



Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

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Moshe Raphael ben Yehoshua (Morris Stadtmauer) o"h

Tzvi Gershon ben Yoel (Harvey Felsen) o"h

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Torah vs. Rabbinic Promise

The *Gemara* asks what is different between Torah and Rabbinic promises imposed by the court.

The *Gemara* suggests the following differences:

1. ***Transferring the promise***

When someone must make a promise, he can opt out of the promise, by offering his claimant to collect by promising instead. This is true only for Torah promises.

However, Mar bar Rav Ashi says this can be done for all promises, leading to the next difference:

2. ***Seizing property***

If someone refuses to make a promise he is obligated to make, the court can seize his property, in accordance with the claim against him. This is true only for Torah promises.

However, Rabbi Yosi classifies one who steals from that which a minor, deaf-mute, or insane person finds as bona fide theft, albeit Rabbinic.

Rav Chisda explains that this means that the court can seize property as payment. Rabbi Yosi would similarly allow the court to seize property of someone who refuses to take a Rabbinic promise, leading to the next difference:

3. ***One suspected of false promises***

If someone who is suspected of making a false promise is obligated to make a promise, the Sages instituted that his counter party should promise instead. This enactment of the Sages was only on Torah promises, not Rabbinic ones, as that would be a Rabbinic rule on another Rabbinic rule.

The *Gemara* says that the Sages, who disagree with Rabbi Yosi, would only impose the court censure of *shamta* on a person who stole from a minor, deaf-mute, or insane person, as they classify this theft as simply a violation of peace.

Ravina told Rav Ashi that this was actually a more extreme form of property seizure, since the *shamta* will only be lifted if he paid.

Rav Ashi explained that if the person refuses to pay, the *shamta* would be in effect for only thirty days, followed by lashes, but no further punishment. (41a1 – 41a2)

"Swear to it!"

Rav Pappa says that if someone produces a contract documenting a loan, we require the debtor to pay, even if he claims the loan was repaid. However, if he demands that the creditor swear that it was not paid, we require the creditor to swear.

Rav Acha the son of Rava said to Rav Ashi: What is the difference between this case and one who impairs his document?

Rav Ashi said to him that if the creditor agreed that it was partially paid, the court *automatically* requires him to swear that the rest was not paid, but if he admits to no payment, we only require him to swear if the debtor demands it. If the creditor is a Torah student, we do not force him to swear.

Rav Yeimar said to Rav Ashi: Shall a Torah scholar strip people of their cloaks?



Rather, we do not adjudicate the Torah student's case, as we cannot collect the money without his swearing, and it is not appropriate to make him swear. (41a2 – 41a3)

In Front of Witnesses

The Mishnah had stated: "A maneh of mine is in your possession," etc.

Rav Yehudah quoted Rav Assi saying that if someone borrowed money in front of witnesses, he must pay back in front of witnesses.

Rav Yehudah said that when he told this to Shmuel, he responded that he can claim that he paid back in front of certain witnesses who are unable to currently testify.

The *Gemara* attempts to resolve this question from the *Mishnah*. The *Mishnah* says that if a creditor claimed a debt, and the debtor agreed, but subsequently claimed that he paid it, the debtor is exempt. The *Gemara* assumes that claiming and admitting to a loan in front of witnesses is equivalent to borrowing in front of witnesses, and the *Mishnah* says that the debtor is believed if he claims he paid, without producing supporting testimony, disproving Rav Assi.

Rav Assi answers that he only requires payment in front of witnesses if the loan was in front of witnesses, since that indicates that the creditor did not trust the creditor. Claiming and admitting to a loan in front of witnesses does not indicate a lack of trust, and the debtor can therefore pay back without witnesses.

Rav Yosef recorded this dialogue differently, with Rav Yehudah in the name of Rav Assi saying: If one lends to his fellow before witnesses, he need not repay him before witnesses; but if he said to him: Do not repay me except before witnesses, he must repay him before witnesses.

When it was said before Shmuel, he disputed even this, saying that the debtor can still claim that he paid back in front of witnesses, who are currently overseas (and unable to testify).

