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TALMUDIC METHODOLOGY
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MEITAV - COMPENSATING DAMAGE WITH LAND

Though many Talmudic discussions regarding monetary laws center around how much money if any is paid, the gemara also addresses the method of payment. Obviously, cash always constitutes an acceptable form of payment. What happens, however, if land is offered in payment for halakhic debts? In this regard, the gemara establishes different payment tables. When paying a woman's ketuba, inferior property may be offered (known as tziburit); when paying back a loan, average-quality land (beinonit) may be presented; when compensating damages, superior qualities of land must be paid (idit). The actual value of payment is not impacted by the method of payment. Understandably, more tziburit land must be paid to cover a debt which might have been matched by less idit land. This article will examine the requirement of paying idit land to compensate damages. This halakha otherwise known as meitav (paying literally the 'best land') is discussed primarily in two locations: Bava Kama (6b-9b) and Gittin (48b).

The source for this halakha can be traced to a pasuk in Mishpatim. When describing the payment for damages known as shein (damages performed by an animal while receiving pleasure – such as eating), the Torah concludes 'meitav karmo u-meitav sadeihu yeshalem' (he should pay the BEST of his vineyard and the BEST of his fields). From this, the gemara derives the meitav principle - when paying land for damage compensation, only best lands (equal to the amount of damages) can be paid. Presumably, the Torah (possibly in its attempt to deter damages in the first place) imposes an extra fine upon the negligent owner of the damaging animal.

An interesting machloket between R. Akiva and R. Yishma'el might suggest an alternate reading of the meitav law. R. Yishma'el and R. Akiva argue as to the manner of assessing meitav. Obviously, the 'BEST' land is a very subjective definition. In relation to whose property must it be considered the best land? Assume the damaged party has low-grade property and the damager has generally superior quality lands. Must the mazik (damager) pay his own best lands or just fields which are better than or equal to the victim's BEST fields (even though they might be the mazik's lesser quality fields)? R. Akiva claims that the mazik must pay his own high-quality land - meitav de-mazik - while R. Yishma'el maintains that the mazik must only render lands which equal the victim's highest grades of land –

meitav de-nizak (again even though they might be the mazik's inferior lands). The gemara searches for pesukim to support each position. What, however, forms the logical basis of this dispute?

We might better understand this machloket by studying a curious hava amina regarding this debate. At one stage, the gemara thought that R. Yishma'el, by asserting meitav de-nizak, also intended a statement about the amount owed. Not only did he mandate payment with a certain grade of land (meitav of the nizak) but also dictated a method for assessing the actual value owed. In the case of an animal which ate a row of wheat, for example, should the loss be assessed based upon the actual row of wheat which was eaten - grade A or grade B? Or should a grade A row of wheat (or its value equivalent) be paid even if an inferior grade of wheat was eaten? The gemara initially assumed that R. Yishma'el would choose the latter form of assessment. This assumption is very surprising. Firstly, the possibility of paying more than was actually damaged seems very problematic. If inferior produce was consumed, why should superior grade (greater value) be owed? Furthermore, why does the gemara initially impute this inexplicable option to R. Yishma'el? He only asserted the type of meitav land to be offered once the value owed was determined!! R. Yishma'el made no claim about the manner of assessing that value.

Evidently, R. Yishma'el's statement regarding the type of payment also suggested the manner of determining the amount owed. On the surface, these two factors appear unrelated. Just because R. Yishma'el demanded payment with meitav lands doesn't mean he would opt for a unique assessment procedure. Tosafot pose this question and choose a literary answer - the language of the machloket between R. Yishma'el and R. Akiva suggested a machloket regarding two INDEPENDENT issues. According to Tosafot, no INHERENT link between R. Yishma'el's meitav and the damage assessment procedure exists. Can we find an alternative answer to Tosafot's question?

Our search for a possible link between these two halakhot might be aided by understanding the nature of compensation for monetary damages. Instinctively, we might define it as the responsibility to reimburse monetary damages at full value. R. Chayim (in his commentary to the Rambam Hilkhos To'en Ve-nit'an 5:2) redefines the nature of these payments. In effect, R. Chayim claims the guilty party must 'fix' the damaged item. See, for example, the mishna in Bava Kama (9b) which reads: "If one is responsible to guard an item [and does not], HIKHSHARTI he must repair and fix his damage" (see the second part of Rashi for this explanation). According to this statement in the mishna, the mazik does not owe 'value' or 'money;' rather his responsibility remains to fix and repair the ITEM he damaged. Of course, at a practical level, he has the right to offer money in lieu of repair. Being that money is liquid and can be used to fix or replace an item, its payment can be seen as a form of

repair. However, the essence of the obligation remains the repair of the item. (See R. Chayim for a practical consequence of this concept.)

Having seen R. Chayim's definition of the nature of damage payments, we might return to R. Yishma'el's dual position. By imputing to him the more stringent assessment strategy, might the gemara have been applying R. Chayim's principle? If my obligation is to compensate value loss we would clearly assess the value of the compensation purely by the value of the loss incurred. There would be no room to pay for a higher grade of wheat if a lower grade were eaten and less money was lost. Conversely, if the obligation is defined as repair or replacement of a damaged item, it might be a unit-based obligation - row of wheat. I don't owe you money; rather I owe you a new row of wheat. In this scenario, we might have CONSIDERED requiring a high grade of wheat-row even though a low grade was consumed. Value-based obligations are strictly metered by the value of the loss. Unit-based debts MIGHT exhibit greater range. By associating R. Yishma'el with the more a unit based payment scheme (and possibly a more stringent assessment policy), the gemara might have been assuming R. Chayim's definition of tashlumei hezek within R. Yishma'el's position (see the Ramban in his commentary to Gittin who explains the gemara's assumption according to R. Yishma'el in this light).

