



Measured and Sold

The *Mishnah* (5:7) discussed forms of acquisitions. In particular the *Mishnah* discussed when in the measuring and sale of produce is the sale complete. The *Mishnah* explains that if the purchaser draws the produce towards him (*meshicha*)¹ yet has not measured the produce, the sale has been performed. In other words, since *meshicha* is an act of acquisition and the price had been agreed upon (*Bartenura*), it is too late for the seller to go back and sell to another at a better price. The *Mishnah* continues that if the produce was measured but *meshicha* was not yet performed, then the sale is not complete.

The *Bartenura* explains the case in the *Mishnah* is where the seller is doing the measuring. He continues that the seller could have even been using the buyer's measuring container. Even though one's utensil can acquire for him, the case would be where the measure is performed in *reshut harabim*, and one's utensils do not acquire there.

The *Bartenura* continues that if however the buyer was doing the measuring, he would have acquired the produce when raising it; he would have performed *hagba'ah*. The *Ritva* explains that this is understood from the simple meaning of the *Mishnah*. The terms *mashach* and *madad*

(measured) were used in reference to those who perform those activities.

The *Rashba* however sites the *Raavad* who explains that even if the buyer performed the measuring the ruling would be the same. He is measuring for the benefit of both himself *and* the seller. For an act of acquisition to be defined as such it must be solely for the purchasers benefit.

The *Rashba* brings an additional reason why even if the purchaser performs the measuring the sale is complete. The *Gemara* (*Yevamot* 52b) explains that if someone hoes in the field of *ger* (that has died with no heirs) but does so thinking it is his field, then he has not acquired the field. The *Rashba* points out that since the action was performed without the intent of acquisition, then the action has no affect. Similarly in our case, the measuring without the intent to acquire would not be significant.

The *Ritva* however differentiates between the case of *Yevamot* and our case. In *Yevamot* since the property is *hefker* the intention is required. In our case however there are two parties. Since there is also *da'at makneh* (intention of the seller) the absence of *da'at koneh* when measuring does not detract from it being a *ma'aseh kinyan*.

Yisrael Yitzchak Bankier

¹ For *meshicha* to be affective, the case must be referring to where the sale is occurring in a *simta* or a *chatzer* that belongs to both of them.

Revision Questions

בבא בתרא ד' ז': ה' י"א

- What is and is not included in the sale of:
 - A city? (ד': ז')
 - A field? (ח': ד')
- In what special case is everything that is in the field transferred to the other party? (ד': ט')
- What are two cases are similar to the previous question? (ט': ט')
- What is and is not included in the sale of:
 - A boat?
 - A wagon? (ה': א')
- According to *R' Yehuda* when does the sale of a yoke include the ox that pulls it? (ה': א')
- What are the three opinions regarding whether the sale of a donkey includes its equipment? (ה': ב')
- What has someone purchased if the rubbish comes with it? (ה': ג')
- If someone purchased honeycomb from a beehive, how much can he take? (ה': ג')
- What is debated regarding the sale of two trees? (ד': ז')
- List the three differences according to the *Tana Kama* between whether a person purchase two or three trees in another person's field? (ד': ה')
- In what situation can the sale of a part of an animal include more than the stated part? (ה': ה')
- Regarding the sale of wheat, when can the seller cancel the deal? When can the buyer cancel the deal? When can either cancel the deal? (List one example for each.) (ה': ו')
- In what two ways are large amounts of fruit acquired? (ז': ה')
- In what two methods is flax purchased? (ז': ה')
- During the sale of wine, at what point is the sale finished even in the face of fluctuating prices (and what is the case that the *Mishnah* describes)? (ח': ה')
- What is a *sarsur* and when is he responsible? (ח': ה')
- What is the debate regarding a case where a person sent his son with money, to a shop to purchase a oil? In what case is there agreement? (ט': ה')
- What obligations are placed on a shopkeeper based on the following *pasuk* (ה': י'):

"מאזני צדק אבני צדק איפת צדק והין צדק יהיה לכם"
(ויקרא י"ט: ל"ו)
- Regarding the previous question, when does *Rabban Shimon ben Gamliel* maintain that these obligations do not apply? (ה': י"א)
- If a seller measured perfectly, what percentage must he add for dry goods? For liquids? (ה': י"א)

Local Shiurim

Melbourne, Australia

Sunday -Thursday
10 minutes before *Mincha*
Mizrachi Shul
Melbourne, Australia

Friday & Shabbat
10 minutes before *Mincha*
Beit Ha'Roeh
Melbourne, Australia

Efrat, Israel

Shiur in English

Sunday -Thursday
Rabbi Mordechai Scharf
9:00am
Kollel Magen Avraham
Reemon Neighbourhood

ONLINE SHIURIM

Rabbi Chaim Brown
www.shemayisrael.com/mishna/

Rav Meir Pogrow
613.org/mishnah.html

Rabbi E. Kornfeld
Rabbi C. Brown
<http://www.dafyomi.co.il/calendars/myomi/myomi-thisweek.htm>

SHIUR ON KOL HALOSHON

Rabbi Moshe Meir Weiss
In US dial: 718 906 6400
Then select: 1 – 2 – 4

Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
9 th June א' תמוז	10 th June ב' תמוז	11 th June ג' תמוז	12 th June ד' תמוז	13 th June ה' תמוז	14 th June ו' תמוז	15 th June ז' תמוז
Bava Batra 6:1-2	Bava Batra 6:3-4	Bava Batra 6:5-6	Bava Batra 6:7-8	Bava Batra 7:1-2	Bava Batra 7:3-4	Bava Batra 8:1-2

