



## OVERVIEW of the Daf

### 1) Penalty for blemishing a bechor (cont.)

Abaye gives another example where a penalty is not imposed upon the children of the transgressor.

2) **MISHNAH:** The Mishnah presents two incidents involving intent to inflict a blemish on a bechor and concludes with the rule that guides these halachos.

### 3) Clarifying the Mishnah

The Gemara explains why it was necessary for the Mishnah to recount both incidents.

R' Chisda in the name of R' Ketina and Rava disagree about the circumstances in which a bechor is permitted if inflicted with a wound after inquiring about the matter from a Jew.

The cases that are included in the Mishnah's summary of the relevant rules are identified.

4) **MISHNAH:** The Mishnah discusses one who inflicts a wound on a bechor in self-defense.

### 5) Clarifying the Mishnah

R' Pappa asserts that the Mishnah's ruling applies only when the man kicked the bechor as he was being pursued.

The novelty of this qualification is explained.

A second version of R' Pappa's ruling is cited.

### 6) Inflicting a wound on a bechor before it is born

R' Yehudah asserts that one may inflict a blemish on a bechor before it is born.

Rava gives examples of what is permitted.

A second version of this teaching is cited.

### 7) Blemish inside of the mouth

Rava teaches when a wound inside of the mouth qualifies

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## Distinctive INSIGHT

### All the family members must be with us outside

והאמר רבא בעלים עומדים עמנו בחוץ נכנס שלם ויצא חבול מעידין עליו

If there is doubt regarding whether an animal is a firstborn, and the animal develops a blemish, the rule is **המוציא מחבירו**, and the kohen can only demand that the yisrael give him the animal if he proves that it is definitely a firstborn. Otherwise, the animal remains with the yisrael and he may eat it.

Where a blemish develops on a doubtful firstborn animal, the yisrael himself, the owner, is suspected of causing the blemish directly in order to keep the animal. Therefore, before he may benefit from this animal, he must bring two witnesses from the outside to testify that the blemish happened by itself. Rav Nachman says that the owners are not suspect, even though they stand to gain by the animal becoming blemished, and they may testify. It is the kohen who is given the bechor that is suspected to intentionally cause a blemish, and the kohen is not trusted to say that the blemish happened on its own.

Another Baraisa records three opinions regarding this issue. R' Yehoshua ben Kafosai says that the kohen in possession of the bechor is not trusted, and two other people, even kohanim, must testify that the blemish was not caused purposefully. Rabban Shimon b. Gamliel says that other members of the kohen's family may testify regarding the bechor, while R' Yose disqualifies any members of the kohen's household, but we can rely upon testimony of someone from the street, even if it be one person by himself.

Rav Nachman rules according to R' Shimon b. Gamliel, and Rava rules according to R' Yose, that members of the kohen's family are not trusted. The Gemara points out that Rava seems to say differently, as he taught that if a kohen is standing with us outside his house, and we see the animal enter the house and later emerge with a blemish, we can testify that the blemish happened by itself. The owner was with us, so we know that he did not cause the blemish. Yet the other members of the household might have been inside, and according to R' Yose, they are all suspected of causing a blemish to the bechor. The Gemara answers that we can testify only when all the owners were with us outside with us, so no family members were with the animal when it became blemished.

Tur (Y.D. 314) records this halacha, that all the family members must be with us outside before we can testify that the blemish was not caused purposefully. Beis Yosef asks on this that we rule according to R' Shimon b. Gamliel, that the family members are not suspect, so there is no need for them to be outside the house. Beis Yosef points out that this is precisely why Rambam omits this detail of Rava that the family members need to be outside with us. The Achronim offer various resolutions to this issue. ■

## REVIEW and Remember

1. Why is it necessary for the Mishnah to present two incidents that express the same principle?

2. When does a blemish in an animal's mouth qualify as a "blemish"?

3. What is R' Yehoshua ben Kaposai's ruling?

4. Why is the wife of a Kohen not believed regarding a bechor?

# HALACHAH Highlight

## Is a man considered one with his wife?

אשתו כגופו דמי

For one's wife is considered like oneself

The Gemara teaches that a kohen's sons and members of his household are reliable to testify that a bechor's blemish was not inflicted by the kohen. The kohen's wife, however, is not reliable since she is considered one with her husband – אשתו כגופו. Sefer Beis Ha'otsar<sup>1</sup> asks whether a husband is considered one with his wife – בעלה כגופה. He cites Or Ha'chaim who explains that one who curses his parents is liable because one's parents are partners in his formation. The difficulty this raises is that a child is executed for cursing even one of his parents but if it is only due to their partnership that he was formed why should he be liable for cursing only one of his parents? He answers that when the pasuk says אביו ואמו קלל – his father and his mother he cursed, the intent is that when one curses a father his mother is cursed as well and one who curses a mother curses his father too. The reason is that a mother and father are considered a single unit, therefore, whatever is done to one of them is comparable to having been done to both of them.

