



## *THE HAKUK EDITION*

### *ENGLISH TOPICS ON THE DAF*

*Dedicated L'Refuah Shlaima for Yaakov ben Victoria*

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## Daf Hashovua Yevamos Daf 22

This week we will discuss a sheilah which is rooted in the Mishnah on daf 22a. If a man has a child “in any way,” his wife is exempt from yibum. What does this come to include? The Gemara explains that it means even a son who is a mamzer, born through a union forbidden by karess.

What if, ask several Acharonim, a man leaves behind a son who is a treifah, someone whose life is in danger and is not expected to live more than 12 months? Will that also exempt her from yibum?

The **Ginas Veradim** (Klal 2 Siman 4) quotes another sugya, in Niddah 43b, which states that even a one-day-old child suffices to exempt his mother from yibum. However, Yevamos 35b indicates that the child must be a ben kayama, one who is able to survive. Inferred from this, the Ginas Veradim continues, a treifah would not be considered offspring to exempt from yibum. But isn't a similar halachic situation, a gosess (one who is dying), enough to count as a child? They are different, he explains. Although most goesim are niftar, in the meantime they are alive, and may yet recover. A treifah, on the other hand, is classified as definitely unable to survive, as the Gemara says if someone kills a treifah he is not guilty of murder.

Another great posek from several hundred years ago, the **Chikrei Lev**, argues on this psak (Even Ha'ezer 57). The Ginas Veradim bases his opinion on the Mishnah in Yevamos 35 which reads, "If one took his yevama and discovered she's pregnant: if the child is not a ben kayama, they may stay married." From here he assumed a treifah is similar. The Chikrei Lev insists that they are not comparable. That Mishnah is discussing a newborn child, and we need to ascertain he is a ben kayama and not a naifel (a baby who will not survive). Until this is proven, he is regarded as being not alive.

This doubt applies to newborn babies. One cannot derive from here anything about a treifah, though! The Chikrei Lev further disagrees with the distinction made between a gosess and treifah, and asserts that regarding yibum a treifah will suffice to exempt his mother.

In our generation, the **Tzitz Eliezer** (Vol. 1 Siman 23) was posed this question, and he cited more sources to support the second view, to consider a treifah a viable child. Rav Tzvi Pesach Frank wrote to him, quoting a **Tosfos Hari"d** in Shabbos 136 who states this explicitly. Since Tosfos was a Rishon, Rav Frank opines that the Ginas Veradim (an Acharon) would not have had his opinion had he seen the sefer; indeed, it was not yet published in those days.

As another proof, the Tzitz Eliezer extrapolates the same from a teshuva of the **Chasam Sofer** ("All Beis Yisroel relies upon his psakim, in all matters," emphasizes the Tzitz Eliezer). Although a child who becomes a treifah before he is 30 days old is not required to have a pidyon haben, it is only because of a derasha to that effect. In all other areas, says the Chasam Sofer, a treifah is like everyone else. This, then, should include yibum, as well.

In a teshuvah concerning aveilus for a child, the **Minchas Yitzchak** echos the Chasam Sofer's reasoning, that only pidyon haben has a source to exclude a treifah. Once a child lives past 30 days (so is certainly no longer a naifel), his passing would evoke aveilus. The Shulchan Aruch itself indicates as such, since only regarding pidyon haben it says a treifah is pattur, but not in hilchos aveilus (Shu"t Vol. 9:120).

In a related sugya, **Rav Menachem Zemba** Hy”d (in the sefer Gur Aryeh Yehuda) ponders if the mitzvah to eradicate Amalekim applies to one who is a treifah! He says it depends on the reasoning of mechiyas Amalek. Is it a *mitzvah* to avenge Hashem’s honor, as the Torah tells us, or a *punishment* to their nation for their crimes? If it’s categorized as punishment, it would not be relevant – a treifah is not liable to punishments in Beis Din. But if it’s our mitzvah to carry out, it could be done even with such a person.

He quotes a fascinating proof to the second line of thinking from a **Meiri** in Sotah. The Torah commands us to bring an eglah arufah to atone for a Jew found murdered (Devorim 21). What if the fellow was already a treifah – as mentioned, if one kills such a person, he is not chayiv misah? The Meiri says that even so, they must perform the ceremony. It is not quite a punishment on the community as much as a mitzvah that is incumbent upon them to carry out. (This fits with what Rashi says there, that the arifah – axing the calf – signifies the truncation of the victim’s life and loss of future mitzvos he could have done. Even a treifah could do mitzvos.) So too may be mechiyas Amalek.

A practical application of this sugya is whether one can be mechalel Shabbos to assist a person deemed a treifah. In the contemporary sefer **Rosh Eliyahu** (O.C. 57), he quotes the Minchas Chinuch as being unsure about it. The Ramban holds that one cannot be mechalel Shabbos to save a fetus, so one may say the same for a treifah, who is assumed to soon pass away. On the other hand, if one is trapped under a collapsed building, we are mechalel Shabbos to save him – so a treifah should be in the same category. The Rosh Eliyahu rules that certainly we should be mechalel to save a treifah, as prolonging a Jew’s life always overrides Shabbos.