

OVERVIEW of the Daf

1) The sources for the Mishnah's rulings

The source that a newborn can become a niddah is identified.

The source that a ten-day-old newborn can become a zavah is identified.

A Beraisa presents a disagreement regarding the source that a newborn can become a zav.

The sources that a newborn can become a metzorah or tamei from a corpse are identified.

The sources regarding the halachos of yibum are presented.

The source that a newborn allows its mother to eat terumah is cited.

The source that a newborn can disqualify his mother from eating terumah is presented.

It is noted that according to another exposition even a fetus disqualifies his mother from eating terumah.

The necessity for both pesukim is explained.

In light of this explanation R' Sheishes explains why the Mishnah mentions only a newborn.

R' Sheishes clarifies the Mishnah's statement regarding a newborn's capacity to inherit and bequeath.

This explanation is unsuccessfully challenged.

Mar the son of R' Yosef in the name of Rava suggests a different explanation of the Mishnah.

A second version of the explanation of Mar the son of R' Yosef in the name of Rava is presented.

The Gemara rules in favor of all the different versions of teachings of Mar the son of R' Yosef in the name of Rava.

The source that one who kills a newborn is liable to execution is cited.

R' Pappa explains the Mishnah's final statement to mean that the family of a newborn that dies must mourn.

The circumstance in which this ruling is true is explained.

2) **MISHNAH:** The Mishnah discusses laws that relate to a girl who is three years old.

3) Betrothing a three-year-old girl

A Beraisa presents a dispute regarding the age at which a girl may be betrothed.

D'vei R' Yannai and R' Yochanan offer different explanations of the dispute.

D'vei R' Yannai's explanation is challenged. ■

Distinctive INSIGHT

The inheritance of a bechor born after the death of the father

בכור שנולד לאחר מיתת אביו אינו נוטל פי שנים, מאי טעמא? יכיר בעיניו והא ליכא

We are told that in the yeshiva of Pumbedisa, a statement was taught in the name of Mar the son of R' Yosef in the name of Rava. A man died and left a pregnant wife. Any son who is born after the death of the father is not eligible to receive a double portion as a bechor. The reason is based upon the posuk (Devarim 21:17) which says, "יכיר—he shall recognize him." This suggests that the law of inheritance depends upon the father having actually met his son. Rashbam (Bava Basra 142b) explains in the name of Rabbeinu Chananel that if the child is born during the life of the father, this child is eligible for inheritance even if the father never saw the child and never "recognized him." The Torah only requires that the life of the child commence while the father is still alive.

Tosafos (ibid.) cites R'i who notes that our Gemara learns that a child which is not yet born does not participate in the process of inheritance from the father from the aforementioned posuk in Devarim. Yet, the Gemara in Bechoros (46b) learns that a child born by caesarean section does not receive a double portion based upon the earlier phrase (Devarim 21:15), "and they shall give birth." Until a child is considered "born" it does not inherit. Tosafos asks why our Gemara needs to use the posuk of "יכיר—recognizing" as the source that a first born delivered by caesarean section does not receive a double portion, when this could be derived from the posuk of "וילדו—giving birth."

Tosafos explains that if we would have relied only upon the posuk of "giving birth" we would have only excluded a first born from the category of inheriting his double portion if he was born after the death of the father. We would have still allowed non-bechor sons to inherit even if they were born after the father's demise. Now, however, that we learn the halacha of a bechor not receiving his double portion from the posuk of "recognizing," we apply the other phrase of "giving birth" to births of even subsequently born children, and that they do not receive their portion unless they were born while the father was still alive.

Ra'aved in the name of Rashi points out that even in this regard there is still a distinction between the halacha of a bechor and that of the other sons. The phrase of "recognizing" teaches that if the first born was born while the father was deathly ill, he may not receive a double portion, because a deathly ill person is not capable of "recognizing" his first born son who is born at that time. A non-bechor who is born at this stage of his father's life would still receive his portion, as this is learned from the phrase of "giving birth." Ritva disagrees with this distinction, and he holds that a bechor born when the father is deathly ill would receive his double portion. ■

HALACHA Highlight

Desecrating Shabbos to save a fetus

דהוא מיית ברישא

Because the fetus dies first

The Gemara relates that a fetus whose mother died does not inherit her property to bequeath it to his brothers (from the father). Once she dies it is certain that the fetus' death preceded hers and a son does not inherit his mother's property to bequeath it to his brothers from the grave. The Gemara challenges this from an incident in which the mother died and the fetus continued to convulse for a short period of time afterwards. The Gemara answers that those convulsions are not indicative of life; rather they are like the tail of a lizard that continues to convulse even after it is severed from the lizard's body. In Arachin (7a) Shmuel rules that if a woman was ready to deliver and then dies it is permitted to transport a knife through the public domain in order to save the fetus even though this involves a desecration of Shabbos. This allowance clearly indicates that there is a possibility that the fetus is still alive.

Tosafos¹ answers that when our Gemara assumes that the fetus died first it refers to where the fetus did not get in position to be delivered. However, if a fetus moved to get in position to be delivered it does not die just because the mother died. Magen Avrohom² in the name of Rashi writes that

REVIEW and Remember

1. What is the source that a newborn could become tamei from a corpse ?

2. Explain: אין בן יורש את אמו בקבר.

3. In what regards is a fetus considered a chosson ?

4. What is the point of dispute between D'vei R' Yannai and R' Yochanan ?

the difference is not whether the fetus moved or not; rather most times the mother dies the fetus dies first. However, there are occasions in which the fetus does not die first. When it comes to Shabbos to save the fetus it is permitted to desecrate Shabbos since when it comes to life or death we are concerned for even minor possibilities to save a life. In contrast when it comes to inheritance we follow the majority and since in the majority of cases the fetus dies first it is assumed that the fetus did not successfully bequeath his mother's property to his brothers. ■

¹ תוס' ד"ה איהו.
² מג"א סי' ש"ל סק"י.

³ רש"י ערכין ז. ד"ה ומקרעין. ■

STORIES off the Daf

"Paying the Price"

"אחת גרושה..."

Today's daf discusses a kohen who married a divorcee and had children from this forbidden union.

One of the most moving parts of the Yom Tov davening is bircas kohanim during mussaf. This part of the service is even more moving in the diaspora since among Ashkenazi congregations this is the only time that bircas kohanim is done by kohanim. Naturally, people want as many kohanim as possible to recite the berachos for this rare opportunity.

One Yom Tov the levi'im were washing the kohanim's hand prior to the berachah when one spotted a person he figured was a kohen. "Why aren't you washing your hands?" he asked.

"Although I am a kohen, I don't want to 'pay the price' of washing my hands..."

Some months later this man became engaged to a divorcee. When he was confronted with two witnesses who had heard his words implying he was really a kohen who is forbidden to a divorcee, he claimed that he had been joking. "And anyway, all of my letters are addressed to me by the name Segal, and so are all of our family documents. As is well known, Segal is a prominent name of levi'im, not kohanim."

The local rabbi had no idea how to determine what to do in this case, so he referred it to the illustrious Divrei Chaim of Sanz, zt"l. The Divrei Chaim allowed the man to marry the divorcee. "Although one's admission is more powerful than one hundred witnesses, an admission is only when one made what was clearly an admission. In our case, it seems clear that he was joking. Just as everyone knows that a kohen doesn't pay to have his hands washed and he was joking in this, he also kidded them when he said he was a kohen."¹ ■

¹ שו"ת דברי חיים, אבהע"ז, ח"א, ס' ט' ■