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Mishna

[The firstborn male of a donkey is sanctified as a bechor. It is written: And every firstborn of a donkey you shall redeem with a lamb, and if you will not redeem it, then you shall break its neck. The redemption lamb is given to the Kohen. After redemption, neither the donkey, nor the lamb which belongs to the Kohen, is holy. According to the Gemora, the first Chapter of this Tractate opens with the laws of the firstborn of a donkey, rather than with those of a kosher animal's firstborn, because the former, being few, can be accommodated within a single chapter. This is followed by five chapters elaborating the numerous laws concerning the kosher animal's firstborn.]

A Jew who buys the fetus of a donkey belonging to an idolater, or one who sells the fetus of his own donkey to him, although this is not permitted (*for one is forbidden to sell large livestock to an idolater because the animal is worked on Shabbos*), or one who forms a partnership with him (*an idolater*), or who receives an animal from him (*to look after*), or one who gives his donkey to him (*an idolater*) to look after, is exempt from the law of the firstborn, for it is written: *all firstborn in Israel*, but not in other nations. (2a)

Necessity for the Cases

The Gemora asks: What is the necessity for mentioning all these cases (*if they all are exempt because an idolater has some form of ownership in it*)?

The Gemora answers: It is necessary to state all these cases, for if it taught only the case of a Jew who buys etc., I might have thought the reason (*that the bechor law does not apply*) was because he is bringing the animal into the state of holiness (*as it will now not work on Shabbos; and therefore we do not penalize him, and we may maintain the Biblical law that it is exempt from bechor*), but where he sells it to an idolater, since he releases it from holiness, he should be penalized (*and he should be required to redeem it from the idolater and give it to a Kohen*); the Tanna therefore teaches us that this is not the case.

The Gemora asks: What is the necessity for mentioning the ruling of one who forms a partnership with him (*an idolater*)?

The Gemora answers: It is to exclude the ruling of Rabbi Yehudah, who maintains that a partnership with an idolater is subject to the law of *bechor*; the Tanna therefore teaches us that this is not the case.

The *Gemora* asks: what is the necessity for mentioning the ruling of a Jew who receives an animal from him (*to look after*)?

The *Gemora* answers: It is necessary because the *Mishna* wishes to teach the next case where a Jew gives his donkey to him (*an idolater*) to look after.

And, the *Gemora* asks, what need is there to mention that case itself?

The *Gemora* answers: It is necessary, for you might be inclined to assume that since the animal itself belongs to a Jew, we should penalize him, lest one come to confuse this with another animal (*that is completely his*); the *Tanna* therefore teaches us that this is not the case. (2a)

Selling Animals to an Idolater

The *Gemora* cites a *Mishna* taught elsewhere: [*One may not sell large animals to an idolater. This is because it will work on Shabbos.*] Rabbi Yehudah permits one to sell broken ones, while ben Besairah permits one to sell horses.

The *Gemora* inquires: What is Rabbi Yehudah's ruling regarding selling a fetus to an idolater? Is the reason of Rabbi Yehudah for allowing in that case because the animal is maimed (*and cannot work on Shabbos*), and therefore a fetus as well (*being incapable of work*) is regarded as a maimed animal? Or is the reason perhaps because a maimed animal is not a frequent occurrence (*and therefore we do not need to be concerned that if this is permitted, one would sell an ordinary animal to*

an idolater), but a case of a fetus, being a frequent occurrence, is unlike the case of a maimed animal?

The *Gemora* attempts to resolve this from our *Mishna*: or one who sells the fetus of his own donkey to an idolater, although this is not permitted; and Rabbi Yehudah does not disagree with this! [*Evidently, he agrees that it is not permitted.*]

The *Gemora* counters: But, according to your argument, let us consider the other cases mentioned in the *Mishna*: or one who forms a partnership with him (*an idolater*), or who receives an animal from him (*to look after*), or one who gives his donkey to him (*an idolater*) to look after, where the *Mishna* does not expressly state that Rabbi Yehudah disagrees, is it really the fact that he does not differ (*we see clearly that he does disagree*)? You must admit that he does differ without the *Mishna* telling us; similarly, here, he also differs without the *Mishna* saying so.

