A RUBEN SHAS KOLLEL PUBLICATION
DAF YOMI DIGEST
THE DAILY RESOURCE FOR THOUSANDS OF DAF YOMI LEARNERS WORLDWIDE
Thurs, Nov 9 2023 ■ כ״ה חשון תשפ״ד
בבא קמא ז׳
The Chicago Center

OVERVIEW of the Daf

1) Paying damages from the best land (cont.)

The Gemara offers another explanation of R' Akiva's comment related to hekdesh.

This explanation is unsuccessfully challenged.

Abaye points out a contradiction between two pesukim whether a damager must pay from his best land or whether he can pay anything worth money, like bran.

One resolution is suggested but rejected.

Abaye suggests the contradiction could be resolved in a similar fashion to the way Rabbah resolved another contradiction.

R' Acha bar Yaakov rejects Abaye's application of Rabbah's resolution to our case and offers his own.

R' Acha the son of R' Ika rejects this application and suggests an alternative explanation.

After it is noted that the original contradiction was not resolved Rava suggests a resolution.

Rava's resolution is rejected and R' Pappa and R' Huna the son of R' Yehoshua offer an acceptable resolution.

2) Assessing superior land

R' Shmuel bar Abba from Akronia asked whether superior land is assessed subjectively in terms of the damager's properties or objectively in terms of the properties of the world.

It is explained how this inquiry is not relevant from R' Yishmael's perspective but is relevant from R' Akiva's perspective.

R' Abba answers that the verse implies it is assessed subjectively.

This answer is challenged. ■

Today's Daf Digest is dedicated by
Mr. and Mrs. Michael Schultz
In loving memory of their father
ר׳ יצחק בן ר׳ שמעון ,ע״ה

REVIEW and Remember

1. What is R' Shimon ben Menasya's ruling concerning goring an ox that belongs to hekdesh?

2. What is the difference between ישולם and ישלם?

3. How poor does a person need to be in order to collect ma'aser ani?

4. According to R' Yishmael, how do we determine what is a superior piece of land?

Distinctive INSIGHT

Paying from the best—מיטב

כל מילי מיטב הוא דאי לא מזדבן הכא מזדבן במתא אחריתי, לבר מארעא דליתיב ליה ממיטב כי היכי דלקפוץ עלה זבינא

Kehillas Yaakov explains that until this point, the Gemara understood that the reason the Torah demands that payment for damages be made from the best quality land was for the benefit of the ניזק—for the one whose property was damaged. He deserves to receive the best to pay for his loss. This is why the Gemara expected that the person who sustained a loss could even demand middle-grade land instead of the best quality land, if this is what he desires. Rav Pappa and R' Huna b. Yehoshua taught a new understanding to the rule of מיטב, and that is that the reason the one who was damaged is to be given the best is in order to get money as easily and as quickly as possible. With this approach, we can now appreciate the difference whether damage is paid with land or with movable objects (מטלטלין). Movable objects can be sold for cash. If there is no buyer for a particular item in one place, a buyer who is eager can be found somewhere else. Land, however, is different. If no buyer is readily found the land cannot be taken somewhere else to find a better market. Therefore, in order to guarantee that the one who was damaged will find a buyer easily, the land itself must be of the best quality.

This approach explains why the one being compensated cannot demand medium quality land as payment, as the objective is not necessarily to satisfy the one damaged, but it is rather to provide him the means to raise cash needed to replace his loss.

The Rishonim each explain their understanding of the conclusion of the sugya. Rabeinu Tam (cited in Toasfos, 9a, ד״ה רב הונא) says that payment can be made with superior land or with cash. Only if the one who damaged has neither of these can he pay with movable objects. Some explain that Rabeinu Tam is explaining that Rav Pappa and Rav Huna b. R' Yehoshua themselves only consider movable objects to be מיטב if the damager has no land or cash. Others explain that Rav Pappa would allow payment with movable objects, as they are also מיטב, but Rabeinu Tam holds that the halacha is not according to Rav Pappa, and movable objects are not considered as מיטב.

