eight full months. As such, the child is considered viable. Once the child is considered viable the fact that he

died shortly after birth does not obligate his mother in yibum. Only if a mother gave birth to a non-viable child would she be obligated in yibum. Although the Gemara Nidah (27a) states that when a woman gives birth to a nine-month fetus the child will be viable only if it is born after a full nine months, it is known already from experience that this rule is no longer applicable. Many women give birth to healthy children only a few days into their ninth month. He then cites Tosafos<sup>2</sup> who already notes that with regards to certain matters nature has changed. Our Gemara states that cows and donkeys do not give birth in their first three years and as such if one purchased a cow or donkey from a non-Jew later before reaching birthing age one need not be concerned that the cow or donkey already delivered. Nowadays cows and donkeys give birth earlier than this. Therefore, it could be said as well that in the time of Chazal a woman would not give birth to a viable child unless she completed her ninth month but that is no longer true. As such since based on our calculation the fetus was born at least a few days into the ninth month, it can be considered viable and as such his mother is not obligated to receive yibum. ■

<sup>1</sup> שו"ת רשב"ש סי' תקי"ג.

<sup>2</sup> תוס' ע"ז כ"ד: ד"ה פרה וחולין מ"ז. ד"ה כל. ■

# STORIES off the Daf

## *Double Indemnity*

"הלוקח בהמה מן הנכרי..."

Today's daf discusses when an animal has the sanctified status of the firstborn.

In money matters people sometimes find it hard to keep an honest and balanced perspective. When one feels certain that money is owed to him—despite his fellow's protests and proofs—he is not far from taking what others would consider unreasonable action.

When a non-Jew was certain that a Jewish business associate owed him a sum of money, he decided to act right away. He convinced a fellow non-Jew to take the Jew's donkey in lieu of payment. The Jew knew that his former associate would never agree to go to follow a detri-

mental verdict of a Jewish court, so he took him to a non-Jewish court.<sup>1</sup>

As the proceedings stretched on, the Jew got more and more discouraged until he finally gave up on ever seeing his animal. Nevertheless, he continued to fight it out in court, and—after a year and a half—was awarded his animal. To his surprise, he also received a calf, which his cow had given birth to in the long interim. Since this was the first-born of his cow, he wondered if the calf had kedushas bechor.

When this question reached the Divrei Chaim, of Tzanz, ז"ל, he ruled that the animal did not have kedushas bechor. "There are two major reasons why we can be lenient in this case. Firstly, according to many rishonim the non-Jew acquired the animal due to קים ליה — when one does an action that incurs capital punishment, he is not liable for any lesser violation that he does

in the same act. When there was a functioning Sanhedrin in Eretz Yisrael, a non-Jew could be killed if he stole an animal from a Jew, so this rule may apply in our case. If he would have been liable for the theft, he loses his liability to return the actual animal. In that event, the animal really does belong to him and therefore when it calved it was in actual non-Jewish possession. The second reason to be lenient is that an animal which gave birth is fundamentally changed. According to many opinions, the non-Jew acquired the animal prior to this fundamental change and its calf is therefore not obligated in bechorah."<sup>2</sup> ■

<sup>1</sup> ע"י תשב"ץ ח"ד, חוט המשולש, טור ג', סי' ו'

<sup>2</sup> שו"ת דברי חיים, יו"ד ח"ב, סי' קי"ט ■