

A בס"ד

Intro

Today we will Be"H learn דף קי"ג of מציעא בבא. Some of the topics we will learn about include:

משכון

When one may seize collateral from a debtor?

This may depend on whether

מלוה

If he is the creditor; or

שליח ב"ד

He is an agent of the court;

AND

ביתו

If he wishes to enter the debtor's house; or

מצאו בשוק

If he finds him in the market;

מסדרין בערכן ובבע"ה

If a poor person pledges ערכין, to pay הקדש the predetermined value of one's own worth as specified by the Torah based on his age and gender, we make an assessment to ensure that he is left with his basic necessities.

The Gemara discusses making such an assessment for a borrower.

A

משכון

When one may seize collateral from a debtor?

מסדרין בערכן ובבע"ה

B מוכרן בב"ד

מוכרן בב"ד holds that after 30 days the creditor may sell the משכון.

כל ישראל בני מלכים הן

The Gemara brings several opinions who agree that all Yidden are treated as royalty.

B

מוכרן בב"ד

כל ישראל בני מלכים הן

1 So let's review...

Zugt di Mishnah:

המלוה את חבירו
לא ימשכנו אלא בב"ד

A creditor can only seize collateral through the courts and may not take it himself from the debtor, even if he meets him in the market.

Additionally,
ולא יכנס לביתו ליטול משכנו

He may not enter the debtor's home to take collateral,
שנאמר
בחוץ תעמוד

1

מלך

**המלוה את חבירו
לא ימשכנו אלא בב"ד**

A creditor can only seize collateral through the courts and may not take it himself from the debtor, even if he meets him in the market,

ולא יכנס לביתו ליטול משכנו

He may not enter the debtor's home to take collateral,

שנאמר
בחוץ תעמוד

2 In order to explain to whom the Mishnah is referring, the Gemara cites a מחלוקת between two ברייתות regarding the power of a שליח ב"ד to seize collateral:

The Pasuk says

כי תשה ברעך משאת מאומה
לא תבא אל ביתו לעבוט עבוטו

The creditor may not enter the debtor's home to take collateral, and so he obviously must stay outside. Therefore, when the Pasuk continues

בחוץ תעמוד
והאיש אשר אתה נושה בו

יוציא אליך את העבוט החוצה
בשליח בית דין הכתוב מדבר

The term והאיש must refer to a שליח בית דין.

Now, the first ברייתא reads the Pasuk

בחוץ תעמוד והאיש

And so

שליח ב"ד כמלוה

Like the creditor, the שליח ב"ד may NOT enter the home to seize collateral.

The second ברייתא reads the Pasuk

בחוץ תעמוד

The creditor may not enter, but

והאיש אשר אתה נושה בו יוציא

And so

שליח ב"ד כלוה

Like the debtor, who is in his home, the שליח ב"ד MAY enter the home to seize collateral.

However, all agree

שליח ב"ד מנתח נתוחי

A שליח ב"ד may seize collateral from the creditor outside of his home.

2

The power of a שליח ב"ד to seize collateral:

**כי תשה ברעך משאת מאומה
לא תבא אל ביתו לעבוט עבוטו**

The creditor may not enter the debtor's home to take collateral, and so he obviously must stay outside.

ברייתא 2

2

The creditor may not enter

שליח ב"ד כלוה

Like the debtor, who is in his home, the שליח ב"ד may enter the home to seize collateral.

בחוץ תעמוד והאיש אשר אתה נושה בו יוציא אליך את העבוט החוצה

ברייתא 1

1

Like the creditor, the שליח ב"ד may not enter the home to seize collateral.

שנאמר ב"ד שליח בית דין הכתוב מדבר

The term שליח בית דין הכתוב מדבר must refer to a שליח בית דין.

However, all agree שליח ב"ד מנתח נתוחי

A שליח ב"ד may seize collateral from the creditor outside of his home.

3 Accordingly, the Gemara offers two interpretations of our Mishnah:

1.

According to the second Braisa;

המלוה את חבירו

לא ימשכנו אלא בב"ד

A creditor may only seize collateral through the courts.

On the other hand,

בב"ד ממשכנין

A ב"ד שליח may seize collateral.

Additionally,

הרי זה נכנס לביתו

וממשכנו

A ב"ד שליח may even enter the home to seize the collateral.

