

OVERVIEW of the Daf

1) Collecting damages (cont.)

The Gemara concludes that R' Yishmael maintains that damage is assessed from the perspective of the damaged party whereas R' Akiva maintains that it is assessed from the perspective of the damager.

Each Tanna cites the same phrase in support of his position.

The Gemara seeks clarity for R' Akiva's statement in the Baraisa that the Bais Hamikdash certainly collects from superior land.

One explanation is suggested and rejected.

A second explanation is suggested but refuted.

As the Gemara analyzes the second explanation it is suggested that perhaps R' Yishmael and R' Akiva dispute a different point but that suggestion is rejected.

Ravina suggests that the Mishnah follows a combination of the opinions of R' Akiva and R' Shimon.

A Baraisa is cited that supports this explanation in which R' Shimon presents the rationale for the halachos that relate to which land is used for making payments.

The reason R' Shimon offers two explanations for the last halacha is explained.

2) A woman's kesubah

Mar Zutra the son of R' Nachman asserts that the ruling that a woman collects her kesubah from inferior land applies only when she is collecting from the orphans but when she collects from the husband she collects an average parcel of land.

The Gemara explains why it is necessary to emphasize that the widow collects from inferior quality land when all collections made from orphans come from inferior quality land.

Two unsuccessful challenges to Mar Zutra's ruling are presented.

Tangentially the Gemara discusses issues related to collecting debts.

3) Guarantors

The Gemara begins to discuss the responsibility of different guarantors. ■

Distinctive INSIGHT

A creditor collects from בינונית

מפני מה אמרו בעל חוב בבינונית וכו'

The Mishnah reported that when collecting property to pay for monetary obligations, we use a graduated scale. Payments for damages are collected from the highest quality land (עידית), loans are collected from medium quality land (בינונית), while payment for a kesubah is paid from the lowest quality land (זיבורית). On our daf, the Gemara analyzes the sources for these rules.

Rif and Rosh include in their text an indication that the collection of medium quality land for a loan is a Torah law. Their text reads: "...מפני מה אמרה תורה - Why does the Torah determine that a creditor collects from בינונית?" The Achronim ask that, indeed, we do not find that the Torah legislates a creditor to collect anything more than זיבורית. Ulla teaches (50a) that the verse (Devarim 24:11) describes how the debtor will offer payment from the items he chooses to give from his house, which is understood to be items of minimal quality. In fact, for this reason, Korban Nesanel notes that the accurate text should not include the words "אמרה תורה," as this is not a Torah rule. Ketzos Hachoshen (102:1) points out that there is no need to change the text, as it is not unusual to find the expression "אמרה תורה" used even when the law being discussed is not a Torah-level rule, but rather simply rabbinic.

Tosafos Harosh explains that the question of the Gemara was why does the Torah rule that a creditor not collect from the best land (עידית), but only from the worst (זיבורית), as we find in the verse. Of course, the Gemara also knows that the rabbis increased the collecting power of a creditor to take from medium quality land, but the main issue is why does the Torah not allow him to collect from the best. Pnei Yehoshua understands that the view of Rosh is that the Torah itself legislates that a creditor may collect from בינונית. This is why we find that the answer of the Gemara highlights how a loan may not collect from the best in order to prevent a lender from targeting an unfortunate borrower in order to collect his choice land, and he also does not collect from the worst, in order not to discourage lenders.

Pnei Yehoshua cites the Yerushalmi (5:1) which interprets the verse from Devarim 24:11 to refer to the court officer who enters the house of the borrower to retrieve an appropriate item for collection. The lender would choose the best item to take for collection, and the borrower would forfeit only his junk. A court officer, however, would be fair and balanced, and bring out a medium quality item for collection. Thus, the verse is a source that a creditor collects from בינונית. ■

Today's Daf Digest is dedicated
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הינדא בת מאיר
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HALACHAH Highlight

Forcing a couple to divorce

והאיש אינו מוציא אלא לרצונו אפשר דמשהי לה בגיטא

The man only divorces with consent since he can make her wait for the

There are times that a couple faces irreconcilable differences but instead of presenting the matter to Bais Din the husband or wife goes to the secular court to help secure the divorce. The court is then asked to decide not only matters related to custody and the division of the assets but at times the court will apply pressure to the recalcitrant party to issue or accept the גט. In some places the courts will impose strict monetary fines on the one who does not comply with a court's directive to divorce. Rav Menashe Klein¹, author of Teshuvos Mishnah Halachos, was asked to comment about the different issues that relate to his matter.