Sefer Shalmei Todah<sup>3</sup> discusses the issue of kindling Chanukah lights when neither the husband nor his wife is home. Is each one of them obligated to kindle Chanukah lights or is it sufficient for one of them to kindle the lights on behalf of the other? He notes that Mishnah Berurah<sup>4</sup> rules that a husband does not discharge his obligation when his wife kindles the lights unless she is home. He then inquires is the reason a husband does not fulfill his obligation when his wife lights elsewhere that there is no principle בעלה כגופה and therefore he must kindle lights for himself or perhaps we do recognize the principle of בעלה כגופה but that applies only when she kindles the lights in

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as a blemish.

R' Pappa identifies the novelty of this teaching.

8) **MISHNAH:** The Mishnah discusses who is believed to testify that a blemish happened naturally.

### 9) Clarifying the Mishnah

The Gemara presents a dispute between R' Yochanan and R' Elazar regarding the progression of the opinions in the Mishnah.

One of these opinions is unsuccessfully challenged.

### 10) A bechor of doubtful status

R' Chisda in the name of R' Ketina issues a ruling related to a blemished bechor of doubtful status and the Gemara explains that his ruling follows R' Yehoshua ben Kaposai's opinion cited in a Baraisa.

R' Nachman disagrees with this ruling.

R' Nachman's proof to his ruling is challenged and thus revised.

### 11) Clarifying the Mishnah (cont.)

R' Nachman and Rava debate which opinion quoted in the previously-cited Baraisa halacha follows.

The Gemara questions whether Rava ruled in accordance with R' Yosi's opinion.

The Gemara declares that halacha follows R' Shimon ben Gamliel's opinion and then adds a qualification to this declaration.

### 12) R' Meir's position

R' Pappa unsuccessfully challenges R' Meir's position. ■

her house but not if she kindles the lights elsewhere. He concludes by reporting that this issue is debated by the Poskim and there is no definitive conclusion to the matter. ■

1. בית האוצר ח"א כלל ר"ז.

2. אור החיים ויקרא כ: ט.

3. ספר שלמי תודה חנוכה סי י"ט אות ג'.

4. ביה"ל סי תרע"ה סעי ג' ד"ה אשה. ■

# STORIES Off the Daf

## Valid Witnesses?

בנו ובתו מעידין

There are many halachos with various guidelines for when we accept someone's testimony. One simple halachah is that one may not testify regarding his close relative. Of course, when a contestant in a legal battle can present witnesses he has basically won his case, unless the witnesses are invalid.

One plaintiff claimed that his friend owed his debtor's estate a vast sum of

money. The debtor was not well and unable to attend beis din or even recall the details of their past transactions. Although the friend denied this, the plaintiff produced two kosher witnesses who bolstered his claim. The defendant denied their validity however. "These witnesses are your relatives. How can they bear testimony on my monetary obligation if you stand to gain an advantage from this?"

When this case came before the Maharsham, ז"ל, he ruled that the witnesses were valid. "The Machaneh Efraim rules that a close relative may be a witness in such a case, even though the person involved in the question may not bear testi-

mony.<sup>1</sup> This is clear from the Gemara in Bechoros 36. There we find that a kohen's bechor may not be used if we only have the kohen's word that the animal contracted a blemish. Yet his children can testify that the bechor became blemished without intervention. Now we may well wonder why his children may testify regarding this. Aren't they invalid witnesses regarding their close relatives? The answer is that relatives may not testify due to a gezeiras hakasuv. But if they testify regarding something else which gives their relative an advantage, there is no problem at all."<sup>2</sup> ■

1. מחנה אפרים, פ"א מהל' עדות

2. שו"ת מהרש"ם, ח"ג, סי כ"ג ■