

## OVERVIEW of the Daf

### 1) One who marries a woman who is unfit (cont.)

The Gemara clarifies the type of vow the kohen who married a woman who is unfit must take in order to be permitted to serve in the Beis HaMikdash before he has a chance to divorce her.

Ameimar's ruling concerning a vow taken on the understanding of the public is qualified.

The reason to differentiate between the kohen who married a woman who is unfit and a kohen who becomes tamei is explained.

### הדרן עלך מומין אלו

2) **MISHNAH:** The Mishnah teaches that there are four categories of a human bechor and elaborates on two of those categories.

### 3) The head of a nefel

Shmuel rules that the head of a nefel is not considered a birth and if the nefel's twin emerges from the womb first it is considered the bechor.

This ruling is successfully refuted.

### 4) Emergence of the forehead

Reish Lakish rules that the emergence of the forehead is considered birth except for matters related to inheritance.

R' Yochanan disagrees and asserts that the son whose head emerged first is the bechor even for the inheritance.

The implication of Reish Lakish's statement is explained.

Numerous unsuccessful challenges to R' Yochanan's position are presented. ■

## Distinctive INSIGHT

### *An oath uttered with the knowledge of the public*

על דעת הרבים אין לו הפרה

The Mishnah taught that a kohen who is married to a woman who is prohibited to him is disqualified from serving in the Mikdash until he takes an oath that he and his wife will not benefit from each another until they divorce.

In the Gemara, Ameimar explains that the oath taken has to be one which cannot be released, for example, an oath which is made "with the knowledge of the public." Tosafos (Gittin 46a) explains that this refers to an oath which is made in front of two people who are informed and alerted about the oath. He does not explain, however, why this results in the oath not being able to be released. Rashba explains that when someone presents an oath to a beis din and he asks that it be released, the judges question the one who took the oath and ask him for an excuse and a reason why he regrets having made the oath. Using this pretext, they can declare that the oath was uttered with a mistaken understanding. However, when an oath is originally made in front of two or three people we are concerned that someone in the group thought that the oath should apply in all circumstances, including the case which is being presented in front of the beis din.

Ritva and Ra"n (Gittin 36b) explains that an oath spoken in front of two or three people is very strong, and that is the reason it may not be released by a beis din.

Ritva notes that if the reason an oath uttered with the knowledge of the public may not be released is that we must consider the opinions of all that were present when it was spoken, it should be possible to release this type of oath if we could reconvene a group and declare the oath released in front of them. Yet, the halacha is that this type of oath may not be released.

Tosafos (Gittin 35a), however, says that an oath uttered with the knowledge of the public may be released if a group is reconvened.

Tosafos (ibid. 46a) and Ritva also point out that if a public oath may not be released in consideration of what the group itself might have been thinking, this same limitation should also be true if an oath was uttered with the knowledge of even another individual. Although the person who uttered the vow petitions a judge for a release, perhaps the one other person who heard the oath was under the impression that the oath would be valid even under the circumstances which are being appealed.

Tosafos answers that one who utters an oath in front of a group defers to their understanding, but he does not defer when he speaks in front of only one person. Ra"n adds that if the speaker explicitly says that he accepts the one listener's view and opinion to be of value, then the vow may not be released even when spoken in front of one person. ■

## REVIEW and Remember

1. How is it possible to be the bechor for inheritances but not for pidyon haben ?

2. How is it possible to be a bechor for pidyon haben but not for inheritances ?

3. Explain: פדחת פוטרת בכל מקום.

4. How much of a person's face must witnesses see to identify a corpse ?

# HALACHA Highlight

*A kohen who makes himself tamei*

התם יצרו תקפו

*There his desire takes hold of him*

**S**hulchan Aruch<sup>1</sup> rules that a kohen who intentionally becomes tamei from corpse tum'ah is unfit to recite birkas kohanim until he repents and accepts upon himself that he will not become tamei any more. Even if he becomes tamei from Rabbinically instituted tum'ah he may not recite birkas kohanim until he commits that he will no longer do so. The commitment that he will not become tamei any more must be done before beis din<sup>2</sup>. However, he is not obligated to take a vow prohibiting himself from benefit if he becomes tamei from a corpse as he must do when he married a woman he is prohibited to marry<sup>3</sup>. The reason for the distinction is based on our Gemara that teaches that a kohen who married a woman he is prohibited to marry has a yetzer hora that stands as an impediment to compliance with halacha. A kohen who makes himself tamei does not have a yetzer

hora to do so and a commitment in front of beis din is sufficient. In the event that the kohen is a doctor and is paid to examine corpses then he must take a vow since the yetzer hora for money stands as an impediment to his compliance with halacha<sup>4</sup>.

In the event a kohen who becomes tamei wants to recite birkas kohanim he must be told that he is not permitted to ascend the platform unless he accepts upon himself that he will not become tamei any more. In the event that he is defiant it is not necessary to protest strongly nor are the other kohanim required to refuse to ascend the platform with him. This is in contrast with a kohen who is married to a woman he is prohibited to marry where it is necessary to vigorously protest his recitation of birkas kohanim and if necessary the other kohanim must refuse to ascend the platform with him<sup>5</sup>. ■

<sup>1</sup> שו"ע או"ח סי' קכ"ח סעי' מ"א.

<sup>2</sup> מ"ב שם סי' קנ"א.

<sup>3</sup> שו"ע שם סעי' מ'.

<sup>4</sup> מ"ב שם.

<sup>5</sup> פסקי תשובות אות פ"ד. ■

# STORIES off the Daf

## The Orphaned Child

"ואינו יודע..."

**O**n today's daf we find a case of a divorcée who was uncertain whether her child was her first husband's or her second's.

It is for very good reason that the Torah is so careful that we treat orphans gently. An orphan faces numerous challenges even if one parent remains to raise him. For one who endured the loss of both parents the hardships are much harder to bear. Perhaps the hardest of all is one who never knew her parents. Although this is virtually unheard of in modern times, not too long ago it was more common.

A family was beset upon by rob-

bers, who killed them all except a little girl. She was missed in the carnage and survived. Eventually she was found and another couple took the baby in and raised her as one of their own. She grew up with every advantage, grew older and married. When she gave birth to her firstborn son everyone's joy knew no bounds. But when it came time to redeem him, the couple wondered what they should do. Although the father was a yisrael, the mother was of unknown parentage; perhaps she was the daughter of a kohein or levi? If so they would not need to redeem the child, but if not, the child required redemption.

When this question reached Rav Chaim Berlin, zt"l, he ruled in a surprising manner. "The Tzemach Tzedek, zt"l, already ruled that if the mother is unsure whether she is the daughter of a kohein or levi, she need

not redeem her firstborn child. After all, the rule regarding questionable money is that the burden of proof is upon the person who will receive the money, not the one paying. Although in general we follow the majority and the majority of Jews are yisraelim that does not apply here since in money matters we do not follow after the majority.

"Although the Nachalas Yaakov points out that according to Tosafos we follow a רוב גמור, complete majority even in money matters, the Tzemach Tzedek goes according to the authorities who argue against the opinion of Tosafos. The halachah here is that the couple should do a pidyon haben, just to be certain, and the kohein should return their money to ensure that he doesn't take money to which he has no right."<sup>1</sup> ■

<sup>1</sup> אוצר רבי חיים ברלין, ח"ב, יו"ד, סי' קע"ב ■