



לעי"נ ברוך בענדיט ובזכה גרוס ע"ה
by Mr. & Mrs. Duvy Gross

The Hakuk Edition English Topics on the Daf

Dedicated l'refuah sheleima for Yaakov ben Victoria

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THE EIGHTH PEREK OF YEVAMOS IS DEDICATED:

לזכר גשמת שלמה בן יהושע והחבר דוד בן החבר מרדכי

Yevamos Daf 80

Ben Shemoneh Chadoshim

A child born in the eighth month of pregnancy is regarded in Chazal as a non-sustainable life force. Assumed unable to live, he is categorized as a naifel (usually referring to a miscarried fetus). The Gemara says such a baby is muktzeh on Shabbos, so considered he is as a non-entity.

But, we may ask, aren't things different in our day and age? With medicinal advances, many children born in the eighth month are just fine. Do the halachos change when the circumstances change? (We touched on this in the essay on daf 75.)

The Shulchan Aruch (O.C. 330) cites our Gemara – we can't be mechalel Shabbos for a ben shemoneh unless he was born with fully formed nails and hair.

Regarding a bris for such a child on Shabbos, some say it is more lenient. The Shulchan Aruch himself (O.C. 331) equates it with hilchos muktzeh, but the Rema (Y.D. 266) holds like the authorities that it is permissible. The rationale is that either the child is a bar kayama (someone who will live), so milah is appropriate; or he is not, in which case cutting his skin is

not a melacha since he is not considered alive. (In Shabbos daf 136 the Gemara asks how we can ever do a bris on Shabbos – until he has survived 30 days he's a safek naifel? And answers with this sevara.) The Taz argues on this Rema, however, and requires that the nails and hairs be formed.

Tosfos in Shabbos (135a) states that we now may be lenient since we are not experts at deciding when exactly the mother conceived like they were in times of Chazal. So, a child born in the apparent eighth month may really be in the ninth month, and when there is a doubt between 8th and 9th it is permissible to be mechalel Shabbos.

What about in our days?

The Chelkas Yaakov (Rav Yaakov Breish, d. 1977; Y.D. 178:3) is stringent. He understands that even with the advent of the incubator, the child is still a safek naifel until 30 days have elapsed.

In contrast, Minchas Yitzchak inclines to argue (Vol. 4:123). Incubators now render even an 8th-month fetus able to survive, so it should make no difference if it finished growing within its mother or within an incubator. Still, he hesitates to rely on

the testimony of doctors and contradict the ruling of Shas and poskim. He adds other reasons to permit it, such as the opinions that if there is any doubt if it's a 7th- or 8th- month baby we may be lenient; and that we are not sure about the measure of "hair and nails" – most babies have some of each.

On the other hand, Rav Shmuel Wozner (Shevet Levi Vol. 3:141) states emphatically that it's common knowledge that countless children are born in the eighth month in perfect health. They don't even need an incubator. So, although Chazal assumed for a fact that they could and would not live, the situation is different today. Tosfos here indeed posits that if a ben shemoneh could survive it would not be muktzeh. Today, this has become a reality, boruch Hashem, and we must be mechalel Shabbos to help such a baby.

Even more clear is the opinion of the Chazon Ish. He writes, "There are those who err and think that a child born before the ninth month is a naifal and they do not exert themselves in healing them. This is a mistake! As long as the hair and nails are formed he is considered at least a possible ben kayama, and some hold he is a certain ben kayama. Now, many incidents are recorded of a ben shemoneh surviving. In the earlier times, a minority of children born completed their development in the 7th month, most in the 9th, but not in the 8th. It appears that now nature has changed. According to doctors' research, it seems that these babies finish their development in the 8th month (Hilchos Milah 155:4)."

Besides for all this, some Rishonim hold that we may be mechalel Shabbos to save a ben shemoneh – even if we assume he won't survive. The Ritva (Nidda 44b) cites the Behag that although such a child is deemed muktzeh, we are obligated to do

whatever is necessary to save his life. Why? There is a logical argument in the Gemara to explain why we are mechalel Shabbos to save lives: Profane one Shabbos to save him, so that he will in the future observe many more Shabbosos. So too, on the chance that the child will survive, we may profane Shabbos to save his life so that he will live and keep Shabbos for the rest of his life. A fetus is already considered a person in this context (but not in others; see there).

Another reason to permit chilul Shabbos for a ben shemoneh is what the Rosh says (Yoma 8:13), that when there is danger to a fetus, the mother is automatically in danger as well. Hence, every effort should be made to save a fetus, since it is by definition saving the mother.

Thus, Orchos Shabbos paskens that we may be mechalel Shabbos to save a fetus in danger of miscarriage. For example, if no movement is felt, they should go to a hospital to be examined.