

OVERVIEW of the Daf

1) Selling large animals to non-Jews (cont.)

The Gemara rejects the second attempt to resolve the inquiry whether we penalize a person who sold the rights to an animal's fetuses to a non-Jew.

It is noted that an earlier-cited Beraisa is a support for Reish Lakish who maintains that one who sells a large animal to a non-Jew is penalized to repurchase the animal for up to ten times its value.

The Gemara inquires whether Reish Lakish meant specifically ten times or not.

An unsuccessful attempt to resolve this inquiry is recorded.

According to a second version Reish Lakish ruled that one who sells a large animal to a non-Jew is penalized to repurchase the animal for one hundred times its value.

This ruling is challenged and the Gemara differentiates between selling the animal and contracting an animal for care.

The Gemara inquires whether Reish Lakish meant specifically one hundred times or not and the matter is left unresolved.

2) Jointly-owned animal

R' Yehoshua suggests that R' Yehudah and Rabanan, who disagree whether a firstborn animal jointly-owned by a Jew and a non-Jew is subject to the laws of bechor, derive their respective positions from the same pasuk.

A second explanation of the dispute is suggested.

The Gemara inquires how large a share the non-Jew must have to exempt a first born animal from the laws of bechor.

R' Huna answers that the exemption applies even if he only owns the ear. R' Nachman challenges this position.

The Gemara responds to this challenge by presenting a related dispute between R' Chisda and Rava.

The point of dispute between R' Chisda and Rava is clarified.

It is suggested that R' Chisda and Rava do not disagree, but this suggestion is rejected.

Another unsuccessful challenge to R' Chisda and Rava is presented.

A related incident is recorded.

R' Yochanan's two statements are analyzed and explained.

Two more incidents related to first born animals that are jointly-owned by a Jew and a non-Jew are recorded.

R' Mari bar Rochel's behavior in the second incident is questioned.

Two explanations for his behavior are presented.

3) **MISHNAH:** The Mishnah teaches that first born animals that belong to kohanim and levi'im are exempt from the laws of bechor. ■

Distinctive INSIGHT

Exemptions to the mitzvah of bechor

לית דחש לה להא דרבי יהודה דאמר שותפות עובד כוכבים חייבת בבכורה

The Gemara brings an incident where we see Rava's view regarding an animal which was owned by a Jew and non-Jew. There was a woman who was a convert, and her non-Jewish brothers used to give her animals to fatten. Part of her pay for her services was that she and her brothers would be partners in ownership of the animal's offspring. She approached Rava and asked whether she would be obligated in the mitzvah of bechor when the animal gave birth. Rava ruled that there is no one who is concerned about the view of R' Yehuda who says that an animal owned in partnership with a non-Jew is obligated in the law of bechor.

The Gemara immediately tells the story of Rav Mari bar Rachel who owned animals, and he wanted to exempt them from the mitzvah of bechor. Therefore, when any animal would become pregnant, he would sell the ear of the fetus to a non-Jew. Nevertheless, although this arrangement resulted in the animal's not being a bechor, he treated the animal as if it was a bechor by not shearing it and not working with it, and he also gave these animals to a kohen. Interestingly enough, the Gemara reports that unfortunately, the entire flock of Rav Mari died.

The Gemara asks that if he planned to treat these animals as if they were bechorim, and he even gave them to a kohen, why did he sell their ears to a non-Jew in order to exempt them from a mitzvah he nevertheless fulfilled? The Gemara answers that Rav Mari was afraid that if these animals would be official behorim, he might inadvertently do work or shear them, which would be a terrible error. Nevertheless, the Gemara explains that R' Mari was apparently punished by the heavens with his entire flock dying, and his mistake was that his actions caused the animals to lose their holy status.

Sefer Shai Lamorah notes that the story of R' Mari illustrates not only that selling part of a bechor to a non-Jew exempts the animals from the mitzvah of bechor, but also the earlier ruling of Rava that partnership with a non-Jew results in an exemption from this mitzvah, and that we do not rule according to R' Yehuda. If the story was only brought to demonstrate the halacha of selling part of the animal to a non-Jew, it would have been brought before the ruling of Rava. The story's being brought after Rava's ruling is strategic in that it illustrates that a partnership with a non-Jew is also an exemption to this mitzvah.

