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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 *Baraisa*: 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 *Baraisa* 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 *Baraisa* 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 *Baraisa*: 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 *Baraisos* not contradict each other!? It must be that one *Baraisa* deals with a case where the damager

originally owned property of a better quality, but then he sold it, while the other *Baraisa* 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 Baraisos both hold that we calculate the land based upon the general public*), both *Baraisos* 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 *Baraisa* 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 *Baraisa*, 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 *Baraisos* 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 *Baraisos* is the following: The second *Baraisa* 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 *Baraisa* 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 *Baraisos* 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 *Baraisa* holds of Ulla (*and therefore he may collect from the average quality land*), whereas the second *Baraisa* does not agree with Ulla's enactment (*and therefore he may only collect from the inferior quality land*). (7b3 – 8a2)

Superior, Average and Inferior Land

The *Gemora* cites a *Baraisa*: 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 *Baraisa*: 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 *Baraisa* 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.*) (8a2 – 8b1)

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, this (he only may collect from Levi) was only said 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), he (Reuven's lender) cannot (collect from Levi), for 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, this was only said if he did not leave similar average land, so that he (Levi) cannot say to him (Reuven's lender), "I left for you a place to collect from Shimon," but if he left similar average quality land by him, he (Reuven's lender) cannot collect from him (Levi), for 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 to him (Reuven), "You are not my disputant," because Reuven could respond to him, "If you take the field 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 (Reuven) can say to him (the creditor), "I do not want Shimon to have complaints against me." (8b1 – 8b3)

INSIGHTS TO THE DAF

REVACH L'DAF

Revach l'Neshamah

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)

****CHAKIRA****

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?

DAILY MASHAL

"V'chol hanoshim b'chochmo tovu" - Rashi says that the special wisdom exhibited by the women in spinning the thread made of goats' hair, was their ability to do this while the hair was still attached to the goats (Gemara Shabbos 74b). What was accomplished by spinning the threads while still attached to the goats?

- 1) If the women were impure, since the threads were still part of the goats, the impurity would not affect the purity status of the threads.
- 2) The women wanted to donate that which was truly theirs. Since there is a rule that the handiwork of a woman becomes her husband's property, this would not truly be their own donation. However, if a woman does handiwork beyond the normal capacity, then it belongs to her. By spinning the threads while they were still attached to the goats, time was saved, which was considered their own donation. (Maharil Diskin)

Rabbi Tzvi Akiva Fleisher had two difficulties in understanding this:

- 1) The rule of a woman's handiwork belonging to her husband was not instituted until the time of the Mishneh.
- 2) Even if we consider this rule in place at the time of the building of the Mishkon, there is also another part to this rule. The Rabbis instituted that for the woman's handiwork to go to her husband, he would in turn be responsible for her sustenance. This arrangement was established for the wife's benefit, since women commonly did not have the opportunity to be wage earners. Since the main intention of

this rule was to protect the wife, if circumstances arose by which she could have a well-paying and reliable income, she had the option to change the arrangement and tell her husband, "I will not receive your sustenance and I will keep my handiwork (income) for myself (gemara K'subos 58a)." Since in the desert all were sustained by Hashem's manna, it is obvious that all women would take advantage of this option.

3) The Holy Admor of Ostrovitze gives another reason for the hair being spun while still attached to the animal. He says it is because of the halacha, "kol mitzvas assei shehazman gromo noshim p'turo" (gemara Brochos 20b), women are exempt from positive mitzvos which are time bound. Because the building of the Mishkon may not be done on Shabbos, it is considered a timebound mitzvoh. Therefore, the women were at a disadvantage, since their helping to create the Mishkon was only voluntary, while the men's was obligatory. That which was created as an obligation is preferable to that which is voluntary (gemara Kidushin 31a). By showing that their creations could be made in this unusual manner, which is a "shinnuy," done in an unusual manner, it was shown that it could be done without a Torah level desecration of Shabbos, making it a non-timebound mitzvoh, making it obligatory even on the women.

Two difficulties again in understanding this:

- 1) A mitzvoh which requires that something be done once seems to not be time bound. Time bound means that theoretically a mitzvoh could be done at all times but the Torah limits it to a specific time. For example, we could have been instructed to eat matzo every night and day of the year. Once Hashem limited it to Pesach night, it became timebound. Theoretically, building the Mishkon did not have the possibility of being a continuous mitzvoh, since once it would be completed, there would be nothing more to do.
- 2) The overriding Shabbos does not give it the status of "zman gromo." It is a full time mitzvoh which has something more powerful pushing it aside, but not by virtue of its being timebound.