



Dividing Demai

The *Mishnah* (6:9) discusses a case where a *chaver* and an *am haaretz* inherit property from their father who was an *am haaretz*. Recall that a *chaver* is not only *neeman* – trusted with separating *trumot* and *maasrot* – but also particular with the laws of *tumah* and *tahara*. An *am haaretz* on the other hand is not particular or trusted with either. The *Mishnah* teaches that when dividing the estate, there is no problem when splitting like products, e.g. wheat. The *chaver* may not however suggest taking all the wheat while his brother takes the barley. Similarly, he may not suggest that his brother take the *lach* – food that has become susceptible to *tumah* – while he takes the *yavesh* – food that has not. We shall try to understand why.

This *Mishnah* appears to be similar to the previous one. The *Mishnah* (6:8) there discusses two people either joined in partnership or inheriting produce. That *Mishnah* also teaches that they can only divide like for like otherwise it is prohibited.

The *Bartenura* explains that the reason why they may divide like for like is because this *Mishnah* is according to the opinion that maintains the principle of *bereira*. In other words, it allows for a future event to determine the current status – retroactive selection. In other words, the brothers each have an equal share in the wheat. Once they divided it, it is as if the share they receive is the share that was theirs from the outset. Consequently, there has been no trading or swapping at the time of division. If however the division is not like for like, then the principle of *bereira* cannot be applied and it is considered as if they are trading. That being the cases, in the previous *Mishnah* it is as if they are selling untithed produce to one another. Similarly, in our *Mishnah* in such a division, it would be considered as the *chaver* is selling *demai* (inherited from his father) to an *am haaretz* – which a *chaver* is not allowed to do. The *Bartenura* explains that our *Mishnah* introduces another issue preventing the asymmetrical division, which is the prohibition of a *chaver* selling *lach* and *yavesh* to an *am haaretz*.

The *Bartenura* however notes that the earlier *Mishnah* (6:7) appeared to maintain that the principle of *bereira* could not be applied. We learnt that if two partners, an *am haaretz* and a *chaver*, harvested their vineyard and produced wine, even though the *chaver* separated *maasrot* for his share prior to the pressing, he would be required to separate again once they divided the wine. The reason is that we do not apply *bereira* and we are concerned that the share the *chaver* receives is the *am haaretz*'s.

The *Bartenura* explains that there is difference between when the division is occurring when the produce is detached or still attached to the ground. When dealing with detached produce, each stalk or grape belongs to both parties. Consequently, we cannot apply the principle of *bereira*. Our *Mishnayot* must be dealing where the wheat and barley have not yet been harvested. In that case we can say that a specific region is the one he was meant to belong to each party.

The *Tosfot Chadashim* however questions whether our *Mishnah* can be referring to produce still attached to the ground. Recall that the issues was effectively selling either *demai* or *tameh* produce to an *am haaretz*. If the produce is still attached to the ground, then it is definitely both *tevel* and *tahor*.

Based on this question, the *Tosfot R' Akiva Eiger* cites that answer of the *Tosfot Yom Tov* (*Demai* 6:12). According to the opinion that maintains the principle of *bereira* in rabbinic laws, there are still exceptions. If the parties do an action that demonstrates that they wish for the partnership to endure, then *bereira* is no longer applied. In the case where they took the grapes and pressed them together, there is a definite action that demonstrated this. In our case however, where the heirs did not cut the wheat or perform any other action demonstrating their interest in the partnership, then *bereira* can be applied. This explanation therefore explains how our *Mishnah* could be referring to cut produce.

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Revision Questions

דמאי ה' א' – ו' ג'

- What is the law regarding ma'aser sheni from produce collected by an aris who lives outside Jerusalem from a field belonging to a *Yerushalmi*? (י:ד)
- What is the law regarding the ma'asrot from produce collected by an aris *Yisrael* from a field belonging to a *kohen* or *levi*? (י:ד)
- Does the previous law differ when the aris is collecting olives and making oil? (י:ה)
- Explain the debate between *Beit Shammai* and *Beit Hillel* regarding the restriction on the sale of olives. (י:ו)
- What must one do when sharing a wine press with someone who is not believed with respect to separating *ma'asrot*? (י:ז)
- In what situation is one allowed to join in partnership or joint-*arisut* with someone who is not believed with respect to separating ma'asrot? (י:ח)
- Does the previous law differ if the two parties inherited a property? (י:ט)
- How should a *ger* and *goi* divide the inherited possessions? (י:י)
- If an *am ha'aretz* selling fruit in *Surya* admits that the fruit is from Israel yet claim that tithes have been taken, is he believed? Why? (י:יא)
- Explain the issue raised regarding a *chaver* who buys produce for himself and an *am ha'aretz*. (י:יב)
- Can one separate *trumot* and *ma'asrot* from *demai* on *Shabbat*? What can a *chaver* do if he accepts an invitation to eat at an *am ha'aretz's* house on *Shabbat*? (י:יג)
- Continuing from the previous question, provided that the *chaver* makes the necessary "preparation" what must he do before, e.g., drinking wine at the meal? (י:יד)
- What must an employee do before eating food provided by his *am ha'aretz* employer (3 opinions)? (י:טו)
- If someone purchases wine from a *Kuti* and does not have time to separate *trumot* and *ma'asrot* before *Shabbat* what can they do during *bein ha'shmashot* (between sunset and nightfall)? (י:טז)
- If one has dates that are *tevel* at home, and is unable to get home and separate *trumot* and *ma'asrot* before *Shabbat* what should he do? Does he act differently if the dates were *demai*? (י:יז)

Melbourne, Australia

Sunday -Thursday

10 minutes before *Mincha*
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10 minutes before *Mincha*
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Efrat, Israel

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Sunday -Thursday

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Reemon Neighbourhood

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Rabbi C. Brown
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SHIUR ON KOL HALOSHON

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Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
26 June כ"ו סיון	27 June כ"ז סיון	28 June כ"ח סיון	29 June כ"ט סיון	30 June ל"ו סיון	1 July כ"א ט"ז	2 July כ"ב ט"ז
Damai 7:6-7	Damai 7:8 - Kilayim 1:1	Kilayim 1:2-3	Kilayim 1:4-5	Kilayim 1:6-7	Kilayim 1:8-9	Kilayim 2:1-2

