The Chicago Center
Mishna Berura Digest
THE DAILY RESOURCE FOR MISHNA BERURA YOMI
Wed, May 21, 2025 ■ כ"ג אייר, תשפ"ה
סימן תקכ"ו סעיף ט'-י'

Overview

Siman 526 Seif 9:

If a baby dies within its first 30 days but its hair and nails are complete it is treated the same as an adult that died, even though we are not certain that it was full term since most women deliver viable babies.

- We do not bury miscarriages on Yom Tov or even instruct gentiles to do so since the fetus may not be moved. (M.B. 44)
- If they are not completed the baby may not be buried even on its 30th day since it is not presumed to be viable and is thus assumed to be a miscarriage. (M.B. 45)
- Some authorities disagree and contend that since it died there is no presumption and we assume it was non-viable. Some are stringent and only permit a gentile to bury the baby and a gentile may even bury a baby whose hair and nails are not complete since it may have been viable. (M.B. 47)

Siman 526 Seif 10:

Those non-viable babies whose foreskin is customarily removed with a stone or reed may not have this procedure done even on the 2nd day of Yom Tov. It is prohibited to bury the fetus on Yom Tov and they must wait until the following day,

- Some maintain that even the fetus discussed in *seif* 9 should not be buried on Yom Tov so that they should be able to remove the foreskin at the grave and a non-viable child is not buried on Yom Tov unless it was circumcised or a female. If a child was not circumcised due to illness and died after 30 days, the baby may be buried on Yom Tov and the foreskin is removed at the grave. Some authorities contend that one should treat a fetus no different than another person who died and at the very least one could permit gentiles to bury the baby on the second day. (M.B. 49)

Halacha Highlight

Removing the foreskin of a fetus on Yom Tov

Shulchan Aruch Siman 526 Seif 10
שנהגו להסיר ערלתן
That they have the custom to remove the foreskin

Shulchan Aruch (סע' י) rules that it is prohibited to remove the foreskin from stillborns even though during the week it would be removed before the baby is buried. Mishnah Berurah (ס"ק מ"ח) explains that Shulchan Aruch does not refer to a baby that is certainly categorized as a stillborn since the foreskin is removed before burial and we do not bury a stillborn on Yom Tov. Rather Shulchan Aruch refers to a baby about whom we are uncertain whether it is a stillborn but we conduct ourselves as though it is not and bury the body on Yom Tov. The novelty is that even though we treat the baby as viable and permit its burial, we do not permit removal of the foreskin before burial since the removal of the foreskin is not necessary to bury the body and consequently, does not override Yom Tov.

Sha'ar HaTziyun (ס"ק ס"ד) presents two reasons for the removal of the foreskin from a stillborn. One reason is that it serves a rectification for sinners. This is based on a Midrash which indicates that Hashem takes the foreskin of stillborns and places it on sinners as protection. The other reason is that the removal of the foreskin generates Divine compassion and allows the baby to rise at the time of resurrection. Noda B'Yehudah (או"ח מהדו"ק סי' ט"ז) writes that there is a practical difference between these two explanations. According to those who maintain that the foreskin of a stillborn is removed so that the fetus will rise during the era of resurrection, it is permitted to remove the foreskin even on Yom Tov since this represents a need of the fetus. However, if the reason is to protect the sinners from punishment, it would not be permitted to remove the foreskin on Yom Tov since it does not represent a need for the fetus. Chasam Sofer (או"ח סי' קמ"ה ד"ה עוד נ"ל) further explains that although removing the foreskin of the fetus provides benefit for the wicked, nevertheless, *melacha* is permitted only for those that may be buried on Yom Tov.