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Gittin Daf 50

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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

### **Guarantors**

It was stated: Everyone holds that a guarantor for a *kesuvah* is not required to keep his guarantee. [*This is for two reasons. Firstly, he expected that the husband would pay for the kesuvah. And secondly, the woman is not losing anything if he doesn't pay (she didn't lay out any money).*] Everyone holds that a *kablan* (a guarantor who accepts full responsibility, even if the debtor does not default) for a debt, is required to keep his guarantee. They argue with regard to a guarantor on a debt and a *kablan* for a *kesuvah*: One opinion maintains that even though the debtor (or the husband) had no property (at the time of the guarantee), they (the guarantors) are required to keep their guarantee, and another one holds that if he (the debtor) had property, they are responsible, but if he had no property, they are not.

The *Gemora* issues a ruling: The *halachah* in all these cases is that even if the debtor had no property, the guarantor is required to pay, except in the case of a *kesuvah*. There, the guarantor will not be responsible even if the husband has property. The reason for this is that he performs a *mitzvah* (by encouraging them to marry) and the woman did not suffer any loss. (49b5 - 50a1)

[Mar Zutra had stated: A divorcee may collect her *kesuvah* from the husband's average land.]

Ravina said: Let us bring a proof from the reason for our decree (that a woman's *kesuvah* is collected from inferior

land). It is that more than the man desires to marry, the woman desires to be married. Now if you would think that the Mishnah refers (only) to orphans (when it says that the woman collects from the inferior land), then the reason would be that they are orphans (and not because of her desire to marry). This is a refutation of Mar Zutra. It, indeed, is a refutation. (50a1)

### **A Quality Collection (from Orphans)**

Mar Zutra the son of Rav Nachman, said in the name of Rav Nachman: If a loan document is claimed from orphans (whose father borrowed the money and died without paying), even though the document explicitly states that the lender has the right to collect from the borrower's best quality land, he may now collect only from the inferior land.

Abaye says: Know this is correct, as a regular creditor collects only from the average quality property, while a creditor who collects a loan from orphans collects from the inferior quality. [*We see that it does not matter what the regular status of a creditor is when it comes to collecting from orphans. In this case, as well, it should not matter that a stipulation was made previously.*]

Rava said to him (he argues as follows): Now, is this (comparison) so? According to Biblical law, a creditor is able to collect only from the inferior land, as Ulla derived this (from a verse), for Ulla said: According to Biblical law, a creditor is able to collect only from the inferior land, as it is stated: *You (the creditor) 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.] What would a man usually take out (as collateral)? [He would take out] his most inferior possessions. [This teaches us that the creditor does not have the right to collect more than the borrower’s worst quality possessions.] And what is the reason that the Rabbis stated that the creditor may collect from average quality land? It is in order that people should not refrain from lending (as they do not want to collect inferior quality land as payment for the loan). Regarding collecting from orphans, the Rabbis established that the regular Biblical law should apply. However, here (in this case, where the lender stipulated that he may collect from the debtor’s superior land), since according to Biblical law, the creditor has the right to collect from the superior quality (as per the stipulation made in the loan document), he may collect from the orphans - even from the superior quality!

The *Gemora* asks: How can Rava say this in light of the braisa taught by Avram Chuza? We do not collect from orphans’ properties except from inferior land, even when involving damages (committed by the orphans’ father). Isn’t the Biblical law regarding damages that the superior quality can be demanded as payment? [Yet, Avram Chuza still says that they pay from the worst quality. This is counter to the logic presented by Rava.]

The *Gemora* answers: The case (of the braisa regarding damages) must be when the superior quality of the damaged party is equivalent to the inferior quality of the damager. This is as per the opinion of Rabbi Yishmael, who said that according to Biblical law we evaluate based on the one who was damaged (and therefore, the damager may pay with his inferior land). And in order to benefit the public, the Rabbis, however, established that the evaluation should be done based on the property of the damager. But with regard to collecting from orphans,

the Rabbis established that the law according to the way it was originally instituted by the Torah.

