

פרק שביני – ט בכור Introduction to

So far, we have dealt with the status of **בכור בהמה טמאה** – whether **בכור בהמה טמאה** (פרק א') or **בכור בהמה טהורה** (פרקים ב-ו); there is a third type of **בכור** – **בכור אדם**. However, **בכור** carries status in two unrelated areas – **קדושה** (requiring **פדיון** from **כהנים**) and within the estate – **נחלה** – **בכור 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 (משנה א) → 47b (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 יקיר לתת לו פי שנים בכל אשר ימצא לו כי הוא ראשית אנו לו משפט הבכרה: דברים כא, יז
 4. הפרת פניהם ענתה גם וחסאתם כסדם הגידו לא כחדו אוי לנפשם פי 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 **אם** only: four categories of **בכור** – **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. ג:ב. נדה)
- 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**
- 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** בן ז' לראשון, בן ט' לראשון, בן ז' לאחרון
- 1 **Note**: in case of **לאחרון** בן ז' לראשון/בן ט' לראשון, 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** (רי' 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 **נחלה** **בכור**)
- (i) **Cannot be**: that our **משנה** is not addressing a case of **הרשאה**; as we later assess that there was a **הרשאה**
- (d) **Answer**: supports **ינאי** ר' – the can only write a **הרשאה** if they were first recognized then mixed (at birth)
- II **אם**'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 באפיו**) is the head an "exemptor"
- b **Challenge**: our **משנה** – 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 **יצאת ראש** is sufficient? Already taught (דא: 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**: **אם**'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 **טומאה** ימי and no **קרבן 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 אונו (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), סד"א that רשב"ל holds his position as גויים don't have נחלה
 - (a) But: in the case of פ"ר, he may agree with 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 גויה 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 גויות to teach לכהן אינו בכור לכהן, 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 בגרייתא was certainly authored by ריה"ג, who (must have) inferred male status from female
- V רבא's ruling about a לוייה – her son is exempt from סלעים
- a Question: who is the father? If לוי or כהן – 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: לוי – 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 רבא'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 ה'
 - 3 Note: this could be answered by ר' יוסף, מר בר ר' יוסף, quoting רבא – case of רבא was ישראל 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 רבה בר רב הונא: 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 רבה: son says to other כהן – "I represent someone whom you could not have sued" (dead father)
 - (a) Challenge (to רבה): in our משנה, if she was pregnant and then converted (1st child) – חייב בפדיון
 - (i) But: according to רבה, 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)