



Limits on Taking Security

A lender is generally entitled to take security for a loan. However the *Mishnah* (9:13) contains a number of *d'Oraita* limits to a lender's ability to exact security from a debtor. The common thread running through these limits is that they demonstrate the *Torah's* concern for people that are particularly vulnerable.

The *Gemara* (*Megillah* 31a) quotes *R' Yochanan* who states that wherever you find the greatness of *Hashem*, there you find His humility. *R' Yochanan* provides three quotes by way of example – from the *Torah*, the *Nevi'im* and the *Ketuvim*. Each quote contains a reference to *Hashem's* greatness and exaltedness which is immediately juxtaposed with *Hashem's* concern for the most lowly and vulnerable members of society – the orphan, the widow, the stranger, the contrite and the lowly of spirit. This concern for the vulnerable is clearly seen in our *Mishnah* where the focus is on protecting the vulnerable, particularly when they are most at risk.

First, the *Mishnah* quotes the *pasuk* that prohibits the creditor or the agent of the *Bet Din* from entering the debtor's home to obtain security. To protect the dignity of the debtor, the creditor must wait outside for the debtor to bring the security to them. This law only applies when the loan is already due and the debtor is in default. This is typically when the debtor is most vulnerable and in need of protection. As a further protection for a poor debtor, the *Torah* requires the creditor to return the security when the debtor needs it. This protection does not apply to the debtor's heirs (if the debtor dies) because they are not in a similar vulnerable situation.

The *Mishnah* then quotes the *pasuk* that prohibits taking any security from a widow at the time that she is in default. As a particularly vulnerable member of society, the *Torah* affords even greater protection to widows. The *Sefer HaChinuch* (*Mitzva* 591) explains that a reason for this *mitzvah* is that *Hashem* wants us to acquire the quality of pity so He commanded us to take pity on the widow, whose heart is broken and is

anxiety stricken. According to *Sma*, the law extends to a divorcee because she has no husband to watch over her and she is out of her father's jurisdiction.

The final *pasuk* that the *Mishnah* quotes prohibits taking as security items used to prepare food. Here again, the *Torah* provides extra protection for a vulnerable debtor. If the creditor takes two objects that are both required for the same act of food preparation the creditor will receive a double punishment. Some commentators include in this prohibition items that are used by the debtor to earn their livelihood (*Tur, Choshen Mishpat* 97:17).

We see that the *Torah* places a three fold limit on the creditor's right to take security – some items may never be taken as security, some items may be taken but must be returned to a poor debtor when they need them and security may never be taken from a widow. The *Torah's* focus is to protect the vulnerable from excessive financial hardship and to safeguard their dignity.

The principle of *lifnim meshurat ha'din* states that it is fitting for a person not to base their deeds on the strict letter of the law but rather to act leniently beyond the requirements of the law. In many cases, the *Rabbanim* passed various *takanot* to prevent people from exercising their rights to the detriment of others. In some cases, including those discussed above, the *Torah* itself sets limits on the ability of a person to exercise their rights if it would be to the detriment of other particularly vulnerable persons.

Perhaps *R' Yochanan's* observation can be understood as follows. The reason why *Hashem's* greatness is juxtaposed with His humility is because it is this very humility and this concern for the lowly and vulnerable that is actually a manifestation of His greatness. This is well worth bearing in mind when we deal with those that are less fortunate than us as we seek to fulfil the *mitzvah* of emulating *Hashem* and walking in His ways (*Sefer HaChinnuch mitzvah* 611).

Allon Ledder

Revision Questions

בבא מציעא ט' ד' – י' ד'

- Can a *choker* refuse to weed the field? (ט' ד')
- What is the debate regarding an *aris*, where the field is producing a poor yield? (ט' ה')
- When can a *choker* reduce the produce that he must pay the field owner if the field was devastated by locust? (ט' ו')
- Regarding the previous question, according to *R' Yehuda*, who cannot renegotiate the terms despite the devastation? (ט' ו')
- What is the law regarding a *choker* who produced prime quality produce? (ט' ו')
- If a person rents a field, can he deviate from the agreed use? (ט' ח')
- What is one not allowed plant in a field if it was rented for a “small number of years”? (ט' ט')
- Regarding the previous question, what is a “small number of years”? (ט' ט')
- If someone rents a field for seven years, when is the *shmittah* years included and when is it not included? (ט' י')
- When should a contact worker be paid if he was employed for a: (ט' י"א)
 - Day?
 - Night?
 - Year?
- What are the two *p'sukim* that are the basis for the requirement to pay wages on time? (ט' י"ב)
- Other than wages, to what two other payments do these *p'sukim* apply? (ט' י"ב)
- What are the two circumstances when one does not transgress the prohibition despite delaying the payment? (ט' י"ב)
- When can a worker make a *shevuah* and collect his wages? (ט' י"ב)
- To whom does only one of the *p'sukim* apply? (ט' י"ב)
- How must a lender go about retrieving a collateral? (ט' י"ג)
- What would he have transgressed if he forced his way into the borrowers to retrieve it? (ט' י"ג)
- From who is one not allowed to take a collateral? (ט' י"ג)
- What objects are not allowed to be taken as a collateral? (ט' י"ג)
- What is done with the rubble from a collapsed building with two owners, one of which lived on the second floor? (ט' י"ד)
- Regarding the dwelling arrangement described in the previous question what is the law if the second floor collapses? (ט' י"ד)
- What is the law if the building collapses and the ground floor owner does not want to rebuild? (Include both opinions.) (ט' י"ד)
- What other case is similar to the one just described? (ט' י"ד)
- If a tree in a private property collapses in to the public domain, when is the owner liable for the damage it causes? (ט' י"ד)

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Bava Metzia 10:5-6	Bava Batra 1:1-2	Bava Batra 1:3-4	Bava Batra 1:5-6	Bava Batra 2:1-2	Bava Batra 2:3-4	Bava Batra 2:5-6

