### A Father's Word about his Son – דין יכיר - Bava Batra 127b

The Gemara describes the credibility of a father to state that his son is not actually biologically his and even that his son is illegitimate. In this shiur, we examine where this credibility comes from, how it might be well used and misused, and the types of limitations that are placed on it.

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## 1. משנה קידושין ד:ח

הָאוֹמֵר, בְּנִי זֶה מַמְזֵר, אֵינוֹ נֶאֶמָן. וַאֲפִלּוּ שְׁנֵיהֶם אוֹמְרִים עַל הָעֻבָּר שֶׁבְּמֵעֶיהָ מַמְזֵר הוּא, אֵינָם נֶאֶמָנִים. רַבִּי יְהוּדָה אוֹמֵר, נֵאֵמָנִים:

One who says: This son of mine is a mamzer, e.g., if he claims that the son was born to one forbidden to him by a prohibition that carries the punishment of karet, he is not deemed credible to render him a mamzer. And even if both of them, the father and the mother, admit that a fetus in her womb is a mamzer, they are not deemed credible. Rabbi Yehuda says: They are deemed credible.

#### 2. בבא בתרא קכז:

מָכָּאן אָמַר רַבִּי יְהוּדָה: נָאֱמָן אָדָם לוֹמַר: ״זֶה בְּנִי בְּכוֹר״. וּלְשֵׁם שָׁנָּאֱמָן אָדָם לוֹמַר ״זֶה בְּנִי בְּכוֹר״, כֶּךְ נָאֶמָן אָדָם לוֹמַר ״זֶה בֶּן גְּרוּשָׁה״ וְ״זֶה בֶּן חֲלוּצָה״. וַחֲכָמִים אוֹמְרִים: אֵינוֹ נָאֱמָן

From here R. Yehuda says: a man is believed to say, "this is my eldest born son." And just as a man is believed to say "this is my eldest born son," likewise he is believed to say "this child was born of a divorced woman," and "this child is born of someone who underwent *halitzah*." And the sages say: he is not believed.

#### 3. דברים כא:יז

ָּכִי אֶת הַבָּכֹר בֵּן הַשָּׁנוּאָה יַּכִּיד לְתֵת לוֹ פִּי שָׁנִיִם בְּכֹל אֲשֵׁר יִמְצֶא לוֹ כִּי הוּא רֵאשִׁית אֹנוֹ לוֹ מִשְׁפַּט הַבְּכֹרָה

Instead, he must accept the first-born, the son of the unloved one, and allot to him a double portion of all he possesses; since he is the first fruit of his vigor, the birthright is his due.

## 4. חתם סופר אבן העזר עו

עובדא הכי הוה באיש א' דר בכפר הסמוך לק"ק סאבאטיש עם אשתו ובניו כולם מוחזקי' בחזקת בניו ממש וחתמו עצמם על שם אביהם בן אלי' וכך נקרא לס"ת ועתה קם בנו הגדול הנקרא אברהם בן אלי' ונשא אחות אביו אלי' הנ"ל בחופה וקידושין ואח"כ נתעוררו לזה אנשי היישוב הדרים בכפר הנ"ל באמרם כי הוא נכשל בערוה דאוריית' לישא דודתו ונשמע הדבר להרב המא"הג הנ"ל בק"ק סאבאטיש וקרא להאב כ' אלי' וא"ל איך נהי' הדבר הרע הזה והשיב שזה אברהם אינו בנו כ"א חורגו בן אשתו ואמר אליו הרב הישמע שהחורג יחתום עצמו בשם בעל אמו ויעלה כן לס"ת וגם בכתיבה יכתב כן אברהם בן אלי' והשיב אלי' הנ"ל שישאל לאשתו והיא תשיב אמרי' והנה היא אמרה שבהיותה פנוי' הרתה לזנונים וילדה זה הבן והיא משרתת בק"ק פ"ב והבן נתגדל בבית ר' משה מלמד

הנ"ל ואח"כ נישאי' לכ' אלי' הנ"ל וכדי להסתיר בושתה החזיקו הבן כאלו הוא מבעלה כ' אלי' הנ"ל אבל באמת אינו בנו כלל...

