Only on land – אלא על הקרקע

Overview

The גמרא cites a משנה which states that a פרוסבול is written only if the borrower has land (real estate). תוספות discusses the reason for this qualification.

משום דמלתא דשכיחא היא[1] שמלוה למי שיש לו קרקע –

Because this is something common that one lends money to someone who owns land; it is common **-**

לפי שאין יכול לכלותו ועומדת בפניו[2] –

Since the borrower **cannot destroy it and it exists before him –**

תוספות responds to an anticipated difficulty:

ואף על גב דעציץ נקוב יכול לכלותו[3] לא פלוג רבנן במקרקעי –

And even though a perforated flowerpot can be destroyed, nevertheless the רבנן did not differentiate between different types **of קרקע,** but rather ruled that all קרקע including an עציץ is fit for writing a פרוסבול.

תוספות responds to an additional difficulty:

והא דכתבינן אקרקע כל שהוא[4] פירש בקונטרס משום דראוי לגבות בו כל החוב[5] –

And regarding that **which we write** a פרוסבול even if the לוה owns **a miniscule property,** so **רש"י explains** that it is valid **since it is possible to collect the entire debt** even from a קרקע כל שהוא -

כמעשה דקטינא דאביי[6] –

Like the story of the small field **with אביי.**

תוספות offers an alternate explanation:

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[1] See רש"י ד"ה אלא (who gives this explanation adding) that the רבנן made their תקנות only by a מלתא דשכיחא, so if the לוה has no קרקע it is unusual that the מלוה will lend him (since he is not sure he will be repaid) therefore there is no תקנת פרוסבול if the לוה has no קרקע.

[2] The מלוה will lend money because he is assured of the loan being repaid (he has a lien on the property). See 'Thinking it over' # 2.

[3] It should be considered a מלתא דלא שכיחא for the מלוה will usually not lend for an עציץ נקוב which can be destroyed (and nevertheless the גמרא states that we write a פרוסבול on a עציץ נקוב).

[4] This should also be considered a מלתא דלא שכיחא for the מלוה will usually require that the לוה has קרקע at least equal to the amount of the loan. See 'Thinking it over' # 1.

[5] Therefore it is considered (like) a מלתא דשכיחא.

[6] See כתובות צא,ב where a לוה died owing a hundred זוז to a מלוה and he left over a small field worth fifty זוז. The מלוה came and took the field. The יתומים went and paid the מלוה fifty זוז and took back the field. The מלוה returned and collected the field again for the remaining fifty זוז that he was still owed. אביי ruled in favor of the מלוה (with certain qualifications, עיי"ש). It is evident that it is possible to collect an entire debt even with less property.

ורבינו שמואל פירש משום דקרקע כל שהוא שוה כל החוב דאין אונאה לקרקעות[7] –
And the (ב"ם)**רש explained** it is a valid פרוסבול, **since a קרקע כל שהוא is worth the entire** amount **of the loan for there is no** law of **אונאה by** קרקע–

תוספות asks on פירוש הרשב"ם:

וקשה דהא אמרינן (כתובות דף ק,ב) **דביטול מקח יש להם עד פלגא:**[8]
And this explanation **is difficult, for** the גמרא **states in כתובות** מסכת **that there is ביטול מקח** for קרקע **up to half.**

Summary

A person usually lends only if his loan is guaranteed by the קרקע which is owned by the לוה, therefore a פרוסבול is written only in such as case. We write for an עציץ נקוב because of לא פלוג. If the קרקע is not worth the entire loan we write a פרוסבול either because it is possible to collect the entire loan (רש"י) or because אין אונאה לקרקעות (רשב"ם), [even though there is אונאה for more than half].

Thinking it over

1. Why did not תוספות answer that we write a פרוסבול on קרקע כל שהוא because לא פלוג רבנן במקרקעי (just as תוספות answered regarding an עציץ)?![9]

2. Can we write a פרוסבול for a מלוה ע"פ (where the לוה has sufficient קרקע)?[10]

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[7] The rule (by מטלטלין) is that if one overcharges (or undercharges) for less than a sixth (of the correct value) the sale is valid as is; if the discrepancy was exactly a sixth (he sold something worth six זוז for seven), the sale is valid but the discrepancy (the אונאה) must be returned (one זוז); if however the אונאה was for more than a sixth (he charges five for something which is worth four) the deal is voided and the merchandise and the monies go back to the seller and buyer respectively. However by קרקע even if the אונאה was more than a sixth the deal is valid. Therefore even though the actual value of this קרקע is less than the loan, nevertheless since it can be sold for a much higher price (without incurring the penalty of אונאה) it is considered to be worth more.

[8] If the אונאה by קרקע was more than half (he sold land which is worth one hundred זוזים for more than two hundred זוזים) the sale is voided. The question is (how) can we write a פרוסבול if the קרקע is worth less than half the amount of the loan?!

[9] See footnote # 4 and נמוקי יוסף.

[10] See (footnote # 2 and) נח"מ.