

WHO GUARANTEES THE GUARANTOR?

A YAHRZEIT SHIUR IN MEMORY OF MOSHE BEN SHMUEL, Z"l

RAMBAM, Mishneh Torah, Malveh ve'Loveh, Chapters 3, 1 & Introduction

דין תורה שבזמן שיתבע המלוה את חובו אם נמצאו ללוה נכסים מסדרין לו ונותנין לבעל חובו את השאר כמו שביארנו, ואם לא נמצא ללוה כלום או נמצאו לו דברים שמסדרין לו בלבד ילך הלוה לדרכו ואין אוסרין אותו ואין אומרים לו הבא ראייה שאתה עני ולא משביעין אותו כדרך שדנין העכו"ם שנאמר לא תהיה לו כנושה, אלא אומרים למלוה אם אתה יודע נכסים לזה המחוייב לך לך ותפוס אותן

According to Scriptural Law, when a creditor demands payment of his debt, and the debtor possesses some property, consideration is granted to the debtor and the remainder of the possessions are granted to the creditor, as explained. If no property belonging to the debtor is found or only those items that are granted to him in consideration are found, the debtor is enabled to go free.

We do not imprison him, nor do we tell him: "Bring proof that you are poor." We do not require him to take an oath that he has no possessions as the gentile legal process does. All of the above is included in the prohibition (Exodus 22:24): "Do not act as a creditor toward him." Instead, we tell the creditor: "If you know that this person who owes you money possesses property, go and seize it."

If the creditor claims that the debtor possesses property, but is hiding it, and it is present within his home, according to law it is not proper for either the creditor or an agent of the court to enter his home to seize the property. Indeed, the Torah warned concerning this saying Deuteronomy 24:11: "Stand outside." We do, however, issue a ban of ostracism against anyone who owns property and does not give it to his creditor.

When, however, the Geonim of the early generations ... saw that the number of deceitful people had increased and the possibility of obtaining loans was diminishing, they ordained that a debtor who claims bankruptcy should be required to take a severe oath ... that he does not possess any property aside from what he is given in consideration, that he has not hidden his property in the hands of others, or given the property to others as a present with the intent that it be returned. **He should include in the oath that any profit he makes and everything that comes into his possession or domain which he acquires, he will not use to provide sustenance, clothing, or care for his wife or children, that he will not give any person in the world a present. Instead, he will take from everything that he earns food for 30 days and clothing for 12 months that is appropriate for him** - not the food of gluttons or drunkards, nor that enjoyed by the sons of royalty, and not the garments of the officers of the royal court, but food and clothing that is commonplace for him." Anything beyond his needs, he should give to his creditor little by little until he pays his entire debt. ¹

¹ In the introduction, Rambam offers additional details: "He brings his possessions, we give him from everything that he has brought: a) food for 30 days; b) clothing for 12 months that is appropriate for him - he should not wear silk clothes or a hat

CHAPTER 1

It is forbidden for one to appear before a person who owes him money when he knows that the debtor does not have the means to repay the debt. It is even forbidden to pass before him, lest one frighten him or embarrass him, even though one does not demand payment. Needless to say, this applies if he demands payment.

Just as it is forbidden for a creditor to demand payment; so, too, it is forbidden for a borrower to withhold money that he possesses due a colleague, telling him: "Go and return," as Proverbs 3:28 states: "Do not tell your colleague: 'Go and return.'"

Similarly, it is forbidden for a borrower to take a loan and use it when it is unnecessary and lose it, leaving his creditor without a source to collect the debt. This applies even if the owner is very wealthy. A person who acts in this way is wicked, as Psalms 37:21 states: "A wicked man borrows and does not pay." Our Sages commanded: "Treat money belonging to your colleague as dearly as your own."

RAMBAM, Mishneh Torah Shmita Chapter 9 (11 – 15)

An account at a store is not nullified by the Sabbatical year. If it is established as a debt, it is nullified. The wage of a worker is not nullified. If it is considered as a debt, it is nullified.

