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Bava Basra Daf 176

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May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

**No Contract**

Rav Pappa rules that a creditor without a contract can collect from the estate of his debtor, but not from land sold by the debtor. He may collect from the estate in order to not dissuade people from lending, but he may not collect from land sold by the debtor, to protect buyers who did not hear of the loan, since no contract was signed. (176a)

**Guarantees**

The *Mishna* said that if a creditor produced a document written by the debtor stating that he owes the money, he may collect from liquid assets, but not from assets that have been sold.

Rabbah bar Nassan asked Rabbi Yochanan whether he may collect from sold assets if this contract was validated by the court.

Rabbi Yochanan said that he still may only collect from liquid assets.

Rami bar Chama challenged this from a *Mishna* in Gittin. The *Mishna* lists three divorce documents (*get*), which the Sages deemed invalid, but which do not make a child from a subsequent marriage illegitimate (*mamzer*):

1. The husband wrote it himself, but without any witnesses signing.
2. There are witnesses signed, but no date.
3. It has a date, but only one signature.

Rabbi Elozar says that even if the *get* was not written by the

husband, and has no signatures, but was given to the wife in front of witnesses, it is valid. Similarly, if a loan document was not written by the debtor, and has no signatures, but is given in front of witnesses, it is valid, and the creditor may use it to seize land sold by the debtor. Rabbi Elozar’s position proves that a document that was given in front of witnesses is a bona fide contract, even if not written by the debtor, and not signed, So too in the case of a contract written by the debtor, and validated by the court, the creditor should be able to seize land sold by the debtor.

The *Gemora* answers that in the case of Rabbi Elozar, the contract was written to be given in front of witnesses, and the debtor therefore fully obligated himself when it was written. However, in the case of the *Mishna*, the debtor never planned to give the contract in front of witnesses, but simply to record his obligation, and therefore it does not have the full power of a contract, even when validated.

The *Mishna* says that if a loan guarantor who appears in the contract after the witnesses’ signatures, the creditor can only collect liquid assets from him. Rav said that if he appears before the witnesses’ signatures, the creditor can also seize land sold by him. Other times, Rav said that even then the creditor can only collect liquid assets.

The *Gemora* resolves the contradiction by explaining that it depends on whether the guarantee clause is attached to the text of the contract with the connecting “and.” If the guarantee clause is preceded by “and,” then it is included in the text of the contract and its signatures, and the creditor may seize land sold by the guarantor, while if it is a separate statement, the signatures are not related to it, and the creditor may only collect liquid assets.

Rabbi Yochanan says that wherever the guarantee clause is located, and however it is phrased, the creditor may only collect liquid assets.

Rava challenges this statement from another statement of Rabbi Yochanan. The *Mishna* in Gittin says that if a *get* concludes with regards to someone, it is invalid, since we are concerned that the witnesses signed only on the regards, and not the contract.

Rabbi Avahu said that Rabbi Yochanan explained that the *get* is only invalid if the regards is not preceded with “and.” If it was preceded with “and,” it is connected to the *get*, and the signatures are therefore on both sections.

The *Gemora* clarifies that Rabbi Yochanan agrees with Rav, and only ruled that a creditor may not seize land sold by the guarantor when the guarantee clause is after the signatures or is not preceded by “and.” (176a)

### ***The Guardian Guarantor***

The *Mishna* related the dialogue between Rabbi Yishmael and ben Nannas about a guarantor who guaranteed after the loan was made. Rabbi Yishmael said that the creditor may collect liquid assets from the guarantor, while ben Nannas said he cannot collect at all, since the guarantor may have only intervened to protect the debtor from the creditor’s wrath. Rabbi Yishmael then stated that one who wishes to become wise should study monetary *halachah*, which is expansive, and if one wants to learn monetary *halachah* well, he should study under Shimon ben Nannas.

Rabbah bar bar Chanah says that although Rabbi Yishmael praised ben Nannas, we still rule like Rabbi Yishmael.

The *Gemora* asks whether Rabbi Yishmael holds his position even when the guarantor indeed intervened when the creditor was strangling the debtor.

Rabbi Yochanan says that he does hold his position, even in this case.

The *Gemora* then asks whether we rule like Rabbi Yishmael even in this case, and cites Rabbi Yochanan who says we do.

Rav Yehudah quotes Shmuel who says that if a creditor was strangling his debtor for payment, and the guarantor made a formal acquisition, he is obligated to pay.

The *Gemora* infers that in a standard case of a guarantor, no formal acquisition is necessary. This differs from Rav Nachman, who says that only a guarantor appointed by the court does not need a formal acquisition to be obligated, since he obligates himself in exchange for being considered trustworthy by the court, but a standard guarantor does need a formal acquisition.

The *Gemora* concludes with the following rulings:

Guarantor	Acquisition Needed?	Reason
At the time of the loan	No	The loan was made because of his guarantee
After the loan	Yes	He only agreed to save the debtor
Appointed by the court	No	In exchange for being considered trustworthy

(176a – 176b)

WE SHALL RETURN TO YOU, GET PASHUT

AND MESECHTA BAVA BASRA IS CONCLUDED



## INSIGHTS TO THE DAF

### ***Guarantors***

The *Gemora* discusses different parameters of guarantors, and to what extent a guarantor is obligated. One who guaranteed a loan at the time of the loan is fully obligated, even if the debtor had no property at the time, and even without a formal acquisition, in exchange for the trust shown him by the creditor. However, one who guarantees a loan afterwards, and thereby assuaged an irate creditor, is only obligated with a formal acquisition.

The *Gemora* says that a guarantor of the court does not need a formal acquisition, since he obligates himself in exchange for the trust shown him by the court.

