



Davar She'lo Ba Le'olam

The *Mishnayot* this week have been focused on explaining what is implicitly included in various type of sales. One unique acquisition discussed refers to the purchase of the "fruit" or offspring of dovecote or beehive. The *Mishnah* places limits on the what the purchaser may take, in order not to comprise the dovecote or beehive itself.

One difficulty raised by the *Rishonim* on this *Mishnah* is how the acquisition can be effective at all. It would appear that one is attempting to acquire a *davar she'lo ba le'olam* – an object that is not yet present for purchase. In other words, since the offspring have not yet been born, how can they be purchase? Whether such acquisition work is the subject of debate; *R' Meir* maintains it can, while the *Chachamim* disagree. How then can the *Mishnah* rule that the acquisition works?

The *Ritva* (80a) explains that this is because at the time of the purchase the doves were in the dovecote, and it is these doves that are going to produce the offspring. Consequently, the sale is understood as purchasing the doves for their offspring. The sale is therefore comparable to purchasing a tree for its fruit, which everyone agrees works.

The *Nimukei Yosef* (40b, s.v. "amar ha'mechaer) however explains that according to the opinion that one cannot acquire a *davar she'lo ba le'olam* the *Mishnah* is explaining what must be done in a specific case. That is if each party is happy to maintain their original agreement when the offspring are finally born. In other words, this case is no different to any other case of a *davar she'lo ba le'olam* and the original agreement is not binding unless they maintain their positions until the end. HaRav David Yaakov Ilan¹ suggest that the *Nimukei Yosef* is consistent with his explanation of why acquiring a *davar she'lo ba le'olam* does not work. In *Bava Metzia* he explains that such cases lack complete *smichut daat* – full resolve from the parties. If each party maintains their position once the offspring are born, then this is no longer a problem and the acquisition is binding.

The *Rambam* (*Mechira* 23:9) however explains that the sale works, because it is considered as if the dovecote is being sold for its produce. The *Rambam* compares this case to one that rents his stream, where the renter can enjoy anything he traps for the duration of the rental period. The *Sema* (ChM 213:1) explains that the *Rambam* prefers to compare our case with that of the stream, rather than the case where one sells a tree for its fruit. Otherwise, one might argue, that the case of the tree is different since the tree itself bares the fruit, whereas the same cannot be said for the dovecote and the young birds.

The *Raavad* however notes that one would need to explicitly state that he is selling the dovecote for the offspring and not as stated in our *Mishnah*. This is because in the case where one sells the fruit of his tree, we do not say that it is implied that he is selling the tree for its fruit, but rather that it is a classic case of a *davar she'lo ba le'olam*.

The *Kesef Mishnah* however understands that according to the *Rambam*, in the case of the dovecote, it is implied. Why are the cases of the dovecote and fruit-tree different?

The *Kesef Mishnah* provides two answers. In the second answer, the *Kesef Mishnah* explains that when considering what is implied in a sale, we need to assess what is the *ikar* (main part) and what is *tafel* (secondary). With respect to a tree, the tree (or field) is the *ikar* and the fruit is *tafel*. Consequently purchasing the fruit does not imply that he is purchasing the tree for the fruit it produces. However when considering a dovecote, the doves themselves are the *ikar* consequently the above terms are implied.²

The *Perisha* (213:1) explains that the answer is found in the how the *Mishnah* termed the sale. The cases were where one purchased the fruit or offspring of the dovecote and beehive. As pointed out by the *Sema* above, the dovecote does not bear any birds, it is doves themselves. The fact that the dovecote itself was referenced, implies that the dovecote was being sold for the offspring.

Yisrael Bankier

¹ Footnote 95, *Ritva, Mosad HaRav Kook Bava Batra* 80a.

² See *Kesef Mishnah* inside for his first answer that differentiates based on the assumed terms of each sale.

Revision Questions

בבא בתרא די' א' – ה' ה'

- What components are not part of the sale of a house? (Only list those things listed in the first *Mishnah*.) (די' א')
- Considering that a *bor* is not included in the sale of a house, what is debated regarding such a case? (די' ב')
- What is the debate regarding the sale of a *bor* on a property? (די' ב')
- When is an oven included in the sale of a house? (די' ג')
- What is included in a the sale of a *chatzer*: (די' ד')
 - Always?
 - Sometimes? (When?)
 - Never?
- What is and is not included in the sale of an olive press? (די' ה')
- What is never included in the sale of a *merchatz* no matter the stipulation? (די' ו')
- What is and is not included in the sale of:
 - A city? (די' ז')
 - A field? (די' ח')
- In what special case is everything that is in the field transferred to the other party? (די' ט')
- What are two cases are similar to the previous question? (די' 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? (ה' ד')
- List the three differences according to the *Tana Kama* between whether a person purchase two or three trees in another person's field? (ה' ד')
- In what situation can the sale of a part of an animal include more than the stated part? (ה' ה')

Melbourne, Australia

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

Friday & Shabbat
10 minutes before *Mincha*
Mizrachi Shul
Melbourne, Australia

Efrat, Israel
Shiur in English

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

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

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Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
3 March כ"ג אדר	4 March כ"ד אדר	5 March כ"ה אדר	6 March כ"ו אדר	7 March כ"ז אדר	8 March א' אדר	9 March ב' אדר
Bava Batra 5:6-7	Bava Batra 5:8-9	Bava Batra 5:10-11	Bava Batra 6:1-2	Bava Batra 6:3-4	Bava Batra 6:5-6	Bava Batra 6:7-8

