

SICHA SUMMARY

Likkutei Sichos, Vol. 26

Mishpatim, Sicha 1

The Two Talmuds:

Tractate Bava Basra concludes with a lengthy discussion concerning the responsibility of a guarantor to a loan. In the end, the talmud distinguishes between a guarantor who accepts responsibility at the time of the giving of the money from the lender to the borrower, and a guarantor who only accepts responsibility after the money has been given. The former does not need to perform an act of acquisition legally cementing his responsibility; the latter, however, is not responsible until he also performs an act of acquisition.

In the example the Mishnah provides: "If one was strangling someone in the marketplace, demanding repayment of a loan, and another person found him doing so and said to the attacker: Leave him alone and I will give you the money he owes, the person who intervened is exempt from paying, as the creditor did not loan the money in the first place based on his trust of the one who intervened."

Only if the guarantor made an acquisition at the time of his commitment in the marketplace would he be legally responsible.

The Yerushalmi, however, implies a different conclusion: even in the case of the guarantor who accepts responsibility after the giving of the money, in the marketplace to stave off a strangler/creditor, for example, he is responsible without an act of acquisition.

The Question:

What is the rationale behind this dispute concerning the limitations of a guarantor's word?

The Explanation:

There are two ways of understanding how the guarantor's promise creates a legal obligation on him to pay the loan:

Causing Loss to the Lender: The guarantor becomes obligated because their involvement directly caused the lender to part with their money. The guarantor's promise gave the lender the confidence to issue the loan, which in turn impresses

upon the guarantor how critical his role in this loan is, leading him to assume the responsibility for the loan.

Benefit Received by the Guarantor: Alternatively, the guarantor's obligation arises from a form of contractual commitment rooted in the benefit they receive. This benefit is not financial but rather psychological—specifically, the trust or credibility granted by the lender's reliance on the guarantor's assurance. This acknowledgment of the guarantor's reliability is akin to a symbolic transaction (קנין), which finalizes their responsibility to cover the loan.

When it comes to the guarantor who intervenes with the strangler, after the giving of the money, these two approaches would differ: According to the position that sees the loss of the lender as the motivating factor in the guarantor's obligation, in the case of the strangler, the lender did not initially rely on the intervention of the person who promised to pay. Since the loan was not issued based on the guarantor's assurance, this approach would exempt the intervenor. Only if the guarantor performed an explicit acquisition would their word be taken seriously in a legal context.

According to the position that sees the benefit received by the guarantor as the source of his obligation, here, the person intervening in the strangler scenario would be responsible because the lender has relented from pressuring the borrower based on his trust in the guarantor.

Thus, the Bavli and the Yerushalmi can be seen as falling along these fault lines, the Bavli sees the loss of the lender as the source of the guarantor's responsibility, while the Yerushalmi sees the benefit derived by the guarantor as the sufficiently powerful to obligate him in payment of the loan.

The Source:

There is a deeper source for these contrasting positions taken by the two talmuds. The unity, interconnectedness, and therefore responsibility of each Jew for another is most fully pronounced in the Land of Israel.

In the diaspora this sense of unity is legally seen as weaker. For example, the Talmud states, "G-d did not punish the nation as a whole for hidden sins committed by individuals until the Jewish people crossed the Jordan River." (Sanhedrin 43b) That is, the people were only fully considered responsible for one another after they entered the Land of Israel. The talmud also rules that "there is no multitude in Babylonia," and therefore we do not make a blessing over witnessing a multitude of Jews in the diaspora. (Berachos 58a) Another consequence of this is that we cannot create legally binding communal fasts outside the Land of Israel. (Pesachim 54b) All this underscores the reality that Jewish unity is most pronounced in Israel.

Therefore, the Bavli maintains that a guarantor only becomes responsible for the loan when there is a practical action taken, such as the releasing of money by the

lender, or the guarantor's act of acquisition when done after the time of the loan. Because the responsibility of one Jew for another is tenuous outside the Land of Israel, therefore a guarantor requires an explicit act to obligate himself. In the Land of Israel, however, the unity amongst the Jews is so tangible that a guarantor can become obligated merely through the abstract, negligible amount of pride he has in being trusted, even without any practical action taken. Furthermore, in Israel, the pain of each Jew matters deeply to another, and therefore the very fact that the guarantor was able to rescue a fellow Jew from a painful situation is sufficient for him to create a legal obligation on himself to pay the loan.

The Deeper Dimension:

The themes of Bava Basra extend beyond legal discussions into deeper symbolic and spiritual territory, particularly when viewed through the lens of Jewish unity and redemption. The tractate begins with the notion of "partners who wish to make a partition," symbolizing the separation of G-d and the Jewish people during the exile. This separation is mirrored in the legal

discussions of disputes and responsibilities among individuals. Yet, the tractate concludes on a note of hope, with the image of a guarantor stepping in to take responsibility, suggesting that G-d Himself will ultimately redeem the Jewish people from their subjugation to external forces.

In the darkest moments of exile, described as "double and redoubled darkness," the Jewish people are likened to the borrower who is "strangled" or constrained. In such times, the guarantor, representing G-d, assumes responsibility, echoing the halakhic conclusion that a guarantor in extreme circumstances can obligate themselves, as per Rabbi Yishmael's ruling.

In Babylonia, however, where the sense of unity is diminished and the darkness is stronger, tangible actions like monetary transactions or formal acquisitions are necessary to solidify obligations. G-d, therefore, has to intervene more flagrantly in the diaspora to rescue the Jewish people. Conversely, in the Land of Israel, where the interconnectedness of the Jewish people is more pronounced, G-d can obligate Himself to rescue us simply through seeing our pain, and therefore remove us from exile with the ultimate redemption.
