



Bekhorot 2

Detailed Summary

Coverage: Bekhorot 2a through 3a line 2

From the opening Mishnah through the distinction between an existing fetus and rights to future offspring

לעילוי נשמת הרב נחמיה בן הרב יוסף הכהן זי"צ'יק זצ"ל

A clear guide to ownership, firstborn sanctity, prohibited sales, partnership arrangements, and the boundary between an existing fetus and future offspring.

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Detailed Summary

The central idea

The opening sugya of Masechet Bekhorot asks a deceptively simple question: When does a firstborn animal belong fully enough to a Jew for the Torah's laws of firstborn sanctity to begin? The Gemara tests that question through purchases, sales, partnerships, profit-sharing arrangements, and ownership of an unborn animal.

The Mishnah

הלוקח עובר חמורו של נכרי, והמוכר לו אף על פי שאינו רשאי, והמשתתף לו, והמקביל הימנו, והנותן לו בקבלה - פטור מן הבכורה, שנאמר: "בְּיִשְׂרָאֵל", אֲבָל לֹא בְּאֲחֵרִים.

The Mishnah presents five business arrangements involving a Jewish owner and a gentile (נכרי). In every arrangement, either the mother, the fetus, or the rights connected to the fetus are not owned exclusively by a Jew. The result is that the offspring is exempt from firstborn status (פטור מן הבכורה). The Torah describes the sanctified firstborn as being "in Israel" (בְּיִשְׂרָאֵל). The Mishnah understands this to exclude an animal in which a gentile has a legally meaningful share.

Rashi integrated

Rashi explains that the Mishnah deliberately begins with the fetus of a donkey (עובר חמור) because this is a firstborn fetus still inside its mother. If the gentile owns a share in either the fetus or its mother, the firstborn does not become holy. Rashi also notes that the tractate opens with the shorter laws of the firstborn donkey (פטר חמור) before moving to the broader laws of firstborn kosher animals.

Tosafot integrated

Tosafot sharpens the Mishnah's structure. When a Jew buys the fetus of a gentile's donkey, the exemption comes from the fact that the mother remains gentile-owned. When a Jew sells his fetus to a gentile, the exemption comes from the gentile's ownership in the fetus itself. These are related but not identical legal routes. Tosafot therefore connects the opening Mishnah to two ownership requirements developed later: complete Jewish ownership of the firstborn and complete Jewish ownership of the relevant mother.

The five arrangements

#	Arrangement	Why the offspring is exempt
1	Purchasing a fetus	The Jew buys the unborn fetus, but its mother belongs to a gentile. The mother's foreign ownership prevents full Jewish ownership of the firstborn process.

#	Arrangement	Why the offspring is exempt
2	Selling a fetus	The Jewish mother remains with the Jew, but the fetus is transferred to a gentile. The gentile's share in the offspring prevents firstborn sanctity.
3	Partnership	The Jew and gentile jointly own the mother or the fetus. According to the Mishnah's ruling, gentile partnership exempts the offspring.
4	Receiving from a gentile	The gentile owns the mother and the Jew cares for it in return for a share of the offspring. The arrangement does not produce a fully Jewish-owned firstborn.
5	Giving in receivership	The Jew gives his animal to a gentile to care for, with the gentile receiving rights in the offspring. Even though the basic animal began as Jewish property, the shared rights exempt the offspring.

Why every case is needed

The Gemara immediately asks why the Mishnah needs so many examples. If the rule is simply that gentile ownership exempts a firstborn, one example should seem sufficient. The answer is that each arrangement creates a different moral and legal impression, and without all five examples we could wrongly think that the Sages imposed a penalty (סגור) in the less responsible cases.

- A buyer is moving an animal toward Jewish ownership. He is “bringing it into sanctity” (מִיָּתִי לָהּ (לְקַדְּוֶשָּׁה), because the animal will now be protected from prohibited Jewish use on Shabbat. We would not expect to punish him.
- A seller is moving the fetus away from Jewish ownership and preventing potential firstborn sanctity (מִמֶּכְרֵי מִקְדְּוֶשָּׁה). We might have expected the Sages to punish him by treating the fetus as though it still carried firstborn obligations. The Mishnah teaches that a penalty cannot manufacture Torah sanctity where the ownership conditions are absent.
- Partnership must be stated because Rabbi Yehuda disagrees. He holds that even partial Jewish ownership can preserve a firstborn obligation. The Mishnah records the majority position that gentile partnership exempts.
- Receiving an animal from a gentile is listed mainly to introduce its mirror image: giving a Jewish animal to a gentile under a profit-sharing arrangement (קֶבֶץ לְנוֹת).
- Giving the animal to a gentile might look especially suspicious because the body of the mother remains Jewish property. The Mishnah nevertheless teaches that once the gentile owns a meaningful share of the offspring, the firstborn is exempt.

