

For you make her טהור from the first day - דקא מטהרת לה מראשון

Overview

When a woman gives birth to a male she is considered טמאה (as a נדה) for the first seven days¹. The next thirty-three days are considered ימי טוהר, and even if she sees blood she is not טמאה טומאת נדה. For the birth of a girl, the mother is טמאה for the first fourteen days and the next sixty-six days are ימי טוהר. If there is a ספק if it was a boy or a girl (as in the case of our גמרא), then she has the חומרא of a female birth (fourteen days of טומאה) and the חומרא of a זכר (only twenty-six days of ימי טוהר following the fourteen days of טומאה²).

Our גמרא is discussing a case where the שליא was expelled on two consecutive days and we are not sure when the ולד הנימיה was actually 'born'. ר' אלעזר maintained that we begin the (fourteen day) טומאה process from day one, for perhaps the child was expelled in the מקצת שליא of day one. רבא challenges the ruling of מראשון לה מוניה, for that would mean that on day fifteen she is in the ימי טוהר; and that is not necessarily so, since the fetus may have been expelled on day two (making day fifteen, actually day fourteen). רבא's challenge has a difficulty with תוספות.

פירוש³ שסופרת י"ד של נקבה מראשון והזמים שתראה בט"ו יהיו טהורין –

The explanation of the phrase 'דקא מטהרת לה מראשון' is **that she will count the fourteen days of טומאה for a נקיבה birth from the first day of expelling the שליא, and therefore the blood that she will see on the fifteenth day will be considered טהורין**, since she already counted the fourteen ימי טומאה. However in reality the טומאה may have started on the second day, which makes the fifteenth day only the fourteenth, when her דם is still טמא.

תוספות has a difficulty with רבא's concern:

ואם תאמר ואמאי לא יהיו טהורים –

And if you will say; and why should the דם of the fifteenth day not be טהור?!

תוספות explains why the fifteenth day should be טהור (regardless):

דלמא ביום ראשון יצא ראשו או רובו ואפילו לא יצא דלמא הוא זכר –

Perhaps on the first day when the שליא was expelled, **the head or the majority of the child came out** (which would make the first day the real

¹ This rule holds even if it was a dry birth; there was no blood expelled during the birthing process.

² The thirty three days of ימי טוהר of a זכר are reduced by the additional seven days of טומאה for the ספק, that it may have been a נקיבה.

³ The term פירוש is used here to indicate that the interpretation requires some modification. The question was דקא מטהרת לה מראשון, which seems to imply that the woman is טהור on the very first day; this is obviously not the case for she becomes טמא (even) on the first day.

first day, when we begin the fourteen day count), **and even if** the child did not come out on the first day, but rather on the second day, nevertheless there is no problem if we are מטהר the fifteenth day, **for perhaps** the child is **a male** who only has seven days of טומאה and the succeeding thirty three days (which encompasses the fifteenth day) are ימי טוהר. We have here a ספק ספיקא which should allow the fifteenth day to be from the ימי טוהר.

answers: תוספות

ויש לומר דלא מצי למישרי מספק ספיקא דהוּו תרי קולי דסתרי אהדדי –

And one can say; that we cannot permit the fifteenth day to be considered **on account of the ספק ספיקא**, **for it will be two leniencies that conflict with each other.**

תוספות continues to explain the conflicting קולות:

שאם תראה יום מ"א תשתרי נמי מספק ספיקא –

For if she will see דם on the forty first day she should also be permitted on account of this same type of ספק ספיקא -

דשמא לא יצא רובו ביום ראשון ואפילו יצא רוב דלמא נקבה היא –

For perhaps the majority of the child did not come out on the first day (but rather on the second), making day forty-one, day forty, when it is דם טוהר, **and even if the majority came out on the first day perhaps the child was a נקיבה** (which makes day forty-one part of the sixty-six טוהר for a girl).