The fines for a rapist, a seducer and one who spreads a slanderous report [about his wife] are not nullified by the Sabbatical year. If they are considered as debts, they are nullified. When are they considered as a debt? When the matter was brought to court.

When a person divorces his wife before the Sabbatical year, [his obligations to her by virtue of] her ketubah are not nullified by the Sabbatical year. If she impaired the legal power [of her ketubah] or considered it as a debt, it can be nullified.

When a person hands over his promissory notes to the court, telling [the judges]: "Collect my debt for me," the debts are not nullified by the Sabbatical year. Deuteronomy 15:3: "[a debt] that you have from your brother." [Implied is that debts demanded by "your brother," a private individual, are nullified by the Sabbatical year. [Payment for] these debts is being demanded by the court.

Similarly, if the court rendered a judgment, writing: "So-and-so, you are obligated to give this person this-and-this amount," [the debt] is not nullified. Such [a debt] is considered as if it has already been collected and entered [the creditor's] possession. It does not resemble a loan.:

crowned with gold; instead, such garments are taken away from him and he is given appropriate garments for 12 months; c) a couch to sit on and a bed to sleep on. These articles are not given to his wife or to his children, despite that he is obligated to provide them with sustenance. The borrower is given his sandals and his tefillin. If a craftsman, he is given two of the tools of his craft of every type necessary. If a farmer or a donkey driver, we do not grant him his team of oxen or his donkey. Similarly, if he is a sailor, we do not give him his ship, even though these are his only sources of livelihood. These are not considered utensils, but rather property. They should be sold with the other movable property in court and the proceeds given to the creditor.

סדר גביית החוב כך הוא כשהמלוה מוציא שטר חוב מקוים אומרים ללוה שלם אפי' שהיה כמה שנים ולא תבעו אין אומרים מחל לו כיון ששהה כל כך שנים ולא תבעו ואפי' שמענו שנתייאש (פי' תרגום ונואש ממני שאול וזה כי מי שלבו הומה על דבר מה ואח"כ נח ואינו חושב עוד בדבר ההוא יאמר עליו ל' יאוש) מהחוב לגמרי ואמר וי לחסרון כיס אינו יאוש (ואפילו ראה המלוה שכתב כל נכסיו לבניו ולא כתב למלוה רק קרקע כל שהוא ושתק אפ"ה לא אמרי' דמחל) (טור) ואפי' אין שטר חוב יוצא מתחת ידו אם החייב מודה

JERUSALEM POST, February 7 2018

The Constitution, Law and Justice Committee approved a landmark bill for its final readings in the Knesset plenum, which is set to revolutionize corporate and individual reorganizations and bankruptcies. Many of the changes will bring Israel into the modern Western age of corporate reorganizations and bankruptcy, in which rehabilitation and maximizing overall economic gains are emphasized over liquidation and punishing debtors as a moral issue. **After years of unusual bipartisan work spanning the full spectrum of right-wing, Arab and Haredi parties, the bill will put rehabilitating corporate and individual debtors front and center in place of liquidation.** The united Knesset MKs celebrated the bill as a victory for social justice. Debtors who run into financial distress due to “economic collisions” or bad luck beyond their control will be empowered and given greater protection to achieve a fresh start. In contrast, debtors who arrived at financial ruin in bad faith will not necessarily reap the bill’s benefits. ... Justice Minister Ayelet Shaked and committee chairman Nissan Slomiansky, both of Bayit Yehudi, former Joint List MK Osama Sa’adi, who was involved in many of the committee’s hearings, United Torah Judaism MK Uri Maklev and many others celebrated the legislation as a crowning achievement of the committee.

