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DAF Notes
Insights into the Daily Daf
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Bava Basra Daf 174

Daf Notes is currently being dedicated to the neshamot of

Moshe Raphael ben Yehoshua (Morris Stadtmauer) o"h

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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

Kablan vs. Guarantor

Rabbah bar Chana says in the name of Rabbi Yochanan: Whenever Rabban Shimon ben Gamliel appears in the *Mishna*, the law follows his opinion. This is with the exception of three cases: the guarantor (*our Mishna*), Tzidon (*see Gitin 74a*), and the final (*case regarding a*) proof (*in Sanhedrin 31a*).

Rav Huna says: If someone says, "Lend to him and I am a guarantor," "Lend to him and I will pay," "Lend to him and I will be liable," and "Lend to him and I will give (*the money*)," these are all terms of becoming a guarantor. "Give him and I will be a *kablan*," "Give him and I will pay," "Give him and I will be liable," "Give him and I will give" are all terms of being a *kablan*. [*The main difference between being a guarantor and a kablan is that the lender must try to get the money from the borrower before trying to get it from a guarantor. In contrast, he may try to get the money from a kablan before a borrower.*]

The *Gemora* inquires: If someone says, "Lend to him and I will be a *kablan*" or "Give him and I will be a guarantor" what is the law?

Rabbi Yitzchak says: When the term "guarantor" is used it means he is a guarantor, and when the term "*kablan*" is used, it means he is a *kablan*. Rav Chisda says: These are all ways of saying one is a *kablan*, besides "Lend him and I will be a guarantor." Rava says: They are all ways of saying one is a guarantor, besides when saying, "Give him and I will give you."

Mar bar Ameimar said to Rav Ashi: My father says that if one says, "Give him and I will give," the lender has no claim on the borrower at all.

The *Gemora* argues: This is incorrect. The lender has a claim on the borrower unless the *kablan* actually takes the money from the lender and gives it to the borrower (*after saying "Give me and I will give him"*).

There was a judge who once allowed a lender to seize the assets of a borrower before even claiming the money from him. Rav Chanin the son of Rav Yaba made the lender go away. Rava said: Who is so smart to do this if not Rav Chanin the son of Rav Yaba! Rav Chanin holds that the possessions of a person are like his guarantor. The *Mishna* says: If someone borrows from his friend with a guarantor, he should not collect from the guarantor. We understand this to mean that he should not collect from the guarantor first, before trying to collect from the borrower. [*This means that the person had no right to first try to collect from the borrower's possessions.*]

A guarantor for a loan paid the money owed to the lender after the borrower had died, and he did not notify the orphans that there was a claim on their estate. He then went and claimed the money back from the orphans. Rav Pappa says: The money that they now owe the guarantor has the status of an oral loan, and they should pay it back (*if found to be obligated to do so in Beis Din*) after they become *bar mitzvah*. Being that it is a *mitzvah* to pay a loan, they should do it when they become *bar mitzvah*. Rav Huna the son of Rav Yehoshua says: [*I agree that they should pay back when they become bar mitzvah if found to be liable, but for a completely different reason.*] We suspect that the lender already seized the money owed to him when the father was alive (*and therefore the orphans never owed any money when the guarantor paid, and should not have to pay the guarantor*).

L'zecher Nishmas HaRav Raphael Dov ben HaRav Yosef Yechezkel Marcus O"H

The *Gemora* asks: What is the practical difference between these two opinions?

The *Gemora* answers: The difference is if the father admits before he dies that he never paid the lender. Alternatively, the *Gemora* answers: The difference is if he was put in *cheirem* (*a form of excommunication*) for not paying back the lender, and he died while he was still in *cheirem*. [*According to Rav Papa he still would not collect until they are bar mitzvah, while according to Rav Huna he would collect immediately.*]

They (*Rabbi Elazar, see Sanhedrin 17b*) sent from there: If he was put in *cheirem* and died in *cheirem*, the law follows Rav Huna the son of Rav Yehoshua (*that the guarantor collects immediately*).

The *Gemora* asks a question from a *braisa*. The *braisa* states: If a guarantor has the loan document proving that he paid back the loan, he does not collect (*until they are bar mitzvah*). If the guarantor has a signed statement from the lender saying, "I received payment from you," he does collect immediately. The *Gemora* continues: This is understandable according to Rav Huna the son of Rav Yehoshua, as the case where he pays is when the father admitted before death that he never paid the lender. However, according to Rav Pappa, why should he collect immediately?

