

1. Rav Sherira Gaon, Otzar haGaonim, Eruvin, Teshuvah 376

As far as your request to record the medicines from the seventh chapter in Gittin, from Rav and Shemuel to the breakpoint of the mishnah, in terms of how they were received and to provide their translations: We must inform you that the rabbis were not doctors, and they stated general things they saw in their times, one by one. These are not mitzvah matters. Therefore, you shall not depend upon these medicines; one should not practice any of them until after they have been checked and we know with certainty from expert physicians that this will not harm or endanger someone. So our fathers and elders taught us and told us, not to practice any of these medicines other than *kibla* which we know causes no harm.

2. Rashba I 98

Question: An animal was found to have an extra eiver [*yeteret*], from one of those eivarim which renders the animal a tereifah, in a place which should render it a tereifah. It was clarified that twelve months had passed. Would we say that since twelve months passed it is not a tereifah, and it is kosher, for Chullin 58 says that a tereifah cannot live twelve months? Although I have seen and heard that some permit this and are lenient, I wish to know your view.

Response: If you saw or heard one who is lenient and permits a *yeteret*, or any other situation the sages listed as a tereifah, do not listen to him, do not agree with him, there should not be such in Israel. It appears to me that one who permits this is slandering the words of the sages. I will speak with you about this at length, so that a fence will be built for you and for all who tremble at the word of Gd, and the words of the holy sages of Israel will not be made like a fence that has been pushed aside, such that a fox could ascend and break through.

In Chullin 42, the sages listed, "There are eighteen tereifot... This is the rule: If an animal that suffers a wound such that it cannot live, it is a tereifah." And the gemara comments that the author of the mishnah believed that a tereifah cannot live, and the cases which he had learned he listed, and the cases which he had not learned he did not list. The list is brought with "This is the rule," and we depend on definitive "This is the rule" formulations in the gemara. Some sages added other tereifot, situations in which the animal could not live, according to their views, and they depended upon this rule... Ulla assigned all of the tereifot to eight categories, saying (Chullin 43), "These eight categories were told to Moshe at Sinai: Pierced, split, removed, lacking, torn, trampled, fallen and broken." We say that these were told to Moshe at Sinai, and *yeteret* is among those that were removed, according to Rav Huna, or those that are pierced or split... And Rav Huna's position is definitive, and none have ever argued it... For all of these, they never said that living twelve months or giving birth would be a sign [of health], for there is no sign in the survival of known tereifot, and they are prohibited unconditionally. We don't say that we leave them [to see if they survive], for according to the view that a tereifah cannot live, they cannot live. One who says that they survived two or three years is describing something that never happened, and one who testifies to this is mistaken; such never happened.

It is as we say in the gemara: R' Yosi ben Nehorai asked R' Yehoshua ben Levi: "How big a hole in the windpipe?" And he replied, "It is as we learned..." R' Yosi ben Nehorai replied: "But we had a lamb like that in our area, and it lived!" To which R' Yehoshua ben Levi replied, "You depend on that? The law has spread in Israel that a bird with a fallen thigh is a tereifah, and R' Shimon ben Chalafta had such a chicken and he prepared a tube for it, and it lived, and that was only within twelve months, and the same must be true for your case." Therefore, even if many people go about saying they saw this, we contradict them. The words of the sages will stand, and we will not slander the words of the sages and uphold the words of these others.

Similarly, a woman told Rav Asi, "I waited ten years after my husband [died], and then I gave birth." He told her, "My daughter, do not slander the words of the sages." And she recanted, explaining that she had been with a non-Jew... In cases like these I say: Please do not slander the words of the sages regarding that which they considered a definite tereifah, and they did not leave as a doubt.

And if there is one whose heart disturbs him, saying that perhaps the sages only spoke of the majority of cases and most animals experiencing one of the listed tereifot will not survive, but some of them might survive due to their physical and constitutional strength, then you will have cancelled our mishnah's rule of, "None like this live." All of the cases listed by those sages, within the view of the mishnah's author, cannot live... And if this were true that we had seen it live, this would be testimony that the animal is not among the tereifot. Further, it would be testimony not only about this animal itself, but it would be testimony 'purifying' the animal and its peers. You cannot escape one of two possibilities: Either a tereifah cannot live and the fact that this animal lived testifies that it is not a tereifah, or this case resolves the debates

[regarding whether a tereifah can live] and testifies that the law is against the author of the mishnah, and like the author of the baraita who stated that a tereifah can live...

