

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.

א"ר 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 רש"י. בכור שנטרף אך excludes this פסוק² of תפדה אך; wherein the word אך 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 מן 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 redeemed⁶.

אבל נהרג איצטריך לאשמועין –

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

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 אך פסוק rejects this line of reasoning and instructs us that even a נהרג need not be redeemed. This concludes פירש"י.

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.

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.

פרש"י continues with his question on תוספות:

ואמאי והא אגלאי מילתא למפרע דלא נפל הוא –

And why is it not פדוי if המעות נתאכלו? For it became apparent retroactively that he is not a נפל; the child lived past the thirty day (test) period¹¹. Why should המעות invalidate the פדיה?! This disproves פרש"י's presumption (mentioned previously in this תוספות) that if the פדיה is valid even if the child died before day thirty.

תוספות offers his view:

אלא ודאי גזירת הכתוב היא מופדיו מבן חדש תפדה –

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

דאפילו קים לן שכלו חדשיו צריך ל' יום –

⁷ See 'thinking it over # 1.

⁸ תוספות may derive this as follows. If we were to assume that (even) when ליה חדשיו קים לן דכלו ליה חדשיו, the rule would be that (if he died ל' בתוך) he is פטור from פדיה (because of מבן חדש תפדה [and he was not a בן]), 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 ל' דכלו לו חדשיו קים לן דכלו לו חדשיו there is a חיוב 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 פרש"י גירסא.

¹⁰ It is actually a הלכותא כשמואל that גמרא concludes that רב ושמואל there between מחלוקת; however the גמרא concludes that אינו פדוי.

¹¹ בתוך שלשים states that the reason he is אינו פדוי is because he cannot redeem him now. However if we maintain (as פרש"י seems to) that by ל' שכלו חדשיו קים לן שכלו חדשיו he can be redeemed שלשים, and this child lived past שלשים indicating that when the פדיה took place he was not a נפל, and he was ראוי לפדיה, so why is he אינו פדוי.

That even if **לֹא שָׁלוּ חֲדָשֵׁי**, nevertheless **thirty day are required** to pass before the child can be נפדה (regardless if he is a נפל or not)¹².

פדיון גזירה"כ is a ופדיוי פסוק that anticipates a question on his assumption that the פדיון that is performed before day thirty is invalid even if כלו חדשיו:

וואף 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 וּפְדוּיוֹ מִבֶּן חֹדֶשׁ תַּפְדָּה) 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 ספק נפל.¹³ It should therefore follow that if דכלו חדשיו קים לן there would be a requirement for פדיה if he died תוך ל' (and also if the פדיה took place קודם ל' and the child lived past ל', it should be a valid פדיה even if נחטא כל המצוות).

תוספות responds:

הכי נמי דרשינו (שם) ח' ימים בבהמה אינו נפל –

We also similarly infer that eight days by a בהמה is not a נפל -

מדכתיב מיום השמיני והלאה ירצה לקרבן –

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 ספק 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 דכלו חדשיו הוי מחוסר זמן תוך שמנה –

And nevertheless (even) when we are certain that it was כלו חדשי, 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 ספק, nevertheless the prohibition (of eight days) and the obligation (of thirty days) are in effect even if we know that כלו חדשי and he is not a נפל ספק.¹⁴

קרוב תוך ה' he is not accepted for a קרוב תוך ה' will now prove that even if כלל הדשיו, he is not accepted for a קרוב תוך ה'.

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

¹² This explains why if ל' נתאכלו המעות בתוך ל' he is not פדוי, since whatever he gave ל' בתוך ל' 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' נהרג בתוך ל' does not require פדיה.

¹³ Similarly there would be no need to teach us that חַיִּים בְּחַיָּה does not require אֵל.
אשר יפדיוו ויהיה כ' עד ה' , then how can we derive from this פסוק that
he is not a נפל; it could be that he is a נפל until an indeterminate age; however the תורה decrees that
נפל take place after ל'. However if we assume that the reason for יום ל' is because until then he is a נפל
then it is understood that we derive from this פסוק that after ל' he is מכלל נפל . See מהרמ"ם.

¹⁴ The eight and thirty day periods are a גזירה (even if חדשיו is); however since the latter indicates specifically this 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 מהר"ם. See ספק נפל.

[illegible]

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] להרצאה וחד אמר משעה שנולד -

One said from the time that he was fit to be accepted as a קרבן¹⁶ and one said from the moment he was born, and the גמרא continues -

ולא פליגי הא בתם הא בבעל מום -

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 קרבן¹⁷, 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 חדשיו -

And the גמרא established there that we are discussing cases where they were certain of this בכור (whether תם or בעל מום) that כלו לו חדשיו¹⁸ -

ואפילו הכי לא חזי להרצאה עד ח' -

And nevertheless (even if כלו חדשיו) he is not fit to be accepted as a קרבן until day eight¹⁹. 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 has a different question on נטרף interpretation that נטרף means:

ועוד דבסוף הקומץ רבה (מנחות דף לו,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 -

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

פרש"י adds an additional question on נטרף:

ועוד דלא הוה ליה למימר נטרף אלא נהרג -

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

¹⁶ This means from when he is eight days old. The שנה בשנה of חיוב 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 חדשיו until day eight.

²⁰ It is possible to differentiate; that when the child was killed there is no חיוב פדיה; however when he is still alive there is a חיוב פדיה even if he is a טריפה.

פירש"י asks a final question on תוספות

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
from פטור 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 מבן
חדש?²¹

פשוט now offers his תוספות

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 זהו נמי טרפה:
And now it is a proper comparison to a בכור that has two heads for that
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 is בפדיה during שלשים חייב שכלו חדשיו רש"י.
נטרף and כלו חדשיו even if חיוב פדיה there is no בתוך ל' תוספות
means that he is diseased.

Thinking it over

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

2. תוספות asks (the last question on רש"י) that why do we need to derive בכור
רש"י. However²⁵ ופדיו from אך when we can derive it from פטור is שנטרף
explained that ופדיו 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 ופדיו is a גזיה"כ even by כלו חדשיו, then
he is (seemingly) not adding anything new with this question.²⁶

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 ל' יום).

²³ See footnote # 7.

²⁴ See אמ"ה.

²⁵ See footnote # 21.

²⁶ See אמ"ה and מהוד"ב (למהרש"א).