



THE SHABUOT MATTERS

שבת קודש פרשת וישב | מסכת יבמות דף פ'

INSIGHTS FROM OUR CHABUROS

An Eighth Month Infant Whose Development is Complete

דתנייא רבן שמעון בן גמליאל אומר כל ששבא ל' יום באדם אינו נפל

The Gemara teaches that an infant born in the seventh or ninth month of pregnancy can be viable. If it is born in the eighth month of pregnancy it cannot be viable. The opinion of Rabban Shimon ben Gamliel is that once an infant has survived for thirty days, he no longer has the status of being a נפל. Even if it is born in the eighth month, upon reaching thirty days, the child is considered viable. We assume that the embryo was complete after seven months, but it was just delayed in being born.

Rosh (ד"ה בן שמונה, Shabbos 135a) and Tosafos (ס'ין ו') rule that an infant born into the eighth month of pregnancy may be given a bris milah on his eighth day of life even if be Shabbos, provided we determine that it is fully developed. This is in accordance with the opinion of Rebbe in our Gemara, who relies upon examination of the infant's hair and nails as conclusive. Rebbe does not require waiting thirty days, as did Rabban Shimon ben Gamliel. Based upon these opinions, Shulchan Aruch (O.C. 330:7) rules that if an eighth month infant whose development is complete is in need, we may violate the Shabbos for his sake.

The Vilna Gaon questions this ruling of Shulchan Aruch. It is true that Rosh and Tosafos allow the bris on Shabbos for such an infant, but this is only because of Rav Adda bar Ahava (Shabbos 136a) who notes that the bris in this case never entails a Torah violation. If the infant is viable, a mitzvah is being done. If the infant is not viable, we are merely cutting flesh. However, for us to violate Shabbos in a context other than a bris would entail a Torah violation, and here we cannot rely upon Rebbe's criteria of a fully developed child without waiting thirty days. Mishnah Berura (ibid., #30) also cites this view of the Vilna Gaon in pointing out that we can only rely upon the opinion of Rebbe to violate rabbinic laws of Shabbos.

PARSHA CONNECTION

This week's daf discusses the הלכות of a סריס both one who was born this way as well as one who became a סריס later in life. The word סריס is also found in פרשת וישב, where the Torah writes that אשת פוטיפר פרעה purchased יוסף. The common interpretation of the word סריס in this context is that of a minister, but the Midrash writes that he became a סריס (unable to have children). This happened to him because his intent was to sleep with יוסף and הקב"ה punished him (בראשית רבה פרשה פו'). When יוסף was about to sin with אשת פוטיפר he saw an image of his father and that helped him overcome the הרע. יצר הרע. One may ask why יוסף called a צדיק for not sinning if his father's image is what really saved him? Wouldn't an image of אבינו stop most people from sinning? Harav שפס זצ"ל offered the following insight, while many people would stop in their tracks by seeing an image of אבינו, most would never SEE it when they are about to sin. It is because יוסף was already a צדיק he was fortunate to see his father's image at this critical time! (Similar to the story of רב פנחס בן יאיר whose donkey was saved from eating טבל).

STORIES OFF THE DAF

The Premature Infant

בן שמונה הרי הוא כאבן

As medical science advances, new halachic issues arise constantly that can only be unraveled by a Gadol possessing both deep knowledge of Torah and a genuine understanding of the relevant technology. Not so very long ago, there was some confusion about whether one many be mechalel Shabbos to save a newly-born fetus of eight months' gestation. While the Gemara in Yevamos 80b clearly states that such a fetus, one lacking fully developed hair and nails, cannot survive outside the womb, the advances of modern medicine have made such survival possible. Many talmidei chachamim held that one should not profane Shabbos to save that premature a neonate, as it says clearly in Shulchan Aruch (Orach Chaim 330:8).

One talmid chacham approached the Chazon Ish, zt"l, about such a case and received the following response: "Nowadays, such infants must be given appropriate care even though this entails chilul Shabbos. This is not only true about an eight-month fetus with undeveloped hair and nails, but even on behalf of a fetus of six months' gestation whose hair and nails are undeveloped. Even though in the time of Chazal such a baby could not survive, nowadays they often do!"

