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Gittin Daf 48

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Daf Notes is currently being dedicated to the neshamot of

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May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

Time Period when the Laws of Yovel were not in Force

[The Gemora had explained the dispute between Rabbi Yochanan and Rish Lakish regarding a man who sells his field only with respect to its produce as follows: Rabbi Yochanan says that the purchaser brings the bikkurim and recites the verses because he is of the opinion that the possession of the produce is equivalent to possession of the thing (and therefore he is obligated to bring the bikkurim and recite the verses), while Rish Lakish, who says that he brings them but does not recite the verses, is of the opinion that the possession of the produce is not equivalent to the possession of the thing.]

The Gemora cites a Mishna in support of Rabbi Yochanan: If a man buys two trees that are in another man’s field (where we are uncertain whether he acquires the land beneath it or not), he brings the bikkurim (for perhaps the land is his), but he does not recite the verses (for he has not acquired the land, and he cannot recite the verse: “from the land which you gave to me”). This implies that if he buys three trees, he does recite the verses (even though the land which he has acquired along with the trees will be returned by Yovel)!

The Gemora rejects the proof, for we can say that the Mishna is discussing a period of time where the laws of Yovel were not in force.

And now that Rav Chisda has stated that the dispute between Rabbi Yochanan and Rish Lakish refers only to the second Yovel (the period after the first Yovel), but in

the period of the first Yovel (before the first Yovel was ever observed), both would agree that the purchaser brought the bikkurim and recited the verses, since the sellers could not rely on the fields being returned (they did not have confidence that the fields would be returned to them, and therefore their intention was to sell even the essence of the land), there is no difficulty. We can say that the Mishna is dealing with the period before the first Yovel and Rish Lakish is discussing the period of the second Yovel. (48a)

Ancestral Field

The Gemora discusses if the dispute between Rabbi Yochanan and Rish Lakish is the same as the disagreement between the Tannaim. For we learned in a braisa: How do we know that if a man buys a field from his father and then sanctifies it and his father subsequently dies, it is reckoned as “an ancestral field”? [A “sedeh achuzah,” an ancestral field is one that has been in his family since the original division of Eretz Yisroel in the times of Yehoshua. If he consecrates such a field, he has the right to redeem it before Yovel. If he chooses not to, it may be sold to anyone, and the field is returned to hekdesch by the next Yovel. They, in turn, give the field to the Kohanim, and it then becomes their “sedeh achuzah.”] It is because it is written: And if he sanctifies to Hashem a field which he has acquired, which is not of the field of his ancestral heritage. This is referring to a field which is not capable of becoming an ancestral field (such a field has the laws of an acquired field), and we therefore exclude a field such as this one, which is capable of becoming an

ancestral field; these are the words of Rabbi Yehudah and Rabbi Shimon. Rabbi Meir says: How do we know that if a man buys a field from his father and his father dies, and then he sanctifies it, it is reckoned as “an ancestral field”? It is because it is written: *And if he sanctifies to Hashem a field which he has acquired, which is not of the field of his ancestral heritage.* This is referring to a field which is not his ancestral field at the time of consecration, and we therefore exclude a field such as this one, which is his ancestral field at the time of consecration. [However, a field which he sanctifies before his father dies is treated as an acquired field, not like Rabbi Yehudah and Rabbi Shimon.]

Now Rabbi Yehudah and Rabbi Shimon did not require any Scriptural text to teach us that in a case where his father died and then he sanctified the field, it is reckoned as “an ancestral field.” Is the following, then, the point at issue between them? Rabbi Meir holds that the possession of the produce is equivalent to possession of the thing, and therefore, in this case, the son is not really inheriting anything upon the death of his father (*for he owned its essence after he purchased it*), and therefore if his father died and then he sanctified it, a Scriptural text is necessary to teach us that it nevertheless is regarded as “an ancestral heritage.” Rabbi Yehudah and Rabbi Shimon, however, hold that the possession of the produce is not equivalent to possession of the thing, and therefore, in this case, the son is inheriting the field upon the death of his father, and therefore if his father died and then he sanctified it, no Scriptural text is necessary to teach us that it is regarded as “an ancestral heritage.” The text is only required to teach us regarding the case when he sanctified it before his father died, and it teaches us that even there, it is reckoned as “an ancestral heritage.”

Rav Nachman bar Yitzchak said: In general, Rabbi Yehudah and Rabbi Shimon hold that the possession of the produce is equivalent to possession of the thing, but in this case Rabbi Yehudah and Rabbi Shimon found another text to

expound from (*and therefore derived both cases from these verses*). If the Torah would have only wanted to exclude the case where the son sanctifies the field after the father died, it could have merely said, *And if he sanctifies to Hashem a field which he has acquired, which is not his ancestral heritage.* Why did the Torah have to write the seemingly superfluous words, “of the field” of his ancestral heritage? He therefore excludes from there even a field which is capable of becoming an ancestral field (*if he sanctifies the field and then his father dies*). (48a)

Rabbi Yochanan is Consistent

Rav Yosef said: If Rabbi Yochanan would not have said that the possession of the produce is equivalent to possession of the thing, he would not have found a place in the Beis Medrash for his hands and feet (*he would not have been able to answer the following question*). For Rav Assi said in the name of Rabbi Yochanan: If brothers divide an inheritance, they are regarded as purchasers (*for they are exchanging their true portions for those that they actually receive*), and they therefore are required to restore their shares to each other at Yovel. Now, based upon this *halachah*, should you assume that the possession of the produce is not equivalent to possession of the thing, then you would not find anyone qualified to bring *bikkurim* (*for they all own only the produce of the field; not the essence of it*) except for an only son who had inherited from an only son up to the days of Yehoshua son of Nun. (48a)

