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Bava Kamma Daf 8

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According to whose Land?

Rav Shmuel bar Abba from Akronia inquired of Rabbi Abba: When we calculate the land (*to see which is the best*), is it based on his own (*the damager’s*) property or upon that of the general public?

The *Gemora* notes: This is not an issue at all according to Rabbi Yishmael’s view that the calculation is based upon the quality of the damaged party’s property. It can apply only to Rabbi Akiva’s opinion which takes the damager’s property into account. What is the *halachah*? Does the Torah, in saying, “*the best of his field*” intend only to exclude the quality of the damaged party’s property from being taken into account, or does it intend to exclude even the quality of the property of the general public?

Rabbi Abba said to him: The Torah states: *the best of his field*. How then can you maintain that the calculation is based on the property of the general public?

The *Gemora* asks from a *braisa*: If he (*the one owed money; either as a damager, a borrower or for a kesuvah*) only had land of the best quality, all of them (*the damaged party, the lender and the woman*) collect from the best. If he only had average quality, they all collect from the average quality land. If he only had inferior quality, they all collect from the inferior quality land. If he had the best, average and inferior

quality, damages are collected from the best, creditors for loans collect from the average quality, and the woman’s *kesuvah* is collected from the inferior land. If he had only the best and average qualities, damages are collected from the best, while creditors for loans and the woman’s *kesuvah* will be collected from the average quality land. If he only had average and inferior qualities, damages and creditors for loans are collected from the average quality, whereas the woman’s *kesuvah* will be collected from the inferior quality land. If he had only the best and the inferior qualities, damages are collected from the best, whereas creditors for loans and the woman’s *kesuvah* are collected from the inferior quality land.

Now, the middle clause states that if he only had average and inferior qualities, damages and creditors for loans are collected from the average quality, whereas the woman’s *kesuvah* will be collected from the inferior quality land. If you maintain that the calculation is based only upon the qualities of the damager’s property, is not the average quality land (*when he has no better*) regarded as his best? Why then should not the creditors for loans be forced to collect from his inferior quality land?

The *Gemora* answers: The *braisa* is discussing a case where the damager originally possessed property of a better quality (*at the time of the loan, and therefore, the average quality land was already mortgaged to the creditor*), but then he sold it. And Rav Chisda likewise explained the *braisa* to be referring to a case where the damager originally possessed property of a better quality, but then he sold it.

The *Gemora* notes: This explanation stands to reason, for it is taught elsewhere in a *braisa*: If he only had average and inferior qualities, damages are collected from the average quality, whereas creditors for loans and the woman's *kesuvah* will be collected from the inferior quality land. Do these two *braisos* not contradict each other!? It must be that one *braisa* deals with a case where the damager originally owned property of a better quality, but then he sold it, while the other *braisa* states the law for a case where he did not have property of a quality better than the average one in his possession.

Alternatively (*the braisos both hold that we calculate the land based upon the general public*), both *braisos* can be discussing a case where the damager did not have a better quality land which he had sold, and there is still no difficulty, as the second *braisa* presents a case where the damager's average quality is as good as the best quality of the general public (*and therefore, the creditor can only collect from the inferior quality land*), whereas in the first *braisa*, his average quality was not as good as the best of the public (*but rather, it was equivalent to the public's average fields; therefore, the creditor collects from his average field*).

Alternatively, both *braisos* can be referring to a case where the damager's average quality land is as good as the average quality of the general public and the point at issue between the *braisos* is the following: The second *braisa* bases the calculation upon the qualities of the damager's property (*and since his average quality land is regarded as the best land, the creditor can collect only from his inferior quality land*), whereas the first *braisa* bases it upon those of the general public (*and since his average quality land is as good as the average quality of the general public, the creditor can collect from the damager's average quality land*).