And if you will reply: What can we do – we have seen a *yeteret* of the foot survive twelve months, with our own eyes! This is what R' Yehoshua ben Levi told R' Yosi ben Nehorai, "You depend on that?" Meaning: This is not possible. It is as though you testify that you have seen the impossible. Or, there is another cause. So, too, here we ask the witness how he knows that this animal had, in fact, survived that period. Perhaps you forgot or erred, or perhaps you were confused regarding the time, or perhaps you confused this animal for another, for it is not possible for him to testify that this animal was in his sights for the entire twelve months. And if he will strengthen himself in his error and say, "No, for I love these strange words, this is what I saw and this is what I will follow," then we will tell him that it is impossible to slander the words of the sages. The witness, and one thousand like him, should be cancelled, rather than cancel one point of the positions agreed upon by the holy Jewish sages, the prophets and students of prophets, and statements given to Moshe at Sinai...

3. Rivash 446, 447

Question: There was a woman of about twenty who was married and lived with her husband for about 35 days. At the end of this time she immersed as a niddah, and was then alone with her husband. Her husband died within three days, and immediately there was doubt whether she might be pregnant, until her time arrived and she was visibly pregnant. She gave birth to a daughter in the end, and witnesses clarified that from the time her husband died until the day her daughter was born was eight months and 22 days. The daughter had complete signs of development, hair and nails. The daughter died after 29 days. Does the daughter exempt her mother from chalitzah, because she left the category of *nefe*/ because her signs were complete or because she had entered 22 days into the ninth month such that we would say her months were complete? Or would we say that all of this does not remove her from potential *nefe*/ status, since she died within thirty days of birth [and the ninth month is incomplete], such that we would not say her gestation was complete, and chalitzah is necessary?

From #446 -

One should not question this based on the popular practice of women producing viable children in less than nine complete months from the day they immersed for niddah. Since they do not actually live with their husbands and then separate, their immersion is not proof; perhaps they erred in their estimation regarding the pregnancy, and the child is from an earlier immersion, and a child of nine full months. And if one will say that they did not cease to have a menstrual cycle [beforehand], Niddah 4b says that a pregnant woman does not cease her bleeding until the fetus is visible, when her limbs become heavy... And we could also assume that the child is from a later time, from seven months, and born on time. Perhaps he was from that immersion, and a seven month pregnancy that was delayed [emerging]...

From #447-

Regarding the question: The master knows that we do not judge the laws and mitzvot of our Torah based on the words of scholars of nature and medicine. Were we to trust their words, we would say that – Gd-forbid – Torah is not from heaven! This is what they have said, with their false signs. If you would judge in tereifot based on scholars of medicine, you would receive much reward from the butchers! In truth, most of the tereifot would be changed from death to live and life to death, and the alive with the dead. There is no doubt that in a case in which the liver is removed and an olive-sized quantity remains, we accept it but they say the animal will die momentarily...

When the Rambam even changed a little, saying that the *tzomet hagidin* is in the lower bone in birds, they did not agree with him, because from the gemara it seems that this is in the middle bone, and they do not distinguish between animals and birds. This is even though the Master was wise in medicine and nature, and expert in dissection. We do not live by the word of nature or medicine; we depend upon our sages, even if they tell us that right is left. They received the truth, and the explanations of the mitzvah, person-to-person from Moshe Rabbeinu. We will not believe the Greek or Arab scholars, who only spoke from their theories or from some experimentation in which they did not pay attention to doubts regarding the experiments...

In many matters, such as in the secrets of creation, they disagree with the words of the Sages. For example: That a fetus is formed after forty days, and is mere water until then. And that the father provides fluid from which the bones and sinews are formed – they believe that all is from the mother, and the father's seed serves only to provide a frame in which the mother's seed stands, like the stomach providing a frame for the milk...