It remains to determine HOW the gemara inferred this view of nezek according to R. Yishma'el: What statement of his invited R. Chayim's concept of unit payments, and hence a unit-based debt which might exceed the value of the actual damage? Possibly, his statements regarding meitav provoked this speculation. Clearly, R. Akiva's meitav stance makes more intuitive sense. The Torah imposed a harsh sentence on the mazik to pay superior fields in an attempt to deter future damages. Why should he pay anything less than his own meitav; meitav de-mazik would appear the more logical. R. Yishma'el would have agreed with R. Akiva had he viewed meitav as merely a 'stiffer form of payment.' However, meitav according to R. Yishma'el constitutes much more; the meitav requirements allows land to be seen as a form of repair. If, as R. Chayim claimed, the basic responsibility of the mazik is to repair, we might question any form of payment other than actual repair or cash. Indeed, money can be seen as a practical replacement for repair because of its liquidity. Land is not so easily rendered liquid (because it is less portable and therefore less 'sellable'). In theory, we might disallow nezek payments through land. If, indeed, we validate land payments we might still require lands which exhibit a high degree of liquidity, are thus similar to cash and can be viewed as 'virtual repair.' Only the best lands will be in demand and can be considered liquid enough to be a virtual repair of the damaged item. Hence I must give the nizak a land which will be his most liquid – meitav de-nizak.

R. Yishma'el defined meitav differently from R. Akiva. According to the latter, meitav is a penalty imposed upon the mazik and gauged by his standards - meitav de-mazik. According to R. Yishma'el, it is a way to assure liquidity and hence the ability of land to be used as a form of repair. It is sufficient to pay superior lands in the nizak's eyes to assure this quality – even if these lands are inferior by the mazik's standards.

Sensing this position of R. Yishma'el, the gemara thought that he would also adopt the stringent assessment procedure. If indeed, he views damage payments as a form of repair (based upon his view on meitav) he might similarly determine the amount owed based on units. This might have justified the gemara's speculation that R. Yishma'el adopted the unit system of assessment - a system of assessment which might mandate paying grade A units as payment of grade B. Of course, the gemara rejects this notion but the very suggestion indicates how the gemara viewed meitav according to R. Yishma'el. Furthermore, even though the payments do ultimately mirror the exact amount of the eaten row of wheat the payment might still be a unit-payment. However, even when compensating units we must be more precise in determining not just which unit was eaten but also its grade and approximate value.

SUMMARY:

Having focused upon the machloket of R. Yishma'el and R. Akiva regarding the type of meitav to be paid, we analyzed R. Yishma'el's stance. We suggested that meitav de-nizak stems from the mazik's obligation to repair or, in lieu, to offer liquid items whose value can be in place of such repair. This view of R. Yishma'el might have prompted the gemara to suggest a unit-based form of assessment for R. Yishma'el – all of which led to a peculiar possibility of paying more value than was actually damaged. Said otherwise: R. Chayim's concept of nezek might generate two related halakhot - one regarding the method of assessing the obligation, and one regarding the method of payment.

This 'link' within R. Yishma'el's position which was suggested and then subsequently rejected by the gemara might surface in a different context. The gemara in Gittin (48) and Bava Kama (6b) suggested an assessment strategy of paying the highest grade of the unit damaged. This was swiftly rejected. A different gemara in Bava Kama (58b) considers a second question. Assuming that payment always reflects the amount damaged – which item's diminished value is assessed? Take for example an animal which ate 'shachat' (the unripened growth which precedes certain types of wheat - referred to by this gemara as 'chaziz'). Should the payment be the minimal worth of the item damaged or the ultimate worth of the wheat which would have grown? This question forms the subject of a debate

between R. Yossi Ha-glili and the Chakhamim with the former adopting the less intuitive approach that the value of the ultimate row of wheat which might have grown is compensated. In the ensuing debate of this position, Abaye aligns R. Yossi Ha-glili's assessment procedure with R. Yishma'el's opinion about meitav. Here, we witness the same phenomenon repeating itself. R. Yishma'el said nothing about how much to pay – only about which type of lands to use as payment. Yet, the gemara assumes that his position about meitav would influence the assessment strategy as well. Possibly, this 'unnatural' association returns us to our previous discussion. If the gemara inferred R. Chayim's notion of nezek compensation from R. Yishma'el's meitav stance, it might have extrapolated from this a unique assessment strategy. In this case, as well, we might arrive at R. Yossi Ha-glili's opinion through R. Chayim/R. Yishma'el. If the damager owes value, present value should dictate the terms of the debt. If, however, the obligation consists of repair, then possibly a full repair based on future development might be owed. Again, we would not necessarily demand such, but certainly the possibility exists. If, however, value is owed, it is far more difficult to arrive at this future-based assessment. Note that this association between R. Yishma'el's meitav position and the assessment strategy remains Abaye's final position (as opposed to R. Yishma'el's expansion in Gittin and Bava Kama 6b).

METHODOLOGICAL POINTS:

1) Be sensitive to unnatural extensions, or unexpected broadenings of halakhic positions. R. Yishma'el asserted his view about the MATERIAL of payment – not the method of assessing its value. By stretching R. Yishma'el to the latter, the gemara might have been indicating that his position about the material of payment stems from a more fundamental definition about the nature of nizkei mammon debt - a position which might also influence the debt's assessment. These unexpected or unnatural extensions force us to redefine our original halakha in a manner which can encompass both the original halakha as well as the 'extension.'