Rashi and Tosafot integrated

Rashi defines “bringing it into sanctity” primarily as bringing the animal under Jewish Shabbat restraint - the animal will now rest rather than be worked by a gentile on Shabbat. Tosafot observes that the phrase can also echo potential firstborn sanctity. Tosafot adds an important teaching point: the buyer has not committed the prohibited sale, while the seller has. The

Gemara's contrast therefore reflects both the direction of the ownership transfer and the moral quality of the act.

Two separate questions must not be confused

The sugya now separates two legal layers. The first layer asks whether the firstborn becomes holy. The second asks whether the underlying transaction was permitted. An animal can be exempt from firstborn sanctity even though the Jew acted improperly. That distinction is essential for understanding the entire discussion.

- Firstborn status (בְּכוֹרָה): Does the Torah recognize this offspring as a sanctified firstborn? That depends on ownership.
- Permissibility of sale: Was the Jew allowed to make this transaction? That depends on separate rabbinic restrictions concerning the sale of large livestock (בְּהֵמָה גְּסָה) to a gentile.

The Mishnah therefore says that the seller is “not permitted” (אֵינוֹ רְשָׁאִי), yet still rules that the fetus is exempt. The improper act may justify a financial penalty, but it does not erase the gentile's ownership and cannot create sanctity by decree.

Why selling a large animal is restricted

The background comes from Avodah Zarah. The Sages restricted selling large working animals to gentiles because the animal might be used for labor on Shabbat. Rashi explains that this is the reason the Mishnah flags the sale as improper. The prohibition is not a statement that all commerce with gentiles is forbidden. It is a targeted protection against transferring an animal that can perform prohibited labor.

Rabbi Yehuda permits selling an animal whose legs are permanently broken (שְׁבוּכָה), because such an animal cannot be used for ordinary labor. This creates the next question: Is an unborn fetus like a broken animal because it cannot work now, or is it different because its inability is only temporary and completely normal?

Is a fetus legally comparable to a broken animal

The Gemara explores Rabbi Yehuda's reasoning. On one side, a fetus cannot presently perform labor, just as a broken animal cannot. On the other side, a broken animal is permanently outside the normal working category, while a fetus is exactly where a healthy animal should be at that stage. It is expected to be born, grow, and become capable of work. The difference is between permanent incapacity and temporary, natural immaturity.

Rashi integrated

Rashi explains that a permanently broken animal is unusual and visibly different. People will not confuse permission to sell it with permission to sell a healthy working animal. A fetus, however, is not defective at all. Its present inability to work is temporary, and it will eventually become a normal working animal. That makes its sale much easier to confuse with the prohibited sale of ordinary livestock.

Tosafot integrated

Tosafot identifies two linked reasons for stringency. First, an ordinary fetus may be confused with other permitted-looking transactions. Second, it is destined to be born and become fit for labor. The conclusion is that Rabbi Yehuda's exception for a permanently broken animal does not automatically permit selling a fetus.

The Gemara first tries to prove the point from our Mishnah: it calls the sale of the fetus improper, and Rabbi Yehuda's dissent is not recorded. But that proof is rejected because the Mishnah also omits Rabbi Yehuda's disagreement in other cases where a later baraita clearly shows that he does disagree. Silence in a Mishnah is not always agreement.

Rav Ashi then supplies the decisive formulation. Rabbi Yehuda permits a broken animal because it cannot recover. If recovery is possible, he prohibits the sale. A fetus is comparable to something that will recover, because its inability to work will disappear as it develops. The sale is therefore prohibited even according to Rabbi Yehuda.

The baraita and Rabbi Yehuda's minority position

A baraita explains Rabbi Yehuda's view more fully. If a Jew accepts an animal from a gentile and receives a share of its offspring, Rabbi Yehuda treats the Jew's portion of the firstborn as carrying firstborn value. The animal is assessed, and the Jew gives half its value to a Kohen (כֹּהֵן). By contrast, when a Jew improperly gives his animal to a gentile under a shared-offspring arrangement, the Sages may require him to buy back the transferred interest for as much as ten times its value and then give the full value to a Kohen.