So, too, in this matter their views might oppose those of our Sages, for perhaps they tested with one or two and found that they completed their gestation at the start of the ninth, and perhaps it was a delayed child of seven months, or it was

from earlier acts. And even if they gave the women to a guard, there is no guard for immorality, and perhaps the guard himself lived with them. It would be better to trust Shemuel or be concerned for his words, for the paths of the heavens were clear to him, and regarding medicine he testified that he knew cures for all illnesses (Bava Metzia 113b). Further, you have not seen the scholars of medicine say that the child is no longer a nefel even if he dies on the day of his birth. Perhaps they said that it is possible for the gestation to be complete at the start of nine months. Further, it is no wonder that the doctors would say this [that a ninth month baby could survive]; R' Yehudah also believed this. It is only that the Rambam and his peers were concerned for Shemuel's view.

4. Ramban to Chullin 76a

Once the *tzomet hagidin* is severed, the animal is a tereifah and it cannot become permitted. The same is true for a punctured spleen or damaged kidney, or any of the tereifot. Although among the doctors it is found that eivarim which have been wounded may be cut and may heal themselves, and if those eivarim are left then the patient dies, this is not what is found in the words of the Sages. If we know an animal has become a tereifah through a broken eiver which should cause it die, the animal is always prohibited. This requires analysis.

5. Tashbetz 2:101

You asked: Reuven came to his town in the beginning of Kislev, after having been away for close to a year. His wife became pregnant, and miscarried at the end of Adar Sheni due to a burden she was carrying. The nefel was complete like a fetus that had completed seven months; it cried a bit, and lived close to twelve hours. Word spread, noting that one could not have a child which would make loud noises after gestation from the start of Kislev to the midpoint of Adar Sheni, which is not even five complete months. They were worried that her pregnancy may have been adultery [and so she and her husband would be prohibited to each other]. You checked whether she had a flow of milk [indicating a developed pregnancy], and nothing was found...

But I have seen that matters have changed in this generation. As Tosafot wrote, the nature of many things has changed with the changing of generations. They said (Avodah Zarah 24b) that cows and donkeys do not give birth within their first three years, and they took this as a defining principle regarding a firstborn animal, to give it to a kohen. But in these generations, they give birth before that time. And so in other natural matters we find...

6. Rashbash 513b

Machlouf Zagand passed away on the eighth of Elul in the year 5206, as is clear from testimony. He had a brother overseas, location unknown, and he left behind a pregnant wife. On the first night of Iyyar, Saturday night, she gave birth to a son. At my instruction, witnesses went and saw that he had complete hair and nails. On Friday, the sixth day from his birth, he fell ill, and on the eighth night he passed away, leaving life for the rabbis and all of Israel... Machlouf's mother challenges some points, claiming that Machlouf's wife went to mikvah on Friday night of Shabbat Nachamu, and she presents other claims which have been recorded in the testimonies. I have seen fit to hear her words - even though she is not credible, as one of the [related] women whose testimony cannot be accepted in such a case - lest anyone find an opening to challenge my decision...

When you calculate, even according to his mother's testimony that he was ill only for twenty days - the last twelve of Av and the first eight of Elul - from Rosh Chodesh Elul to the end of Nisan is eight months, subtract five days from the twelve to complete the 29-day months because months of pregnancy are full, 30-day months, and that leaves eight months and seven days...

Once the child has entered the ninth month, even for a day, in addition to the day she became pregnant, then he is considered a complete child even if he lacks complete signs and he does not survive thirty days. Although the gemara says, "A woman who gives birth to a seven-month gestation does so in partial months, a woman who gives birth to a nine-month gestation does so in complete months [and so a child is born in the middle of the ninth month is a *nefel*, not viable]," many have already expressed shock at this, for our senses deny it and experimentation has shown the opposite, in truth. Many women enter one day into the ninth month and produce viable children, and not all women complete nine months, and if you were to maintain this position then you would not leave a son or daughter to Avraham Avinu who were not nefalim, only a minority... So how do we conduct marriage and divorce with a child who is born after an incomplete ninth month, if this is considered a nefel like a child born after eight months, certainly according to Rashi who says that we don't engage in any legal action with such a person, as though he was viable, until he is twenty?