The *Gemora* attempts to resolve this from the following *braisa*: Rabbi Yehudah says: If one received an animal from an idolater to look after (*and to divide the offspring*), and it gave birth (*to a firstborn*) we evaluate what it is worth and half of its value is given to the *Kohen* (*but not the animal itself, for since it is partially owned by an idolater, it is not holy*). Or if a Jew gives an animal to an idolater to look after, although he is not permitted, we penalize him by compelling him to redeem the animal even up to ten times its value, and he gives its entire value to the *Kohen*. Now, does this not refer to the fetus? [*A Jew gives a pregnant animal to an idolater to look after, both sharing the offspring while the animal itself belongs to the Jew; the words 'although it is not permitted' refers to the fetus. We*

penalize him by making him give the value of the fetus to the Kohen. We can therefore deduce that one is forbidden to sell a fetus to an idolater.]

The *Gemora* deflects the proof by saying that it refers to the animal (*when he gave it over to him when it was not pregnant; but a fetus is allowed to be sold to an idolater*).

The *Gemora* asks: But does it not say 'its value' (*with a masculine suffix, referring to the fetus*)?

The *Gemora* answers: It should be read 'its value' (*with a feminine suffix, referring to the mother*).

The *Gemora* asks: But does it not say that he gives its entire value to the *Kohen*? Now, if 'its value' refers to the animal, what does the *Kohen* have to do with it?

The *Gemora* answers: We are dealing here with a case where a Jew gave him a pregnant animal to fatten (*and they should share the offspring and any increase in the animal's value after it is sold*); since we penalize him for selling the animal to an idolater, we also penalize him for selling the fetus.

Rav Ashi said: This can be proven from the following *braisa*: Rabbi Yehudah permits the selling of a maimed animal, as it will not heal and live (*i.e. be useful, and therefore is presumed to be sold for meat*). But, it can be inferred that if it could be cured, it would be forbidden. Now, isn't a fetus similar to an animal which can be cured? We can therefore deduce from this (*that it is forbidden to sell a fetus to an idolater according to Rabbi Yehudah*).

There are those who taught the above discussion as referenced to our *Mishna* as follows: or one who sells the fetus of his own donkey to an idolater, although this is not permitted. May we say that our *Mishna* is not in accordance with Rabbi Yehudah, for we have learned: Rabbi Yehudah permits the selling of a maimed animal (*and a fetus may be compared with a maimed animal, since in both cases the animals are unable to work, and therefore Rabbi Yehudah will hold that a fetus may be sold to an idolater, contrary to the ruling of our Mishna*).

The *Gemora* deflects this, for you can even say that the *Mishna* is in accordance with Rabbi Yehudah, for the case of a maimed animal is not a frequent occurrence (*and therefore we do not need to be concerned that if this is permitted, one would sell an ordinary animal to an idolater*), whereas the case of a fetus is a frequent occurrence.

The *Gemora* attempts to prove that Rabbi Yehudah holds that it is forbidden to sell a fetus to an idolater from the following *braisa*: Rabbi Yehudah says: If one received an animal from an idolater to look after (*and to divide the offspring*), and it gave birth (*to a firstborn*) we evaluate what it is worth and half of its value is given to the *Kohen* (*but not the animal itself, for since it is partially owned by an idolater, it is not holy*). And if a Jew gives an animal to an idolater to look after, although he is not permitted, we penalize him by compelling him to redeem the animal even up to ten times its value, and he gives its entire value to the *Kohen*. Now, does this not refer to the fetus? [*A Jew gives a pregnant animal to an idolater to look after, both sharing the offspring while the animal itself belongs to the Jew; the words 'although it is not permitted' refers to the fetus. We penalize him by making him give the value of the fetus*]

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The Gemora asks: But does it not say that he gives its entire value to the Kohen? Now, if 'its value' refers to the animal, what does the Kohen have to do with it?

The Gemora answers: We are dealing here with a case where a Jew gave him a pregnant animal to fatten (and they should share the offspring and any increase in the animal's value after it is sold); since we penalize him for selling the animal to an idolater, we also penalize him for selling the fetus.