והשתא בתחילה התרנו משום דשמא זכר השתא נתירנו משום שמא נקבה –

And now it will come out that initially we permitted the דם of day fifteen **because perhaps** the child was a זכר, **and now we will permit** the דם of day forty-one **because perhaps** the child was a נקיבה. If we follow the logic of ספק ספיקא we will be מתיר the דם of day fifteen (for שמא זכר) and the דם of day forty one (for שמא נקבה). If we were to do that -

הרי ממה נפשך נעשה איסור –

Then in any case a prohibition has been violated. It cannot be that the דם of day fifteen and forty one should both be טהור. If the child was a זכר (and day fifteen is טהור) then day forty one should be אסור (since the זכר may have been born on day one; this is the צד we used to be מתיר day fifteen), on the other hand if the child is a נקבה (and day forty one is טהור) then day fifteen should be אסור (since the child may have been born on day two; this is the צד we used to be מתיר day forty-one). Since we do not know which of these two (contradictory) options to accept, we accept neither and both days are דם טמא.

Tosfos cites a similar case:

וכהאי גוונא תנן בהמפלת (נדה כט,א) תשב לזכר ולנקבה ולנדה –

And there is a similar case in ⁴פרק המפלת where the משנה states that she ⁵should 'sit' for the possibility that it was a זכר or a נקבה or for נדות (there may have been no birth at all).

אף על גב דכל איסור באפי נפשיה הוי ספק ספיקא:

Even though that each of these prohibitions by themselves should be considered a ספק ספיקא; nevertheless, since these ספק ספיקות conflict with each other we rule her as a טמאה for all the possibilities.

Summary

When there are two conflicting ספק ספיקא לקולא we rule לחומרא in both cases.

Thinking it over

1. Can we resolve from תוספות whether חזקת טומאה is 'stronger' than the היתר of a ספק ספיקא or not?⁶

2. Why should we not say that on day fifteen she should be טהור on account of the ספיק ספיקא; and if she will see on day forty-one, she will be טמא in order not to contradict the original assumption that it may have been a זכר?!⁷

3. Why does תוספות state that ממה נפשך נעשה איסור; it is possible that on day fifteen it is מותר because it may have been born on day one (regardless if it is a נקיבה) and it is מותר on day forty-one because it may have been a נקבה (regardless if it was born on day one)?!⁸

⁴ The משנה there is discussing a case where something was expelled from the woman and she saw דם, however she is not sure whether it was a fetus or not. The rule is that she must be טמא for all possibilities; perhaps it was a זכר, or a נקיבה, or perhaps there was no ולד at all where she has no ימי טוהר. She is considered טמאה לידה for the first fourteen days (for perhaps it was a נקבה), even though it is a ספק ספיקא; for it is possible that there was no child at all and she is only טמאה נדה for seven days, and even if there was a child perhaps it was a זכר and the טומאת לידה is only for seven days. The reason we are not מתיר day eight to fourteen on the possibility that it was a זכר is because of a conflicting ספק ספיקא. For if the woman saw דם on day thirty-four and day forty-one, then if we assume (as was just suggested) that perhaps it was a זכר, then (the ראייה on day thirty-four is טוהר, דם, and) the ראייה on day forty one which comes right after the forty לידה, is a דם נדה, which makes her טמא for the next seven days (through day forty-seven). However we can argue that on account of a conflicting ספק ספיקא, she should only be טמא for day forty one and not for the subsequent six days. It is possible that there was no fetus at all and therefore the ראייה on day thirty-four was a ראייה of נדה, which makes her a נדה for seven days through day forty. On day forty-one begins the eleven day period בין נדה נדה where any דם seen is considered (not נדה, דם, but rather) דם זיבה. The first ראייה of דם זיבה (on day forty-one) makes her a כנגד יום שומרת יום כנגד יום, which means she is only טמא on that day and if she sees no דם on day forty two, she is טהורה. And even there was a birth, it is possible that the fetus was a נקיבה, which makes (day thirty-four and) day forty-one טוהר ימי טוהר and there is no טומאה at all. This ספק ספיקא contradicts the previous ספק ספיקא that the fetus was a זכר and therefore she is בטומאת נדה from day forty-one through day forty-seven. וק"ל

⁵ See שטמ"ק.

⁶ See בל"י.

⁷ See אמ"ה.

⁸ See סוכ"ד.