

30.4.8

(אף בחול שואלו ואוכלו על פיו) 75b → (משנה ה) 74a

1. דָּבְרוּ אֶל כָּל עַדְתֵי יִשְׂרָאֵל לֵאמֹר בְּעֶשֶׂר לַחֹדֶשׁ הַזֶּה וַיִּקְחוּ לָהֶם אִישׁ שֶׁהָ לְבֵית אִבְתָּ שֶׁהָ לְבֵית: שְׁמוֹת יב, ג.
 2. וְכָל פֶּטֶר חָמֵר תִּפְדָּה בְּשָׂה וְאִם לֹא תִפְדָּה וְעִרְפָתוֹ וְכָל בְּכוֹר אֲדָם בְּבִנְיָד תִּפְדָּה: שְׁמוֹת יג, יג.

I בן פקועה: משנה ה

a If he slaughters the mother and finds inside:

i a "dead" embryo: either non-full-term (dead or alive) or full-term (dead)

1 then: he must tear it out and remove the דם (which is אסור, in spite of חלב being permitted)

ii a "live" embryo: full-term

1 then: may be eaten

(a) ד"מ requires שחיטה and is included in restriction of בנן ואת בנן (slaughtering on same day as mother)

(b) בן פקועה mother's שחיטה is מטהר the embryo (חכמים)

(c) ד' שמעון שזורי in such a case, even years later, may be eaten without שחיטה

b If he tore the mother open and found a חי – must be slaughtered

i Reason: mother wasn't slaughtered

II ר' אלעזר – as reported by ר' הושעיא

a Version1: dispute about חחיטה (בן תשעה חי) (about ר"מ/חכמים)

i Excluding: fats and blood (both אסור according to all)

1 Question: which fats? – cannot be fats of עובר

(a) Background: ר' יהודה, גיד הנשה, per ברייתא ahead (in re: ר' יהודה, גיד הנשה)

(b) And: ר' הושעיא (ר"א) explains that dispute is about בן ט', each following his שיטה

2 Rather: must be about fats of גה"נ itself

(a) Challenge: that is also a dispute ר"מ/ר"י (whether fats of גיד have to be chiseled out)

b Version2: dispute only about eating, but they agree it is a viable animal for הרבעה and חרישה

III ר"מ/ר"י dispute about extension of ר"מ/ר"י

a ר' יהודה דשב"ל also permits blood of עובר; ר"מ extends ban from fats to blood

b ר"י: even ר' יהודה agrees that blood is forbidden

i Proof: our משנה – את דמו – מוציא את דמו

ii Defense (ר"ז): ר' יהודה didn't maintain that ר' יהודה would permit blood, just that there is no כרת for eating it

1 Challenge: we are addressing ר' יהודה's position, but he holds that even דם התמצית is כרת – this should be no less

(a) Answer (ר' יוסף): ר' יהודה holds דם "וכל דם" is only כרת if its "full blood" is also כרת

IV Questions about בן פקועה

a ר"מ would certainly allow; do רבנן allow? (ט2) פדיון פטר חמור

i lemma1: since it requires no שחיטה, as if it is already שחוט

ii lemma2: since in reality it is running around, it may be used

1 מר זוטרא may not be used

2 ד' אשי may be used

(a) argument (ר' אשי): only reason not to use is comparing vv. 1-2 (שה::שה), if so, require תמים & yearling

(b) defense: תפדה תפדה (v. 2) expands possibilities of פדיון to include any שה

(i) challenge (ר' אשי): if so, any שה should be valid (בן פקועה)

(ii) answer: purpose of שה::שה is to limit and exclude בן פקועה

b reckoning טומאה if mother is slaughtered and meat becomes טמא, is עובר a ראשון (same as mother) or שני?

i שני → ראשון separate bodies, יחנן ד' יחנן

ii ראשון דשב"ל: all one body – all considered ראשון

1 challenge (ר"י to דשב"ל): our משנה – the עובר is either מגע נבילה or מגע טריפה שחוטא

(a) explanation: only if it is 1 body could it be מוכשר לטומאה

(b) defense: the שחיטה is מכשיר (without liquid) per ר"ש

2 challenge (ר"י to דשב"ל): ruling that if a בן פקועה (mother slaughtered) went through river, הוכשר

(a) implication: without water, no לטומאה

(b) explanation: if it is separate body, requires הכשר; but if 1 body, should be מוכשר via mother's שחיטה

(c) defense: could have been a 'dry שחיטה', per רבנן דר"ש (שחיטה alone isn't מכשיר)