Mishna

Rava said: A Scriptural verse and a *braisa* support Rish Lakish’s opinion. It is written: According to the amount of crop-years shall he sell it to you. [*This verse seems to indicate that he is only selling the crops for the years remaining until Yovel. He is not, however, selling him the land itself. This proves that the possession of the produce*

is not equivalent to possession of the thing.] The Gemora cites the braisa: A firstborn takes a double portion in a field that was returned to his father's estate by Yovel. [The father sold a field, and then died. The field was returned to his estate by Yovel, and now the heirs are dividing it. The halachah is that a firstborn only takes a double portion on property that was in the father's possession at the time of his death. The firstborn is not entitled to a double portion from properties that are owed to him, but were not collected until after his death. If he is receiving a double portion from the land which was returned to the father's estate, it proves that this land was in the father's possession the entire time. This supports Rish Lakish's viewpoint that the buyer of the produce was not regarded as the owner of the field.]

Abaye said: It has been established that a husband with respect to his wife's *melog* property requires authorization from her (*in order to litigate matters associated with it; he is not considered the owner of the field because he may enjoy its produce*). This, however, is the case only if the litigation does not concern the produce. But if the suit concerns the produce, since he is putting forward claims to the produce, he can put forward claims to the land itself as well. (48a – 48b)

WE SHALL RETURN TO YOU, HASHOLEIACH

Mishna

This *perek* continues to discuss *halachos* that were enacted for the benefit of the public. The first *Mishna* discusses the following three types of personal payments: (1) for injured parties; (2) payments of debts; (3) payment of the *kesuvah* made by a husband to his wife when he divorces her. All these payments can be collected from land. The *Mishna* teaches us from which type of land a person is obligated to make payment - superior, average or inferior quality.

For those who are damaged, we assess for them from the superior quality land (*from the liable party*), for a creditor from average quality land (*from the debtor*) and for a woman's *kesuvah* from the inferior quality land (*from the husband*). Rabbi Meir says that a woman's *kesuvah* is also from the average quality land.

A creditor may not collect from mortgaged property (*that has been sold*) when there is still available free property (*by the debtor*), even if the free property is of an inferior quality.

When we are collecting from an orphan's inherited property, we may only seize land of an inferior quality.

Compensation for produce consumed and for the improvement of the land (*when someone bought stolen land that is now being returned to its original owner*), and for the food of a wife and daughters (*after the husband/father dies*), is not taken from mortgaged property, for the benefit of the public.

And one who finds a lost object does not take an oath (*where the owner is claiming that the finder is not returning everything*), for the benefit of the public. (48b)

Compensating the Injured Party with Land

The *Gemora* asks: Is this *halachah* (*that we collect from the damager's superior quality land*) only an ordinance to benefit the public? It is a Biblical law, as it is written: *The best of his field and the best of his vineyard he shall pay!*

Abaye replied: This statement is necessary only according to the view of Rabbi Yishmael who said that Biblically, the assessment is made according to the damaged party's properties (*and therefore he could pay with his inferior*



land, providing that it is equivalent to the damaged party's inferior land). The *Mishna* teaches us that to benefit the public; we make the assessment on the damager's property.

The *Gemora* asks: What statement of Rabbi Yishmael are we referring to?

The *Gemora* cites the *braisa*: *The best of his field and the best of his vineyard he shall pay*. That means that the superior quality of the field of the damaged party and the superior quality of the vineyard of the damaged party; these are the words of Rabbi Yishmael. Rabbi Akiva said: The Torah's purpose is only to allow compensation for damage to be recovered from the damager's superior quality land. And all the more so (*this is true*) in the case of the Temple treasury.

The *Gemora* questions Rabbi Yishmael's viewpoint: Now according to Rabbi Yishmael, does it make sense that if a man's animal ate the vegetables from a rich bed, he repays the value of a rich bed, and if it ate from a poor bed he repays the value of a rich one? Why would that be?

Rav Idi bar Avin answers: We are discussing a case where it ate one bed of vegetables among others and we do not know whether it ate a rich one or a poor one. In this case, Rabbi Yishmael rules that he repays the value of the best.

Rava asked him: Seeing that in a case where we would know that it ate a poor one, he repays only the value of a poor one; here, where we do not know, is he required to pay the value of a rich one? Does not the burden of proof always fall on the claimant?

Rather, Rav Acha bar Yaakov suggests the following: The case is where the best of the claimant's property is equivalent in quality to the worst of the defendant. Rabbi Yishmael holds that we assess according to the land of the

damaged party, whereas Rabbi Akiva maintains that we assess according to the land of the damager. (48b – 49a)

QUESTIONS AND ANSWERS FROM YESTERDAY'S DAF to refresh your memory

Q: In what circumstances do we not redeem a fellow when he sells himself and his children to idolaters?

A: If he is accustomed to doing that (*two or three times*).

Q: Is the property owned by an idolater in *Eretz Yisroel* exempt from *ma'aser*?

A: *Machlokes* between Rabbi Yochanan and Rish Lakish.

Q: If one sells his field just for the produce, does the buyer recite the verses when he brings the *bikkurim*?

A: *Machlokes* between Rabbi Yochanan and Rish Lakish.