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Gittin Daf 49

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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

Explaining the dispute

[*Rav Acha bar Yaakov had suggested that the following is where Rabbi Yishmael and Rabbi Akiva disagree: 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.*]

The *Gemora* provides the sources for the dispute. Rabbi Yishmael derives through a *gezeirah shavah*¹ (that the word *sadeh* - field is referring to a field belonging to the damaged party): The word ‘field’ occurs in the verse below (dealing with the payment of damages) and the word ‘field’ occurs in the verse above (which discusses the damage itself); just as in the verse above it refers to the field of the damaged party, so in the verse below it refers to the field of the damaged party. Rabbi Akiva, however, understands the verse *He shall pay his choicest field* in its simple meaning (referring to) the choicest field of the one who is paying (i.e., the damager).

The *Gemora* notes that Rabbi Yishmael explains that the *gezeirah shavah* is effective and the verse is effective. The *gezeirah shavah* is effective in the manner we said above. The verse is effective for the following case: If the damager has land of superior quality and of inferior quality, and his inferior land is not equal to the superior

land of the damaged party, he must pay him from his superior quality land. (49a1)

What is the Case of Hekdesh?

The *Gemora* had cited above: Rabbi Akiva said: The Torah’s was coming 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 (*hekdesh*).

The *Gemora* asks: What is Rabbi Akiva referring to when he says that there is a *kal vachomer* (it is certainly so) to *hekdesh*? If we would say that he is dealing with a case where our ox has gored the ox belonging to *hekdesh*, this cannot be, because the Torah says: *If one man’s ox gores the ox of one’s fellow*, but one will not be liable for his ox damaging an ox of *hekdesh*! Shall we say then that he was referring to the following: If a man says, “I accept upon myself to give a *maneh* for the repair of the Temple,” the treasurer may come and collect it from his superior land! Surely, this cannot be correct, for he (*the treasurer*) is in no better position than a creditor, and a creditor has a right to collect only from the average property! And if you will say that Rabbi Akiva holds that a creditor can collect from the superior land just like those collecting for damages, we may object to this comparison: How can you draw an analogy from an ordinary creditor,

¹ *one of the thirteen principles of Biblical hermeneutics; it links two similar words from dissimilar verses in the Torah*

whose strength is enhanced in that he can claim compensation for damages, to *hekdesh*, whose strength is weakened with respect that that they never have a right to claim compensation for damages!?

The *Gemora* answers: In truth, he is dealing with a case where our ox (one that is unconsecrated) has gored an ox belonging to *hekdesh*, and Rabbi Akiva holds like Rabbi Shimon ben Menasya. For we learned in a *braisa*: Rabbi Shimon ben Menasya says: If an ox of *hekdesh* gores an ox of a common man, there is no liability, but if the ox belonging to a common man gores an ox of *hekdesh*, whether it was *tam* (an ox that did not yet gore three times) or *mu'ad* (an ox that gored already at least three times), the owner is required to pay the full compensation (even though the halachah of a *tam* is usually that the owner pays for only half the damages).

The *Gemora* asks: If so, why should you say that Rabbi Akiva and Rabbi Yishmael are differing as to what is to be done where the best of the claimant's property is equivalent in quality to the worst of the defendant? Perhaps in that case they both would agree that we assess according to the claimant's property, and their dispute here is the same as that of Rabbi Shimon ben Menasya and the *Chachamim* – that Rabbi Akiva holds like Rabbi Shimon ben Menasya and Rabbi Yishmael holds like *Chachamim*?