The *Gemora* asks (on Rava, who maintains that a creditor may collect from the orphans’ superior land when it was initially stipulated that the lender may collect from such land): Is this so? But Rabbi Eliezer Nivtaah taught: We cannot collect from the property of orphans except from inferior quality, and even when they are superior quality? What does he mean “even when they are superior quality”? It would seem that he means that even if the loan document being used to collect from them explicitly commits to paying with superior quality (they still pay with inferior quality, unlike Rava)!?

The *Gemora* answers: No; when the braisa mentions the superior land, it is referring to a case is where the superior land has jumped away (and can no longer be collected by the lender; i.e. it was totally flooded). This is in accordance with Rava, for Rava said: If someone damaged inferior property, he (the damaged party) collects from the superior land (of the damager). But if (after the damage occurred) the superior land has jumped away, he (the damaged party) collects only from average quality (even if there is better quality land available). [Rashi explains that once the best is unable to be collected from, there is no more Biblical law regarding his having to collect from best quality. This is because the damaged party can be told that it is on account of his poor fortune that the field which had been designated for his payment became ruined.] Regarding collecting from orphans, the Rabbis established the law according to the way it was originally instituted by the Torah (and he may collect only from the inferior quality land). [Rashi explains that this last statement is reverting back to the statement of Avram Chuza.] (50a1 – 50a3)

### Adults or Minors?

The *Mishna* had stated: We do not collect from an orphan's inherited property except with inferior quality.

Rav Achadvoi bar Ami inquired: The orphans mentioned in the *Mishna*, are they minors, or even adults? Is this an enactment that the Rabbis established for (the benefit of) orphans (that they can use their least marketable land to pay their obligations), and (it follows that) the Rabbis established this for minors but not for adults (who have the ability of selling their own inferior land)? Or perhaps, (the reason that orphans pay with inferior land is) because it does not enter the lender's mind (at the time of the loan) that the borrower would die and that his property would fall (as an inheritance) to the orphans, for (if they did think like that) it would lock the door (that they would not lend unless they would be guaranteed at least average land from the orphans; but since lenders do not think of this possibility, there is no reason for this enactment); therefore, even adult orphans as well (may pay with inferior land)?

The *Gemora* attempts to bring a proof from a braisa taught by Abaye the Elder: The orphans that we said are adults, and it would not be necessary to say that this applies to minors as well.

The *Gemora* rejects this proof: Perhaps he (Abaye the Elder) was referring only to the law regarding an oath (that if someone attempts to collect a debt from orphans, he may do so only if he swears that he was not paid<sup>1</sup>), for an adult (orphan), with respect to his father's affairs, is akin to a minor (*as they presumably do not know if their father paid back or not*). However, regarding the law of inferior land (that orphans may pay with inferior land), it does not (apply to adult orphans).

<sup>1</sup> The court exercises this right on behalf of the orphans, who presumably are ignorant of their father's affairs, and the lender

The *Gemora* rules: The orphans that we said are adults, and it would not be necessary to say that this applies to minors as well – whether regarding an oath, and whether regarding inferior land. (50a3 – 50b1)

### Is a Gift the Same?

The *Mishna* had stated: Creditors may not collect from encumbered properties when there are still unencumbered properties available (in the debtor's possession, and even if the unencumbered properties are of an inferior quality).

Rav Achadvoi bar Ami inquired: What is the law regarding a gift of land (if the debtor gave average property as a gift)? [May the creditor collect from that land, or must he first collect the debtor's "free" inferior land?] The *Gemora* explains: The enactment (that a creditor collects first from the debtor's "free" inferior land) that the Rabbis made was on account of a loss to the purchasers (if creditors would be allowed to seize encumbered average land that they purchased); however, regarding property that was given as a gift, where there is no loss to the purchasers, perhaps not (and the creditor would be allowed to seize encumbered average land from the gift recipient before attempting to seize the free inferior land). Or perhaps, even a gift as well, if the debtor would not have received any pleasure from the gift recipient, he would not have given him a gift, and therefore [his loss] should be comparable to the purchaser's loss as well?

