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Bava Kamma Daf 7

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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

Kal Vachomer to Hekdesh

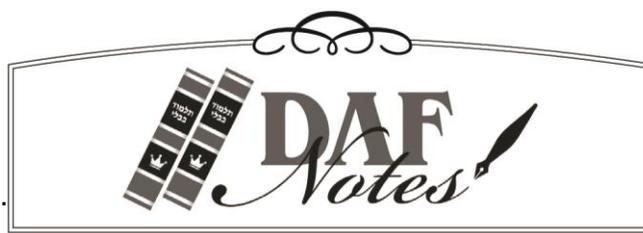
The *Gemora* had cited above: Rabbi Akiva said: The Torah’s purpose is only to allow compensation for damage to be recovered from the damager’s superior quality land. And all the more so (*this is true*) in the case of the Temple treasury (*hekdes*).

The *Gemora* asks: What case of *hekdes* is Rabbi Akiva referring to? If we would say that he is dealing with a case where our ox has gored the ox belonging to *hekdes*, 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 *hekdes*! 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, whose strength is enhanced in that he can claim compensation for damages, to *hekdes*, whose strength is weakened with respect that that they never have a right to claim compensation for damages!?

The *Gemora* returns to its original answer: Really, Rabbi Akiva is referring to a case where an ordinary ox gored an ox belonging to *hekdes* (*and he is teaching us that the payment must be with the best land*), but we asked: How can this be? The Torah said: *the ox of his fellow*! This teaches us that one is not liable to pay when his animal damages property belonging to *hekdes*!? We will answer that Rabbi Akiva is in accordance with Rabbi Shimon the son of Menasya, for we learned in a *braisa*: Rabbi Shimon ben Menasya says: If an ox of *hekdes* gores an ox of a common man, there is no liability, but if the ox belonging to a common man gores an ox of *hekdes*, 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 only pays for 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*?

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.] (6b – 7a)

Damager's Method of Paying

Abaye asked to Rava: It is written: *The best of his field and vineyard he should pay*. It would seem that that the only option available for the damager to pay with is with his superior land. However, we learned in a *braisa*: It is written: *He shall return the money*. This teaches us that the damager can pay with objects that are worth money - even something like bran.?

The *Gemora* answers: This is not a difficulty, for we can say that he can pay with anything when he is paying voluntarily (*and he is not bothering him to come to Beis Din*). And he must pay with his best land when he is paying against his will.

The *Gemora* refutes this answer by illustrating that the verse which teaches us that he should pay with his best land is discussing a case where he is paying voluntarily.

Rather, Abaye answers that we can resolve this contradiction by using that which Rabbah said elsewhere. We learned in a *braisa*: [One is considered a poor person if he has less than two hundred zuz. He is then permitted to take *ma'aser ani*, *leket*, *shich'chah* and *pe'ah*. He is even permitted to take one thousand zuz at one time. If, however, he has more than two hundred zuz, he cannot take the gifts of the poor; it would be regarded as stealing.] If one owned houses, fields and vineyards (*which are normally worth two hundred zuz*), and he cannot find a purchaser, we give him *ma'aser ani* up to half the value of his fields. Now the Master discussed the circumstances regarding this law: If property in general, and his included, declined in value, why can we not give him even the value of more than the half of his field's value, since the depreciation occurred in general (*and he should be considered a genuine poor person*)? If, on the other hand, property in general increased in value, but his, on account of his going about looking here and there for money, declined in price, why give him anything at all (*since his property, in truth, is worth two hundred zuz*)? And the Master (*Rabbah*) answered: The law is applicable to a case where in the month of Nissan, fields have a higher value (*for he can plow the field in the spring, and it will be ready for planting in Tishrei*), whereas in the month of Tishrei, it has a lower value. People, in general, wait until Nissan and then sell, whereas this particular person, being in great need of money, finds himself compelled to sell in Tishrei at the present lower price. [He cannot be considered a poor man, for his property is worth two hundred for anyone that can wait to sell; however, on the other hand, he cannot be regarded as a rich man, for it currently is not worth two hundred,

and he desperately needs money.] He is therefore given half, because it is usual for property to drop in value up to a half, but it is not usual to drop more than that.

