

OVERVIEW of the Daf

1) **MISHNAH:** The Mishnah discusses cases in which a first-born donkey is exempt from the laws of bechor.

2) Clarifying the Mishnah

The Gemara explains why it was necessary for the Mishnah to discuss five different cases.

3) Selling large animals to non-Jews

A Mishnah records two different exceptions to the restriction against selling large animals to non-Jews.

The Gemara inquires whether R' Yehudah would permit the sale of a fetus of a large animal to a non-Jew.

Two unsuccessful attempts to resolve the inquiry are presented.

R' Ashi proves that one cannot sell the fetus of a large animal to a non-Jew.

According to a second version the Gemara assumes that our Mishnah is inconsistent with R' Yehudah.

The Gemara demonstrates how the Mishnah could be consistent with R' Yehudah.

On a second attempt R' Ashi proves that R' Yehudah does not allow the sale of a fetus of a large animal to a non-Jew.

The Gemara inquires whether we penalize a person who sold to a non-Jew the rights to an animal's fetuses.

The Gemara explains how this question is relevant according to R' Yehudah and Rabanan.

The position of the Rabanan is clarified.

Two unsuccessful attempts to resolve the inquiry are presented. ■

REVIEW and Remember

1. Why does the Mishnah present five cases ?

2. Why does R' Yehudah permit the sale of a broken animal to a non-Jew ?

3. What is the essence of the question of one who sold an animal for the rights for its future fetuses to a non-Jew ?

4. Why does R' Yehudah permit the sale of a broken animal to a non-Jew ?

*Today's Daf Digest is dedicated
לעילוי נשמת מרת רבקה בת ר' שרגא פייטל ע"ה
By her children
Mr. and Mrs. David Friedman*

Distinctive INSIGHT

May a Jew cause a non-Jew to take an oath?

והתורה אמרה לא ישמע על פיך

The Gemara notes that the Mishnah referred to the halacha of selling a donkey to a non-Jew, while the Mishnah noted that such a sale is actually prohibited. The Gemara concludes that not only is it prohibited to sell a donkey to a non-Jew, but it is also prohibited to lease a donkey or to enter into a partnership of ownership with a non-Jew. The reason the Mishnah only conceded that selling a donkey is not allowed is because the main and most prevalent case of dealing with a non-Jew is when selling an animal to him. Nevertheless, the Mishnah holds that leasing and entering into a partnership are also prohibited.

The reason partnering with a non-Jew is prohibited is presented by Avuah d'Shmu'el, who says that we are afraid that the non-Jew might become obligated to take an oath to the Jew regarding some issue in the business, and the non-Jew will pronounce an oath in the name of his god. The Jew would then be in violation of the mitzvah of the Torah (Shemos 23:13): "Do not mention the name of other gods, they shall not be caused to be spoken by your mouth." This teaches that a Jew may not be the cause for a non-Jew to pronounce the name of his god.

The presentation of this halacha in the Gemara implies that entering into a partnership with a non-Jew is a Torah-level issue. This is, in fact, the ruling of Rambam (Hilchos Shutfim 5:10).

Rabbeinu Tam (Gittin 50b) and Ra"n (to Sanhedrin 63b) hold that this is only a rabbinic restriction. They understand that the verse which prohibits pronouncing the name of a foreign god is referring to where a Jew vows in the name of an idol. Ra"n (ibid.) cites Ramban that even this is only prohibited rabbinically, as an act of piety. The Jew is not guilty of directly causing the non-Jew to sin in this case even if he would swear in his god's name, so he is not really in violation of "placing a stumbling block before the blind," which is applicable in a situation similar to where someone hands a cup of wine to a nazir. It could also be that if the non-Jew swears on his own accord there is no violation for the Jew at all, as the sin is for a Jew to administer the non-Jew an oath in the name of idolatry, and it is not necessary to avoid having a non-Jew take an oath on his own.