The *Gemora* responds: Firstly, if that were the case, why should Rabbi Akiva have said: "The Torah's purpose is only etc."? [It would seem like he is arguing on Rabbi Yishmael's previous ruling regarding a damage to an ordinary person!?] And furthermore, what did he mean when he said: "And all the more so (this is true) in the case of the Temple treasury (*hekdesh*)"? [Why should we certainly be strict with respect of *hekdesh*, if regarding an ordinary person, he is lenient – that the damager pays according to the field of the damaged party, and not by his superior land?] And furthermore, Rav Ashi has taught

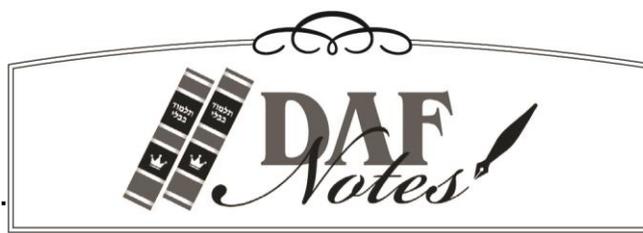
us a *braisa* which explicitly records their dispute? For we learned in a *braisa*: *The best of his field and the best of his vineyard he shall pay*. That means that the superior quality of the field of the damaged party and the superior quality of the vineyard of the damaged party; these are the words of Rabbi Yishmael. Rabbi Akiva said: That means that the superior quality of the field of the damager and the superior quality of the vineyard of the damager. [Evidently, they argue with respect of compensating *hekdesh* and also whether a damager is required to pay with his superior quality land or not.] (49a1 – 49b1)

Reasons for the Halachos

Ravina suggests that our *Mishna* is following Rabbi Akiva's opinion that Biblically, we assess according to the land of the damager, and it also follows Rabbi Shimon, whose custom it was to expound the reasoning of the verse. And the *Mishna* (when it said that this was enacted for the benefit of the public) was explaining the reason for the Biblical *halachah*. This is the explanation of the *Mishna*: Why is compensation for damage assessed on the superior quality land? It is to benefit the public.

The *Gemora* cites a supporting *braisa* for this interpretation: Rabbi Shimon said: Why did the Torah rule that compensation for damages should be paid out of superior quality land? It is on account of thieves and extortionists, so that a man should say to himself, "Why should I steal or extort, seeing that tomorrow *Beis Din* will go down to my property and take my best quality field, basing themselves on that which is written in the Torah: *The best of his field and the best of his vineyard he shall pay*?" For that reason, the Torah ruled that compensation for damages should be assessed on the best quality land.

The *braisa* continues: Why did they say that a creditor can recover only from average quality land? It is in order that a man, on seeing his fellow possessed of a fine field or a



fine house, should not be tempted to say, "I will convince him to borrow money from me so that I can collect those fields on account of my debt." For this reason they ruled that a creditor can recover only from average quality land. But if that is so, he should be allowed to recover only from most inferior quality land? Rabbi Shimon answered: This would be closing the door in the face of the borrowers (*for people would not lend money*).

The *braisa* continues: A woman's *kesuvah* is collected from the inferior land; these are the words of Rabbi Yehudah. Rabbi Meir said: It is recovered from the average quality land. Rabbi Shimon said: Why is a woman's *kesuvah* collected from the inferior land? It is because more than the man's desire to marry is the woman's desire to be married (*and the women will not refuse to be married because of this halachah*).

Another thing: The man who divorces is not like the woman who is divorced, for the woman goes out with her consent or without her consent, but the man sends away only with his consent.

The *Gemora* asks: What is "another thing"?

The *Gemora* explains: And if you will say that just as when the husband divorces the wife, the Rabbis provided that she should obtain a *kesuvah* from him, so too, when she leaves him (*she incites him to divorce her*), they should provide for him a *kesuvah* from her? Come and hear the reason why this is not so: The man who divorces is not like the woman who is divorced, for the woman goes out with her consent or without her consent, but the man sends away only with his consent. He always has the option to keep her waiting for a *get* (*so when he does divorce her, it is with his consent, and he must therefore give her the kesuvah*). (49b1 – 49b2)

The Woman's Kesuvah

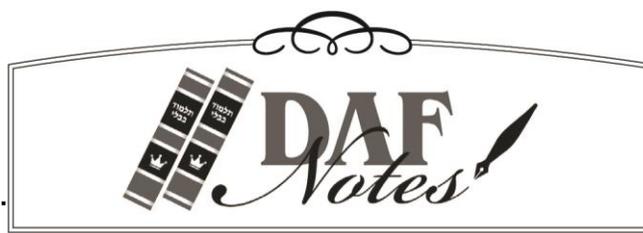
The *Mishna* had stated: A woman's *kesuvah* is collected from the inferior land.