An incident occurred in a man who lived in a village near the community of Sabatish with his wife and his sons, all of whom were assumed to be his biological sons, and they signed their names using their father's name "son of Eliyahu," and were called up to the Torah that way. But now his eldest son Avraham Ben Eliyahu married his paternal aunt, i.e., Eliyahu's sister. And afterwards the people of the village challenged this and said that he has aired by marrying a woman who is biblically forbidden to him - namely his aunt. And to gaon living in the town of Sabatish heard about this and called Eliyahu in, asking him how did this terrible thing happen. And Eliyahu answered that this child is not his biological son but his stepson, his wife's son, and the rabbi asked, but who has heard of a stepson signing with his mother's husband's name or going up with the to the Torah that way or writing that way. And he answered that the rabbi should ask his wife, And she'll answer his question. And she said that when she was single she had a child out of wedlock and it was this child, and the child grew up in the house of Rabbi Moshe the melamed, and afterwards she married Eliyahu. And in order to hide her shame, they acted as though the sun was her husband's biological child. But actually he isn't...

### **Qualifications:**

#### I. Not if the son has children

.5. יבמות מז.

מעשה באחד שבא לפני רבי יהודה, ואמר לו: נתגיירתי ביני לבין עצמי, אמר לו רבי יהודה: יש לך עדים? אמר ליה: לאו. יש לך בנים? אמר לו: הן. אמר לו: נאמן אתה לפסול את עצמך, ואי אתה נאמן לפסול את בניך... רבינא אמר, הכי קאמר ליה :יש לך בנים? הן; יש לך בני בנים? הן; אמר לו: נאמן אתה לפסול בניך, ואי אתה נאמן לפסול בני בניך. תניא נמי הכי, ר' יהודה אומר: נאמן אדם לומר על בנו קטן, ואין נאמן על בנו גדול. ואמר ר' חייא בר אבא אמר רבי יוחנן: לא קטן - קטן ממש, ולא גדול - גדול ממש, אלא קטן ויש לו בנים - זהו גדול, גדול ואין לו בנים - זהו קטן

The Gemara relates: There was an incident involving one who was presumed to be Jewish who came before Rabbi Yehuda and said to him: I converted in private, and therefore I am not actually Jewish. Rabbi Yehuda said to him: Do you have witnesses to support your claim? He said to him: No. Rabbi Yehuda asked: Do you have children? He said to him: Yes. Rabbi Yehuda said to him: You are deemed credible in order to render yourself unfit to marry a Jewish woman by claiming that you are a gentile, but you are not deemed credible in order to render your children unfit... Ravina said that this is what Rabbi Yehuda said to him: Do you have children? He said: Yes. He said to him: Do you have grandchildren? He said: Yes. He said to him: You are deemed credible in order to render your children unfit, based on the phrase "he shall acknowledge," but you are not deemed credible in order to render your grandchildren unfit, as the verse affords a father credibility only with respect to his children.

### II. Not if the child is already presumed to be his son

6. שו"ת חוות יאיר צג

אע"פ שלא יצא מפיו בני הוא זה ממש רק שהוחזק לבנו ע"פ האב בשאר דבריו וענייני חיבה שאין נוהגין רק אב עם

Even though he never explicitly said, "this is my son," but rather it is presumed so based on other of his words and loving gestures which are only customary between the father and son...

# 7. שו"ת תשב"ץ ב:צ

...והעול" מכל זה הוא שהאב נאמן לו' על בנו שהוא ממזר אפילו בלא הכרת בכור ואפילו מוחזק בעדים שהוא כשר אלא שאם הוחזק מפי עצמו שהוא כשר שוב אינו יכול לפסלו שהתורה לא האמינתו אלא בדבור ראשון אבל לחזור מדבורו לא האמינתו ובנדון זה אם קודם שצעק הבעל על אשתו שהיא מזנה הוכר עוברה ונתפרסם הדבר שהיא מעוברת נר' שאינו נאמן לו' אח"כ שאינ' מעוברת (מפני) [ממנו] שכיון ששתק מתחל" הרי הוא כמו שהחזיק' הוא מעוברת ממנו וכיון שהוחזק' מעוברת ממנו אינו נאמן לומר לא באתי עליה כלל וממזר הוא.

... and what emerges from this is that the father is believed to say about his son that the latter is illegitimate even not in the context of acknowledging who his eldest son is, and even if this son was supported by witnesses as kosher; however, if the sun is presumed kosher based on the father's own words, the father can no longer invalidate his son, for the torah only believed him if it was a first utterance, but not to renege on an earlier utterance - in that case the Torah did not believe him. And in this case, if before the husband screamed about his wife that she committed adultery it was known that she was pregnant, it seems that he is not believed to say later that she is not pregnant from him: because he was silent at the beginning (when it became known that she was pregnant), it is as though he acknowledged that she is pregnant from him. And what it she is presumed pregnant from him he is not believed to say I did not sleep with her at all, and the child is illegitimate.

III. עדות או גזירת הכתוב? – Testimony or Scriptural Decree?