Ravina answers: The point at issue between the *braisos* is with respect to Ulla, for Ulla said: According to Torah law, a creditor is only able to collect from the inferior land. This is derived from the following verse: *You should stand outside and the man etc.* [*This refers to someone who owes collateral that he must bring it from his house to the lender, and the lender should not go inside and seize it.*] A man would normally only bring out his worst possessions. [*This teaches us that the creditor does not have the right to collect more than the borrower's worst quality possessions.*] However, Chazal stated that the creditor may collect from average quality, in order that people should not refrain from lending (*as they do not want to collect bad quality items as payment for the loan*). The first *braisa* holds of Ulla (*and therefore he may collect from the average quality land*), whereas the second *braisa* does not agree with Ulla's enactment (*and therefore he may only collect from the inferior quality land*). (7b – 8a)

Superior, Average and Inferior Land

The *Gemora* cites a *braisa*: If a debtor (*for damages, loans and a woman's kesuvah*) sold of all his land (*superior, average and inferior quality*) to one person or to three people at the same time, they all have entered into the place of the original owner. [*Therefore, the creditor for the damages will collect from the best land; the one for loans will collect from the average; and the woman will collect her kesuvah payment from the most inferior land.*] If, however, the three sales occurred one after the other, all of the creditors will collect from the property purchased last (*regardless of its quality*). If this property is not sufficient to pay all the creditors, they collect from the buyer before him. If it is still not enough, they collect from the first buyer.

The *Gemora* discusses the *braisa*: What are the circumstances when the debtor sold of all his land to one



person? The *Gemora* proves that the land was sold to him one after the other. If so, asks the *Gemora*, why is there a halachic distinction between this case and the case where he sold the land to three different people? Just as in the case of three purchasers, each buyer can say to the creditor, “When I bought this parcel of land, I left you a place to collect your debt from” (and that is why the creditor collects from the last purchaser); so too, in the case of one purchaser, he should be entitled to push off the creditors to the very last purchased property, saying, “When I bought this parcel of land, I left you a place to collect your debt from”? [They should all be forced to collect from the property purchased last, even if it is of inferior quality; why do we rule that each creditor collects from the land originally mortgaged for his debt?]

The *Gemora* answers: The *braisa* is dealing with a case where the property purchased last was of the best quality (in which case, it is not beneficial for the purchaser that all of the creditors should collect from this parcel of land).

The *Gemora* asks: If so, shouldn't all the creditors be entitled to collect from the best quality land (as this was the property purchased last)?

The *Gemora* answers: It is because the debtor may say to the creditors, “If you remain quiet and agree to take your due (out of the land which you have received from the debtor), you may take accordingly; otherwise, I will return the deed of the most inferior land back to the original owner — in which case you will all be forced to take from the worst land.”

The *Gemora* asks: If so, why should the same not be said regarding the creditors for damages? [They also should be forced to collect from the average land, for the debtor can

tell them, “Take this or I will force you to take from the worst land.”]

Rather, it must therefore be that we are dealing with a case where the debtor has meanwhile died, and, as his heirs are not personally liable to pay (except from inherited land), the original liability rests upon the purchaser. Therefore, he can no longer threaten the creditors. [The question returns: Why can't they all collect from the best land since it was the last land purchased?]

Rather, the reason the creditors cannot be paid out of the best is purchaser can say to them, “What was the reason that the Rabbis enacted that property sold by a debtor cannot be collected by his creditors so long as there are available unencumbered properties still in his possession? It is for the sake of protecting my interests? In this particular instance, I have no interest to avail myself of this enactment.”

The *Gemora* proves that one has the ability to refuse a Rabbinic enactment, for Rava elsewhere said: If a person says, “I do not want to avail myself of a Rabbinic enactment (which was made for his benefit), such as this one, we listen to him.

