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Presumed to be a Liar

The *Gemora* states: Once we were discussing a liar, let us say something else about it. Rav Yosef bar Minyomi said in the name of Rav Nachman: If *Beis Din* ruled that someone is liable and they told him: Go out and give to him (*the lender*), and after some time he said, "I paid him," he is believed (*provided that he takes a Rabbinically imposed oath*). If afterwards the lender comes to *Beis Din* and claims that he was never paid and he wants *Beis Din* to draw up a document stating that he can seize property from the debtor, they do not write one up (*for the creditor is believed that he paid*). If, however, *Beis Din* tells him: You are liable to him, and after some time he said, "I paid him," he is not believed (*even with an oath*). [*The lender can swear that he was not paid and he collects. This is because Beis Din only notified him that he is liable; they did not instruct him to pay. When the debtor does not pay on his own, we do not assume that he will pay back immediately; rather, he will wait until he is specifically instructed to do so.*] Therefore, if the lender wants *Beis Din* to draw up a document stating that he can seize property from the debtor, they will write one up.

Rav Zevid in the name of Rav Nachman said: Whether *Beis Din* told him: Go out and give to him, or if they said: You are liable to him, and after some time he said, "I paid him," he is believed (*for it is common for a person to pay even when he is not specifically instructed to do so*). If afterwards the lender comes to *Beis Din* and claims that he was never paid and he wants *Beis Din* to draw up a document stating that he can seize property from the debtor, they do not write one up (*for the creditor is believed that he paid*). However, there is a distinction between the two languages regarding the following: If *Beis Din* ruled that someone is liable and they told him: Go out and give to him (*the lender*), and after some time he said, "I paid him," and witnesses testified that he did not pay (*for in their presence the lender demanded the money and he refused to pay*), he is presumed to be a liar regarding this money (*and he will never again be believed that he paid the debt unless he produces witnesses*). If, however, *Beis Din* tells him: You are liable to him, and after some time he said, "I paid him," and witnesses testified that he did not pay (*for in their presence the lender demanded the money and he refused to pay*), he is not presumed to be a liar regarding this money (*and he will therefore be believed if he claims later that he paid the debt*). What is the reason for this? It is because we assume that he is simply stalling for time (*and he is not intending to steal from him*), for he thinks, "I will not pay until *Beis Din* investigates the matter (*and only then, if they will instruct me to pay, then I will pay*)." [*Since he was not intending to steal the money, he is not presumed to be a liar; he would therefore be believed with an oath later to say that he paid the debt.*] (16b3 – 17a1)

Rabbah bar bar Chanah said in the name of Rabbi Yochanan: If one person says to another, "You have in your possession a hundred *zuz* belonging to me," and the other replies, "I do not owe you anything." Witnesses came and testified that in fact he owes him the money and the defendant then claimed, "I paid it." We rule that he is presumed to be a liar regarding this money (and he

will never again be believed that he paid the debt unless he produces witnesses).

Such was the case of Shabsai, the son of Rabbi Marinos: He wrote to his daughter-in-law in her *kesuvah* a cloak of fine wool, and he pledged himself (*as a guarantor*) to it. Her *kesuvah* got lost, and Shabsai said to her, "I deny ever accepting upon myself to give the cloak." Witnesses then came and said, "Yes, he did pledge the cloak to her." Afterwards he said, "I already gave it to her." He came before Rabbi Chiya and Rabbi Chiya said to him: You are presumed to be a liar in regard to this cloak (*and therefore we do not believe you that you gave it to her*).

Rabbi Avin said in the name of Rabbi Ila'a, who said in the name of Rabbi Yochanan: If one was obligated to take an oath to his fellow, and he said, "I already took the oath," but witnesses testify that he did not take the oath, he is presumed to be a liar regarding this oath (*and he will never again be believed that he swore unless he produces witnesses*).

This ruling was reported to Rabbi Avahu. He said: Rabbi Avin's ruling seems correct in a case where the oath was imposed upon him by a *Beis Din*, but in a case where he voluntarily imposed an oath upon himself, he is believed (*to say that he already swore even though there were witnesses who testified that he did not swear in their presence*), for it happens that a person talks in this manner (*to refuse to swear when he is not obligated to do so; he is therefore not presumed to be a liar regarding this oath*).

When this qualification was reported back to Rabbi Avin, he said that he also was referring to such a case.