Rashi integrated

Rashi explains that under Rabbi Yehuda, the animal does not acquire complete bodily sanctity (קִדְּשָׁתָּהּ הַגּוֹיָף) because the gentile owns half. It cannot be offered on the altar as an ordinary firstborn offering. Nevertheless, the Jew's half carries a monetary obligation toward the Kohen. The requirement to give value is therefore not the same as saying that the entire mixed-ownership animal is fully sacred.

Tosafot integrated

Tosafot asks why the Kohen receives money rather than the physical Jewish share. The practical answer is that a fractional interest tied up with a gentile partner is difficult for the Kohen to realize. Money gives the Kohen the usable value of the Jewish portion. Tosafot also notes that the severe buyback penalty belongs specifically to the prohibited transfer of large livestock; it should not be casually extended to every kind of animal transaction.

How the Gemara tests the baraita

The Gemara repeatedly examines the grammar of the baraita. Does the prohibition refer to transferring the fetus itself, or to transferring the mother? The masculine form “its value” (דָּמִיּוֹ) sounds as though the text refers to the male fetus, while the surrounding discussion can be read as referring to the female animal. The Gemara considers emending the wording and then reconstructs the case as a pregnant animal placed with a gentile for fattening and shared profit.

This is not wordplay for its own sake. The precise object of the transaction decides everything. Selling the mother, selling an existing fetus, and selling only rights to future offspring are three different legal acts. The baraita’s penalty can prove a prohibition only after the Gemara identifies exactly what was transferred.

A new question: selling only the rights to future offspring

The Gemara then raises a narrower case. A Jew keeps ownership of the animal itself but sells to a gentile only the rights to whatever offspring the animal may produce in the future. This is called selling the animal “for its fetuses” (מִכַּר בְּהֵמָה לְעוֹבְדֵי הָאֱלֹהִים). The animal is whole, remains with the Jew, and may not even be pregnant yet. Is this sale permitted?

The question works according to both positions in the earlier dispute:

- According to Rabbi Yehuda, perhaps only a permanently broken animal may be sold because nobody will confuse it with a normal sale. A healthy animal whose future offspring were sold looks much more like an ordinary prohibited transaction. On the other hand, the Jew has not separated from the animal itself at all, so the transaction may be less serious than selling even a broken animal outright.
- According to the Sages, perhaps their restriction applies when the animal itself leaves Jewish ownership, while a retained animal with only future rights transferred remains permitted. On the other hand, if they prohibit even a visibly broken animal, they may certainly prohibit a healthy animal transaction that observers could misunderstand.

The challenge from the Rabbis and the danger of confusion

A baraita records the Rabbis challenging Rabbi Yehuda: Even a broken female animal can be bred and can produce offspring. If it is sold to a gentile, the gentile may keep it alive rather than slaughter it. Observers might then assume that ordinary large-animal sales are permitted. The Gemara clarifies that the Rabbis’ own main concern is confusion with a normal sale (אֲתִי לְאִיחָלּוּפִי). Their comment about breeding is an internal challenge to Rabbi Yehuda: even on your reasoning, the animal may still remain in use and create misunderstanding.

Rabbi Yehuda answers that a genuinely permanently broken animal is generally not fit to be bred in the normal way. His exception remains narrow. This exchange does not by itself resolve the case of selling only future offspring rights.

Why the Mishnah's wording does not prove permission

The Gemara next notices that the Mishnah says “although he is not permitted” only beside the sale. It does not repeat those words beside partnership or receivership. Perhaps that omission proves that the other arrangements are permitted. The Gemara rejects the inference. A Mishnah often states the qualification once in the principal case and expects the reader to carry it into parallel cases.

The partnership case proves the point. Shmuel's father teaches that a Jew should not enter a business partnership that may eventually force a gentile partner to swear in the name of his idol, violating the concern expressed by “it shall not be heard upon your mouth” (לֹא יִשְׁמַע עַל פִּיךָ). Yet our Mishnah does not repeat “although he is not permitted” beside partnership. The omission therefore cannot establish permission.

Tosafot integrated

Tosafot notes that the partnership discussion has practical qualifications and that later authorities distinguish between causing an idolatrous oath and dealing with people whose oath-language is not understood as straightforward idol worship. For our sugya, however, the essential point is textual: the Mishnah's silence beside a secondary case does not prove that the transaction is allowed.