Mar Keshisha, the son of Rav Chisda, said to Rav Ashi: Come, learn a proof (*from the following braisa*): If a deathly ill person says, "Give two hundred zuz to So-and-so, three hundred to So-and-so, and four hundred to So-and-so (*three different people*), we do not say that

could have been forced by their father to swear that the debt was unpaid.

whoever was first in the (distribution) document acquires (the money first, and therefore, if there would not be sufficient funds for all of them, the first one would nevertheless receive his allotment). Therefore, if a different loan document (against the deceased) is produced, he (the creditor) collects from all of them (equally). However, if the deathly ill person said, "Give two hundred to So-and-so, and afterwards to So-and-so, and afterwards to So-and-so," we say that whoever was first in the (distribution) document acquires (the money first). [*This is because of the term "afterwards," which implies that the second person should get his money only after it is ascertained that the first person was able to collect.*] Therefore, if a loan document (against the deceased) is presented, it first is collected from the last one (mentioned in the document). If he (the last one) does not have (sufficient funds to satisfy the entire debt), he (the creditor) collects from the fellow before him. If he (the second one) does not have (sufficient funds to satisfy the entire debt), he (the creditor) collects from the fellow who preceded the one who preceded him (the last one).

This implies, Mar Keshisha says, that even though the first person (mentioned) received a property of average quality and the last person (mentioned) received inferior land, he (the creditor) collects from the inferior land, but he does not collect from the average land. Learn from here that regarding a gift as well, the Rabbis made this enactment (that a creditor collects first from the debtor's "free" inferior land).

The *Gemora* disagrees with the proof: Here we are dealing with a case with a creditor (where the people that he instructed that money be given to were not gift recipients, but rather, they were other creditors).

The *Gemora* asks: Didn't he (the sick person) say "give" (*implying a gift*)?

The *Gemora* answers: He meant, "Give.... as payment for my debt."

The *Gemora* asks: But (if this is referring to previous loans), let us see whose loan document was dated earlier (*and based on that, we will know who receives first*)!?

The *Gemora* answers: The case is where there was no document (and therefore they collect in order of the way they were listed in the will).

The *Gemora* asks: But the *braisa* states: whoever was first in the document?

The *Gemora* answers: This refers to the document of his command (from the sick person who instructed that his property should be given to these people, but there was no loan documents).

Alternatively, the *Gemora* answers: This could even be referring to a gift (*and indeed one would take from the first person to whom average quality was given before the last person who was given the inferior land*). The *braisa* is not difficult, as the words "he (the creditor) collects from the last one," mean: only the last one (mentioned in the document) loses. [*This is because after he (the creditor) collects from the first one, the first one can claim from the last one, who ends up losing.*]

Alternatively, the *Gemora* answers: [*This could even be referring to a gift.*] The *braisa* is not difficult, as the case could be where all of the properties are the same quality (*and therefore this inquiry cannot be resolved from the braisa*). (50b1 – 50b3)



## DAILY MASHAL

### *The “Very Best”*

It is evident from Rash”i that initially we collect from the best quality land, and it is only afterwards that we collect from the “very best.”

The Gemora in Shabbos 33b states: When there are righteous men in the generation, the righteous are ensnared for the sins of the generation; when there are no righteous in a generation, schoolchildren are ensnared for the generation. The Pardes Yosef explains: The righteous are regarded only as the “best,” but not as the “very best.” This is because there is no righteous person in the land who does not sin. But the schoolchildren, however, are considered the “very best,” for they have no sin at all. Therefore, if there are righteous people, they are ensnared, for initially, we collect from the best; but if there are no righteous people, it is the “very best” that are ensnared, and that is the schoolchildren.

#### QUESTIONS AND ANSWERS FROM YESTERDAY’S DAF

to refresh your memory

Q: What is the *halachah* according to Rabbi Shimon ben Menasya if an ox belonging to a common man gores an ox of *hekdesh*?

A: 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.

Q: According to Rabbi Shimon who expounds the reasoning of the Torah, why did the Torah rule that compensation for damages should be paid out of superior quality land?

A: 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.

Q: Why do we say that a creditor does not collect from inferior quality land?

A: This would be closing the door in the face of the borrowers (*for people would not lend money*).