And it was also stated elsewhere: Rabbi Avin said in the name of Rabbi Ila'a, who said in the name of Rabbi Yochanan: If one was obligated by *Beis Din* to take an oath to his fellow, and he said, "I already took the oath," but witnesses testify that he did not take the oath, he is presumed to be a liar regarding this oath (*and he will never again be believed that he swore unless he produces witnesses*). (17a1 – 17a2)

Returning Found Documents

Rabbi Assi said in the name of Rabbi Yochanan: If one finds in the street a note of indebtedness which contains *Beis Din*'s certification and the date of that very day is written on it, he should return it to the owner. You cannot object that the borrower had it written with the intention of borrowing, and he never borrowed, for the note contains *Beis Din*'s certification. You cannot object that it should not be returned because the loan may have been repaid, as we are not afraid of a loan having been repaid on the very same day on which it was granted.

Rabbi Zeira asked Rabbi Assi: Did Rabbi Yochanan really say this? Did you not yourself teach in the name of Rabbi Yochanan as follows: A man may not borrow again using a document on which he has once borrowed and which he has repaid since the lien incurred by the first loan (*to collect land that the borrower had at the time of the loa*n) was cancelled. Now, when was the second loan? If it occurred on the following day or on any date later than that given in the note, why was it necessary to state the reason that the lien incurred by the first loan was cancelled? The note should be invalid from the fact that it is predated!? For we have learned in a *Mishnah*: Predated contracts are invalid (*because a lender could use it to illegally repossess properties that the borrower sold prior to the genuine date of the loan but after the date written down in the contract*). It must therefore be assumed that the second loan occurred on the very same day as that given in the note. It emerges that people do pay on the same day as they borrow!?

Rabbi Assi answered him: Did I say that one never pays a debt on the day it is incurred? I only said that it is not usual for people to pay on the same day.

Rav Kahana said (*explaining Rabbi Yochanan's ruling*): The lost document is to be returned to the owner when the debtor admits that he has not paid.

The *Gemora* asks: But if so, what is the novelty in this *halachah*?

The *Gemora* answers: It is because you might have said that this debtor has really paid, and the reason why he says he has not paid is that he wishes to have the note returned to the creditor so that he may borrow on it again. This way he would save the scribe's fees (*which is always the obligation of the borrower*). Rabbi Yochanan teaches us that we do not say like this. The reason is that in such circumstances, the lender himself would not permit it, thinking the Rabbis may hear about it (*that he is using a note where the lien had been cancelled*) and make him lose money.

The *Gemora* asks: But why is this case different from the one which we learned in a *Mishnah*: If he found loan documents that contain a lien on properties, he should not return them; and it was explained as referring to a case where the debtor admits that he owes the money. The reason we do not give back the document is because 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, why would we not say there also that in such circumstances, the lender himself would not permit it to be used in Tishrei, for he would say to the borrower: Write another note in Tishrei, as otherwise, the Rabbis may hear about it (*that it is predated*) and make me lose my money?

The *Gemora* answers: In the *Mishnah*, seeing that the lender would benefit (*with the predated note*) by seizing property sold by the debtor between Nissan and Tishrei, he would therefore be content and would say nothing. But here, seeing that the lender would not benefit at all, as after all, the note was written today, what advantage is there in that note (*the paid one*) with regards to seizing sold property? Therefore, we may assume that the lender will not permit the use of a note where the lien has been cancelled. (17a2 – 17a4)

Act of the Court

Rabbi Chiya bar Abba said in the name of Rabbi Yochanan: If someone claims that he paid an obligation which was imposed on him by an act of the court (*such as a man's kesuvah obligation, or for the sustenance of his wife and daughters*), he has said nothing (*if he cannot produce witnesses, he is not believed*). What is the reason? Every act of the court is regarded as if a document is placed in the hand of the claimant. [*He therefore will not be believed unless he produces a receipt to that effect.*]

Rabbi Chiya bar Abba asked Rabbi Yochanan: Isn't this already known from our *Mishnah* (Kesuvos 88b): If she produced a *get*, but not the *kesuvah*, she collects her *kesuvah* (*even though, normally, a creditor is not believed to say that the debt had not been paid if he cannot produce the document, a kesuvah is different, since it is regarded as an act of Beis Din, and the husband would not be believed that it was paid*).

Rabbi Yochanan answered him: If I had not lifted the shard for you, you would not have found the pearl underneath it. [*If I would not have taught the halachah, you would not have gleaned it from that Mishnah.*]

Abaye asked: What pearl has Rabbi Chiya bar Abba found? Maybe that *Mishnah* was dealing with a place where a *kesuvah* was not usually written, so that her *get* serves

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the purpose of a *kesuvah*, but in a place where a *kesuvah* is usually written, the *halachah* would be that if she produces her *kesuvah* she may collect payment, but that if she does not produce it she may not collect payment?

