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Land Sold to Measure

The *Mishnah* (7:1) teaches that if one sold a *beit kur* of soil, then large boulders (ten *tephachim* height) or deep ditches (ten *tephachim*) are not included when measuring out the land. The *Bartenura* explains that the person purchasing the land deliberately used the term “soil” since he was interested in land that could be used for planting. Had he simply said an area of land, then the boulders and ditches would have been included in the measurement.¹

Now considering that areas of the boulders and ditches have not been considered when measuring, what is the status of those areas?

According to the *Rashbam* (102b) this is not even a question. He maintains that the seller must provide a single field that is clear of the large obstacles. He continues that a person does not want to purchase a single field and treat them as separate fields, as stated by *Rav Papa* in the *Gemara* (103a). The *Rosh* (102b) however explains that the buyer can only make this complaint if the boulders or ditches divide the field. If however he can navigate around the boulders when ploughing, then the areas are simply not included when measuring out the purchased land. According to this understanding, what is the law regarding these obstacles?

The *Rambam* (*Mechira* 28:1) explains that even though they were not measured, they still belong to the purchaser. The *Yad Rama* explains that this is similar to the *yetzia* of house, which we learnt, was included in the sale provided it was less than four *amot* wide. In other words, they are considered secondary and included in the sale.

The *Rashba* however cites the *Raavad* that maintains they remain the property of the seller. He explains that those

cases we learnt about in the earlier chapters that listed items that are included in a sale, are different. Those cases were not sold by a particular dimension or measure. Consequently we are careful to specify what is and what is not included. In this case however, since the field was sold by a particular measure and that measure was indeed delivered, the boulders and ditches that were excluded remain excluded. The *Raavad* continues that the purchaser must pay the seller for these items since they are considered “lost” in his field; they are effectively inaccessible. This is much like the continuation of the *Mishnah* that if too much land was given, but the excess was too small to be useful to the seller, we compel the purchaser to buy that excess.

The *Rashba* however finds this difficult. Firstly, if being sold to measure is literal then even small palms and shrubs should be excluded. Secondly, it appears that according to the *Raavad* the only difference between whether the boulders are large or not is if the purchaser must pay for them. What does this payment have to do with the rationale of the *Gemara* that purchaser does not want to treat his purchase as separate fields? Finally, this rationale cannot be compared to the continuation of the *Mishnah*. There the extension is just that - it is part of the field. However in this case, anyone purchasing a field would like to avoid the boulders and ditches so how can we compel him to buy it?

In defense of the *Raavad* the *Aruch HaShulchan* (CM 219:2) explains that they are not required to pay the full amount but rather a severely deflated rate. Even though in the outset they would have never purchased them, everyone knows (*anan sahadei*) that they are happy with them now and must pay some something²

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¹ The *Tosfot R' Akiva Eiger* however notes that this is only the opinion of the *Rashbam*. The *Tosfot* however explain that the term “soil” in the *Mishnah* is used to teach different law. The *Mishnah* continues that if the boulders are smaller or the ditches shallower then they are included when measuring the land. The novelty is that even if the person specifically

stated soil, the law is unchanged. The *Tosfot* however disagrees with the *Rashbam* who maintains that if he had simply said land, then even an area that is full of boulders would be included.

² See *Ketubot* 34b.

Revision Questions

בבא בתרא ו' א' ח' ב'

- Can a buyer claim *mekach ta'ut* if he purchased produce, and using them, was not able to grow produce? (א': ו')
- If someone purchased figs, what percentage of wormy figs is acceptable? (ב': ו')
- In what case is the purchase of wine that subsequently became vinegar considered a *mekach ta'ut*? (ג': ו')
- What is debated regarding the purchase of land to build a "house"? (ד': ו')
- What restrictions are placed on one that owns a well in the property of another person? (ה': ו')
- What other case is similar to the one in the previous question? (ו': ו')
- When do these restriction not apply in this case? (ז': ו')
- What is the law regarding a case where a public pathway is running through person's field, and he allocates another pathway on the side of his field as a replacement? (ח': ו')
- How wide is: (ט': ו')
 - A private path?
 - A public path?
 - A "king's way"? What else is the same width?
- How large is a gravesite? (Include both opinions) (י': ו')
- What is excluded when a person sells another a *beit kur* of "soil"? And when is it included? (יא': ו')
- How is the *beit kur* measured? (יב': ו')
- What is the law if the actual land is smaller or larger? (יג': ו')
- How is the law different if the seller said:
 - "Approximately a *beit kur*"? (יד': ו')
 - "A *beit kur* between these markers"? (טו': ו')
- According to *Ben Nanas* what is the law if the seller used both the terms "measured" and "approximately" when selling the *beit kur*? (טז': ו')
- Regarding a case where a person sells half a field: (טז': ו')
 - On what basis is the division determined?
 - On whose property is the dividing fence built?
- How wide is a *charitz*? A *ben charitz*? (יז': ו')
- Which three cases are: (יח': ו')
 - *Nochlin u'manchilin*?
 - *Nochlin ve'lo manchilin*?
 - *Lo nochlin u'manchlin*?
- List the order of people that inherit? (יח': ב')

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
23 rd June ח' תמוז	24 th June ט' תמוז	25 th June י' תמוז	26 th June יא' תמוז	27 th June י"ב תמוז	28 th June י"ג תמוז	29 th June י"ד תמוז
Bava Batra 8:3-4	Bava Batra 8:5-6	Bava Batra 8:7-8	Bava Batra 9:1-2	Bava Batra 9:3-4	Bava Batra 9:5-6	Bava Batra 9:7-8

