

אין לו גובה משלפניו –

If he does not have, collect from the previous buyer

OVERVIEW

The **עידית בינונית וזיבורית** teaches us that if the debtor sold his (three) fields to three different people consecutively, then whoever has a claim against the debtor (whether it is a **ניזק** or a **בע"ה** or a **אשה**), must collect initially only from the last **לוקה** (regardless which field the last **לוקה** possesses. If the last field sold is not sufficient to pay for his debt, then after the last field was confiscated, the previous to last field may be used for collection, and so on. We collect from the last to the first. **תוספות** will be discussing the following case. The original owner of the three fields (**עידית בינונית וזיבורית**) was **מזיק** someone on Sunday, took a loan from another on Monday, and married on Tuesday. Afterwards he sold the three fields to three different people, in the order of **עידית** first, then **בינונית** and finally **זיבורית**. The **ניזק**, the **בע"ה** and the **אשה** are coming to collect their respective debts, simultaneously. It may seem that since they are all coming at the same time; and there are three fields to collect from, the **ניזק** should collect **מעידיית כדינו**, the **בינונית** **בע"ה** and **אשה** **כתובת**. Our **תוספות** will rule that it is not so.

אומר רבי יצחק בר אשר¹ שאם באו כולם בבת אחת -

The ריב"א states that if all the creditors (the **ניזק and the **בע"ה** and the **אשה**) came simultaneously to collect their respective debts from the various **לקוחות**, then the law is that -**

כל הקודם בשטר גובה מן האחרון תחילה –

Whoever's document precedes the others (in time), he collects from the last **לוקה, first.** The creditor who is owed money first collects first; but he must collect from the last **לוקה**.

תוספות explains:

ואם נזקין קדמו² גובה מן האחרון אפילו היא זיבורית³ –

And if the damages preceded the other obligations, then the **ניזק collects from the**

¹ See הגדולים בערכו.

² First, the seller (of the properties) damaged, and afterwards he borrowed money and then he married.

³ If the **מזיק** would not have sold any of his fields the **ניזק** would collect from **עידית**. However since he sold the **זיבורית** last, then the buyers of the **עידית** and **בינונית** can refuse payment to the **מזיק**; telling him when we bought the **זיבורית** the **מזיק** still had the **זיבורית**, and your (primary) lien was against the **זיבורית** of the **מזיק**, but not against the **עידית** and **בינונית** of the **לקוחות**. The rule is that you cannot collect from **משעובדים** as long as the debtor has assets. Therefore your (primary) lien continues to be against the **זיבורית** but not against the **עידית** and **בינונית**.

last לוקח, even if the field that this last לוקח bought was זיבורית

ואם בא בעל חוב אחריו יגבה נמי מן האחרון אם יש לו -

And if the lender comes after the ניזק (the מזיק borrowed money after he damaged), the בע"ח also collects from the last לוקח (his זיבורית), if the last לוקח still has (the bought זיבורית) property remaining after the ניזק collected his share.

ואם אין לו גובה משלפניו ואפילו מן העידית -

And if the last לוקח has no property left over; the ניזק collected it all, then the בע"ח collects from the prior לוקח (the one who bought immediately before the last לוקח); and even if this property is עידית -

והאשה משלפני פניו ואפילו הן עידי עידית:

And the woman (if she married after the היזק and the loan) collects her כתובה from the buyer who bought before the one who bought before the last לוקח and even if that field is עידי עידית (the choicest of the choice).

SUMMARY

The collection process from לקוחות is such that we always collect from the last לוקח first; regardless what type of property he owns. This rule applies (even) in the case where several creditors came simultaneously; the creditor with the earliest date collects first from the last לוקח.

THINKING IT OVER

1. What strategy can the ניזק use to attempt to collect from עידית in the aforementioned case?

2. In the aforementioned case what would be if the ניזק convinced the עידית לוקח to allow the ניזק to collect from the עידית?⁴ What if the בע"ח convinced the עידית לוקח to allow the בע"ח to collect מעידית?⁵

⁴ He may say to him, 'eventually you will have to give up your property to the אשה, etc.; release it instead to me and I will make it up to you somehow'. See רא"ש סי' ג.

⁵ See אמ"ה בקטע ד"ה כתב.