However,

בעל חוב

אפילו נתוחי נמי לא

גזירה שמא יכנס לביתו ליטול משכנו

The creditor may not ever seize collateral, even outside the home, to insure that he will not enter the debtor's home to take it.

2.

According to the first Braisa we interpret our Mishnah as follows;

המלוה את חבירו

לא ינתחנו אלא בב"ד

A creditor can only seize collateral through the courts.

Additionally,

ולא יכנס לביתו ליטול משכנו

Even a שליח ב"ד, who CAN seize collateral, may not enter the debtor's home to take it;

3

Two interpretations of our Mishnah:

①

According to the second Braisa;

המלוה את חבירו

לא ימשכנו אלא בב"ד

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A ב"ד שליח may seize collateral.

Additionally,

הרי זה נכנס לביתו - וממשכנו

A ב"ד שליח may even enter the home to seize the collateral.

However,

בעל חוב - אפילו נתוחי נמי לא

גזירה שמא יכנס לביתו ליטול משכנו

The creditor may not ever seize collateral, even outside the home, to insure that

he will not enter the debtor's home to take it.

②

According to the first Braisa

המלוה את חבירו

לא ינתחנו אלא בב"ד

A creditor can only seize collateral through the courts.

Additionally,

ולא יכנס לביתו ליטול משכנו

Even a שליח ב"ד, who can seize collateral, may not enter the debtor's home to take it;

4 Based on this מחלוקת, the Gemara interprets several other Pesukim:

One Pasuk says
לא יחבל ריחים ורכב

One may not take a millstone as collateral. The Gemara infers

הא דברים אחרים חבל

One may take other items as collateral.

Similarly, another Pasuk says

לא תחבל בגד אלמנה

One may not seize a widow's garment as collateral. The Gemara infers

הא של אחרים תחבל

One may take other people's garments as collateral.

And as Rashi explains,

ריחיים ורכב בגו ביתא שכיחי

These items, and especially clothes, are usually found in a home, implying that other items may be taken even from the debtor's home?

The Gemara explains how the two earlier opinions interpret these Pesukim:

1.

According to the second Braisa

שליח ב"ד

This refers to a שליח ב"ד, who, although he may enter a home to take collateral, he must heed these restrictions.

2.

According to the first Braisa

בבעל חוב

ולעבור עליו בשני לאוין

This refers to the creditor, and adds an additional prohibition in these cases.

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4

Based on this מחלוקת, the Gemara interprets several other Pesukim:

לא תחבל
בגד אלמנה

One may not seize a widow's garment as collateral.

הא של אחרים תחבל

One may take other people's garments as collateral.

לא יחבל
ריחיים ורכב

One may not take a millstone as collateral.

הא דברים אחרים חבל

One may take other items as collateral.

As Rashi explains,

ריחיים ורכב בגו ביתא שכיחי

These items, and especially clothes, are usually found in a home, implying that other items may be taken even from the debtor's home?

בביתא

2

שליח ב"ד
Although he may enter a home to take collateral, he must heed these restrictions.

לא יחבל
ריחיים ורכב

הא דברים אחרים חבל

לא תחבל
בגד אלמנה

הא של אחרים תחבל

בביתא

1

בבעל חוב
ולעבור עליו בשני לאוין
An additional prohibition is added in these cases.

5 The Mishnah continues:

היו לו שני כלים
נוטל אחד ומניח אחד
If the debtor had two items, which together equal the value of the loan, the creditor may only take one at a time, leaving the debtor with his needs.
The Mishnah explains
ומחזיר את הכר בלילה
ואת המחרישה ביום
He must leave him his cushion at night and his plow during the day.

However,
ואם מת
אינו מחזיר ליורשיו
If the debtor dies, he does not need to return the collateral to his heirs, but may sell them to collect his debt, because, as Rashi explains, the Pasuk says
השב תשיבם לו
ולא ליורשין
He only returns collateral to the debtor.

5

משנה

היו לו שני כלים
נוטל אחד ומניח אחד

If the debtor had two items, which together equal the value of the loan, the creditor may only take one at a time, leaving the debtor with his needs.

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As Rashi explains - the Pasuk says

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He only returns collateral to the debtor.

