



## Common Practice

The ninth *perek* discusses field work arrangements and the responsibilities of each party. The arrangement can be one of *arisut*, where the other party gives the owner a percentage of the yield, or *chakirut*, where the worker give the owner a fixed amount of that yield.

The first *Mishnah* teaches that in either of these arrangements, if the practice is to harvest the crop by cutting the stalks or by uprooting the produce, then that practice must be preserved. Similarly, if the practice is to plough through the field after the harvest, then that also must be done. The *Gemara* explains that this is even if the worker careful weeded so that ploughing would not be necessary, which was not normally done, nonetheless he would be required to plough the field. The *Mishnah* explains that “everything goes according to the region’s practice”.

The *Gemara* (103a) explains the either party can object to any change because he can argue that the standard practice benefits him. Where the practice is to cut the stalks, the owner can argue he prefers it, since what remains can fertilise the soil. Similarly, the worker can argue that he wants to keep to the current practice because it requires less effort on his part. If the practice is to uproot the produce, the owner can demand that that be done since he can argue he wants his field cleaned. Similarly, the worker can demand that the common practice be preserved since he wants the straw to feed to his animals.

The *Tosfot Yom Tov* cites the *Nemukei Yosef*, who questions the need from the *Gemara* to provide the justification for each party to demand that the common practice be maintained. The *Gemara* regularly reasons that business agreements go according to the common practice without any further explanation. Why then does the *Gemara* spend time explaining the justification for each position?

The *Tosfot Yom Tov* answers that a local practice that lacks any rationale would not be binding. Instead, he compares

those practices to *minhagei Sedom*. He suggests that the *Gemara* here spent time explaining the reason as opposed to elsewhere, because it was not as obvious as other cases in the *Gemara*.

The *Tosfot Yom Tov* brings a proof from the later *Mishnah* (9:6). There the *Chachamim* maintain that if the person took the field agreeing to plant barley, then he cannot plant wheat. The *Bartenura* explains that that is because wheat draws more from the soil. If, however they agreed to plant wheat, he could plant barley. *R' Shimon ben Gamliel* however disagrees. The *Gemara* explains that the reason why he disagrees is not because it appears dishonest (*she'erit Yisrael lo yeasu avala...*) but rather because it is bad for the soil to switch between the products that are planted in it. The fact that the *Gemara* probed to find a rational explanation rather than just relying on *minhag*, means that one a logical reason necessary.

The *Chidushei Mahariach* however provides a different explanation. After learning the *Gemara*, we understand that each position, harvesting or uprooting, are on equal footing. Without the *Gemara* we might have thought that, for example, uprooting is more difficult and explained that *Mishnah* as follows. If the practice is to uproot, he *must* uproot. However, if the practice is to harvest, then he *can* harvest. If he however wants to uproot the product, then all the better. Consequently, the *Gemara* was necessary to teach that neither practice is objectively preferable to the other.

This explanation fits with the *Raavad* (*Shitah Mekubetz* 103a). The *Raavad* notes that the *Mishnah* adds that each party can prevent the another from changing the practice. The addition of these words explains why the practice cannot be changed, since there is a reason why each party might want to prevent a change in practice. Importantly, he adds that therefore one cannot change even if the other party has not (yet) objected. One is simply not allowed to do so and say he is sure the other party would not mind.

## Revision Questions

בבא מציעא ח' ט' – ט' י"ג

- What responsibility is placed on the landlord if the house collapses during the rental period? (ח' ט')
- What does it mean if someone is “mekabel” a field from another person? (ט' א')
- What dictates the terms of such an arrangement? (ט' א')
- If the nature of a field changes, when can a *choker* renegotiate the terms? (ט' ב')
- What is the law if an *aris* sits back and does not engage in any field work? (ט' ג')
- Can a *choker* refuse to weed the field? (ט' ד')
- What is the debate regarding an *aris*, where the field is producing a poor yield? (ט' ה')
- When can a *choker* reduce the produce that he must pay the field owner if the field was devastated by locust? (ט' ו')
- Regarding the previous question, according to *R' Yehuda*, who cannot renegotiate the terms despite the devastation? (ט' ו')
- What is the law regarding a *choker* who produced prime quality produce? (ט' ז')
- If a person rents a field, can he deviate from the agreed use? (ט' ח')
- What is one not allowed plant in a field if it was rented for a “small number of years”? (ט' ט')
- Regarding the previous question, what is a “small number of years”? (ט' ט')
- If someone rents a field for seven years, when is the *shmittah* years included and when is it not included? (ט' י')
- When should a contract worker be paid if he was employed for a: (ט' י"א)
  - Day?
  - Night?
  - Year?
- What are the two *p'sukim* that are the basis for the requirement to pay wages on time? (ט' י"ב)
- Other than wages, to what two other payments do these *p'sukim* apply? (ט' י"ב)
- What are the two circumstances when one does not transgress the prohibition despite delaying the payment? (ט' י"ב)
- When can a worker make a *shevuah* and collect his wages? (ט' י"ב)
- To whom does only one of the *p'sukim* apply? (ט' י"ב)
- How must a lender go about retrieving a collateral? (ט' י"ג)
- What would he have transgressed if he forced his way into the borrower's house to retrieve it? (ט' י"ג)
- From who is one not allowed to take a collateral? (ט' י"ג)
- What objects are not allowed to be taken as a collateral? (ט' י"ג)

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## Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
3 November ב' חשוון	4 November ג' חשוון	5 November ד' חשוון	6 November ה' חשוון	7 November ו' חשוון	8 November ז' חשוון	9 November ח' חשוון
Bava Metzia 10:1-2	Bava Metzia 10:3-4	Bava Metzia 10:5-6	Bava Batra 1:1-2	Bava Batra 1:3-4	Bava Batra 1:5-6	Bava Batra 2:1-2