The *Gemara* attempts to disprove Shmuel from the *Mishnah*, which requires the debtor to pay back in front of witnesses, if the creditor explicitly required it. The *Mishnah* says that if the creditor claimed a debt, the debtor agreed, and the creditor told him to pay back only in front of witnesses, the debtor is liable if he later claims that he paid, since he has no supporting testimony.

Shmuel says that the *Mishnah* is one opinion, but this is a dispute of *Tannaim*. Shmuel cites a *Baraisa* in which the Sages say that if the creditor said, "I lent you with witnesses, so you must pay me back in front of witnesses," the debtor must prove his payment with supporting testimony, while Rabbi Yehudah ben Besairah says he can claim that he paid in front of witnesses who cannot currently testify.

Rav Acha challenges this proof, saying that the *Baraisa* may be discussing the position of the creditor at the time of claim. However, if the creditor said this at the time of the loan – Shmuel's case, the debtor must provide supporting testimony.

Rav Pappi quoted Rava who rules that if one lends in front of witnesses, he need not pay back in front of witnesses, but if the creditor stipulated that he pay back in front of witnesses, he must do so. However, the debtor is believed if he claims that he paid back in front of witnesses who are currently unable to testify. (41a3 – 41b2)

Debt Case Law

Mnemonic: 13 Reuben and Simeon, who studied the law, they lent and paid (before) So-and-so and So-and-so, gallnuts, different claims, being believed as two.

A creditor told his debtor that he must pay back in front of two specific witnesses, but he paid back in front of other witnesses. Abaye said that he paid back in front of witnesses, and that sufficiently fulfills the condition, but Rava responded that the creditor specified the witnesses to prevent the debtor from avoiding them and choosing others.



A creditor told his debtor that he must pay back in front of witnesses who learn *halachos*. He paid back in private, and the creditor lost the money. When the case reached Rav Nachman, the creditor admitted that he accepted the money, but claimed that he did so only as a custodian, until two suitable witnesses are found. Rav Nachman told him that since he admitted that he accepted them, they were considered full payment for the loan. Rav Nachman added that if wants two suitable witnesses, he and Rav Sheishes learn all areas of Torah, so he can bring the money and fulfill the condition.

A creditor claimed a 100 *zuz* debt, but the debtor denied the debt. The creditor brought witnesses who testified that the debtor borrowed the money and paid it back. Abaye said that we cannot collect from the debtor, since the witnesses that proved the debt also proved that he repaid it, making him exempt. Rava responded that by denying the debt, the debtor was denying that he paid, and he is believed to obligate himself, even in the face of conflicting testimony. Thus, the witnesses establish the debt, and the debtor establishes that he did not pay, making him liable.

A creditor claimed a 100 *zuz* debt, and the debtor said, "Didn't I repay you in front of these specific witnesses?" The witnesses he specified came and testified that they never saw him pay back the debt. Rav Sheishes thought that this proved the debtor to be a liar, obligating him in the debt, but Rava responded that something that a person forgets anything irrelevant. Since the debtor did not need to specify if there were witnesses to the payment, nor who they were, he may have forgotten the details, and not a liar.

A creditor claimed a 600 *zuz* debt, and the debtor said, "Didn't I repay you the 100 *kav* of gall nuts, which were worth 6 *zuz* each?" The creditor responded that they were worth 4 *zuz* each, and proved this with testimony of witnesses, and Rava said that the debtor has been proven to be a liar. Rami bar Chama asked why we do not say that the value of the merchandise was irrelevant information that the debtor forgot, but Rava answered that people do remember the market price of merchandise. (41b2 – 42a1)

INSIGHTS TO THE DAF

Torah Student and Swearing

The *Gemara* says that if a Torah student produces a loan document, but his debtor claims he paid it, we do not adjudicate the case. We cannot collect without him swearing, and it is inappropriate for us to make him swear. The Rosh (10) explains that if he does swear of his own volition, he may then collect his debt.

How to pay back?

The *Gemara* discusses whether a debtor must pay back his loan in front of witnesses.

If the loan was in front of witnesses, the Rambam, Rif, and Rosh say that the debtor need not pay back in front of witnesses, while the Mordechai quotes the Raavya who says he may have to pay back in front of witnesses.