Tosafos cites Rabeinu Shmu'el who holds that if it is prohibited to join a partnership with a non-Jew due to the possibility that the non-Jew might take an oath, then it would certainly be prohibited to have him take an oath in a case where the non-Jew denies a claim in court. Ra"n adds that even if the Jew might lose money, we do not allow one to violate even a rabbinic law due to monetary loss. Rabbeinu Tam disagrees, and he says that an oath may be given in order to retrieve money from a non-Jew. He holds that a partnership with a non-Jew is must be avoided rabbinically, and it is allowed to avoid a loss. ■

HALACHA Highlight

Missing learning to observe the redemption of a firstborn donkey

הלוקח עובר חמורו של עובד כוכבים

One who purchases the fetus of an idolater's donkey

Sefer Mishmar HaLevi¹ speculates that with the onset of the study on Bechoros as part of the daf hayomi cycle there may be people who become inspired to fulfill the mitzvah of redeeming a first born donkey. Therefore, a definitive ruling is required whether or not it is permitted for one to miss learning (ביטול תורה) in order to watch the mitzvah of redeeming a firstborn donkey. The basis of his uncertainty is that redeeming a firstborn donkey is not an obligatory mitzvah. It is a mitzvah that is fulfilled when mandated, but there is no obligation to pursue the fulfillment of the mitzvah. On the other hand, there are those who want to demonstrate how precious mitzvos are and one way of demonstrating that is to be present when the mitzvah is fulfilled. A corollary of this is that if one is allowed to miss learning to be present when someone is redeeming a firstborn donkey, is

it preferred for one to be in attendance as a fulfillment of ברב עם הדרת מלך – in the multitudes of the nation is the glory of the king? Similarly, is it appropriate to take children out of school or out of the classroom so that they could be present for this ceremony?

He cites Rav Yosef Sholom Elyashiv who answered him that the only mitzvos for which one misses learning is for the reading of the megilla, taking a corpse for burial and bringing a bride to the chuppah. We do not find that one should miss learning to fulfill other mitzvos. As far as the question of fulfilling the mitzvah in the presence of a large crowd we also do not find precedent for such a thing and certainly if it would involve missing learning there is no precedent. Teshuvos Vayashev Hayam² maintains that if people want to observe the redemption of a firstborn donkey so that they could see how the mitzvah is performed and to hear the divrei Torah that will be part of the ceremony it is certainly permitted. ■

¹ משמר הלוי בכורות סי' י' עמ' קי"ב.

² שו"ת וישב הים ח"ב סי' ט"ו עמ' רנ"ז אות ח'.

STORIES off the Daf

So As Not to Swear

”שמה יתחייב לו שבועה...”

On today's daf we find a case of one who is forced to swear.

Once the Chavas Da'as, ז"ל, was travelling incognito with a group of merchants. There was no way to tell that the man dressed as a poor wayfarer was one of the famous rabbinic personages of his time. As the coach neared the outskirts of a city one of the merchants discovered that he had been robbed. Everyone began talking at once, except the Chavas Da'as. One of the merchants accused him of the crime. “I bet the silent pauper stole it; he has sharp eyes like a fraud and is the only one who is silent.”

Although the Chavas Da'as denied taking anything, the merchants brought

him to the local Rabbi. Since he resembled a poor man, the Rabbi figured it likely that he took the money. “The halacha is that you must either produce the money or swear you didn't take it!”

The Chavas Da'as considered his predicament. “I will pay half the money to avoid swearing,” he declared.

The merchant figured that he must be the thief; otherwise why not swear? “Either pay the entire sum or swear!”¹

The Chavas Da'as thought another moment and offered three quarters of the sum. When that was rejected, he offered to pay almost the entire amount, which the merchant also dismissed.

“I can't pay more so I will have to swear,” the Chavas Da'as said. “But first I need time to prepare myself.”

He went into the corner and began to cry, obviously doing intense teshuvah. After a few minutes of this, one of the merchants fainted. When he woke up he

admitted that he had taken the money and rushed to return it.

When the merchants left, the Rav demanded that the Chavas Da'as reveal who he was, which he eventually did, brushing aside the Rav's natural apologies. “Why apologize? You ruled according to halacha.”

“Why did you first offer half, then more and finally almost the entire amount, before you agreed to swear?” the rabbi asked.

“First I offered all my money; then my material goods. My final offer included all of my property. Since I can't raise more and do not have the strength to take on debts I agreed to swear.”² ■

¹ ע"רמ"א בחו"מ סי' ע"ה, סי"ז, שמתו שיש רגלים לדבר חייב שבועה אפי' טוען להד"מ

² תפארת משולם, ע"תשמ"ו