Now a similar case may also be made out with reference to payment for damage (*where the damage occurred in Tishrei*) which is collected from the best. If the damaged party, however, says, "Give me average quality, but a slightly larger amount," the damager is entitled to reply: "It is only when you take the best quality which is due to you by law that you may calculate on the present price (*which is cheaper*); but otherwise (*if you want average quality*), you will have to take according to the higher price of the future."

Rav Acha bar Yaakov questioned this: If so, you have weakened the right of the damaged parties for damages in respect of average and inferior quality. For the Torah states that he can collect from the best, how can you maintain that average and inferior qualities are excluded (*unless he takes according to the higher price*)?

Rav Acha bar Yaakov therefore said: If any analogy could be drawn, it can be made to a case of a lender (*when he is collecting during Tishrei*). A creditor is paid by law out of average quality. If, however, he says to the debtor, "Give me inferior quality, but a slightly larger amount," the debtor is entitled to say, "It is only when you take that quality (*the average land*) which is due to you by law that you may calculate on the present price (*which is cheaper*); but otherwise (*if you want inferior quality*), you will have to take according to the higher price of the future."

Rav Acha the son of Rav Ikka questioned this: If so, you will have locked the door in the face of prospective borrowers. The lender will rightly contend to the

borrower, "Were my money with me (*i.e. I never lent you the money*), I would be able to buy property according to the current low price. But now that my money is with you, must I take according to the future higher price?"

Rav Acha the son of Rav Ikka therefore said: If any analogy could be drawn, it can be made to a case of a woman's *Kesuvah*, which, according to the law, is collected from inferior quality. But if the woman says to the husband, "Give me average quality, but a slightly smaller amount," he may reply: "It is only when you take the quality due to you by law that you may calculate in accordance with the present low price; but otherwise, you must take it in accordance with the future higher price.

The *Gemora* asks: But, in any case, we have not resolved the contradiction.

Rava answers: Whatever the damager pays with, it must be from the best that he has.

The *Gemora* asks: But the Torah wrote: *the best of his field?* [According to you, it should not have said anything about fields?]

Rather, when Rav Pappa and Rav Huna the son of Rav Yehoshua had arrived from the Beis Medrash, they explained it as follows: All kinds of things are considered "best," for if they were not to be sold here, they could be sold someplace else. The exception is land which cannot be moved from where it is. Therefore, the payment has to be made from the best land, so that an intended buyer will jump at it. (7a – 7b)



INSIGHTS TO THE DAF

Quick Hitters

Abaye asked to Rava: It is written: *The best of his field and vineyard he should pay*. It would seem that that the only option available for the damager to pay with is with his superior land. However, we learned in a *braisa*: It is written: *He shall return the money*. This teaches us that the damager can pay with objects that are worth money - even something like bran.?

1. Why didn't the *Gemora* ask from the verse: *money shall be returned to the owner*?

The advantage of superior quality land is that an intended buyer will jump at it; this way, he will get money. Accordingly, we would not ask from "money," for that is obvious that one can pay with. (Netziv)

2. Perhaps the contradiction can be resolved in the following manner: By *shein* and *regel*, he must pay with the best, but by *bor*, he is not required to.

All types of damages were derived through a *gezeirah shavah*, and we cannot distinguish between them. (Pnei Yehoshua)

DAILY MASHAL

Damages and Gains

A couple in a town in Galicia had an only son who was a mute. He had been taken to countless doctors – no expense had been spared, but although normal and

bright in all other ways, he could not speak. One day, a fire broke out next door and began to spread quickly. The father was in a back room and did not notice but the young boy saw the danger and became agitated. Suddenly he yelled out: "Tatty! A fire is burning!" The father rushed in and managed to extinguish the fire but the big news was that his son had spoken. Later, when the father took the neighbor to a Din Torah for damages caused by the negligent fire, the neighbor argued that the father would have willingly paid much more than those damages to cure his son, which his fire had accomplished. The Rav agreed, citing the Gemara (Berachos 9b) which says that if one juxtaposes geulah (the redemption blessing) to tefillah (the Shemoneh Esrei) he won't be damaged all day. R' Zaira claimed that he had done so and yet, he had suffered a loss. What was his loss? He was forced to bring a gift to the king. R' Zaira was told that this did not constitute a loss. Since he had merited seeing a king, which itself was worth money, he could not claim it as a loss.