Rav Ashi said: This can be proven from the following braisa: Rabbi Yehudah permits the selling of a maimed animal, as it will not heal and live (i.e. be useful, and therefore is presumed to be sold for meat). But, it can be inferred that if it could be cured, it would be forbidden. Now, isn't a fetus similar to an animal which can be cured? We can therefore deduce from this (that it is forbidden to sell a fetus to an idolater according to Rabbi Yehudah).

The Gemora inquires: If one sold an animal (which was not pregnant) for its future offspring (to an idolater), what is the ruling? [Do we penalize him by forcing him to redeem the animal from the idolater in the same way we would if he would have sold the entire animal to the idolater?] This may be inquired with respect of Rabbi Yehudah's viewpoint, and it may be inquired with respect of the Rabbis' opinion.

The Gemora explains: It may be inquired with respect of Rabbi Yehudah's viewpoint as follows: are we to say that Rabbi Yehudah only permits the case of a maimed animal because the Jew will not come to confuse it with another animal and sell it to an idolater, but in the case of an entire (healthy) animal (being sold for its future fetuses), where he may confuse it with another, he will say that it is forbidden, or are we to say that perhaps, if in the case of a maimed animal, where it is severed completely from the original owner (after the sale), it is permitted, how much more so in the case of an entire animal, where he has not severed all connection with it?

It may be inquired with respects of the Rabbis' opinion as follows: Are we to say that the Rabbis only prohibit in the case of a maimed animal because it is severed completely from the original owner (after the sale), but in the case of entire (healthy) animal, where he does not sever his connection from the animal, it is permissible; or are we perhaps to say that if in the case of a maimed animal, where he will not come to confuse it with another animal, they forbid the selling to an idolater, how much more so in the case of an entire animal, is there the concern of confusion?

The Gemora asks: But is the reason of the Rabbis because of what is stated here? Has it not been taught

in a *braisa*: They asked Rabbi Yehudah: We see that they mate these female animals with a male and she will give birth! Consequently, the reason is on account of the future offspring (*that they will be removed from the sanctity of Shabbos observance; and not because people will then sell healthy animals*)!?

The *Gemora* answers: This is what the Rabbis said to Rabbi Yehudah: Our reason (*why we forbid the selling of a maimed animal*) is because it may come to be confused with (*the selling of*) another (*healthy*) animal. But as for you, why do you permit a maimed animal? It is because it cannot be cured, and therefore it is as if he had sold it to be slaughtered (*and it will not lead to any confusion*). But we see that they mate these female animals with a male and she will give birth, and being that this is so, they keep it for a long time! [*Rashi explains that people will come to think that we can sell these animals, even when they are healthy, to idolaters.*] Rabbi Yehudah answered: When it gives birth, it will be prohibited. In other words, Rabbi Yehudah maintains that they (*female maimed animals*) do not mate with males (*for, due to its injury, it is too painful for the male to mount her*).

The *Gemora* attempts to resolve the inquiry from our *Mishna*, which states: or one who gives his donkey to him (*an idolater*) to look after; and it does not say 'although he is not permitted to do so.' [*Now, here, the animal was sold to the idolater for its offspring and it is permitted to do so; we therefore can infer that it is permissible to sell an animal to an idolater for its future fetuses.*]

The *Gemora* counters: But, according to your argument, when it says: or one who forms a partnership with him

(*an idolater*); since it does not say (*that it is forbidden*) are we to infer that it is allowed? But hasn't the father of Shmuel said: One must not form a partnership with an idolater lest he (*the idolater*) will be obligated to take an oath to him, and he will swear in the name of his idol, and the Torah says: [*And make no mention of alien gods*] *neither shall it be heard through you*. You must, therefore, admit that when the *Mishna* states that selling to an idolater is forbidden, the same ruling applies to a partnership with him; similarly, when the *Mishna* states that selling to an idolater is forbidden, the same ruling applies to the case where the idolater is contracted to care for the animal. Why then does the *Mishna* cite the prohibition specifically in connection with selling? It is because the primary prohibition refers to the selling.

