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**TALMUDIC METHODOLOGY**

**By Rav Moshe Taragin**

**Shiur #04: Bar Metzra (Part 2)**

A previous *shiur* (<https://www.etzion.org.il/en/bar-metzra-%E2%80%93-first-right-purchase-neighbor>), explored the nature of the *bar metzra* rule: a neighbor who possesses land adjacent to a parcel of land being offered for general purchase has first rights to purchase that parcel. That *shiur* explored whether this rule reflects a benefit to demand “first purchase” and oust alternate potential clients, or the neighbor enjoys a partial *kinyan* on the land being sold. Several interesting *nafka minot* were presented, including the manner by which the adjacent neighbor or the *bar metzra* may waive his privilege of ‘*bar metzra’* rights. This *shiur*, will investigate several additional *nafka minot* impacted by this essential question.

The *gemara* in *Bava Batra* (5a) cites a scenario in which Ravina and his neighbor Runia were disputing the application of *bar metzra* rules. Ultimately, R. Safra – the reigning *dayan* – instructed Ravina to yield to Runia. The details of the nature of this “neighbor-ship” and of the dispute itself are not clear to the *Rishonim*. This *shiur*, will explore three of the four options suggested by the *Rishonim*.

Rashi cites a “second opinion” that claims that the property of Ravina (who was wealthy) completely surrounded Runia’s small field. The parcel of land that was now up for purchase was not physically contiguous to Runia’s circumscribed land (since Runia’s land was enclosed on four sides by Ravina’s land). Runia wanted to implement his *bar metzra’s* rights to purchase land that was not physically contiguous to his but was certainly proximate to his enclosed property. The debate surrounded whether a *bar metrza* has first rights of purchase to lands that are accessible but not physically contiguous. Runia claimed that *bar metzra* rights extended in this instance, whereas Ravina rejected his contention.

Presumably, the debate surrounded the nature of *bar metzra* rights. If *bar metzra* is merely a privilege or *zechut* to enable the economization of resources and labor, it should apply in any condition. Even if Runia’s land was not physically contiguous to the land for sale, he can still **access** the outer land. In fact, the Rosh (cited by the *Shita* *Mekubetzet*) clearly states that Runia had legal access to the outer land, even though he didn’t enjoy physical contiguity. He had already acquired “pass-through” rights from Ravina to allow him to exit his enclosed land and access other areas. Thus, even though Runia’s land was enclosed, he was able to walk through the surrounding lands of Ravina and access this land for sale. Why should *bar metzra* be limited only to physical adjacency? The same factors that award first purchase rights to someone with a contiguous field should apply to anyone who has easy access to the land being sold.

Alternatively, perhaps *bar Metzra* is not merely “first purchaser rights,” but constitutes a miniature *kinyan* upon the land of a neighbor. Anytime a person acquires land, he also acquires a partial hold on neighboring lands. Of course, this weak *kinyan* does not afford him with any classic ownership functions, but it does allow him to exercise first-purchase rights in the event that the neighboring land is sold. If *bar metzra* is defined as a partial *kinyan* in neighboring land, it may only apply to an actual contiguous land. Ownership of land might yield a partial hold upon lands physically adjoining; it is be more difficult to imagine these *kinyanim* extending to all lands that are accessible to a land owner. It would be illogical to claim that a person who owns land also possesses a partial *kinyan* on all lands he can access nearby.

Rabbenu Tam read this scenario very differently from Rashi’s second opinion. He argues that Ravina was indeed wealthy and owned many lands adjacent to Runia’s single property. This created a scenario in which Ravina himself was a multiple *bar metzra* to the land being sold on the market; Ravina enjoyed physical adjacency to multiple boundaries of the land being sold. By contrast, poor Runia only enjoyed adjacency to one boundary of the land being sold. Ravina suggested that his *bar metzra* position was **stronger** than Runia’s, as he possessed multiple adjacent borders; he should therefore be awarded the prospective land. Ravina was not simply questioning Runia’s rights as a *bar metzra*; he was proposing that his **own** *bar metzra* candidacy superseded those of Runia.

Should *bar metzra* be “weighted,” such that a person who enjoys multiple boundary adjacencies should be given preference over one who only enjoys a single adjacency? Perhaps this question is also impacted by the definition of *bar metzra*. If the doctrine merely awards rights of purchase based on land adjacency, it would matter little whether a person enjoys single adjacency or multiple adjacency. However, if *bar metzra* establishes a mini-*kinyan* in the land of a neighbor, perhaps that *kinyan* is augmented if a person possesses multiple adjacent lands. Since each property owned delivers a partial *kinyan* on the adjacent land, the *kinyan* of a multi-boundary neighbor would surpass the *kinyan* of a single-boundary neighbor.

In his initial comments, Rashi offers a completely different perspective on the dispute between Ravina and Runia. Both Rabbenu Tam and the second approach presented by Rashi claim that this was a **unique** application of *bar metzra* because both sides had a claim: According to the second opinion in Rashi, Runia had access to the land offered for purchase, but did not own lands physically contiguous; according to Rabbenu Tam, Runia lived adjacent to one boundary, whereas Ravina occupied multiple boundaries. This first approach cited in Rashi, in contrast, claims that only Ravina was a *bar* *metzra* to the land being sold and he was a classic *bar metzra*. However, despite his clear and unmistakable *bar* *metzra* rights, he was encouraged by the judge (R. Safra) to relinquish those rights and award the land to Runia, who wasn’t a *bar metzra* at all! Runia was impoverished, and the potential benefit he could draw from the land over-tallied Ravina’s *bar metzra* rights.

What is unclear is why R. Safra disqualified classic *bar metzra* rights of Ravina simply because Runia was poor. Perhaps R. Safra was merely encouraging Ravina to behave beyond the letter of the law, *lifnim mi-shurat ha-din*. A similar situation emerges in *Bava Metzia* (63a), where Rabba bar bar Chana was encouraged to pay wages to negligent porters who had broken his wine barrels and wasted the wine they were meant to transport. Even though legally he could have withheld their salaries and even sued them for the damage to his wine, Rabba bar bar Chana paid them in order to live by the higher standard expected of someone of his moral stature. Perhaps R. Safra was similarly directing Ravina: Even though you deserve the land because of your *bar metzra* rights, you should extend this courtesy to Runia, who is poorer than you.

Alternatively, perhaps R. Safra was instructing Ravina that his *bar metzra* rights do not legally apply if they are being applied to the disadvantage of a different potential buyer who is poor. After all, *bar metzra* does not award the neighbor actual monetary holds upon a neighboring land, but merely grants the neighbor purchase **rights** in order to create a society of courteous behavior and fulfill the principle of *ve-asita ha-yashar ve-ha-tov*. In this instance, the agenda of *yashar* and *tov* is better served by offering purchase rights to the poor person.

Interestingly, the *Ba’al Ha-Ma’or* cites his father, who claims that *bar metzra* rights in general are suspended if the vying purchaser who is not a neighbor can make a significantly greater profit off the land than the actual *bar metzra* can. To prove this theory and this suspension of *bar metzra*, the *Ba’al Ha-Ma’or* cites the ruling of R. Safra, who suspended classic *bar metzra* rights of Ravina to award the land to Runia, the poorer person.

Ravina maintained, however, that *bar metzra* endows the neighbor with actual monetary holds upon the neighboring land. If Ravina the *bar metzra* possessed these monetary rights, they aren’t suspended simply because a different potential purchaser is poorer.