



## Sell a Right to Eat

In the seventh *perek* we learn that, in certain situations, a worker is permitted to eat from the produce or fruit that he is working with. The *Mishnah* (7:2) teaches that this right is biblical in origin. While the *Mishnah* (7:5) debates whether there is a limit (or whether a work should limit) the volume he consumes, the *Mishnah* (7:6) teaches that a worker can forgo this right in exchange for an increased pay. One might ask, how can one negotiate conditions that are contrary to *Torah* law?

Indeed, the *Meiri* asks this question. He however suggests that since the stipulation is purely monetary, it is permitted. We have however learnt of the debate regarding this very point. While *R' Yehuda* maintains this position, *R' Meir* disagrees and argues that even if the condition is monetary, one can not negotiate it if it runs counter to *Torah* law. For this reason, the *Minchat Chinnuch* (576:9) finds this answer difficult, since our *Mishnah* is "*stam*" (without explicit authorship) and a *stam Mishnah* is generally the opinion of *R' Meir*.

The *Minchat Chinnuch* raises further difficulties. For example, this stipulation relies on *mehila* (forgoing). The worker's right to the food only arises at the time of eating. Consequently, it should be defined as a *davar she'lo ba le'olam* – a matter that is not yet at hand. The difficulty is that *mehila* is not applicable for a *davar she'lo ba le'olam*. (*ChM* 209:4). The *Minchat Chinnuch* ultimately leaves the matter unresolved, requiring further analysis.

The *Darkei David* (92b, cited by the *Yalkut Bi'urim* 93a) suggests that this case is not considered as if it is a stipulation against *Torah* law. He explains that there

is no *mitzvah* for the worker to eat, nor is there a *mitzvah* for the owner to leave the worker food. Instead the *mitzvah* is that if the worker wishes to eat, the owner must allow him to do so. The stipulation then is not that the worker will not eat, but that the worker will not want to eat while working. If the worker never wants to eat, then there is no *mitzvah* to allow him to eat the food, and the condition will never conflict with the *Torah* law.

One might suggest that this direction can also be found in the *Tifferet Yisrael*. The *Tifferet Yisrael* find this *Mishnah* difficult when considering the ruling of the *Magen Avraham* (OC 169:1) that one cannot stipulate regarding food as it causes anguish. The *Tifferet Yisrael* answers that the *Magen Avraham* was only referring to a condition made at the beginning of the year that would endure, and perhaps the worker would regret the arrangement. However, regarding a day worker, as is the case in our *Mishnah*, had he not estimated that he would be able to uphold the condition he would not have made it.

The *Darkei David* may shed light on the *Tifferet Yisrael*. When considering a long-term arrangement, one runs into the risk that the work would not be able to live by the stipulation. In other words, the worker may get hungry and by *Torah* law now have the right to take food. The risk then is the stipulation would now run counter to *Torah* law and be invalid. However a day worker, who, e.g. could have a large breakfast, could safely estimate that he could live up to the condition of not wanting to eat, and thereby not contradict the *Torah* law.

*Yisrael Bankier*

**Revision Questions**

בבא מציעא ח' א' – ז' י"א

- What type of guardian is a craftsman that was supplied with material by the customer? When does this change? (ח' א')
- What type of guardian are people the guard each others items on alternating days? (ח' א')
- Explain the debate regarding the type of guardian that one who is holding a collateral of a loan is considered. (ז' א')
- What does *Abba Sha'ul* allow to be done with a collateral belonging to a poor person? (ז' א')
- What is the law regarding a paid removalist that breaks the item while moving it? (ח' א')
- What is the law regarding a case where an employer hires a labourer for a days work but did not formalise a workplace agreement? (א' ז')
- What did *R' Yochanan ben Matya* find problematic with the agreement his son made with his workers and who argued that it was fine? (א' ז')
- Which employees may take food (by biblical right) irrespective of the local custom regarding feeding workers? (ב' ז')
- What limitation does *R' Yosi bar Yehuda* place on the law referred to in the previous question? (ג' ז')
- Regarding the previous questions, can the employee be selective with the food he takes? (ד' ז')
- What limitation did the *Chachamim* place on this right for the benefit of the employer? (ד' ז')
- Explain the debate regarding whether the employee can consume food of a value that is greater than his salary. (ה' ז')
- Can an employee forgo the “right of food consumption” for money? (ו' ז')
- How is this right affected in a field of *neta revai*? (ו' ז')
- What is different about a guards “right of food consumption”? (ז' ח')
- What are the four type of guardians and explain the differences between them? (ז' ח')
- What are the two opinions about what constitutes *ones* for an attack by wolves? An attack by dogs? (ט' ז')
- If an animal in the hands of a *shomer* dies, when is it considered *ones*? (י' ז')
- If an animal, in the hands of a *shomer*, falls off a cliff when is it not considered *ones*? (י' ז')
- Can a *shomer* stipulate with the owner to change the level of responsibility? (י' ז')
- What are the three cases of an invalid condition, and what is the law if one makes these conditions? (יא' ז')

**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

**ONLINE SHIURIM**

*Yisrael Bankier*  
mishnahyomit.com/shiurim

*Rabbi Chaim Brown*  
www.shemayisrael.com/mishna/

*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
27 January כ"א שבט	28 January כ"ב שבט	29 January כ"ג שבט	30 January כ"ד שבט	31 January כ"ה שבט	1 February כ"ו שבט	2 February כ"ז שבט
Bava Metzia 8:1-2	Bava Metzia 8:3-4	Bava Metzia 8:5-6	Bava Metzia 8:7-8	Bava Metzia 8:9-9:1	Bava Metzia 9:2-3	Bava Metzia 9:4-5