The *Gemora* asks: What did Rava mean when he said, “such as this one”? He is referring to that which Rav Huna said in the name of Rav. For Rav Huna said in the name of Rav: A woman is permitted to say to her husband, “I do not want to be supported by you, and I will not give you my earnings.” (She works and keeps the earnings to herself.) (8a – 8b)

Rulings



The *halachah* in the following case is obvious: If the buyer (*who at successive sales purchased all the land of a debtor, and the last purchase was his most superior property*) sold the average and inferior qualities to another buyer, and retained the superior land for himself, all of the creditors may come and collect from the superior quality land, for this property was the last one acquired; and since the average and inferior quality land are no more in his possession, he is not able to say to the creditors, "Collect from the average and inferior properties, as I have no interest to avail myself of the Rabbinic enactment."

But, what would be the *halachah* when the buyer sold the superior quality and retained the average and the inferior for himself?

Abaye at first thought to say that all of the creditors are entitled to come and collect from the superior land (*since that was the only one remaining*).

But Rava said to him: Doesn't the first buyer sell to the second one all the rights that have come to him? And therefore, just as when the creditors come to claim from the first buyer, he is entitled to pay them out of the average and inferior quality land - and although when the average and inferior quality land were purchased by him, the best property still remained free with the original debtor, and the *halachah* is that property sold by a debtor cannot be collected by his creditors so long as there are available unencumbered properties still in his possession, the buyer can push them off by saying, "In this particular instance, I have no interest to avail myself of this enactment," so too, the second purchaser should be entitled to say to the creditors, "Collect from the average and inferior quality land," for the second purchaser entered into the sale only upon the understanding that any right that the first buyer

possessed in connection with the purchase should also be assigned to him.

Rava ruled: If Reuven sells all of his fields to Shimon and Shimon sells one field to Levi, the creditor of Reuven may collect from either Shimon or Levi. However, he only may collect from Levi if he bought a field of average quality land, but if he bought superior and inferior quality land, and he left average quality land by Shimon, Levi can say to him, "I was careful and bought superior and inferior quality land, for those are lands that are not fit for you." And even if he bought average quality land from Shimon, but he left average quality land by him, Levi can say to him, "I left for you a place to collect from."

Abaye said: If Reuven sells his field to Shimon with a guarantee (*that he will refund his money if Reuven's creditor takes it from him*) and the creditor of Reuven attempts to take the field, Reuven may contest the creditor in *Beis Din*. The creditor cannot say that you are not my disputant because Reuven could respond that if the field gets taken from Shimon, he is going to demand compensation from me.

The *Gemora* cites an alternate version: Even if Reuven sold the field to Shimon without a guarantee he may contest the creditor in *Beis Din*. This is true because he can say that I do not want Shimon to have complaints against me. (8b)

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****CHAKIRA****

****BRIEF INSIGHTS****

COLLECTING AVERAGE QUALITY LAND

If Reuven sells all of his fields to Shimon and Shimon sells one field to *Levi*, the creditor of Reuven may collect from either Shimon or Levi. However, he only may collect from Levi if he bought a field of average quality land and did not leave any average quality land with Shimon.

The Rosh says that since Reuven sold the average quality land to Shimon, the creditor can insist that Shimon give him the land of worst quality land that remains in his possession. Even though normally the creditor cannot force the debtor to give worst quality land instead of average quality land; however in this case he can say to Reuven that you are my disputant because you bought the land that was mortgaged to me. Now that you sold that land that was mortgaged to me I will take the worst quality land that remains in your possession.

****QUICK HALACHAH****

CONTESTING THE CREDITOR

If Reuven sells his field to Shimon without a guarantee and Levi attempts to take the field, if Reuven wants to contest Levi in *Beis Din*, he may do so. Levi cannot say to Reuven, "What business do you have to contest me in *Beis Din*," because Reuven can say that I do not want Shimon to complain to me that he lost out because of me. However if Reuven gave it to Shimon as a gift, he may not contest Levi in *Beis Din* because Shimon will not have any complaints against him. (Shulchan Aruch CM 226:1)

If Reuven sells his field to Shimon with a guarantee and the creditor of Reuven attempts to take the field, Reuven may contest the creditor in *Beis Din*. What can Reuven do to contest the debt that Shimon cannot do?

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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.