Nimukei Yosef explains that if the one who did the damage has cash, he may not pay with מטלטלין. Shulchan Aruch (C.M. 419:1) rules that payment may be made with

(Continued on page 2)

HALACHAH Highlight

Collecting average land from a borrower

נזקין בעידית ובעל חוב בבינונית וכתובת אשה בזיבורית

Damages are collected from superior land, loans from average quality land and a woman's kesubah from inferior quality land

Under ideal conditions a lender has the right to collect the average land of his borrower in the event that the borrower cannot repay the loan with money. Shulchan Aruch[1] rules that when a debtor has superior land, average land and inferior land and sells his superior land, the lender retains the right to collect the average land. S"ma[2] explains that although one can argue that since at the time of collection the borrower has only average and inferior quality land and consequently the lender should collect the inferior quality land since that is now what is considered average, nevertheless, the lien was already in place for the average piece of land and that is the land the lender has the right to collect. Yam Shel Shlomo[3] asserts that this ruling applies only when the borrower sold the property after the due date for the loan arrived, but if the borrower sold the property before the loan was due the lender will be forced to collect from the inferior quality land. Shach[4] disagrees and claims that the implication of the Gemara and earlier halachic authorities is that there is no distinction regarding the timing of the sale of the property. The basis of this dispute seemingly[5] relates to when the lien becomes activated. According to Yam Shel Shlomo it becomes activated at the time the loan is due, whereas according to Shach the lien is activated at the time of the loan, therefore, it doesn't matter when the borrower sold the land since the lien on the average piece of land was already in place.

Nesivos Hamishpat[6] addresses a related circumstance. What is the halacha when the borrower had only average quality land at the time of the loan, so obviously the lien was on that land, and some time later the borrower purchased inferior quality land; which land does the lender collect? On the one hand, it is logical that the lender should be able to collect the average land since that was the land the borrower possessed at the time of the loan. On the other hand, one could argue that since the borrower now owns two different quality pieces of land the lender should be forced to collect the lower quality of the two since subjectively that is now the average piece of land. Nesivos Hamishpat rules that the lender will collect the inferior quality land. The reason is that the enactment of Chazal that a lender collects from average land only begins at the moment that the borrower owns two pieces of property so the lien becomes triggered at that time. In this case since he only owned one piece of land at the time of the loan the lien on the average quality land did not yet begin. ■

1. שו"ע חו"מ סי' ק"ב סע' ד'.
2. סמ"ע שם ס"ק י"א.
3. ים של שלמה ב"ק סי' י"ב ומובא דבריו בש"ך שם סק"ג.
4. ש"ך שם סק"ג.
5. ע' נתה"מ שם סק"ב.
6. נתה"מ שם סק"ב. ■

(Insight. Continued from page 1)

מטלטלין, even if the damager has land and/or cash. מטלטלין is always considered מיטב. Sm"a writes that the damager may choose how he wants to pay, but Shach disagrees and contends that the one who was damaged may demand מטלטלין, in which case the damager may not pay with land. ■

STORIES Off the Daf

At what price?

"הרי שהיו לו בתים שדות וכרמים"

Wartime causes tremendous difficulty on many different levels. Among many other issues, property values might drop precipitously during wartime.

A certain man who had, in better times, divorced his wife and borrowed vast sums of money, was left with no cash with which to pay either the kesubah or his debts. Unfortunately it was wartime and due to the unstable conditions, his property could be sold for only a fraction of its worth during peaceful times. His ex-wife and the man who had loaned him the money wished to receive enough land to be able to sell and receive their due according to wartime prices. The owner of the properties naturally wished to repay them according to the value of the land during peace. They went to their local beis din to adjudicate, but the dayanim did not know how to rule. So they consulted with the Rashba, zt"l.

The Rashba answered, "He must pay them with enough land to cover the debts at the present prices even though the land is currently undervalued. This emerges from Bava Kama 7 which discusses land which is more valuable in Nissan than in Tishrei. The Gemara entertains the possibility that the owner may receive the higher price for his land only if his debtor or ex-wife requests a different type of land than what he or she is halachically entitled to. We see from this that, in general, they receive a parcel at the current value. This is true even when the land will increase in value in several months and is certainly the halachah in our case, when the world is embroiled in a war which could last for years."

The Rashba concluded, "Besides, who can be sure the prices will go up again after the war? Perhaps the properties will cost the same!"[1] ■

1. שו"ת הרשב"א, חלק ד', סימן קנ"ט

Daf Digest is published by the Chicago Center, under the leadership of HaRav Yehoshua Eichenstein, shlit"a
HaRav Pinchas Eichenstein, Nasi; HaRav Zalmen L. Eichenstein, Rosh Kollel; Rabbi Tzvi Bider, Executive Director, edited by Rabbi Ben-Zion Rand.
Daf Yomi Digest has been made possible through the generosity of Mr. & Mrs. Dennis Ruben.