Mar Zutra the son of Rav Nachman said: This is the rule only where the *kesuvah* is recovered from the orphans, but in a case where she is collecting from the husband himself, it can be collected out of average land.

The *Gemora* asks: If the *Mishna* is referring to orphans, why does it specify a woman's *kesuvah*? The same would apply to all payments from orphans, as we have learned in our *Mishna*: When we are collecting from an orphan's inherited property, we may seize land only of an inferior quality!?! The *Mishna* must therefore be referring to the husband himself!?

The *Gemora* answers: In truth, the *Mishna* may be referring only to orphans, and there was a reason for specifying the woman's *kesuvah*, for I might have thought that the Rabbis were more lenient with her on account of favor (*in order that she might look more favorably on prospective suitors*). We are therefore taught that this is not so.

Rava said: Let us bring a proof from our *Mishna*: Rabbi Meir says that a woman's *kesuvah* is collected from the average quality land. From whom? If you will say (that it is collected) from the orphans, does Rabbi Meir then not accept that which we have learned in our *Mishna*: When we are collecting from an orphan's inherited property, we may seize land only of an inferior quality? Rather, we must say that he means: from the husband himself; from which we can infer that in the opinion of the Rabbis, (payment for a divorcee can be claimed even from the husband) only of an inferior quality (which would contradict Mar Zutra)!?



The Gemora disagrees: No; Rabbi Meir indeed also referred to orphans, and (in his opinion) a woman's kesuvah is different (that it should be collected even from their average land), for this would make her favorably disposed to suitors.

Abaye said: Come and hear from our Mishna: 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*). From whom? If you will say (that it is collected) from the orphans, why did he teach only the woman's kesuvah (is collect from the inferior land), even all the claims of others as well (would have the same law)?

Rav Acha bar Yaakov said: We are dealing here with a case where a man became a guarantor for compensation for damage due from his son, for his son's debt, and for his daughter-in-law's kesuvah. [His son later died without paying these obligations.] Each case then follows its own rule. The Gemora explains: Compensation for damages and debts which are usually paid in the lifetime (of the son) are paid in this case also (by the father) as though in the lifetime (of the son). The woman's kesuvah which is usually paid (to the daughter-in-law) after the death (of the son), and (collected) by whom? From the orphans. So he (the father) as well, when he pays, he pays as after the death (of the son – and that is with inferior land).

The Gemora asks: But cannot this explanation (of the Mishna – that it is not the correct one) be derived from the fact that a guarantor for a kesuvah is not responsible (for its payment, if the husband defaults)?

The Gemora answers: We speak of a kablán (who accepts responsibility to pay).

The Gemora asks: This solves the problem according to the one who holds that a kablán is responsible even

though the borrower has no property, but what answer is to be given according to the one who holds that if the borrower has property he is responsible, but if the borrower has no property he is not responsible?

The Gemora answers: If you want I can say that in this case we suppose the son to have had property which was subsequently destroyed, or if you want I can say that in respect of his son, a man (the father) would in all cases regard himself as responsible. (49b2 – 49b5)

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

Q: If one buys a field in the time period that the laws of *Yovel* are in force, does he recite the verses when he brings the *bikkurim*?

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

Q: What type of land do we assess when paying for damages? What is the *halachah* regarding debts?

A: Damages – superior quality; debts – average quality.

Q: What type of land do we assess when paying for a kesuvah?

A: *Tanna Kamma* – inferior quality; Rabbi Meir – average quality.