6 A Bava Metzia elaborates on these Halachos:

כדרך שמסדרין בערכין
כך מסדרין בבעל חוב

Regarding the assessment to collect ערכין, a pledge to pay the predetermined value of one's own worth as specified by the Torah based on his age and gender, the Pasuk says:

ואם מן הוא מערכך

If he is too poor to pay the full amount;

And we expound

החיינו מערכך

We make an assessment to ensure that he is left with his basic necessities. Similarly, when taking collateral one must leave the borrower with his necessities.

It must be pointed out, however, that there is a difference between ערכין and בעל חוב:

In the case of ערכין, he pays whatever he can afford at that time and is exempt from the rest even if he later becomes wealthy. However, in the case of בעל חוב, he still owes the rest of the loan and must pay it if and when he can afford it.

6

בבבא

כדרך שמסדרין בערכין כך מסדרין בבעל חוב

Regarding the assessment to collect ערכין, a pledge to pay the predetermined value of one's own worth as specified by the Torah based on his age and gender.

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In the case of בעל חוב, he still owes the rest of the loan and must pay it if and when he can afford it.

7 The ת"ת elaborates:
 ולא ימשכנו
 דברים שעושין בהן אוכל נפש
 The creditor may not take as collateral items used for food preparation.
 ונותן מטה ומטה ומצע לעשיר
 מטה ומטה ומפץ לעני
 He must leave two beds, with either a felt spread or a mat depending on what the debtor is accustomed to using.
 The Gemara explains the need for two beds:
 חדא דאכיל עלה
 וחדא דזג עלה
 One to recline on while eating and one to sleep on, because שמואל said
 כל מילי ידענא אסותייהו
 לבר מהני תלת
 I know the cure for every ailment except for three, one of which is
 מאן דאכיל נהמא
 ולא מסגי ארבעה גרמידי
 One who eats a meal and does not walk four אמות before sleeping.
 Therefore, it was the custom to have a separate bed for sleeping four אמות away from the bed where one eats, to ensure that one stays healthy.

However, the ת"ת concludes,
 לו אבל לא לאשתו
 ולא לבניו ולבנותיו
 One does not need to provide for the needs of his wife or children.
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7
ולא ימשכנו
דברים שעושין בהן אוכל נפש
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לו אבל לא לאשתו
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One does not need to provide for the needs of his wife or children.

8 The Mishnah concludes;

רבן שמעון בן גמליאל אומר
אף לעצמו אינו מחזיר
אלא עד שלשים יום

He only returns the collateral for thirty days.

ומשלשים יום ולהלן
מוכרן בב"ד

After thirty days, he sells it through the court to collect his payment.

The Gemara suggests that רשב"ג holds

עד שלשים יום הדר ליה בעיניה

Until 30 days, the collateral is returned intact.

מכאן ואילך

מיהדר ליה למאי דחזי ליה

ומזבנינן מאי דלא חזי ליה

Subsequently, the item is sold, an item of lesser value but equal utility is bought and returned to him, and the creditor keeps the rest.

However, the Gemara refutes this interpretation, because

רשב"ג סבירא ליה

כל ישראל בני מלכים הן

All Yidden are treated as royalty. Therefore,

ליכא מידי דלא חזי ליה

It is not possible to say that something is not suitable for any borrower?

8

מלך

רבן שמעון בן גמליאל אומר
אף לעצמו אינו מחזיר
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It is not possible to say that
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9 As he states in a Mishnah in שבת מסכת שבת
לא את הלוף ולא את החרדל
Luf beans and mustard seeds are מוקצה on Shabbos
because they have no practical use.
However,
רשב"ג מתיר בלוף
מפני שהוא מאכל לעורבין
The beans can be used to feed ravens.
Although only wealthy people keep ravens as pets,
רשב"ג סבירא ליה
כל ישראל בני מלכים הן
All Yidden are treated as royalty.

Therefore, the Gemara explains
רשב"ג זבוני לגמרי קאמר
He holds that the item is sold and the creditor keeps its
entire value.

Accordingly, the Gemara points out:
לרשב"ג
השתא זבוני מזבנינן ליה
סדורי מסדרינן ליה
If he holds one may sell the item, he certainly does not
hold that we make an assessment to leave him with his
necessities!

9

As in the Mishnah in מסכת שבת
לא את הלוף ולא את החרדל
*Luf beans and mustard seeds are מוקצה on Shabbos
because they have no practical use.*

However,
רשב"ג מתיר בלוף
מפני שהוא מאכל לעורבין
The beans can be used to feed ravens.

Although only wealthy people keep ravens as pets,
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