Abaye afterwards corrected himself: What I said is really nothing; for if you were to assume that the *Mishnah* is referring to a place where a *kesuvah* is not usually written, but that in a place where a *kesuvah* is usually written the *halachah* would be that if she produces her *kesuvah* she may collect payment, but not if she does not - how would a woman who became a widow after *erusin* collect payment (*for the kesuvah was not written until after nisuin*)? If it is by the testimony of witnesses that her husband died, the husband's heir could claim and say: I have paid her already! And you cannot say that he would be believed, for if so, what have the Sages achieved by their enactment (*of a kesuvah for an arusah; the husband's heir will always claim that he has already paid it*). [*It can therefore be proven from the Mishnah that a person cannot claim that he paid an obligation which was imposed on him by an act of the court.*]

Mar Keshisha, the son of Rav Chisda asked Rav Ashi: How do we know that a woman, widowed from *erusin* has a right to collect her *kesuvah* (*even without producing her kesuvah*)?

Perhaps you will say that it is derived from the following *Mishnah*: A woman who was widowed or divorced, either after marriage or after betrothal, is entitled to collect everything (*the basic obligations of the kesuvah, plus any additions that the husband included*). But perhaps this *Mishnah* is only referring to a case where the husband voluntarily obligated himself to her by writing for her a *kesuvah* (*how would you know this to be true even if he didn't write for her a kesuvah*)?

The novelty of the ruling would be to exclude the opinion of Rabbi Elozar ban Azaryah, who states that the husband wrote the addition for her with the sole objective of marrying her (*and since he did not marry her, she may not claim it*).

The *Gemora* proves that the *Mishnah* is discussing a case where the husband voluntarily obligated himself to her by writing for her a *kesuvah*, for it says: [She] exacts payment of all [that is due to her] — if you agree that [the case is one where the husband] wrote a kesuvah, there is an explanation why [the Mishnah] uses the term, '[She] exacts payment of all [that is due to her].' But if you say that he did not write her [a kesuvah], what is the meaning of the term, '[She] exacts payment of all [that is due to her],' seeing that she is only entitled to a hundred or two hundred zuz [and no more]? (17a4 – 18a1)

INSIGHTS TO THE DAF

1) WHEN A BORROWER IS BELIEVED TO SAY HE PAID
brought to you by Kollel Iyun Hadaf of Yerushalayim

QUESTION: Rav Zevid in the name of Rav Nachman rules that there is no difference between a case in which *Beis Din* formally passed a verdict requiring a borrower to pay his debt ("Tzei Ten Lo") and a case in which *Beis Din* merely told the borrower to pay ("Chayav Atah Liten Lo") but did not actually pass a verdict. In both cases, if the debtor later claims that he paid he is believed, since the loan was made verbally and no Shtar was written.

The Gemara earlier (15a) seems to contradict this ruling. The Gemara there says that once a claim against a borrower has been brought to court ("k'she'Amad ba'*Din*"), it is as if the loan is written in a Shtar, because the matter of the loan becomes publicized. Hence, if someone bought property from a borrower after the lender made a claim against him in court, the lender may take that property from the buyer just as a lender may collect property that was purchased from the borrower when the loan was written in a Shtar. Why, in the case of

the Gemara here, is the borrower believed to say that he paid back the debt? Since the claim was brought to court, it should be like a loan written in a Shtar. A borrower who claims to have repaid the loan is not believed when the loan is written in a Shtar. Rather, he must bring witnesses or show a receipt from the lender.

ANSWERS:

(a) The **RIF** answers that the Gemara earlier refers to a case in which the borrower does not agree to obey the instructions of *Beis Din*, and he refuses to pay. The loan in such a case becomes like a loan written in a Shtar. In the case of the Gemara here, the borrower left *Beis Din* with the intent to comply and pay his debt. In such a case, when he later claims that he paid, he is believed.

(b) **RABEINU CHANANEL** and **RABEINU EFRAIM** answer that the fact that the case has been brought to *Beis Din* does not automatically make the loan considered like one written in a Shtar, and thus the borrower is believed to say that he paid. The Gemara earlier refers to a case in which *Beis Din* actually wrote a Shtar stating that the borrower owes money to the lender. The Gemara teaches that even though the Shtar was not written at the behest of the borrower, it still is considered a fully valid Shtar Chov and it enables the lender to collect from the Lekuchos.

