

בכור שנטרף¹ בתוך ל' יום –

A firstborn that was נטרף (killed) within thirty days

OVERVIEW

A child within the first thirty days of its birth (as well as an animal within the first eight days of its birth) is deemed a נפל; it may be an aborted fetus (a non viable life form). However if we know that the child (or animal) went through a full term pregnancy then it is not a נפל, but considered a viable person (animal) in regards to certain laws.

ר"א taught that a firstborn child that was נטרף within thirty days of his birth is not redeemed (by his father) as other first born. This is derived from the פסוק of אך פדה נטרף; wherein the word אך excludes this שנטרף. רש"י maintains that נטרף means he was killed. תוספות infers from רש"י that if a child had a full term pregnancy, and is therefore not a נפל, he will have to be redeemed even if he died within thirty days of his birth. תוספות disagrees with רש"י in this matter, as well as with the translation of the word שנטרף.

פירש הקונטרס³ שנהרג -

רש"י explained that the term נטרף here means **that he was** (actually) **killed** -

ובמת מעצמו לא איצטריך קרא לאשמועין דאין פודין -

However if the בכור died on his own accord; no one killed him, the פסוק of אך is not needed to teach us that we do not redeem this deceased בכור -

דהא כתיב⁴ ופדיוו מבן חדש תפדה -

For it is written 'and his redemption is from when he is one month old, then he should be redeemed'.⁵ We derive from this פסוק if he did not reach the age of one month (because he died [of natural causes]) he need not be redeemed.⁶

אבל נהרג איצטריך לאשמועין -

However when he was killed, it is necessary to let us know that he still needs not to be redeemed -

¹ The word 'שנטרף' (as well as the term טרפה) usually refers to a person or animal which who was attacked and literally torn apart by the attack. It also commonly refers to a diseased person or animal that cannot live (on account of this disease) for more than twelve months.

² במדבר [קרה] יח, טו.

³ בד"ה פודין and בד"ה בכור.

⁴ שם טז.

⁵ This פסוק indicates that he must be a viable child and not a נפל. See following footnotes # 6 & # 8.

⁶ Since he died naturally, it would indicate that he was a נפל. See following footnote # 8.

דלא אמרינן אי לאו דאקטיל הוי חי ולא נפל הוי ולפרקיה -

And we do not say that that if he weren't killed, he would have lived past the thirty day minimum **and he is not considered an aborted fetus, and** he should therefore **be redeemed**. The פסוק אך rejects this line of reasoning and instructs us that even a נהרג need not be redeemed. This concludes פירש"י.

פירש"י comments on תוספות

משמע קצת⁷ דאם קים לן בגויה דכלו לו חדשיו וחי היה חייב לפדותו -

There is a slight indication in פרש"י that if we were certain concerning this child (who died within thirty days), that his months of pregnancy were completed (i.e. he is a full term baby) and he would have lived (if he were not killed), then there would be an obligation to redeem him ([even] after he died).⁸

פרש"י has a difficulty with תוספות

וקשה דבפרק יש בכור (בכורות דף מט, א) אמר גבי פודה בנו תוך ל' יום -

And there is a difficulty with פרש"י, for the גמרא states in פרק יש בכור concerning one who redeemed his son within thirty days of his birth -

ונתאכלו⁹ המעות לאחר זמן אין בנו פדוי¹⁰ -

And the money was consumed by the כהן (before the thirtieth day arrived); **after the time** of thirty days, the rule is that **his child is not redeemed** and needs to be redeemed again. This concludes the citation from the גמרא.

רש"י continues with his question on תוספות

ואמאי והא אגלאי מילתא למפרע דלא נפל הוא -

And why is it not פדוי if נתאכלו המעות **For it became apparent retroactively that he is not a נפל**; the child lived past the thirty day (test) period.¹¹ Why should נתאכלו invalidate the המעות? This disproves רש"י's presumption (mentioned previously in this (תוספות) that if חדשיו לו דכלו לן קים the פדיה is valid even if the child died before day thirty.

⁷ See ‘Thinking it over # 1.

⁸ קים לן דכלו ליה חדשיו, the rule would be that (if he died בְּתוֹךְ ל' he is פטור פדיה (because of חדש תפדה [and he was not a חדש]), then it is not necessary to for the פסוק to teach us by נהרג (when we are not sure if חדשיו) that he is פטור. However, if we assume that by חדשיו ל' דכלו ל' קים there is a פדיה, then it is understood that by נהרג (where we do not know for certain if חדשיו) we require a פסוק that he is פטור even though he may have been חדשיו. See נח"מ.

⁹ The גמרא there in י"י is גמרא ורשא.

¹⁰ It is actually a מחלוקת there between רב and ר' שמואל; however the גמרא concludes that הלכתא כשמואל that אינו פדוי.

