

20.1.05

7b (אדעתא דכל זכותא דה"ל לראשון בגוה זבין) → 8b (בעא מיניה רב שמואל בר אבא מאקרוניא מרבי אבא)

1. כי יבער איש שדה או כרם ושלח את בעירו ובער בשדה אחר מיטב שדהו ומיטב פרמו ושלם: שמות כב, ד
 2. בחוץ תעמד והאיש אשר אתה נשה בו יוציא אליך את העבוט החוצה: דברים כד:א

I Continued analysis of rule of מיטב (v. 1)

- a Question asked of אבא ר' – do we estimate מיטב subjectively (the best of מזיק's fields) or objectively (universal standard)?
- i Note: question can only be asked of ר"ע; ר"י, clearly we use the ניזק's set of fields to determine
- ii Response: if the תורה determined מיטב שדהו, why would we use a global standard?
- b Challenge: general ruling about collection:
- i If: someone had only one grade of land (ז, ב, ע) – all (כתובה) בע"ח, נזקין, collect from that
- ii if: he had all three types – בינונית, נזקין – עדית – כתובה – זיבורית; בע"ח – בינונית, נזקין – עדית – כתובה
- iii if: he only had בינונית + עדית – נזקין collect from עדית and the rest from בינונית
- iv if: he only had זיבורית + בינונית – נזקין ובע"ח collect from בינונית and כתובה from זיבורית
- 1 note: if we rank land subjectively, consider his בינונית as עדית and make בע"ח זיבורית collect
- 2 answer #1: if he had owned better land, this land is now considered בינונית (else, it is עדית [subjectively])
- (a support: ruling that in this case, בע"ח collects זיבורית; resolution is found in answer #1
- 3 resolution #2: (all agree that we use a global standard) – if his "בינונית" was valued as global עדית/worth less
- 4 resolution #3: resolved by בשל/בשל עולם (our ברייתא maintains that we use a global standard)
- 5 resolution #4 (רבינא): disagree whether to accept עולא's approach to בע"ח:
- (a) עולא essentially, a בע"ח may collect זיבורית as per v. 2; חכמים "raised" him to בינונית to encourage lending
- (i) our ברייתא: accepts עולא and בע"ח gets בינונית; 2nd ברייתא holds that בע"ח always get זיבורית regardless
- v if: he only had זיבורית + עדית – נזקין collect from עדית and the rest from זיבורית

II Assessment of ברייתא regarding transferred liens

- a If someone (who owed בע"ח וכתובה) sold all of his land to one person or to several as one – they all take his place
- i However: if he sold in sequence, all collect from the last to buy; if insufficient, continue regressing
- ii Observation: the sale to one person had to be in segments – else it is obvious –
- 1 question: if he sells to 3 it reverts to the last one → if he selles to one, he should be able to force collection from the last land bought
- (a) answer: if he bought עדית last
- (i) challenge: if so, all (בע"ח וכתובה) could also collect from עדית
- (ii) answer: he could threaten to sell back זיבורית and then they'd all have to collect from there
- (iii) challenge: he could even do that to נזקין (and force even a ניזק to collect from זיבורית)
- (b) rather: original debtor died (having sold his lands) and his heirs aren't liable for the debts
- (i) challenge: he can still threaten the ניזק that he will dispose of the עדית
- (c) rather: the seller is benefiting from a תקנת חכמים – that a creditor may never collect from משועבדים unless there are no בני חורין – he may forego that "benefit"
- (i) as per: הונא רב's ruling in re: a woman foregoing her rights to מזונות and, thereby, withholding her wages from her husband.
- (ii) Implication: if the buyer sold off all the land except for עדית, all collect עדית (his claim of foregoing the benefit is lost)
1. question: if he sold the עדית, keeping the rest – which is collected?
- a. אב"י: all collect from עדית, as that was where the שעבוד was
- b. רבא: since the original buyer could have "sent them" to בינונית/זיבורית, even though the עדית was בני חורין – he could have "foregone" the תקנה to his benefit (as above) –
- i. therefore: the second buyer bought the same rights and may direct them to collect from בינונית וזיבורית which is still in the property of the first buyer, claiming that he bought from the first buyer intending to inherit whatever rights he had.