(c) The **RAMBAN**, **RASHBA**, **RAN**, and **RITVA** answer that when the Gemara earlier states that the loan becomes like one written in a Shtar when the case is brought to *Beis Din*, it refers *only* to the lender's right to collect from Lekuchos. The lender may collect from Lekuchos because the loan became public knowledge when the case was brought to court, and the buyers knew that they were purchasing land from a person who was in debt, so they are considered to have caused the loss to themselves. The Gemara here, in contrast, discusses whether the borrower is believed to say that he paid back the loan. In general, the only reason such a claim does not work against a Shtar is that the lender can prove that the loan has not been paid from the fact that he is still holding the Shtar Chov. The lender can argue that if the borrower truly paid back his debt, then he would have insisted that the lender return the Shtar to him. In the case of a loan brought before *Beis Din*, although it is considered as if the loan was written in a Shtar, the lender does not have an actual Shtar, and thus his argument is not applicable. Consequently, the borrower is believed to say that he paid his debt.

2) WHEN A BORROWER IS NOT BELIEVED TO SAY HE PAID

QUESTION: Rav Zevid in the name of Rav Nachman rules that there is no difference between a case in which *Beis Din* formally passed a verdict requiring a borrower to pay his debt ("Tzei Ten Lo") and a case in which *Beis Din* merely told the borrower to pay ("Chayav Atah Liten Lo") but did not actually pass a verdict. In both cases, if the debtor later claims that he paid he is believed, since the loan was made verbally and no Shtar was written.

QUESTION: Rav Zevid in the name of Rav Nachman rules that when a borrower claims to have paid back his debt, he is believed regardless of whether *Beis Din* formally passed a verdict requiring him to pay ("Tzei Ten Lo") or *Beis Din* merely told the borrower to pay ("Chayav Atah Liten Lo") but did not actually pass a verdict. In both cases, if the debtor later claims that he paid he is believed, since the loan was made verbally and no Shtar was written. The difference between these two cases exist when the borrower claims that he paid and witnesses testify that he did not pay. If *Beis Din* passed an actual verdict requiring him to pay, and he then claimed to have paid and was contradicted by witnesses, he is "Huchzak Kafran" and is not believed subsequently to claim that he paid, unless he brings proof. In contrast, if *Beis Din* merely told him to pay but did not pass a verdict, and he then claimed to have paid and was contradicted by witnesses, he is not "Huchzak Kafran" and he retains the ability to claim

subsequently that he paid (even without bringing proof). In a case where no actual verdict was passed, *Beis Din* assumes that when he contradicted the witnesses, he did not mean to deny the debt's existence outright but merely wanted to get more time to pay back, and he rationalized that he would wait until *Beis Din* looked into the case further.

How can witnesses contradict the borrower who says that he paid and cause him to be "Huchzak Kafran"? How is it possible for witnesses to testify that an event *did not* happen, and that the borrower *did not* pay?

ANSWERS:

(a) Most Rishonim (**RASHBA**, **RITVA**, **RAN**, **ROSH**) explain that the borrower is "Huchzak Kafran" when he claims that he paid back the loan on a certain day at a certain time and witnesses testify that he was with them at that time. (He is not "Huchzak Kafran" if *Beis Din* merely told him to pay but did not yet pass a verdict, even though it is still clear that he lied, because *Beis Din* assumes that he merely wanted to delay paying until *Beis Din* would look into the case, and he did not have intention to steal the money.)

(b) **RASHI** explains that the borrower becomes "Huchzak Kafran" (and later loses his credibility to claim that he paid) in a case in which witnesses were present when the lender demanded his money from the borrower, and the borrower refused to pay. Since he so brazenly and blatantly disobeyed the verdict of *Beis Din* in front of witnesses, he is "Huchzak Kafran" and is not believed later to claim that he paid (unless he brings proof to support his claim).

The Rishonim challenge Rashi's explanation and contend that even when the borrower refuses to pay in front of witnesses, he should *not* be "Huchzak Kafran." They reason that in that case as well it is possible that he did not have money at the time and he merely wanted to stall for time.

The Acharonim offer various approaches to resolve the Rishonim's difficulty with the words of Rashi.

1. The **GIDULEI TERUMAH** (II:12:3) answers that Rashi maintains that if the borrower's intention truly was to gain more time, he would not have tried to do so in such a brazen way. Instead of blatantly refusing to obey the ruling of *Beis Din*, he would have found some other way to gain more time. Since he was so brazen, it must be that he lied outright and intended to steal, with no intention to pay later.

