

We compare it to a creditor**OVERVIEW**

The גמרא initially sought to say that if a נזיק demands a larger portion of בינונית at the current lower valuation (equal to his loss), the מזיק can refuse by saying you may take עידית at the current valuation; however בינונית you will have to take at the higher valuation. The גמרא refuted this that since the תורה gave the נזיק the right to collect even from עידית (at the current valuation) then if you will deny him בינונית (or זיבורית) at the current valuation you are diminishing his strength that the תורה awarded him. The גמרא retracted, and stated that it applies to a בע"ח; that he cannot request זיבורית at the current valuation (only בינונית). תוספות will explain why the same difficulty of נזיקין does not apply here to a בע"ח.

anticipates a question:

ולא שייך למפרך אם כן הורעת כמו -

And it is inappropriate to challenge; ‘if so, you have denigrated his strength (of the בעל חוב), for we are not allowing him to collect from זיבורית at the current valuation, when the בע"ח is entitled to receive (even) בינונית כדהשתא.¹

explains that it is not a question:

שלא יפה הכתוב כח בעל חוב אלא אדרבה הורע כמו דמדאורייתא דינו בזיבורית²:

For the תורה did not enhance the strength of the בע"ח; rather on the contrary the תורה diminished his strength, for the lawful claim of a בע"ח is (only) against the זיבורית of the לווה. Therefore by not allowing the בע"ח to collect from the זיבורית טפי, פורתא כדהשתא, we are not diminishing his strength, for his strength is initially very limited.³

SUMMARY

We cannot say הורעת כמו by a בע"ח for he never had a כח יפוי כח.

THINKING IT OVER

Why cannot the מלוה argue that זיבורית אצל כחי הרעת, for I have a כח מדרבנן to collect בינונית?⁴

¹ נזיק is asking that we should have the same objection by a בע"ח as we had previously by the נזיק.

² It is only בזיבורית that a בע"ח can collect from בינונית (in order לפני לוין). (שלא תנעל דלת בפני לוין).

³ When we say that מדאורייתא בע"ח דינו בזיבורית, it does not (necessarily) mean that he has a right to the זיבורית of the לווה; but rather on the contrary, he has no rights at all. The לווה can give him whatever the לווה chooses (this is derived from the [תצא] כד, יא). (פסוק, והאיש אשר אתה נושה בו יוציא אליך את העבוט החוצה [דברים]). Therefore the לווה can insist that he either take בינונית כדהשתא (which he deserves בע"ח), or זיבורית כדיוקרא דלקמיה. [It is the exact opposite of מיטב, where the נזיק can choose whatever type of קרקע he desires; זיבורית included.] The above should also explain why the מלוה cannot claim בתקנת חכמים. See חי' ר"נ אות רמ"ד. א"א בתקנת חכמים.

⁴ See בל"י אות קצד.