



OVERVIEW of the Daf

1) Assessing superior land (cont.)

The Gemara concludes its challenge to the position adopted by R' Abba that superior land is assessed subjectively based on the damager's property.

This challenge is rejected.

Support for rejecting this challenge is cited but refuted.

A third resolution for the conflicting Baraisos is suggested.

Ravina offers a fourth resolution to the contradiction.

2) Collecting from buyers – לקוחות

A Baraisa discussing collecting property that a debtor sold to different buyers.

The Gemara begins to analyze the first ruling of the Baraisa.

After reaching a conclusion regarding the case of the first ruling of the Baraisa the Gemara offers a challenge to that explanation.

The Gemara finally arrives at an acceptable explanation of the Baraisa's first ruling and finds support for this explanation from a statement of Rava.

3) A **לוקח** who sells some of the purchased property

The Gemara discusses the rights of a creditor to collect property from a buyer who sold some of the properties he bought from the original debtor.

The Gemara inquires about the rights of the creditor when the buyer sold the superior land and retained average or inferior land for himself.

Abaye suggests that the creditor will collect the superior land whereas Rava disagreed and claimed that the second

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Distinctive INSIGHT

A creditor collects from the poor quality land

דאמר עולא דבר תורה בעל חוב בזיבורית שנאמר בחוץ תעמוד והאיש אשר אתה נושה בו יוציא אליך את העבוט החוצה

Two Baraisos were brought, each of them dealing with a case of a person who owned two types of land, mid-grade (בינונית) and poor quality (זיבורית). The first Baraisa taught that a creditor collects from the mid-grade land, while the second Baraisa taught that a creditor collects from the poor quality land. In order to resolve this inconsistency, Ravina suggests that the Baraisos differ regarding basic rights which the Torah grants to a creditor and how he collects. While the Baraisos agree with a teaching of Ulla, that on a Torah level a creditor may only collect from the poor quality land, the one Baraisa holds that the rabbi upgraded the collection rights of a creditor, and that he may actually collect from mid-grade land.

As mentioned above, Ulla teaches that a creditor may collect only from poor quality land. This is learned from a verse (Devarim 24:11) which describes a creditor approaching the house of his debtor to collect household items for a loan which is in default. Ulla rhetorically asks, "What is it that a debtor will offer from his house? It is the cheapest and lowest quality items (or land)." We see from the narrative of the verse that a creditor collects from זיבורית. The commentators wonder, however, why Ulla needs to learn this fact from a verse. Would it not be obvious, even without a verse, that if someone is obligated to pay a debt, he could pay with whatever type of items he wishes? If the verse taught that a creditor has a right to a better quality item, this would be a worthwhile lesson for the Torah to teach, but it does not seem to be a significant point to allow him to give just anything.

In his **אבי עזרי**, Rav Shach explains that Ulla holds according to the Gemara in Bava Basra (175b) that **שיעבודא דאורייתא**—the right to collect a loan gives the creditor a direct interest in the possessions of the debtor. It is as if he has a lien against all his property. Therefore, we might have thought that the lender may demand superior quality land (עידית), and that the borrower would have to acquiesce to his wishes. This is why we need a verse to teach us that the rights of the lender only extend to collect from זיבורית. ■

REVIEW and Remember

1. Why did Chazal enact that a lender collects from average land rather than inferior land?
2. How do we determine from which buyer the creditor will collect?
3. Is a person obligated to submit himself to a Rabbinic enactment set up for his benefit?
4. What is Reuven's interest in going to court regarding a piece of land he sold without a guarantee?

HALACHAH Highlight

The right of the lender to collect land

דבר תורה בעל חוב בזיבורית

Biblically, the lender collects from inferior quality land

The Gemara earlier (7b) concluded that a lender, who has the right to collect average quality land, can ask the borrower for a larger amount of inferior quality land. Furthermore, the lender has the right to assess the value of the land based on today's lower value rather than the higher, future price. The reason the lender can demand that the land should be assessed at today's lower values is that forcing the lender to assess the land at the higher, future price will "lock the door on borrowers." The lender will point out the injustice that had he kept his money rather than lent it to his friend he would have the capital to purchase land at today's lower price and now that he lent the money to his friend, he should lose?