The stopping point at the top of 3a

The final proof comes from the baraita that imposes the severe penalty. At first, it sounds as though a Jew is penalized for giving the gentile a share in the animal's future offspring. If so, selling rights to future fetuses must be prohibited. The Gemara rejects that reading. The baraita concerns an animal that is already pregnant and therefore an existing fetus (עוֹבֵר) already present inside the mother. The masculine wording “its value” (דְּמִיּוֹ) supports this interpretation.

Rashi integrated

Rashi states the distinction very clearly: the penalty applies where the fetus was already in the mother and the Jew sold that existing fetus completely. Rights to offspring that do not yet exist are different. The baraita cannot be used to treat the future-rights arrangement as the same prohibited sale.

Where this unit ends

Bekhorot 3a line 2 completes the opening unit. The Gemara has separated three transactions: selling the mother, selling an existing fetus, and selling rights to future offspring. The next line begins a new topic: how high the repurchase penalty may rise after an improper sale.

The full picture in plain language

A firstborn does not become holy merely because its mother is physically in a Jewish barn. The Torah looks at legal ownership. If a gentile owns a meaningful part of the mother, the fetus, or the offspring rights, the animal may be outside firstborn sanctity. At the same time, the Jew may still have violated a separate rule by transferring a large animal or an existing fetus in a way that can lead to Shabbat labor or public confusion.

The Mishnah therefore teaches a disciplined way to think. First ask: Who owns what? Second ask: When did that ownership begin - before pregnancy, during pregnancy, or after birth? Third ask: Is the transaction permitted? Fourth ask: If it was improper, what penalty applies? Only after separating those questions can the halakhic result be understood correctly.

Glossary

Hebrew term	Transliteration	Meaning in this sugya
בְּכוֹרָה	Bekhorah	Firstborn status or sanctity. In this unit, the question is whether the offspring enters the Torah's firstborn obligations.
פֶּטֶר חֲמוֹר	Peter chamor	The firstborn male donkey. It is redeemed with a lamb or with its value; if not redeemed, a separate Torah procedure applies.
עוֹבֵר	Ubar	A fetus. The sugya distinguishes an existing fetus from offspring that may be conceived only in the future.
נֹכְרִי / גּוֹי	Nochri / goy	A gentile. A legally meaningful gentile ownership share can prevent firstborn sanctity.
שׁוּתָפוּת	Shutafut	Partnership or shared ownership.
קַבְלָנוּת	Kablanut	A receivership or profit-sharing arrangement in which one party cares for the animal and receives rights in its offspring or increase.
בְּהֵמָה גֹּסָה	Behemah gasah	Large livestock capable of significant labor, such as cattle or donkeys. Its sale to a gentile was restricted because of possible Shabbat labor.
קֶנָּס	Kenas	A rabbinic penalty. It may require repurchasing an improperly transferred interest at far above normal value.
מִפְּקִיעַ מִקְדוּשָׁה	Mafkia mikedushah	Removing an animal from the conditions under which sanctity would arise.
קִדְּשַׁת הַגּוֹף	Kedushat haguf	Intrinsic bodily sanctity, such as an animal that is itself consecrated for the altar.

Hebrew term	Transliteration	Meaning in this sugya
דָּמָיו / דָּמֶיהָ	Damav / dameha	"Its value," in masculine or feminine form. The grammatical form helps identify whether the baraita means the male fetus or the female mother.
שְׁבוּרָה	Shevurah	A permanently broken or disabled animal. Rabbi Yehuda permits its sale when it cannot recover and cannot perform ordinary labor.
אִינוּ רָשָׁאִי	Eino rashai	"He is not permitted." The transaction can be forbidden even though the resulting offspring is exempt from firstborn status.
אֶתִּי לְאִיחָלֻפִּי	Atei le'ichalufei	A concern that people will confuse a narrow permitted case with a broader prohibited case.
כֹּהֵן	Kohen	A priest. Certain firstborn animals or their value belong to a Kohen when firstborn obligations apply.

Sources

We greatly appreciate [AlHaTorah Bekhorot](#).

The Rashi and Tosafot insights are integrated in English so the summary can be read as one continuous teaching guide. The Hebrew source text reproduced in full is the opening Mishnah, as requested.

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