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Returning a Lost Document

The *Gemora* cites a *Mishnah* (in *Bava Basra*): We can write up a document for the borrower even if the lender is not with him. [*The witnesses obviously did not witness a loan, but if the borrower wants the document drawn up, we write it for him, for he is the one who is obligating himself.*]

The *Gemora* asks: How can this document be written up early? Let us be concerned that it was written in Nissan, but the actual loan did not occur until Tishrei. The lien will therefore enable the lender to collect from properties bought from the borrower from Nissan to Tishrei, when in fact, he should not be allowed to do so!

Rav Ashi answers: The *Mishnah* is dealing with a deed of acquisition, in which case he pledged himself (*to pay the lender from the date given in the note*).

The *Gemora* asks: But if this is so, we can ask on our *Mishnah*, which teaches: If he found loan documents that contains a lien on properties, he should not return them, and the *Gemora* explained that we are dealing with a case where the debtor admits the debt, and (they are not returned) for the reason it is possible that they were written in Nissan, but the actual loan did not occur until Tishrei. The lien will therefore enable the lender to collect from properties bought from the borrower from Nissan to Tishrei, when in fact he should not be allowed to do so. Why shouldn't the documents be returned? Let us see: If it is a case of a deed of acquisition, then he has pledged

himself (*to pay the lender from the date given in the note*). If it is not a deed of acquisition, there is no reason to be concerned, for you have said that if the lender is not present with him, we do not write the loan document?

Rav Assi answered: Although ordinarily we do not write notes which are not deeds of acquisition when the lender is not present, in our *Mishnah*, which deals with a document that has been lost, they have a negative quality (*as otherwise he would have been careful not to lose it*) leading us to suspect that by some chance it might have been written (*without the lender being present*).

Abaye says: The witnesses acquire for him the lien to the property by signing their signatures to the document, even if it is not a deed of acquisition (*and this is why they could sign even if the lender is not present*).

Abaye objected to Rav Assi's version: If you say that documents which are not deeds of acquisition are not written when the lender is not present, then there is no ground to be concerned that by some chance they may have been written without the lender being present.

The *Gemora* challenges Abaye from the following *Mishnah*: If a man finds *gittin* or bills of emancipation for slaves or wills (*from a deathly ill person*) or deeds of gifts or receipts, he should not return them (*to the writer or the recipient*) for we are concerned that after they were written, the writer changed his mind and decided not to give them. Now, even if he changed his mind, what does it matter, in view of Abaye's statement that the witnesses



acquire for him the lien to the property by signing their signatures to the document?

The *Gemora* answers: This applies only to a case where the documents eventually came into his hand, but in a case where they did not come to his hand, Abaye's principle does not apply.

The *Gemora* asks on Abaye from our *Mishnah*, which teaches: If he found loan documents that contain a lien on properties, he should not return them, and the *Gemora* explained that we are dealing with a case where the debtor admits the debt, and for the reason it is possible that it was written in Nissan, but the actual loan did not occur until Tishrei. The lien will therefore enable the lender to collect from properties bought from the borrower from Nissan to Tishrei, when in fact he should not be allowed to do so. Now, it is understandable according to Rav Assi, who says that the other *Mishnah* (in *Bava Basra*) refers to deeds of acquisition, as our *Mishnah* can then be explained as referring to documents which are not deeds of acquisition, as previously stated. But according to Abaye, who says that the witnesses acquire for him the lien to the property by signing their signatures to the document, how can it be explained (*for even if the document was drawn up in Nissan, and not given until Tishrei, the lien takes effect from Nissan; so why are we concerned*)?

Abaye could answer you: The reason for the teaching of our *Mishnah* is the fear that the debt may have been already paid and that a deceptive agreement may have been reached between the lender and the borrower (so that the lender can collect his debt again from the buyers of the borrower's properties).

The *Gemora* asks: But what can be said according to Shmuel, who holds that we are not afraid that the debt may have been already paid and that a deceptive

agreement may have been reached between the lender and the borrower?

It would be understandable if he agreed with Rav Assi, who says that the other *Mishnah* (in *Bava Basra*) refers to deeds of acquisition, as our *Mishnah* can then be explained as referring to documents which are not deeds of acquisition, as previously stated. But if he agrees with Abaye, who says that the witnesses acquire for him the lien to the property by signing their signatures to the document, how can it be explained?

The *Gemora* answers: Shmuel would explain the *Mishnah* to be referring to a case where the borrower does not admit that he owes the money (*and therefore, the document cannot be returned*).

The *Gemora* asks: But if so, why would Rabbi Meir say the document should be given back when there is no lien? Even if he cannot collect from properties with a lien, he can collect from other possessions of the borrower!?

The *Gemora* answers: Shmuel follows his own reasoning, for Shmuel stated: Rabbi Meir would say that a loan document that does not contain a lien on properties does not entitle the creditor to collect from either encumbered or unencumbered property.

The *Gemora* asks: But since it does not entitle one to collect, why should it be returned?

Rabbi Nassan bar Oshaya said: It is returned so that the lender may use it as a stopper for his bottle.

The *Gemora* asks: Then let us return it to the borrower that he may use it as a stopper for his bottle?

The *Gemora* answers: It is the borrower who denies the debt completely!

Rabbi Elazar says: The argument in our *Mishnah* concerns a case where the debtor does not admit that he owes the money. Rabbi Meir holds that a document which contains no lien on properties does not entitle the creditor to collect either from encumbered property or from unencumbered property, while the *Chachamim* are of the opinion that it does not entitle the creditor to collect from encumbered property, but that it does entitle him to collect from unencumbered property.

But in a case where the debtor admits that he owes the money, all agree that the document should be returned, and we are not afraid that the debt may have been already paid and a deceptive agreement was reached between the lender and the borrower to collect from the purchasers of the borrower's property.

But Rabbi Yochanan says: The argument in our *Mishnah* concerns a case where the debtor admits that he owes the money. Rabbi Meir holds that a document which contains no lien on properties does not entitle the creditor to collect from encumbered property, but it does entitle him to collect from unencumbered property. The *Chachamim* hold that he may collect even from encumbered property. (12b4 – 13b2)

DAILY MASHAL

Abaye had stated: The witnesses acquire for him the lien to the property by signing their signatures to the document.

It is said: Hinted in this statement is that the heavens and the earth are witnesses, and so too it is well-known that all the righteous people and all of the Heavenly holy spheres sign to the merit of the Jewish people. Automatically, the Jewish people acquire the positive inspirations and the holiness based upon those merits.