The *Gemora* attempts to resolve the inquiry from the following *braisa*: Rabbi Yehudah says: If one received an animal from an idolater to look after (*and to divide the offspring*), and it gave birth (*to a firstborn*) we evaluate what it is worth and half of its value is given to the *Kohen* (*but not the animal itself, for since it is partially owned by an idolater, it is not holy*). And if a Jew gives an animal to an idolater to look after, although he is not permitted, we penalize him by compelling him to redeem the animal even up to ten times its value, and he gives its entire value to the *Kohen*. But the Sages say: as long as the idolater has a share in it, it is exempt from the law of *bechor*. Now, is it not (*when it states that we penalize him*) referring to the animal itself (*which would prove that one is forbidden to sell an animal to an idolater for its future fetus*)!

The *Gemora* deflects the proof by saying that it is referring to the fetus (*for the animal was already pregnant with it at the time of the contract*).

The *Gemora* proves from the language of the *braisa* that we are referring to the fetus. (2a – 3a)

INSIGHTS TO THE DAF

HALACHAH: A PARTNERSHIP WITH A NOCHRI

OPINIONS: The Gemara quotes Avuha d'Shmuel (the father of Shmuel) who ruled that a Jew may not enter a partnership with a Nochri, because perhaps a dispute will arise and the Nochri will make an oath in the name of his idol. A Jew is not allowed to cause anyone to swear by the name of an idol.

Does this imply that if a Jew has a dispute with a Nochri, for whatever reason (even if they are not partners), and the Nochri wants to swear by his idol, the Jew should pay the disputed sum in order to avoid causing the Nochri to swear?

(a) **TOSFOS** (DH Shema) and the **ROSH** (1:1) quote the **RASHBAM** who rules that the Jew should pay to the Nochri the disputed sum in order to avoid causing the Nochri to swear by his idol. (See also **TOSFOS** to Sanhedrin 63b, DH Asur, and **ROSH** there, 7:3).

(b) Tosfos here and in Sanhedrin cites **RABEINU TAM** who disagrees and permits a Jew to have a Nochri swear to him in court. He explains that this is permitted because, first, causing a Nochri to swear is permitted in order to prevent a monetary loss. Avuha d'Shmuel's ruling only prohibits forming a partnership with a

Nochri, because at that point the Jew is not in imminent danger of losing money.

Second, Rabeinu Tam explains that nowadays Nochrim do not swear with the name of their pagan gods. Instead, when they mention the name of their god, they have in mind the Creator of the world. Even though they refer to a duality (or trinity) of powers, this form of Avodah Zarah, called "Shituf" (worshipping another god along with Hashem), is permitted to a Nochri (but not to a Jew). Rabeinu Tam adds that even if the Nochri uses in his oath the same word that we use to refer to Hashem, such a word cannot be considered the "name of a pagan god" even if the Nochri does not have in mind the One G-d.

There is a difference between the two reasons of Rabeinu Tam's ruling. According to the first reason, it remains prohibited to enter a partnership with a Nochri nowadays. According to the second reason, it is permitted to enter a partnership with a Nochri nowadays.

(c) The **RAMBAN** permits both entering a partnership with a Nochri, and accepting a Nochri's oath in court. He explains that Avuha d'Shmuel did not actually prohibit the formation of a partnership with a Nochri on Halachic grounds. He merely *advised* us not to enter a partnership. One who follows Avuha d'Shmuel's advise is acting with "Midas Chasidus," while one who does enter such a partnership or accepts an oath from a Nochri does not transgress any prohibition. (According to the Ramban, the verse quoted in the Gemara, "Lo Yishama Al Picha" (Shemos 23:13), is prohibiting only a *Jew's* mention of pagan gods.)



HALACHAH: The **TUR** (CM 182) rules in accordance with Rabeinu Tam's lenient view that it is permitted to accept an oath from a Nochri.

With regard to entering a partnership with a Nochri, most Rishonim (cited by the **BEIS YOSEF** CM 182) permit it. However, the **SHULCHAN ARUCH** himself (OC 156) writes that one should be careful not to enter a partnership with a Nochri, lest he cause the Nochri to make an oath in the name of his Avodah Zarah. The **REMA** there, however, says that the practice is to be lenient, in accordance with the view of Rabeinu Tam.