

OVERVIEW of the Daf

1) Bechor (cont.)

R' Huna's position that a bechor is sanctified retroactively is unsuccessfully challenged.

2) Majority of limbs

Rava inquires whether we follow the majority when it comes to limbs or not.

The Gemara clarifies the exact intent of the inquiry.

An unsuccessful attempt to resolve the matter is presented and rejected.

3) Sanctification of the bechor

Rava asks a series of questions that relate to the sanctification of the bechor. Some of the inquiries require clarification and they are all left unresolved.

Other Amoraim ask additional questions which also remain unresolved.

4) MISHNAH: The Mishnah presents a dispute whether one who touches a dead fetus inside of a non-kosher animal becomes tamei.

5) Explaining the dispute

R' Chisda explains the rationale behind Tanna Kamma's position that a person who touches the dead fetus inside of its mother is not tamei.

R' Yitzchok explains the rationale behind R' Yosi HaGalili's position that if the animal is non-kosher the person who touches it becomes tamei.

After numerous attempts the Gemara succeeds at refuting the explanation and R' Nachman bar Yitzchok offers an alternative explanation for R' Yosi HaGalili's position.

The Gemara explains why despite R' Nachman bar Yitzchok's explanation it is still necessary to have the explanation of R' Yitzchok.

6) Tum'ah of a neveilah

A Beraisa records a discussion between Tannaim regarding the source that the neveilah of a kosher non-domesticated animal transmits tum'ah. ■

Distinctive INSIGHT

Why is the dead fetus in its mother not tamei?

קל וחומר אם הועילה אמו להתירו באכילה לא תועיל לו לטהוריה מידי נבילה

The Torah teaches (Vayikra 11:39) that the meat of an unslaughtered dead carcass of an animal (neveilah) causes impurity to anyone who touches it or carries it. This is true whether the animal is of a kosher type or if it is from a non-kosher species. If someone carries the neveilah, impurity is imparted to his clothing.

The Mishnah teaches that if a fetus dies within the womb of its mother, its carcass is not tamei (impure). Therefore, if a shepherd reaches within the body of the mother and touches the dead fetus, he is not tamei. R' Yose disagrees, as he makes the following distinction. If the shepherd reaches into the body of a non-kosher animal and touches its dead fetus, the shepherd is tamei, but if he touches the dead fetus of a kosher animal, he is not tamei.

The Gemara begins with explaining why Tanna Kamma holds that there is no tum'ah for any dead fetus within its mother's body. R' Chisda says that this halacha is based upon a kal vachomer. If the shechita of the mother permits the meat of the fetus for eating, the pure status of the mother can certainly help the dead fetus to not be tamei. Tosafos (72a, ד"ה הוציא) explains the logic in this argument. The shechita of the mother permits the fetus within it to be eaten, even if the fetus had already died. This teaches us that in this situation the fetus is secondary to its mother, and it does not maintain its own independent status. Although the fetus itself is dead, the shechita of the mother has an effect upon the fetus to permit it, thus indicating that we view the fetus as a part of its live mother. Being that we view it as being alive in terms of shechita, we also consider it alive in terms of tum'ah and taharah.

Rashi notes that the Gemara later (71a) states that "swallowed up" tum'ah is tahor. The dead fetus, even if it is a neveilah, is not tamei because it is contained within its mother. This, then, should be a simple reason for the halacha in the Mishnah why the shepherd who reaches in and touches the fetus is tahor. Why does the Gemara have to base its answer upon a kal vachomer? Rashi answers that the kal vachomer is necessary only according to R' Akiva who says (72a) that "swallowed up" tum'ah remains tamei. Therefore, the fetus would have been tamei, had it not been for the kal vachomer which teaches that the pure status of the mother reflects upon the fetus that it also be tahor.

In Meromei Sadeh, the Netzi"v infers that although Rashi holds that R' Akiva says that all "swallowed up" tum'ah is tamei, Tosafos holds that R' Akiva only says that it is tamei when a fetus reaches its arm outside the womb, but otherwise even R' Akiva says that "swallowed up" tum'ah is tahor. ■

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HALACHA Highlight

Eating a majority of a k'zayis of matzah

עד השתא לא אשמעינן דרובו ככולו

Until now did we not know that the majority is considered like its entirety?

The Gemara takes the principle **רובו ככולו** – the majority is comparable to the entire thing – as a given. Later authorities question the exact parameters of this principle. There is a mitzvah to eat an olive's volume of matzah the first night of Pesach. All opinions agree that one who does not eat an olive's volume does not fulfill the mitzvah even though he ate a majority of that quantity. Similarly, a mikvah requires forty seah of water and all opinions agree that if the mikvah contained only a majority of those forty seah the immersion would not count. Why is this so if the principle **רובו ככולו** is such an obvious principle?

Chasam Sofer¹ writes that the principle of **רובו ככולו** applies only when the majority and minority are physically in front of us and there is something that binds them together. For example, when the entire Sanhedrin sits together the final decision will follow the majority. If, however, only the majority of the Sanhedrin is present we do not follow that majority. Similarly, in order to recite devarim shebikedusha it is necessary to have ten adult men present. If seven of them have not heard kaddish or borchu they may recite that prayer but if only seven people gather together they may not recite kaddish or borchu even if none of them have recited that prayer.

Rav Shlomo Kluger² rejected this explanation based on

REVIEW and Remember

1. Explain Rava's question related to whether we follow the principle of majority when it comes to limbs.
2. Does an animal have to make physical contact with the womb for it to become sanctified as a bechor?
3. What is the point of dispute between Tanna Kamma and R' Yosi HaGalili?
4. What is the necessity for R' Yitzchok's teaching?

the following question. According to Chasam Sofer if a person puts an olive's volume of matzah in his mouth and swallows a majority of that matzah but then spits out a minority of that matzah we should say that he has fulfilled the mitzvah. That obviously is not the case. Therefore he explains that the principle of **רובו ככולו** applies to all areas of halachah except for those areas that involve eating. When the Torah commands that a person should consume and have the benefit of an olive's volume of a food the Torah means that a person must consume that amount and the majority of that amount is not sufficient since the person did not benefit the amount instructed by the Torah. ■

¹שו"ת חתם סופר או"ח סי' ק"מ.

²קנאת סופרים השמטות לשירי טהרה סי' י"ז. ■

STORIES off the Daf

After the Majority

"הלכו באיברין אחר הרוב..."

A certain man owned several kosher animals. When one animal was soon to give birth, he was very glad indeed. But he forgot that the firstborn of an animal is kadosh and cannot be used unless it gets a blemish. Shortly before the birth a learned friend gently mentioned this problem and the owner wondered what he could do. His learned friend suggested a possible solution. "The Shulchan Aruch permits one to blemish a bechor while it is still in its mother's womb.

While this may be impractical, making a blemish before the majority emerges from the mother is often easy. Since the halacha is that we follow the majority this should be permitted. Just as if the fetus was damaged while in the womb it is permitted, damaging it after it began to immerge but before the majority came out should be permitted."

When this question reached the Shach, ז"ל, he permitted making a blemish in these circumstance. "Although the Bach, ז"ל, prohibits this—he learns that the Rambam forbids— this is incorrect. Rashi in Chullin 70 learns that making a blemish in such a fetus is permitted. The Rashba in Chullin also holds that one may make a blemish if most of the ani-

mal has not yet emerged from its mother's womb. The logic suggested is correct: until most of the animal emerges it is considered to be entirely in the mother's womb. Until the majority emerges giving it a blemish is definitely permitted."¹ ■

¹שי"ד, יו"ד, סי' שיי"ג, ס"ק ח' ■

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