



## OVERVIEW of the Daf

1) **MISHNAH:** The Mishnah presents a dispute whether delivering by caesarean section triggers the halachos of childbirth. The Mishnah contrasts the discharge of nidah and other discharges and notes one similarity.

### 2) Caesarean Section

R' Mani bar Patish presents the rationale behind Tanna Kamma's opinion and R' Shimon's response to their position.

Reish Lakish explains the rationale behind R' Shimon's position.

The exchange between Rabanan and R' Shimon regarding this point is recorded.

R' Yochanan asserts that R' Shimon will agree that an animal delivered by caesarean section does not become sanctified and may not be brought for an offering.

This assertion is unsuccessfully challenged.

R' Chiya the son of R' Huna in the name of Rava cites a Baraisa in support of R' Yochanan's assertion. ■

## HALACHAH Highlight

### *An animal that delivered by caesarean section*

יוצא דופן

*If a woman delivered by caesarean section*

The Mishnah discusses the case of a woman who delivered caesarean section and rules that she is not subject to the laws of tum'ah and taharah that follow childbirth. Rashi<sup>1</sup> explains that by applying some sort of cream the doctor can reach into the womb and extract the baby. It is evident from this that this procedure does not kill a woman and thus the Mishnah must address the issue of whether such a woman is subject to the laws of tum'ah and taharah that follow childbirth. Rambam<sup>2</sup> writes that it is possible for a woman to be carrying twins and the first one is delivered caesarean section and the second is delivered normally and then the mother dies. This scenario is what Chazal had in mind when they discussed the bechor status of the baby that was born following a child delivered by caesarean section. Rambam concludes that the report that people repeat that after delivering by caesarean section it is possible for the mother to become pregnant and deliver again seems ridiculous and would be very strange. Tashbatz<sup>3</sup> writes that if the mother is opened with medicine as

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## Distinctive INSIGHT

### *Halachos concerning a caesarean birth*

יוצא דופן אין יושבין עליו ימי טומאה וטהרה

The Rishonim discuss the theoretical situation of childbirth through a caesarean section before "modern" medicine changed the circumstances of abdominal surgeries and traumas.

Rashi explains that a fetus which is born "out of the side" is where the abdomen of the mother is opened using drugs, and after the child is removed the mother heals. Pishchei Niddah notes that Rashi's comment conflicts with that of Rambam in his Commentary to the Mishnah (Bechoros 8:2). Rambam there writes that a woman will not survive if she undergoes childbirth by having the baby exit through her abdomen. This cannot mean, however, that she would succumb immediately, because our Mishnah discusses the halacha that the mother does not observe days of blood of tum'ah and taharah, so it must be that she would live through these days. Once we say that Rambam also agrees that the mother will not die immediately, we do not have to say that Rashi disagrees with him. When Rashi says that the mother heals and recovers it could mean that she can survive the birth, but it might be that she would not necessarily recover fully and live out her life.

In our Mishnah, Tanna Kamma holds that after a caesarean birth the mother does not observe days of blood of tum'ah and taharah. R' Shimon disagrees and says that a caesarean birth is halachically a regular birth, and the mother does observe the days of blood of tum'ah and ta-

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## REVIEW and Remember

1. What is the point of dispute between Rabanan and R' Shimon?
2. Does an animal delivered by caesarean section become sanctified with physical sanctity?
3. What are the three exclusionary terms in the pasuk of *זאת תורת העלה הוא העלה*?
4. What types of invalid korbanos may remain on the Altar if they were placed there?

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Rashi describes there is certainly no reason that the mother should die. Even if the mother is opened with a knife there is also no concern that she should die from the procedure since it is performed in an area that is not necessarily fatal, and it does not render her a tereifah.

Teshuvos Minchas Yitzchok<sup>4</sup> was asked about the kashrus of animals that went through a caesarean section. He cited Tashbatz and explained that the first opinion in Rema seems to subscribe to that position that a puncture in the womb does not render an animal a tereifah. However, the second opinion cited by Rema rules that a puncture in the womb does render an animal a tereifah and this is the opinion that Rema follows barring a circumstance of great loss. Perhaps Rema is stringent only when the womb is punctured as a result of internal illness but when the puncture was made by a person the animal is not a tereifah. He then notes that Rambam would be stringent even in this case and as a result he writes that one should be stringent unless it is a circumstance in which one would suffer a significant financial loss. ■

1. רש"י ד"ה יוצא דופן.
2. רמב"ם פירוש המשניות פ"ח מ"ב.
3. שו"ת התשב"ץ ח"א סי' קי"ג.
4. שו"ת מנחת יצחק ח"ד סי' נ"ז.
5. רמ"א יו"ד סי' מ"ה סעי' א'. ■

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harah.

We find a parallel discussion among these same Tannaim in Bechoros (47b) regarding the halacha of a first born male which is born by caesarean section and whether he should receive a double portion among his brothers in his father's inheritance. Rabbanan say that this child would not receive a double portion of inheritance, because the technical term used by the posuk (Devarim 21:15) in regard to inheritance is "and they (the wives) will give birth." Chachamim do not include a child born by caesarean section in the category of children who are "born," while R' Shimon says that the posuk extends the law of tum'ah of birth to a mother who has a child by caesarean section. Accordingly, R' Shimon holds that such a first born would receive a double portion among his brothers in the father's estate.

In the Gemara, R' Yochanan teaches that R' Shimon agrees that an animal born by caesarean section cannot be used for an offering. The law of the birth of an animal for an offering is learned from the halacha of a bechor of an animal, who must be "the first of the womb." Still, Tosafos notes that R' Shimon's view in Bechoros is that a first born of a person may receive a double portion even if he is born by caesarean, because the laws of human births (tum'ah and double portion) are comparable. ■

## STORIES Off the Daf

### A Financial Predator

מחיר כלב

Today's daf discusses things which cannot be used for holy purposes due to having been used or obtained in an inappropriate or disgusting manner.

In the city of Kalsav, there was a woman who was known to be criminal. She took over someone else's house by underhanded means and, due to her connections, could not be touched by the secular courts. Not surprisingly, she refused to go to a din Torah.

This woman was known to everyone as the chamsanit, a financial predator. But as Rav Dessler, zt"l, writes, even a criminal cannot live with him-

self if he thinks of himself as wicked. This woman was, therefore, very pained that the community was so against her and she decided to commission a sofer to write a sefer Torah for donation to the community's shul.

When the Torah was finished, she made a gala hachnasas sefer Torah, not bothering to ask the rabbi what he thought. The Torah was placed in the aron hakodesh and the rabbi wondered what he should do. Was it even permitted to use the sefer Torah for reading? He also wondered whether they could evict tenants in the house.

When he asked the Divrei Chaim of Sanz, zt"l, about this, he answered decisively. "Firstly, we should not evict anyone since we don't know what kind of claims she may have. Just because she refuses to go to beis din doesn't

mean that she is certainly a thief. But no Jew should rent from her again since it seems clear that she took possession of the house without any right.

"As far as the sefer Torah she wrote is concerned, she did fully acquire the money that she used to pay for it since the people that she appears to have cheated have given up on it being returned and the money was also transferred to another's domain. Nevertheless, they should not make berachos on her sefer Torah. It is unclear whether it is permitted, and even if it were to be permitted in this case, people should not be allowed to make berachos on this Torah to discourage others from following in her ways. The community must avoid conferring a stamp of approval on such a person."<sup>1</sup> ■

1. שו"ת דברי חיים, חו"מ, ח"ב, סי' ל"ג