The Tosafot wrote [in a different context] that this was only in earlier generations, but now times have changed. You know this because our masters said (Bechorot 20a) that a cow and donkey give birth only after three years, and this is a

definitive rule such that one who purchases a cow or donkey from a non-Jew within three years must give the first child to a kohen [treating it as a firstborn] – but our senses contradict this, for they give birth at two years! And so the sages mentioned many things along these lines and we find them to be otherwise. And so my father wrote in a responsum. I see great proof to this in the statement that the eleven day space between niddah periods is Halachah l'Moshe miSinai. Today it is a space of fourteen days! And if you will ask how a mutable rule can be a Halachah l'Moshe miSinai, one could say that that the Halachah l'Moshe miSinai is not that this period should be no more than eleven days, but rather that a woman who sees blood for three consecutive days during that intervening period is a zavah. The sages were the ones to say it was eleven days; the Halachah l'Moshe miSinai did not descend to the calculation of eleven days, or more or less... So, too, regarding a woman who gives birth to a nine month baby doing so after nine complete months, even though this was one way in their days, if we now find it to be otherwise then the law is not considered 'changed.' Granted that they linked these times – seven incomplete months and nine complete months - to pesukim (Yevamot 42a and Niddah 38b), linking the seven to ויהי לתקופות הימים being two seasons and two days [regarding the birth of Shemuel], and ויתן ד' לה הריון equal 271 days [regarding Ruth], these are asmachta. ויהי לתקופות הימים is from the prophets, and chalitzah and yibbum are biblical, and we do not deduce biblical law from the prophets! So it appears to me.

Further, I note that not all of the sages agreed that a woman would give birth to a nine-month baby after nine complete months. It is a debate; Mar Zutra there said, "Even according to the one who says that..." indicating all agreed a seven month baby would be born after an incomplete month, but the nine-month matter is in debate. So since it is subject to debate, and our senses and experience validate one of the views, it is appropriate to depend on it. That is clear in my view.

7. Tosafot Moed Katan 11a כוורא

"*Kavra* [fish] is good when close to rotting" – Today we believe it is dangerous to eat fish that are close to rotting... Perhaps this has changed, like the talmudic medicines which are not good today. Alternatively, perhaps the rivers of Bavel were better. Some explain that "*kavra*" does not refer to fish in general, but to a specific fish called "*kavra*," and it was different from other fish in this matter, as seen in Chullin 109b, "He prohibited *giruta* [a certain predatory bird] but permitted the tongue of *kavra*." It does not appear that all fish tongues would taste the same.

8. Tosafot Avodah Zarah 24b פרה

One should be surprised, for two-year-old cows give birth every day! One could say, certainly, that today things are different from the way they were in earlier generations - like with the *inunita d'varda* of Chullin 47a, where they said that wild animals have them, indicating that domestic [lit. indoor] animals do not. Today, all of our animals have them.

9. Terumat haDeshen 271

Question: A Jew purchased a lactating cow from a non-Jew, and it was three or four months pregnant. He did not ask the non-Jew whether it had previously produced young or not, but the non-Jew said independently that she is obviously pregnant, and that they should be careful not to get close to her before the birth, because she normally kicks a lot at that time, having done so earlier when giving birth in his possession. Can we assume that the current pregnancy is not a first-born, or not?

Response:... Although the talmud only mentions the principle of "A cow only produces milk if it has given birth" as a majority and not a super-majority as it is with our animals, one could say that their animals differed from our own. We find a similar concept in Tosafot and the Asheri in Chullin, regarding the statement that a three-year-old cow's young definitely goes to the kohen... Tosafot brings proof of change from the incidence of *inunita d'varda* to demonstrate that there is a difference between their animals and ours, and so there is no strain to distinguish similarly in our matter.

However, it does not appear appropriate to permit solely from this reason, depending upon our analysis against the talmudic tradition and saying it changed in our day, such that we would need to say that the Gaonim who ruled on this matter did not write for our day and our lands. Our master Maharam also wrote that the custom is to be strict, and presumably he referred to the custom in our lands. However, in our case we also have the given that it is not producing a first-born, from the words of the non-Jew...