

פרק שניני – יט בכור

So far, we have dealt with the status of **בכור בהמה טהורה** (פרק א') or **בכור בהמה טמאה** (פרק ב'); there is a third type of **בכור** – **בכור בן אדם**. However, **בכור** carries status in two unrelated areas – **קדושה** (requiring **פדיון** from **כהנים**) and within the estate – **נחלה**, who receives a double portion of inheritance. We will now turn our attention to **בכור אדם**, identifying those types of **בכורות** which have both, only one or neither of these statuses. The key issue is the nature and status of their birth

31.8.1

46a → 47b (משה או 1) (אין כותבין הרשאה זה לזה)

1. קדש לי כל בכור פטר כל רחם בגני ישראל באדם ובבהמה לי הוא: שמות יג, ב
2. כל אשר נשמת רוח חיים באפו מכל אשר בתרבה מתו: בראשית ז, כב
3. כי את הבכור בן השנואה יפיר לתת לו פי שנים בכל אשר ימצא לו פי הוא ראשית אנו לו משפט הבכרה: דברים כא, יז
4. הפרת פניהם ענתה בם וחטאתם כסדם הגידו לא כחדו אוי לנפשם כי גמלו להם רעה: ישעיהו ג, ט
5. כי כה אמר ה' בורא השמים הוא האלהים יצר הארץ ועשה הוא כוננה לא תהו בראה לשבת יצרה אני ה' ואין עוד: ישעיהו מה, יח
6. שאו את ראש כל עדת בני ישראל למשפחתם לבית אבתם במספר שמות כל זכר לגלגלתם: במדבר א, ב

I **נחלה** only, **כהן** only, both, neither

- a **נחלה** only: if he follows a **נפל**, even if the head came out while alive; or follows a **בן ט'** who was stillborn
 - i or if: he follows a **נפל** that looks like animal or bird (per **ר"מ** render those insignificant – cf. **נדה ג:ב**)
 - ii or if: she miscarried and a partial human form came out
 - iii if he: never had sons and married a woman who had already had children (and then they had a son)
 - iv or if he: married a woman who had had a child when she was **גויה/שפחה** and then was converted/freed
 - 1 dissent: **ריה"ג** – in this case, their first child together is also **בכור** לכהן, per v. 1 – it is her **בישראל** רחם פטר רחם
- b **כהן** only: if he had had children and married a woman who never had children
 - i Or: if she converted or was freed while pregnant
 - ii Or: if a first child got mixed up with one who is exempt (e.g. **לויה**, **כהנת**) or לאחרון
 - 1 Note: in case of **לאחרון** בן ט' לראשון/בן ז' לאחרון, he isn't a **בכור לנחלה**, implying that he inherits like a פשוט
 - (a) However: each set of brothers could "send him" to the other set
 - (b) Answer (**ר' ירמיה**): it means that the one who is born next (**לאחרון**) isn't a **בכור לנחלה** (either)
 - (c) Challenge: why don't the **ספק** and the next one write a **הרשאה** for each other, and together collect 3 portions and divide them (since one of them is certainly the **בכור לנחלה**)
 - (i) Cannot be: that our **משה** is not addressing a case of **הרשאה**; as we later assess that there was a **הרשאה**
 - (d) Answer: supports **ינאי** – **ר'** can only write a **הרשאה** if they were first recognized then mixed (at birth)

II **שמואל's dictum** – exiting of the head of a **נפל** isn't sufficient to exempt the next (live) birth from **בכורה**

- a Source: v. 2 – only when alive (**נשמת רוח חיים באפו**) is the head an "exemptor"
- b Challenge: our **משה** – head is invoked (first clause)
 - i Answer: **ראשו** there means "majority" of the body; **ראשו** used (instead of **רובו**) in parallel with **סיפא**
 - 1 Because: in that case, if it is a **בן ט'** and alive, the next one isn't even **נחלה**
 - 2 Challenge: is that merely teaching that **יציאת ראש** is sufficient? Already taught (**חולין ד:א**)
 - (a) Proposal: perhaps this is teaching that it also applies to **אדם** (not inferred from **בהמה**, since **בהמה** has no birth canal; **בהמה** can't be inferred from **אדם**, where there is a visage to consider)
 - (b) Rejection: that is also taught – (**נדה ג:ה**) – once the baby's head comes out, considered **לידה**
 - (c) Rather: **שמואל's dictum** is rejected

III Dispute **רשב"ל/ר"י** re: significance of forehead (**פדחת**)