Shitah Mekubetzes¹ cites Riva who questions the rationale of this ruling from our Gemara. Why was it necessary for the earlier Gemara to rationalize its ruling out of fear that it would close the door to borrowers? The reason the lender should be able to collect a larger quantity of inferior quality land is stated in the Gemara's exposition that Biblically a lender may only collect inferior quality land. Since it was an enactment of Chazal that allows the lender to collect average quality land the lender should be able to forgo the enactment that was set up for his benefit in accordance with the Gemara (8b) that allows a person to forgo Rabbinic enactments set up for a person's benefit.

Tumim² challenges the premise of Riva's question. When

buyers will not have to give their land to the creditor.

Rava issues a similar ruling in a case where Reuven sold his property to Shimon who sold one of those properties to Levi and Reuven's creditor demands payment.

Rava adds qualifications to his ruling that makes it similar to the previous ruling.

4) A seller's interest in the property he sold

Abaye rules that if Reuven sold a field to Shimon with a guarantee and a creditor wants to take the land from Shimon, Reuven can go to Beis Din to argue the case since he has an interest in the land remaining in the hands of Shimon.

According to a second version this ruling applies even if Reuven sold the property without a guarantee. ■

the Gemara makes the exposition that teaches that a lender is entitled to collect the inferior quality land of the borrower it should not be understood as teaching that the borrower must give the lender inferior quality land; rather it is teaching that the borrower has the right to choose what he wants to use to pay back the loan and may even use inferior quality land. Generally, the borrower will choose to pay with inferior quality land, but if for some reason he wants to pay with average or even superior quality land he has the right to do so. Therefore, the lender cannot claim that he would like to invoke his Biblical rights to collect from inferior quality land since Biblically, the choice of what quality land will be used is entirely in the hands of the borrower. ■

1. שיטה מקובצת ז: ד"ה כתב הרא"ש.

2. אורים ותומים סי' ק"ב תומים סק"ג ד"ה ובמרדכי. ■

STORIES Off the Daf

"The least of his property"

מה דרכו של אדם להוציא לחוץ פחות שבכלים

A certain man borrowed ten thousand shekels from his friend. Although he had the ability to repay the loan in currency of large denominations, the two had recently had a dispute and the borrower decided to get even with the lender. Since he worked in a bank, it would be fairly easy for him to change the entire sum into ten agorot pieces. This would inconvenience the lender in several ways. First of all, it would be difficult for him to count the money and ensure that he had received the full amount. Secondly, if he wished to purchase something from a store he would

need to exchange the money for larger bills. In addition, many banks in Israel will refuse to exchange very much small coinage for larger bills. He felt that this would teach a very satisfying lesson to his friend for being so intractable and unreasonable regarding their dispute. After all, in Bava Kama 8 we find that just as one usually gives a security from the least valuable of his possessions¹, he also may repay a loan with the least valuable of his properties? Although the rabbis required one to pay with a common form of property, presumably paying with money in any shape is less time-consuming than finding a buyer for land of any sort. So why shouldn't he repay the loan in small change?

But when he told someone his plan, the other person claimed that this was

definitely not permitted. "After all, we hold that one who has money must repay his debt with cash and money, and may not force the lender to receive property or possessions, so who told you that you can literally pay the loan in pennies when you have the ability to repay in bills?"

When Rav Yitzchak Zilberstein, shlit"a, was consulted regarding this question he replied, "Although the S"ma permits one to pay in small coins, this is presumably only when doing so is only a minor inconvenience like it was in his times. Nowadays, when it is almost impossible to buy anything worth a fraction of the loan with such small change, one may not repay in such small denominations!"² ■

1. חו"מ, סימן ק"א

2. עלינו לשבח, במדבר, עמוד תרכ"ט-תרכ"ל