¹¹ *בְּתוֹךְ שְׁלֹשִׁים* states that the reason he is *אינו פְּדוּי* is because he cannot redeem him now *שְׁלֹשִׁים*. However if we maintain (as *רש"י* seems to) that by *שְׁלֹשִׁים יָמִים* he can be redeemed *שְׁלֹשִׁים*, and this child lived past *שְׁלֹשִׁים* indicating that when the *פְּדִיָּה* took place he was not a *בֶּפֶל*, and he was *רְאוּי לְפְדִיָּה*, so why is he *אינו פְּדוּי*.

תוספות offers his view:

אלא ודאי גזירת הכתוב היא מופדיו מן חדש תפדה -

Rather we must say **that this is a גזירת הכתוב** which we derive from **ופדיו מן חדש תפדה -**

דאפילו קים לן שכלו חדשיו צריך ל' יום -

That even if **קדם לן שכלו חדשיו**, nevertheless **thirty day are required** to pass, before the child can be **תפדה** (regardless if he is a **נפל** or not).¹²

anticipates a question on his assumption that the **ופדיו** of פסוק is a גזירה that a פדיון that is performed before day thirty is invalid even if **כלו חדשיו**:

ואף על גב דמהאי קרא נפקא לן (שבת דף קלה, ב) כל ששהה ל' יום באדם אינו נפל -

And even though that from this פסוק (of חדש תפדה) **we derive that every human child that survives the first thirty days** is not a **נפל**; this would indicate that the reason we are not **פודה** before **יום ל'** is because till then he is a **נפל**.¹³ It should therefore follow that if **קדם לן שכלו חדשיו** there would be a requirement for **פדיה** if he died **ל'** תוך (and also if the **פדיה** took place **ל'** קודם and the child lived past **ל'**, it should be a valid **פדיה** even if (נתאכלו המעות).

תוספות responds:

הכי נמי דרשינן (שם) ח' ימים בבהמה אינו נפל מדכתיב מיום השמיני והלאה ירצה לקרבן -

We also similarly infer that eight days by a בהמה is not a נפל. since the תורה writes 'and from the eight day onwards it is accepted as a קרבן', which would seem to indicate (as we said previously) that the reason it cannot be brought for a **קרבן** until day eight is because it is a **נפל**. It would therefore seemingly follow that if we knew that **כלו חדשיו** it would be accepted for a **קרבן** (even) before day eight -

ואפילו הכי כי קים לן שכלו חדשיו הוי מחוסר זמן תוך שמנה -

And nevertheless (even) when we are certain that it was כלו חדשיו, the animal is (still) **lacking the time** needed to be accepted for a **קרבן** **during its first eight days** (we do not accept him for a **קרבן** before he is eight days old). This proves that even though we derive from the פסוקים that until eight/thirty days the newborn is still a **נפל**, nevertheless the prohibition (of eight days) and the obligation (of thirty days) are in effect even if we know that **כלו חדשיו** and he is not a **נפל**.¹⁴

¹² This explains why if **ל'** בתוך he is not **פדוי**, since whatever he gave **ל'** בתוך was not a **מעשה פדיה** (but is considered a gift to the **כהן**), and after **ל'**, there was no money for the **פדיה** to take effect. Similarly there would be no need to teach us that **ל'** בתוך does not require **פדיה**.

¹³ If **ופדיו** is a גזירה that a child cannot be redeemed before **ל'**, then how can we derive from this פסוק that after **ל'** he is not a **נפל**; it could be that he is a **נפל** until an indeterminate age; however the תורה decrees that פדיון take place after **ל'**. However if we assume that the reason for **יום ל'** is because until then he is a **נפל** ספק then it is understood that we derive from this פסוק that after **ל'** he is **נפל** מכלל. See מהר"ם.

¹⁴ The eight and thirty day periods are a גזירה (even if **חדשיו**); however since the תורה indicates specifically this

קרוב תוך ה' קים לן דכלו חדשיו will now prove that even if

כדמוכח בפרק קמא דראש השנה (דף יב, ב) דאמר [בכור] מאימתי מונין לו שנה ¹⁵ -

As is evident in the first פרק of ר"ה where the גמרא asks, from when do we count a year for a בכור? The גמרא responds -

חד אמר משעה [שנראה] להרצאה¹⁶ וחד אמר משעה שנולד ולא פליגי הא בתם הא בבעל מום -

One said from the time that he was fit to be accepted as a קרבן **and one said from the moment he was born**, and the גמרא continues; **and** these two opinions **do not argue**, **one** (who says we start counting from day eight) is discussing a case where this בכור was a תם (**unblemished**) and fit for a קרבן,¹⁷ and the **other** is discussing a case where the בכור is a בעל מום and not fit for a קרבן; the year begins from birth, for he is fit to be eaten from birth. The גמרא asked even if he is a בעל מום he cannot be eaten until eight days, for he is a ספק נפל.