Someone once asked Rav Shlomo Zalman Aurbach, zt"l, to explain this apparent contradiction. "Why do we find that many premature babies survive even though Chazal say that they cannot?"

The gaon explained, "Modern science has produced a device that simulates the womb—an incubator. Chazal only recorded what they observed about the mortality of premature fetuses in the absence of an incubator, not in the presence of one. A premature neonate in incubation could be compared to a fetus whose development was halted and then continued—and Chazal never discussed such a case!"

The gadol concluded, "Don't forget to be filled with gratitude to Hashem for the lifesaving wonders of modern medicine."

HALACHA HIGHLIGHT

A Change in Nature

הא גמרו אמרין האי בר שבעה הוא ואישתהוי הוא דאשתהי

If [the nails and hair] are developed we assume that the child is a seven month pregnancy and merely remained [in the womb].

There was once a woman whose husband passed away while she was pregnant and the only living brother of the deceased could not be found. The child was born but by his eighth day had passed away. As calculations were made it was determined that the widow delivered a few days into her ninth month of pregnancy. Rabbeinu Shlomo ben Shimon Duran¹, the Rashbash, ruled that since the pregnancy extended beyond the eighth month the baby is considered viable and the widow did not need to do yibum. One of the issues addressed by Rashbash is that the Gemara Niddah² states that for a nine month fetus to be viable it must remain in the womb for a full nine months. Since this baby was not in the womb a full nine months the baby should be considered non-viable. Rashbash explains that the principle that a nine-month pregnancy must last a full nine months is no longer in force because the nature of people has changed and nowadays it is common for women to deliver viable children at the beginning of the ninth month.

Rav Moshe Feinstein³ commented that the significance of the statement of Rashbash that in this case nature has changed is needed because in this case there is an alternative explanation. Rebbi teaches that a child born in the eighth month is not considered non-viable unless he shows signs of immature development but if a child is born in the eighth month with proper signs of development we assume that this is a viable seven month fetus and was late coming out of the womb. Since there is an alternative explanation we would not declare this to be an instance of a change in nature were it not for the testimony of Rashbash. However, when it is evident that a change in nature has occurred, without an alternative explanation, it is not necessary to find support from the testimony of Rishonim to declare that a change has occurred. Rav Avrohom Bornstein⁴, the Avnei Nezer, expresses greater caution when it comes to declaring that nature has changed and writes that it is only in reference to a child born into the ninth month, where we have the testimony of earlier authorities, can we state definitively that a change in nature has occurred.

1. שו"ת רשב"ש סי' תקי"ג

2. גמ' נדה כז

3. מובא דבריו בסוף ספר הל' נדה מה"ר שמעון אייזר אורא'

4. שו"ת אבני נזר יו"ד סי' רל"ח

POINT TO PONDER

The Gemara tells us that one can tell if someone is a סריס from birth. It then asks why we are not concerned that maybe he was healed in between his birth and now. Such a possibility has important ramifications to a יבמה who would otherwise not need even chalitzah to be permitted to get remarried. Since he was born a סריס, why don't we leave him on the חזקה that nothing changed? (And not need the Gemara's answer that such a healing cannot happen).

Response to last week's Point to Ponder:

The גמרא discusses the story of the גבעונים during the time of דוד המלך and their insistence that they get seven of שאול's children in order to hang them as retribution for what שאול did to them. Why did they ask for seven? Is there any significance to this number with regards to their claim?

Although our Gemara doesn't explain why the גבעונים asked specifically for seven, an explanation is found in ירושלמי סנהדרין דף כט as well as the במדבר רבה פרשה ח' ע"א. The גבעונים actually had two grievances, one being the loss of their livelihood due to שאול killing the כהנים of נוב, as well as the killing by שאול of seven גבעונים. (See further details in the מדרש). Further point to ponder: If this is the case, why does the Gemara not mention this second reason?

REVIEW AND REMEMBER

1. What causes a child to be born a סריס חמה?
2. Why is a סריס חמה not judged as a ומורה?
3. What are the characteristics of a סריס חמה?
4. Is vapor coming from one's skin after a bath in the winter a healthy sign?

ר' יוסף שמואל שמעלקא ב"ר יצחק מערמעלשטיין ז"ל, Shelly Mermelstien לע"נ dedicated to Yevamos

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