



Today's Daf In Review is being sent l'zecher nishmas Habachur Yechezkel Shraga A"H ben R' Avrohom Yehuda

Bava Kamma Daf Zayin

- **Q:** In the Braisa **R' Akiva** said there is a kal v'chomer to hekdesch. What is the kal v'chomer? If it is where a person's ox gored the ox of hekdesch (and the kal v'chomer is that he must pay hekdesch from the best of his land), that is not correct, because we learn from the pasuk of "shor rei'eihu", that if one damages hekdesch he does not pay for that damage!? You also can't say it means that if someone promises money to hekdesch, that hekdesch can collect for that obligation from the best of his fields, because hekdesch is no different than any other creditor, and the halacha is that a creditor collects for the average quality fields, not from the best!? Even if you say that **R' Akiva** holds that a creditor collects from the best quality fields, that would not be the case when hekdesch is the creditor, because hekdesch is different in that it doesn't collect at all when it is damaged!? **A:** The case is that a person's ox damaged the property of hekdesch. **R' Akiva** holds like **R' Shimon ben Menasya**, who says that the pasuk of "shor rei'eihu" teaches a chumra, not a kula, that although there is a halacha of tam and muad when an ox gores, if the ox gores an ox of hekdesch it is always considered to be a muad. That is where the kal v'chomer comes into play, and teaches that hekdesch too must be paid with the best quality land.
 - **Q:** Based on this, why do we say that **R' Yishmael and R' Akiva** argue regarding a case where the best land of the nizik is of equal quality to the inferior land of the mazik? Maybe we can say that all agree that the damages must be paid using land of quality equal to the highest quality of the nizik. The machlokes is whether we hold like the view of **R' Shimon ben Menasya – R' Akiva** would hold like him and **R' Yishmael** would hold like the **Rabanan** who argue with him!? **A:** The Braisa suggests that they are arguing regarding the drasha of the pasuk, and according to this interpretation they would agree regarding the drasha of the pasuk. Also, this would not be a kal v'chomer to treat hekdesch in this lenient way. Also, we find that **R' Ashi** says that a Braisa clearly says that they are arguing with regard to whose field we use to establish the quality that must be used for payment – **R' Yishmael** says it is the best of the nizik, and **R' Akiva** says it is the best of the mazik.
- **Q: Abaye** asked **Rava**, the pasuk of "meitav sadeihu u'meitav karmo yishaleim" teaches that only the best quality field can be used for payment. However, another pasuk of "yashiv" teaches that any item of value may be used for payment!? **A:** If the mazik pays without having to be brought to Beis Din, he can pay using anything of value. If the mazik is brought to Beis Din who then forces him to pay, he may only pay using the best quality land.
 - **Ulla the son of R' Illai** said, this makes sense, because the pasuk requiring the best land says "yishaleim", which suggests a payment that is being forced.
 - **Q: Abaye** asked, if the payment is forced, the pasuk would use the word "yeshulam"! **A:** Rather, **Abaye** said that we can use **Rabbah's** explanation of another Braisa to explain the case here, as follows. The case is that the damage was done at a time of the year when land prices are low, and the nizik says to the mazik, instead of paying me in superior land, pay me with a larger piece of average land. In that case, the mazik can tell him, if you take superior land, as the pasuk says, I will pay based on the current price of the land. However, if you want average land, I will give it to you based on the higher, future price.
 - **Q: R' Acha bar Yaakov** said, the Torah made it better for the nizik, by allowing him to collect even from superior land, and you will say that if he wants from inferior land he is put into a worse position!? **A:** Rather, if we want to use **Rabbah's** explanation to explain a case, it would have to be a case where a creditor, who is to be paid with average land, asks to be paid with a larger piece of inferior land. In that case, the debtor

can tell him, if you take average land like you are deserving, I will give it to you based on the current, lower price. However, if you want the inferior land, you must take it based on the higher, future price.

- **Q: R' Acha the son or R' Ika** asked, if the debtor may do this, this will make creditors not want to lend money!? The creditor will say, if I had cash I would be able to buy whatever land I want at the current price, but because my cash is by you, I have to accept the land at a future price!? **A:** Rather, he said, if we want to use **Rabbah's** explanation to explain a case, it would have to be a case where a woman, who is to be paid her kesubah with inferior land, asks to be paid with a smaller piece of better quality land. In that case, the husband can tell her, if you take inferior land like you are deserving, I will give it to you based on the current, lower price. However, if you want the better land, you must take it based on the higher, future price.
- **Q:** We are still left with the conflicting pesukim!? **A: Rava** said, the pesukim mean that whatever the mazik chooses to use for payment must be of the best quality that he has of that item (whether it is land or any other item).
 - **Q:** The pasuk says "the best of his *field*"!? **A: R' Pappa and R' Huna the son of R' Yehoshua** explained, all items other than land are always considered to be superior, because if they can't be sold here, they can be sold somewhere else. However, land cannot be moved. That is why when he pays with *land*, it must be from the best quality that he has so that it will be easy for him to sell.
- **Q: R' Shmuel bar Abba of Akrunya** asked **R' Abba**, when Beis Din determines the quality of the mazik's land, do they do so based on all the mazik's properties, or do they assign a quality based on a global standard? According to **R' Yishmael** it is clear that he can pay with land that is equal in quality to the best land of the nizik. However, according to **R' Akiva**, when the pasuk says "meitav sadeihu", does that mean to exclude consideration of the quality of the nizik's field, but he may pay with superior land based on a global standard, even if he has higher quality land, or is it meant to exclude the consideration of a global standard, and the mazik must always pay with his best land? **A: R' Abba** answered, the pasuk says "the best of *his* land", which clearly means that we do *not* look to a global standard of quality.