ומוקמינן לה התם דקים ליה בגויה דכלו לו חדשיו¹⁸ ואפילו הכי לא חזי להרצאה עד ח'¹⁹ -

And the גמרא established there that we are discussing cases where they were **certain of this בכור** (whether תם or מום) **that כלו לו חדשיו, and nevertheless** (even if כלו חדשיו) **he is not fit to be accepted** as a קרבן **until day eight.** This proves that regardless of the לימוד as to when he is no longer a ספק נפל; nevertheless, before the allotted time, he is not ראוי for קרבן or פדיון even if כלו חדשיו.

נהרג means נטרף has a different question on ש"י interpretation that תוספות

ויעוד דבסוף הקומץ רבה (מנחות דף לז,א) מחייב גבי בכור שיש לו ב' ראשים -

And in addition, in end of פרק הקומץ רבה concerning a בכור that has two heads the father is obligated -

ליתן לו י' סלעים לכהן ופריך עלה מבכור שנטרף דפטור -

to give ten סלעים to the כהן (instead of the usual five). **And the גמרא challenges** this ruling **from** our case **of a בכור שנטרף where he is פטור** (a baby with two heads cannot live and is a טריפה so how could he be חייב).

ואי נטרף היינו נהרג היכי מדמי ליה להכי -

period, that shows that after this period he is no longer a ספק נפל, for if he would be a ספק נפל (even later) the תורה should have written the later period. The תורה would not have required a פדיה for a ספק נפל. See מהר"ם.

¹⁵ The הבכור נאכל שנה בשנה בין תם בין בעל מום שנאמר (דברים [ראה] טו, כ) לפני ה' אלהיך תאכלנו states: כורבן (if he is a תם) or eaten (if he is a בעל מום) within the year. A שנה בשנה בכור must be brought for a

¹⁶ This means from when he is eight days old. The *שנה בשנה* of *חייב* becomes effective when the *בכור* is one year and eight days old.

¹⁷ Then the year starts from day eight; for prior to that it is not eligible for a קרבן.

¹⁸ Therefore if he is a בעל מום he may be נשחט immediately at birth, and the year for the בעל מום begins then.

¹⁹ We do not begin the counting of the year for this **בכור תם שכלו לו חדשי** until day eight.

However if נטרף (according to רש"י) means killed, how can the גמרא compare it to that case of שני ראשים where the child is still alive.²⁰

תוספות adds an additional question on פרש"י:

ועוד דלא הוה ליה למימר נטרף אלא נהרג -

And furthermore if נטרף means נהרג then the גמרא should not have said נטרף but rather נהרג (so there will be no room for error).

תוספות asks a final question on פירש"י:

ועוד דאסיק גמרא אך חלק הא כיון שנהרג תוך ל' יום מופדיו מבן חדש נפקא -

And furthermore the גמרא concludes that we derive that a בכור שנטרף is פטור from פדיה from the word אך which is חלק; but since he was killed within thirty days we derive that he is פטור from the פסוק of מופדיו מבן חדש?²¹

תוספות now offers his פשט:

ומפרש רבינו תם שנטרף היינו שנעשה טרפה²² -

And the ר"ת explains that the word שנטרף means that the child became a טרפה (he received a wound or a disease which renders him a טרפה [a non viable being]).

והשתא מדמי ליה שפיר בהקומץ לבכור שיש לו ב' ראשים דהוי נמי טרפה:

And now it is a proper comparison to a בכור that has two heads for that בכור with two heads is also a טרפה.

SUMMARY

רש"י maintains that בכור שנטרף means that he was killed. We may infer from רש"י that a בכור שכלו חדשיו is חייב בפדיה during שלשים.

תוספות maintains that נטרף means כולו חדשיו and even if חייב בפדיה there is no בתוך ל' that he is diseased.

THINKING IT OVER

1. Why does תוספות state²³ that from פרש"י it is בגויה דכלו לו משמע קצת דאם קים לן כיון דכלו לו? ²⁴ why only 'קצת' חייב לפדותו?

²⁰ It is possible to differentiate; that when the child was killed there is no חייב בפדיה; however when he is still alive there is a חייב בפדיה even if he is a טרפה.

²¹ See 'Thinking it over' # 2.

²² That is why it is necessary to have a לימור from אך that he is פטור from פדיה (even though he is after יום).

²³ See footnote # 7.

²⁴ See אמ"ה.

2. בכור שנטרף (רש"י) asks (the last question on תוספות) that why do we need to derive פטור from אך when we can derive it from ופדויו.²⁵ However רש"י explained that ופדויו is referring to a נפל (ספק) that is not viable; however here where he was killed, he may have been a viable child. And if תוספות is referring to his previous assertion that ופדויו is a גזיה"כ even by כלו חדשיו, then he is (seemingly) not adding anything new with this question.²⁶

²⁵ See footnote # 21.

²⁶ See אמ"ה and מהוד"ב (למהרש"א).