MISHNAH BAVA BATRA 10:7

וְכֵן הָיָה רַבֵּן שְׁמַעוֹן בֶּן גַּמְלִיאֵל אוֹמֵר, הָעֶרֶב לְאִשָּׁה בְּכִתְבָתָּהּ וְהָיָה בְעֵלָהּ מְגֵרְשָׁהּ, יְדִירְנָה הַנָּאָה, שְׁמָא יַעֲשֶׂה:
קִינוּיָא עַל נְכָסִים שָׁל זֶה וַיַּחֲזִיר אֶת אִשְׁתּוֹ

MISHNAH AND GEMARA, ARACHIN 23A

מתני' המקדיש נכסיו והיתה עליו כתובת אשה ר"א אומר כשיגרשנה ידור הנאה רבי יהושע אומר אינו צריך כיוצא בדבר ארשב"ג אף הערב לאשה בכתובתה והיה בעלה מגרשה ידירנה הנאה שמא יעשה קינויאה על נכסים של זה ויחזיר את אשתו

There was a man who had sold his property and was then divorcing his wife. R Joseph son of Raba sent [the following question] to R Papa: We learnt [in our Mishnah] about a guarantor . . . what about a purchaser?

נהרדעי אמרי דתנן דלא תנן לא תנן אמר רב משרשיא מאי טעמא דנהרדעי בשלמא הקדש משום ריוח דהקדש ערב נמי מצוה הוא דעבד ולא מידי חסריה

He replied: Must the tanna go on enumerating like a peddler?! The Nehardeans said: That which was taught in the Mishnah was taught; that which was not taught was not taught, i.e., the husband does not need to make the vow when the payment of the marriage contract is collected from buyers. Rav Mesharshiyya said: What is the reasoning? Granted, when the payment of the

marriage contract is collected from consecrated property the husband must make the vow due to the importance of maintaining the profit of the Temple treasury. In the case of a guarantor as well, the husband must make the vow, **as the guarantor performed a mitzva** and the woman did not lose anything, i.e., the guarantor received nothing from the wife, and he nevertheless accepted responsibility for the payment of the marriage contract. **The husband therefore vows in order that others should not be discouraged from performing this mitzva.**

DEUTERONOMY 15

7) If there will be among you a needy person, from one of your brothers in one of your cities, in your land the Lord is giving you, you shall not harden your heart, and you shall not close your hand from your needy brother. 8) Rather, you shall open your hand to him, and you shall lend him sufficient for his needs, which he is lacking. 9) Beware, lest there be in your heart an unfaithful thought, saying, "The seventh year has approached," and you will begrudge your needy brother and not give him, and he will cry out to the Lord against you, and it will be a sin. 10) You shall give him, and your heart shall not be grieved; for because of this thing the Lord will bless you in all your endeavors. 11) For there will never cease to be needy within the land. Therefore, I command you, saying, you shall surely open your hand to your brother, to your poor one, and to your needy one in your land.

RAMBAM, Mishneh Torah, Laws of Charity, 10

There are eight levels of charity, each greater than the next. [1] The greatest level is to support a fellow Jew by endowing him with loan, or entering into a partnership with him, or finding employment for him, to strengthen his hand so that he will not need to be dependent upon others
...

BEIT YOSEF, Yoreh Deah 249

אמר רבי אבא אמר ר"ל גדול המלוה יותר מן העושה צדקה ומטיל לכיס יותר מכולם ופירש רש"י לפי שאין העני בוש בדבר... והטעם שמטיל לכיס יותר מכולם מפני שהמלוה מעות לחבירו בלא ריוח הלוה בוש שהוא נהנה מחבירו בדבר שאין חבירו נהנה כלל אבל במטיל מלאי אינו בוש כלל מאחר ששניהם נהנים

In the chapter Baameh Halsha (Shabbat 63a), "R. Abba also said in the name of R. Simeon b. Lakish: He who lends is greater than he who performs charity; and he who forms a partnership is greater than all." And Rashi explains there that this is because the poor person is not embarrassed... And the reason that one who does business with the poor person is greater than them all, is because one who lends money to his friend without any benefit to himself, in such a case the borrower is embarrassed, for he benefits from his friend in a matter which his friend does not benefit at all. But if one does business with him, in such a case he is not embarrassed at all, since both of them benefit.