- iii *note*: in ברייתא (re: passing through river), ruling that it is מיטמא if it then goes into בית הקברות
- 1 *Question*: who could author such a ruling – that while alive, it is מיטמא?
 - 2 *Answer* (ר' יוחנן): ריה"ג (רשב"א) who allows for טומאת אוכלים on the פקועה בן פקועה (א) *But*: חכמים dissent – if it is alive, no טומ"א
 - 3 *Note*: ר"י is consistent, as he maintains that ב"ש::ריה"ג in this:
 - (a) *א"ש*: against ר"ע – ב"ה – fish are מקבל טומאה from the time they are trapped
 - (i) *Note*: ב"ה – from when they die; ר"ע – from when they can no longer live
 1. *Difference*: between ב"ה and ר"ע – if the fish is flopping – not yet dead but can no longer survive
- iv *Tangential question* (ר' חסדא): is a fish טריפה (if it has טריפה-*indicators*)?
- 1 *Could be asked*: whether or not we hold טריפה חיה or not
 - (a) *Even if*: we hold טריפה חיה, that may only hold for בהמות, that have "more life"
 - (b) *Or even if*: we hold טריפה אינה חיה, that may only hold for animals which require שחיטה – תיקו
- v *Tangential question*: if a בהמה miscarries, what is the status of its חלב?
- 1 *א"ש*: as חלב בהמה – liability of כרת for ingesting
 - 2 *רשב"ל*: as חלב בהמה – only a גבלה, but no כרת
 - (a) *Analysis1*: ר"י – coming out into the world defines as בהמה; ר"ל – needs to come to full-term to define
 - (b) *Analysis2*: all agree that if it didn't come to full term, no liability for חלב
 - (i) *Rather*: disagreement about case where he put his hand in and took חלב from a living full-term עובר
 - (ii) *א"ש*: coming to term is sufficient to define as חלב בהמה
 - (iii) *רשב"ל*: term and coming out of the womb are necessary conditions for חלב איסור
 - (c) *Challenge* (ר"י): verse (interpreted in ת"כ) that excludes חלב (+) of עובר from being offered with אשם
 - (i) *Explanation*: ר"י's approach explains why there is a verse needed to exclude
 - (ii) *But*: to רשב"ל, no verse should be needed
 1. *Defense*: that is רשב"ל's source!
 - (d) *Alternate version of challenge* (רשב"ל): verse needed to exclude חלב שליל
 - (i) *Explanation*: to ר"י, should be able to be brought
 - (ii) *Answer*: as per מחוסר זמן (wasn't yet born)

V Dispute רבא/אמי ר' if one slaughters a טריפה and finds a full-term עובר alive

 - a *א"ש*: According to ר"מ who usually requires שחיטה for פקועה בן פקועה, here requires none
 - i *א"ש*: According to חכמים who require no שחיטה for פקועה בן פקועה – do not permit this one to be eaten without its own שחיטה
 - b *רבא*: even חכמים would permit
 - i *Reason*: the תורה obligated to cut any 2 סימנים of the four available – which was done

VI חסדא 's curious ruling: if he slaughters a טריפה and finds a full-term עובר alive, requires שחיטה and מתנת כהונה

 - a *But*: if it dies, no טומאת נבלה
 - b *Challenge* (רבא): 1st two rulings follow ר"מ, final one follows רבנן
 - c *Defense* (ר"ח): ר' חייא had similar ruling –
 - i *Block*: ר"ח's case was where it was found to be dead in the womb ("already dead")
 - d *Defense* (ר"ח): the תורה permitted 4 סימנים (as above)
 - i *Note*: ר"י supported this read, citing ר' יוחנן – but unclear if רשב"ל agreed or not

VII Analysis of end of משנה – שמעון שזורי's opinion

 - a *Question*: where do חכמים and רש"ש differ?
 - i *Answer*: if it immediately stood up – רבנן require (מד"ס) שחיטה
 - b *א"ש*: if we consider the father's seed, a בן-פקועה who mates with a regular animal – the offspring has no תקנה
 - c *א"ש*: all agree that a קלוט is permitted – since it is odd, people remember that and won't infer from it to regular animal
 - i *Alternatively*: א"ש – if it is a קלוט בן קלוט – since it has a "double-oddity", people surely take note of that
 - d *Final ruling* (ר' חנינא): follows רש"ש – and he permitted the offspring for unlimited generations
 - i *Dissent*: ר' יוחנן permits the animal itself, not its offspring
 - ii *Story*: a בן פקועה was made a טריפה; ר' אשי ordered it to be slaughtered to save it from נבילה
 - 1 *Challenge*: we ruled in accordance with רש"ש – even ר' יוחנן agreed that the בן פקועה itself is מותר
 - 2 *Answer* (ר' אשי): ר' יוחנן was just defining רש"ש; he didn't accept that ruling at all
 - (a) *Challenge*: ר' חנינא ruled that we always follow רש"ש whenever his opinion is mentioned in משנה
 - (b) *Answer*: alternate tradition from ר' (יו)נתן – we only follow רש"ש in two cases:
 - (i) *מסוכן*: extending rights to write גט on behalf of someone who was very sick
 - (ii) *תנומת מעשר של דמאי*: that fell in to its source – we may ask עם הארץ and trust him (that he separated תר"מ) even on weekday