He begins by recounting the history of forcing someone to divorce. According to the Torah the husband has the right to divorce his wife with or without her consent, but the man cannot be forced to divorce his wife against his will. During the time of the Talmud it was noticed that husbands were too quick to divorce their wives so Chazal instituted the kesubah that mandated that a husband who divorces his wife must pay her the amount contained in the kesubah. Some time later, during the time of Rabbeinu Gershom, it was deemed necessary to make an enactment that a man may not divorce his wife without her consent the same way the husband cannot be compelled to divorce his wife without his consent.

A matter of dispute, however, is the status of a גט that was given to a woman against her will. Bais Shmuel² rules that subse-

REVIEW and Remember

1. How does R' Yismael apply the gezeira shavah and the verse?
2. What is the position of R' Shimon ben Menasya regarding damages and sacred property?
3. Explain R' Shimon's unique perspective on expounding verse?
4. What is the difference between an ערב and a קבלן?

quent to the enactment of Rabbeinu Gershom a גט given to a woman without her consent is invalid. Pischei Teshuvah³ cites other authorities who maintain that if a woman remarried with a גט that was given to her against her will she is not required to be divorced from the second husband. Teshuvos Mishnah Halachos then notes that all opinions will agree that the husband who divorced his wife without her consent is considered in violation of the enactment of Rabbeinu Gershom and should be banned from the Jewish People. The reason, he explains, is that our Gemara relates that ultimately a husband cannot be forced to give a גט against his will. Therefore, since the husband willfully forced the גט upon his wife he must face the consequences for his action. ■

1. שו"ת משנה הלכות ח"י"ד סי' קל"ה.
2. ב"ש סי' קי"ט ס"יק י"ב.
3. פת"ש שם סק"ז. ■

STORIES Off the Daf

An Unpleasant Surprise

"והאיש אינו מוציא אלא לרצונו..."

Acertain newlywed couple was married for several months when the wife's father took sick. The kallah requested leave of her husband to pay a short visit to her father. Her husband happily granted the request, sending his best wishes for a רפואה שלימה. After a few weeks, the husband began to worry about his poor father-in-law. Two months later with no word and he was petrified.

When he finally heard that someone from his father-in-law's town was visiting

his own shtetl, the husband was overjoyed. He rushed to this man to inquire after his wife and her father. The husband found the stranger's response very disconcerting, "Actually, I am here as a messenger from your wife and father-in-law, who, by the way, is feeling much better. They would like to request a divorce..."

The husband was furious. He hadn't even been informed that there was any kind of problem and now to demand a divorce out of the blue?

"But why does she want a divorce?" he spluttered.

"Well you are a bit older than her and she doesn't feel like she could ever live with you happily," was the worrying reply.

This husband absolutely refused to

give a divorce. "If there was a problem, she should have brought this up to me while she was here. Instead, she left at the first pretext without intending to return or saying goodbye!"

When this case came before the Rashbah, זת"ל, he ruled that the husband was not required to divorce her. "This is a clear Gemara in Gittin 49. There we find that a man must consent to divorce his wife. Her claim that she cannot live with him does not force him to divorce her. A man gives a kesubah to prevent him from divorcing his wife. If a woman could force a man to give a divorce she would also have to pay a kesubah to him to prevent her from forcing him to divorce her!"¹ ■

1. שו"ת רשב"א, חלק א' סימן תקע"ג וא"ף ר"ה