The *Gemora* answers: This case is different, as the signing of the lender that he received payment from the guarantor turns this into a documented loan, not an oral loan. Rav Papa agrees that the orphans must pay documented loans before they become *bar mitzvah*. [*Rav Pappa differentiates between a clear obligation, which is regardless of the age of the orphans, and an oral loan which is only a mitzvah (i.e. meritorious) for them to pay back.*]

A guarantor for a loan paid the money owed to the gentile lender after the borrower had died, and he did not notify the orphans that there was a claim on their estate. He then went and claimed the money back from the orphans. Rav Mordechai said to Rav Ashi: Avimi from Gronia says in the name of Rava that even according to the opinion that we suspect money was paid to the lender before the father died, this is only when the lender is a Jew (*as the lender will always claim the money from the borrower before the guarantor*). However, if the lender is a gentile, being that gentiles will also claim the money from the guarantor first, it is clear that no money was given to the lender. [*The guarantor can therefore demand payment immediately.*]

Rav Ashi replied: On the contrary! Even according to the opinion that we do not suspect the father paid the lender before he died, this is only when the lender is a Jew. However, when the lender is a gentile, being that gentiles will also claim the money from the guarantor, it is clear that money was given to the guarantor. Otherwise, he would not have agreed to be the guarantor, as it is almost assured that he will have to pay back the loan as well.

The *Mishna* had stated: And so too, Rabban Shimon ben Gamliel said: One who is a guarantor for a woman's *kesuvah*, and her husband divorced her, he must vow not to let her derive any benefit from him, lest they make a conspiracy against this one's property (*for this way, she will collect from him, and afterwards, the husband will remarry her*), and he will take back his wife.

Moshe bar Atzri was the guarantor of the *kesuvah* of his daughter-in-law. His son, Rav Huna, was a Rabbinical student who did not have money. Abaye said: Is there nobody who can go and give Rav Huna advice to divorce his wife, have her collect her *kesuvah* from Moshe bar Atzri, and then remarry her?

Rava asked: Doesn't the *Mishna* say that (*to avoid such a conspiracy*) the husband must swear he will not have any benefit from his ex-wife ever again?

Abaye replied: Does everyone who divorces his wife do so in a *Beis Din* (*where they are careful to make the husband make such a condition when he has guarantor's on his kesuvah*)?

L'zecher Nishmas HaRav Raphael Dov ben HaRav Yosef Yechezkel Marcus O"H

In the end, this advice did not help at all, as Rav Huna was a *Kohen* (*and therefore could not remarry his wife, as she would be a divorcee who is forbidden to a Kohen*).

Abaye commented: This is the meaning of the phrase, "After the poor goes poverty." [*In other words, the poor continue to live in poverty.*]

The *Gemora* asks: How could Abaye have given such advice in the first place? Didn't Abaye himself say: Who is considered a cunning evildoer? It is someone who gives advice to sell property as per the opinion of Rabban Shimon ben Gamliel. [*The case is where someone gave a property to Reuvan, and he said that after you die it should go to Shimon. Rabban Shimon ben Gamliel understands that if Reuven sells the property he keeps all of the money, as the condition was only to give whatever is left of the property to Shimon after Reuven dies. This is similar (if not more) cunning advice.*]

The *Gemora* answers: Regarding one's son, and a Rabbinical student, this is permitted.

The *Gemora* asks: How was this an option? A guarantor for a *kesuvah* does not really make himself liable to pay!?

The *Gemora* answers: In this case he was a *kablan*, not just a guarantor.

The *Gemora* asks: This is understandable according to the opinion that a *kablan* indeed accepts the liability to pay for a *kesuvah*, even if the husband has no assets. However, according to the opinion that he only accepts liability if the husband indeed has assets, how could they (*theoretically*) have made Moshe bar Batzri pay (*as his son in law had no money*)?

The *Gemora* answers: It is possible that he had lands originally and they became flooded. Alternatively, it is possible that a father will make himself liable for his son's *kesuvah*, even if his son does not have any assets.

This is as it is taught: According to everyone, a guarantor of a *kesuvah* is not liable. According to everyone, a *kablan* of a loan is liable. The argument is regarding a *kablan* of a *kesuvah* and a guarantor of a loan. One opinion says that if the borrower has assets he accepts liability, but he otherwise does not. Another opinion says that in any event, he indeed makes himself liable.