Tosafos notes that we rely upon this ruling in our days, and we sell the ear of an animal to a non-Jew when the animal is about to give birth. The reason R' Mari was punished is that he sold the ear of the fetus to the non-Jew, but we sell the ear of the mother animal. ■

Today's Daf Digest is dedicated by Mr. Melech Bernstein
and family in loving memory of our father

ר' אליעזר יחזקאל בן ר' לוי, ע"ה

HALACHA Highlight

Giving a cow away as a gift to avoid giving birth to a bechor

משום דמפקע להו מקדושתיהו

Because he removed them from their sanctity

In the Mishnah, as well as in other places in the Massechta, there is a discussion of selling an animal to a gentile in order to prevent a fetus from acquiring the sanctity of a first born animal. Tosafos¹ confirms that this is our practice even nowadays. There was once a man who had a cow that had not yet given birth and when she was ready to give birth it was Shabbos. Since one may not sell property on Shabbos it was not possible to sell the mother to a gentile at that time. It was suggested that the cow be given to the gentile as a gift and the question of the permissibility of this step was posed to the author of Teshuvos Avodas Hagershuni¹. He responded that although there are grounds to permit giving a gift to a fellow Jew on Shabbos and to maintain that gift giving is not encompassed by the prohibition against buying and selling property on Shabbos, that leniency could not be applied to giving a gift to a gentile on Shabbos. The reason is that even during the week it is prohibited to give a gift to a gentile based on the verse (Devarim 7:2) **לא תחנם**. It is permitted to give a gift to a gentile if one receives a favor from him since in this regard it is comparable to a sale. Accordingly, since gift giving to a gentile is comparable to a sale it is prohibited on Shabbos. He then rejects this analysis. As long as the gift is not given in direct response to a favor which was done on Shabbos it will be seen as a mere gift and as such may be permitted on Shabbos.

REVIEW and Remember

1. What is the penalty for selling a large animal to a non-Jew ?

2. How large of a share in the animal must a non-Jew have to exempt the fetus from bechor ?

3. What are the definitions of “large” and “small” when it comes to the eye of an animal ?

4. What step did R' Mari bar Rachel take to exempt his animals from the laws of bechor ?

Nevertheless, he hesitates to permit gifting the animal to a gentile in order to prevent the fetus from becoming sanctified as a bechor. Poskim always discuss selling an animal in order to achieve that goal, not giving it to a gentile as a gift. He speculates that the reason Poskim do not discuss giving the mother to a gentile as a gift is that people will think that the gift is merely a stratagem (הערמה) to avoid having a bechor. When an actual sale takes place with a transfer of money it gives greater credibility to the transaction and is thus an acceptable means to avoid owning a bechor. ■

¹ תוס' ד"ה דקא מפקע להו.
² שו"ת עבודת הגרשוני סי' כ"ד ומובא דבריו בגליון רעק"א יו"ד סי' ש"כ
 סעי' ו'.

STORIES off the Daf

The Ownerless Bechor

”דלמא אתי בהו לידי תקלה...”

Dealing with a bechor can be very tedious. It may not be worked or used. Not surprisingly, people use whatever strategy they can to avoid this situation. But what about an animal which gives birth unexpectedly? If the offspring is a first-born this can complicate one's ability to circumvent kedushas bechor. If an animal begins to give birth on Shabbos things become even more complex since one cannot sell anything on Shabbos.

One rancher in this situation had a brilliant idea. “I can't sell on Shabbos, but I can declare something ownerless. Why not be mafkir the animal? That way it will not be mine when it's born.”

But when the Avodas HaGershoni zt”l, was asked about this he ruled that it was not a simple matter. “Not so fast. Although this removes the Torah obligation, the animal is still forbidden rabbinically. We see this from Bechoros 3. There we find that although Mari bar Rochel acted properly to remove kedushas bechor, onlookers thought what he did was ineffectual and figured that a bechor is not really holy. Making the animal ownerless is no different. Another problem is—like chametz—we must

be concerned that he did not declare it ownerless with his entire heart, but will claim he did.

“Since the animal is rabbinically forbidden he must treat it like a bechor. He cannot shear it or work it, like Mari bar Rochel treated his animals as recorded in Bechoros.”¹

But the Shagas Aryeh zt”l rules that hefker is completely ineffectual here. “It is clear from Bechoros 3 that hefker does not remove kedushas bechor. If it did, why did Mari bar Rochel sell his animal's ear to a non-Jew? Why didn't he simply declare it hefker? Clearly hefker doesn't help.”² ■

¹ עבודת הגרשוני, סי' כ"ד
² טורי אבן, ר"ה, דף י"ג, ע"א