The Rambam rules that this is only when the court was ready to collect, and the guarantor convinced the court to defer collection, as he will guarantee payment. Since the court was persuaded by his word, they have indicated their trust in him.

If a guarantor is included in the loan contract, after the signatures of the witnesses, the Ramban and Raavad say that he is obligated, even without a formal acquisition, just like someone who handwrites an IOU to someone.

The Ramah disagrees, and says that this does not obligate the guarantor.

The Rambam goes further and says that even a guarantor who appears in the contract before the signatures, but which occurred after the loan, is not obligated without a formal acquisition.

### **DAILY MASHAL**

#### ***Nezikin Personalities***

The conclusion of Bava Basra is actually the conclusion of

the three sections of *nezikin* – Bava Kama, Bava Metzia, and Bava Basra. Bava Kamma deals primarily with damages, which close interactions between people, albeit destructive. Bava Metzia similarly deals with interactions between people, in a normative fashion – guarding items, returning lost items, lending money, etc. Bava Basra primarily deals with separations between people – fences between neighbors, inheritance, sales of objects, etc.

The last *Mishna* in this super-section of *nezikin* seems to have elements of all parts. It begins with a loan made between people, a sort of Bava Metzia functional interaction. However, the creditor is upset at not receiving his payment, and proceeds to attack the debtor, a sort of dysfunctional Bava Kamma interaction. Enters the guarantor, one who is actually separate from both parties, the Bava Basra personality. Ben Nannas teaches us that the correct thing for the guarantor to do is to get involved, simply to return the dysfunctional interaction to a normative one. Perhaps Rabbi Yishmael is referring to this type of lesson when he praises ben Nannas.

#### ***Upon Concluding Bava Basra: What is actually the Longest Tractate?***

Tomorrow, the thousands of Daf HaYomi learners conclude Bava Basra, comprising 176 *dafim*, the longest tractate in the Babylonian Talmud. Those exploring the connections between various bodies of the Written and Oral Torah have discovered that the longest portion of the Chumash, *Naso* in the book of Bamidbar, contains 176 verses and that the chapter with the most number of verses in the whole Tanach, Chapter 119 of Tehilim, is also comprised of 176 verses. Actually, if not for the comparatively long commentary by Rashbam, Rashi's grandson, the number of *dafim* in Bava Basra would be less as the text of the *Gemora* in Bava Basra, alone, is not the longest of any tractate. As the Vilna Gaon remarks, the text of the *Gemora* in Brachos is actually the longest of any tractate, though only comprising 64 *dafim*.



Still, the Daf HaYomi participants may congratulate themselves on finishing the longest tractate since – as Rav Yosef says in Bava Kamma (102a) – Bava Kamma, Bava Metzia and Bava Basra are really one tractate divided into three to make their learning more wieldy. *Bava* means “gate”: Bava Kamma – “The First Gate,” Bava Metzia – “The Middle Gate” and Bava Basra – “The Last Gate”. Indeed, ancient manuscripts show all three as one long tractate divided into thirty chapters.

Apropos this distinction, Rabbi Levi ben Chaviv criticized Mahari Beirav’s calling Bava Kamma “tractate Kamma” as the entire Bava Kamma is only the First gate of a longer tractate (Responsa Ralbach, 147).

This topic has a broad *halachic* implication. The *Gemora* in Bava Kamma 102a explains that if the *Mishnah* mentions a difference of opinions regarding a certain *halachah* and then later mentions just one of the opinions *stam* i.e. without mentioning that this is the opinion of only one *Tanna*, we must assume that Rabbi Yehudah HaNasi, the redactor of the *Mishna*, ruled according to that opinion. This rule is valid, however, only if all the opinions appear in the same tractate and the *Gemora* therefore attributes much importance to the question as to if Bava Kamma, Bava Metzia and Bava Basra are to be regarded as one tractate or not.

By the way, during the famous Beilis trial, the Talmud itself was also accused and misused to fabricate allegations against the Jews; the prosecutors, however, were so ignorant that one of them held up a tractate Bava Basra and asked the meaning of the “last Grandmother” and its significance (*baba* in Russian means “grandmother”). The Jews present at the trial were hard put to hide their smiles...

**Sanhedrin and Makos – one tractate?** Some hold that Sanhedrin and Makos also comprise one long tractate containing 14 chapters and a few manuscripts attest accordingly.

Rambam mentions the idea in the introduction to his commentary on the *Mishna* but asserts that the concept is false.

On the other hand, Ramban (on Devarim 21:13, etc.) and Rashba (on Kiddushin 22a) cite a passage from the Yerushalmi “in Sanhedrin” whereas the passage appears in Makos.

Ralbag (*parshas Mishpatim, Shoresh* 16) also calls Chapter 2 of Makos “Chapter 13 of Sanhedrin” and the commentary *Melech Shlomo* on the *Mishnah* mentions that most of the books he had seen designate the conclusion of Makos as the end of Chapter 14 of Sanhedrin. According to this opinion it could be that, when possible, tractates were arranged according to the number of their chapters in descending order.

Thus *Seder Nezikin* is:

Tractate Nezikin (Bava Kamma, Bava Metzia and Bava Basra together): 30 chapters;

Sanhedrin with Makos: 14 chapters;

Shevuos: 8 chapters;

Eduyos: 8 chapters;

Avodah Zarah: 5 chapters;

Avos: 5 chapters (Chapter 6 is actually a *beraisa*, as stated at its beginning);

Horayos: 3 chapters.

(See *Margalios HaYam* at the beginning of Sanhedrin and the last page of the book concerning tractate Avodah Zarah).