2. The **LECHEM ABIRIM** answers that when Rashi writes that the borrower "did not pay" when the lender demanded repayment from him in front of witnesses, he means that the borrower said, "I do not *want* to pay," which implied that he had no intention of paying at all, even later. If his intention had been to delay and gain more time, he would not have said that he does not *want* to pay, but he simply would have evaded paying at that moment.

Some Rishonim, however, strengthen their question on Rashi's explanation. They contend that even if the borrower said that he does not *want* to pay, *Beis Din* still should assume that he was attempting to gain more time, and not that he had no intention of ever paying. The **ROSH** (1:42) asserts that whenever it is possible to find some merit in the borrower's claim -- and not declare him to be a liar and a thief -- *Beis Din* is required to give him the benefit of the doubt. The Rosh proves this from the Gemara earlier which discusses a Shomer who denies having a Pikadon. In such a case, the Gemara says that the Shomer is not deemed to be "Huchzak Kafran" unless witnesses testify that they saw the Pikadon in his possession at the time that he denied having it. As long as witnesses have not testified to that effect, *Beis Din* gives him the benefit of the doubt and assumes that he lost the

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Pikadon and merely wanted to gain more time to find it. Similarly, in the case of the Gemara here, *Beis Din* should give the borrower the benefit of the doubt and assume that he refused to pay merely in order to gain more time, and that he *does* intend to pay his debt at some point. Why, then, does Rashi write that the borrower is "Huchzak Kafran" when he disobeys the ruling of *Beis Din* in front of witnesses and refuses to pay? Perhaps he merely is stalling for more time.

3. The **MILCHEMES MITZVAH** and **IMREI MAHARSHACH** (cited in Otzar ha'Mefarshim) answer that the proof of the Rosh from the case of a Pikadon does not apply to the case of the Gemara here. Only in the case of a Pikadon can the Shomer be given the benefit of the doubt in this way. It is reasonable to assume that the Shomer denies having the Pikadon in order to stall for time, because he would be afraid to admit that he has the Pikadon lest the claimant force him to surrender it immediately. In contrast, when the defendant has no Pikadon that he must return but merely owes money from a loan, he could tell the truth (that he does not yet have money to pay back) and he would not be forced to pay right away; he does not have to be so brazen as to say that he does not want to pay.

4. The Milchemes Mitzvah answers further that in the case of the Pikadon, when the Gemara says that the Shomer is not a proven liar and thief when he denies having the Pikadon (until witnesses testify that they saw the Pikadon in his possession at the time that he denied having it), the Gemara is referring to the Shomer's credibility with regard to all other matters. Once he is proven beyond any doubt to have lied (i.e. when witnesses testify that they saw the Pikadon in his possession at the time that he denied having it), he no longer is trusted to testify in any monetary matter. In contrast, in the case of the Gemara here, the borrower who refuses in front of witnesses to obey *Beis Din* merely becomes "Huchzak Kafran" with regard to *this* loan; if he later claims again that he paid the loan, he will not be believed unless he brings proof that he paid, such as witnesses who saw him pay. However, the borrower still will be believed if he testifies or makes a claim in any other monetary matter. Since his status of "Huchzak Kafran" applies only to this loan, *Beis Din* does not require as strong a reason to establish him as a liar as it requires in the case of a Pikadon. For that reason, the borrower is "Huchzak Kafran" when he disobeys *Beis Din* in front of two witnesses, and *Beis Din* does not assume that he is simply trying to gain more time, in contrast to the case of a Pikadon in which the Shomer is given the benefit of the doubt even in that respect. (I. Alsheich)

DAILY MASHAL

Rav Elyashiv heard from a Torah scholar who said that whether the halachah is in accordance with Rabbeinu Bachye that one could only ascend to Jerusalem by foot or whether it was merely the poor people who ascended by foot, it is evident from the Yerushalmi that there was a concern that people required shoes in order to fulfill the mitzvah. In all likelihood, this concern would have resulted in a collection for the poor prior to the festival, similar to a collection of food that was orchestrated on behalf of the poor. Perhaps it is for this reason that the Gemora mentions Avrohom Avinu regarding the pilgrimage. The character of kindness displayed by the Jewish People is an inheritance from Avrohom Avinu and in a sense, it was Avraham Avinu who catalyzed the outpouring of kindness that the Jewish People demonstrated when the Jewish People ascended to Jerusalem for the festivals.