The *Gemora* concludes: The law is that a guarantor always accepts responsibility to pay unless he is a guarantor for a *kesuvah*. Even if the husband has assets, he does not make himself liable. Why? He is just doing a *mitzvah* (*to help them get married*) and is not making anyone lose anything (*as the woman wants to get married for her own benefit as well*).

Rav Huna says: If a person on his deathbed says that he is dedicating all of his possessions to *hekdesh*, but that he owes a *maneh* to someone, he is believed. This is because the status quo is that people do not make conspire to take away money from *hekdesh*. (174a – 174b)

INSIGHTS TO THE DAF

The Origin and Meaning of a "Bon Pour Aval" Guarantee

"I am a guarantor *bon pour* ***aval*** to pay the promissory note…" is a clause appearing in official promissory notes issued by government bodies used for many loans and also by free loan funds. What is an *aval* guarantee, what is the origin of the word and its legal implications and how is the concept regarded by *halachah*?

Our *sugya* discusses varieties of guarantees and explains that there are two sorts of guarantors: (a) An **ordinary** guarantor may be demanded to pay a debt only if it has been proven that the borrower has no assets. (b) An **immediate** guarantor (*arev* ***kablan***) takes the borrower's place in any instance and the lender may demand the debt from him without referring first to the borrower. He is called *kablan*, from the verb *lekabel* – "to receive", as he is regarded as having received the loan from the lender and having passed it on to the borrower (Rashbam,

Bava Basra 47a). The holder of a guaranteed promissory note which does not indicate that the guarantor is a *kablan* may demand the debt from him only if it is proven that the borrower has no assets.

Many free loan funds require guarantors to sign the undertaking worded in our *sugya*: *Ten lo ve'eten lecha* – "Give him and I'll give you." In other words, the guarantor instructs the lender to lend to the borrower and, in exchange, undertakes to become an *arev kablan*. Many other loan funds use the government-issued promissory notes with the *bon pour aval* clause. According to civil law, a guarantor signing such a note is regarded as an *'arev kablan* and, as such, should apparently be considered so by *halachah* (see *Pischei Choshen, Hilchos Halvaah, 13, S.K. 7*).

Bon pour aval: Still, HaGaon Rav Yaakov Avraham Kohen extensively researched the topic with senior jurists and discovered that the French phrase *bon pour aval* merely indicates that the signer undertakes to pay the debt simply as an ordinary guarantor without any reference to being an *arev kablan*. *Aval,* then, does not mean *arev kablan* and, actually, civil law regards a guarantor signing even without the term *aval*, or *bon pour aval*, as an *arev kablan*! In other words, civil law does not recognize the Talmudic category of an **ordinary** guarantor at all and every guarantor is regarded as an *arev kablan*. From the *halachic* viewpoint, however, if a guarantor signed a *bon pour aval* guarantee, it is difficult to obligate him as an *arev kablan* as the literal meaning of *aval* is just not so. Hence, if the guarantor never undertook to be an *arev kablan* we cannot force him to fulfill an obligation he never assumed (*Eimek HaMishpat,* II, 16).

DAILY MASHAL

Why Was Reb Baruch Ber Afraid?

Rabbi Moshe Bernstein, son-in-law of Rabbi Baruch Ber Leibovitz zt "l, rosh yeshivah of Kamenietz, told the following story: A few years after we returned from Krementchug, where we lived during the First World War, I saw my father-in-law one day after prayer, obviously disturbed and frightened. When I asked him the reason, he replied that he had found that he still had a book belonging to the synagogue at Krementchug, beyond the border. "If so," he said, "I'm a thief! Not only that, but when we fled Russia we came through Minsk [now in Belarus] and the local rabbi, Rabbi Eliezer Rabinowitz, asked us to form a *bis din* with him to arrange a *get*. According, then, to the opinion that a *get* **must** be arranged by a *beis din*, that *get* is invalid as a thief is disqualified from serving on a *beis din*."

Rabbi Leibovitz was not calmed till he remembered that a band of killers had attacked him on the way from Krementchug to Minsk and that he had barely escaped with his life. During the attack he had pronounced a heartfelt confession (*viduy*) in which he completely repented for any wrongdoing. Since he had really repented and since the book could not be returned due to the war in the region, he decided that he was not a thief and that the *get* was valid.