- a **דשב"ל** exempts (as birth) for all but **בכור לנחלה** – per v. 3 (must be recognizable at birth to be considered **בכור**)
- b **ר"י** even exempts for **נחלה**
 - i "for all": to include **גויה** that had forehead born before conversion – no **ימי טומאה** and no **קרנ לידה** (born to **גויה**)
 - ii Challenge (to **ר"י**) **יכיר** means "recognizing the face", which means the face including the nose
 - 1 Defense: read "until the nose"
 - iii Challenge: may not testify that man died (**להתיר אשתו**) without face and nose, per v. 4
 - 1 Defense: **עדות אשה** is unique and we have a higher threshold
 - (a) Challenge: we allow 2nd-hand testimony, woman's testimony etc. – it is more lenient
 - (b) Answer: since we are lenient once testimony is given, we are stringent about the **עדות** itself
 - (c) Alternative answer: **יכיר** is not the same as **הכרת פנים** (requiring greater recognition)

- IV Dispute רשב"ל/ר"י re: a גוי who had children, then converted and had a son
- a ר"י. that son is not a בכור – he's already had אביו (v. 3)
 - b רשב"ל. that son is a בכור – when someone converts, they are "reborn"
 - i Note: they are consistent with their rulings re: fulfillment of פריה ורביה before conversion
 - 1 ר"י. he fulfilled פ"ר – per v. 5
 - 2 רשב"ל. didn't fulfill פ"ר – he is now "reborn"
 - ii Justification:
 - 1 If: we only heard of first dispute (re: בכור), that רשב"ל holds his position as גויים don't have נחלה
 - (a) But: in the case of פ"ר, he may agree with ר' יוחנן per v. 5 (flip justify)
 - iii Challenge (to ר"י): from our משנה – if he was childless (so far) and married a woman who had had children as a גוי or שפחה and then had a son with him after conversion/liberation – בכור לנחלה (but not לכהן)
 - 1 Question: with whom did she have this second child?
 - (a) If: from a ישראל who had not yet had sons – we could have presented this case with a ישראלית
 - (b) Rather: must have been with a גר who had had sons and then converted → supporting רשב"ל
 - (i) Rejection: the new son is born of a ישראל who had never had sons;
 1. Justification: needed to present as גיורת to teach לכהן אינו בכור, contra ריה"ג (v. 1)
 - iv Challenge (to ר"י): from ברייתא – if he had had sons before converting, his first son afterwards is בכור לנחלה
 - 1 Defense: that בגייתא was certainly authored by ריה"ג, who (must have) inferred male status from female
- V ר'אב"א's ruling about a לוייה – her son is exempt from סלעים
- a Question: who is the father? If כהן or לוי – she could even be a ישראל בת
 - b Rather: must have been from a ישראל – but v. 6 should militate in favor of obligation (follows father's status)
 - i Answer 1 (ר"פ): father was a non-Jew
 - 1 And: this is true not only according to opinion that אין מזהמין – we don't identify him as son of גוי
 - 2 But even: according to opinion that מזהמין את הוולד – he's still called לוי פסול
 - ii Answer 2 (בשם רבא): father was ישראל – but due to v. 1 (פטר רחם), mother's identity is considered
 - iii Challenge (to ר"פ): end of משנה → לוייה and כהנת are exempt
 - 1 Father cannot be: כהן ולוי – then we wouldn't need her to be לוייה to exempt
 - 2 Rather: must be from גוי
 - (a) However: in such a case, as per רבא's test, כהנת should be liable
 - (i) רבא. asked if a כהנת becomes pregnant from גוי – what is the status of her son
 - (ii) ר"פ. answered from ר'אב"א's ruling (which he considers to be a case of גוי as father)
 - (iii) רבא. distinguished, based on the fact that if a לוייה is captured or has בעילת זנות, still gets מעשר
 1. But: if a כהנת has בעילת זנות, she's considered a זרה (→ no תרומה) – should be liable for סלעים
 - 3 Note: this could be answered by ר' יוסף, quoting רבא – case of ר'אב"א was father
 - 4 ר"פ. could defend his position – כהנת in our משנה is a ישראל בת, married to כהן – called כהנת since her son is כהן
- VI The כהן who died and left a בן חלל (who was a בכור)
- a ר"ח. the son is obligated to redeem himself
 - b ר'אב"א. the son is exempt from פדיון
 - i Parameters of dispute: if father died after son had lived 30 days – all agree that he is exempt; father was זוכה בפדיון
 - ii Dispute: if he died within first 30 days (no חיוב yet)
 - 1 ר"ח. obligated, since father never "took possession" of the פדיון
 - 2 ר'אב"א. son says to other כהן – "I represent someone whom you could not have sued" (dead father)
 - (a) Challenge (to ר'אב"א): in our משנה, if she was pregnant and then converted (1st child) – חייב בפדיון
 - (i) But: according to ר'אב"א, son should be able to use same argument – since father is גוי
 - (ii) Defense: גוי has no ייחוס (→ his position is not considered)
 - 3 רשב"ל. ruled that if father died within first 30 days, son is obligated to redeem himself (supporting ר"ח)