If the debtor claimed that he paid back in front of witnesses, Rashbam and the Rif say he need not prove anything, but the Rambam and Rabbeinu Tam say he must try to bring the witnesses. If he isn't able to, he is exempt.

If the witnesses come and deny his account, the Rema says he is liable, as he was proven to be a liar. Although the *Gemara* says that people forget irrelevant information, this is true only when he responded rhetorically, in the course of conversation, "didn't I pay you back in front of A and B?", but not when he categorically stated that he did so. The Ba'al Hamaor disagrees, and says that as long as he did not summon them to testify, he is not liable if they denied his account, since people forget irrelevant information. See Bais Yosef (HM 70) for a discussion of the Rambam's position when the witnesses denied his account.

If the creditor required him to pay back in front of witnesses, the Rambam rules that he must do so, and if he pays back privately, he is still liable. The Rosh says that if the creditor stipulated this at the time of the loan, it is binding in all cases,



but if he stipulated it later, it is binding only if the debtor explicitly agreed to it.

If the debtor claims he paid back in front of witnesses, but they are unable to testify (e.g., they died or have left town), the Rif says he is not believed, while the Rambam, Ri, and Rosh say he is believed. The Remah says that he is only believed if he names the witnesses. Rabbeinu Yeshaya says that we only accept his version if the witnesses left town, and only inasmuch as we will wait for them to return and corroborate his story.

If the creditor specified the witnesses who must witness the repayment, the debtor may not claim he paid in front of witnesses who are unable to testify. If he claims he paid back in front of the specified witnesses, but they are unable to testify, he is believed. If he provides witnesses who testify that he paid back in front of them, Rashi and the Rif say that he is still not believed, while Rabbeinu Chananel, the Ramban, and Rosh say he is believed.

Irrelevant to whom?

The *Gemara* says that if the debtor claimed to pay back in front of specific witnesses, and they deny the account, he is not considered a liar, since people forget irrelevant information. Rashi explains that we are referring to the debtor, who didn't need any witnesses present, making the details irrelevant to him. The Rambam says we are referring to the witnesses, as it is irrelevant to them what the debtor did, since they were not summoned to testify.

We'll take your word for it

Rava says that if an alleged debtor denied the debt, and then witnesses testified that he borrowed the money and paid it back, he is liable. Although the witnesses testified that he paid, he admitted that he did not by saying that he did not borrow. The Chasam Sofer (HM 98) says that if the *creditor* says that the debtor borrowed and paid back, the debtor is exempt. Just as we take the obligating word of the debtor above that of the witnesses, we take the exempting word of the creditor above that of the debtor. Rabbi Akiva Eiger (Responso 149) says that if witnesses just testify that the debtor paid the creditor, he is

not liable. Although denying a loan is tantamount to denying repayment, testifying about repayment is not tantamount to testifying to the loan itself.

How much of a liar?

Rava says that if the debtor claimed he paid back with a quantity of merchandise which was worth the debt, and witnesses dispute his estimate of the market value, he is considered a liar, and cannot claim that he forgot the irrelevant details of his payment.

The Ketzos (HM 79:11) says that he is only proven a liar for the difference in amount of payment, but not for the amount the merchandise was worth. For example, if he claimed he paid back 100 items, each of which was worth 10 *zuz*, but the witnesses say they were worth 6 *zuz*, he is only considered a liar for the remaining 400 *zuz*, but not for the 600 *zuz* the merchandise was worth. He notes that the Tur says "if the creditor agreed that he paid 600, he must pay the remaining 400", implying that if the creditor denies all payment, the debtor must pay all the debt. This would imply that he is considered a liar for the whole payment.

The Shulchan Aruch omits the mention of the creditor agreeing to any payment, supporting the Ketzos's position. The Ketzos suggests that even though the debtor is only considered a liar for the remainder, the Tur only mentioned the creditor admitting the partial payment, since otherwise the debtor would have to swear that he paid that amount.

DAILY MASHAL

An unusual factor in the Chazon Ish's admiration of the Chofetz Chaim was the title he gave him – "Rabbeinu." Once, one a Rav commented to the Chazon Ish, "How can you rely on the Mishnah Brurah when its author was a simple baal ha'bayis?" (The Rav, like others, mistook the Chofetz Chaim for a simple storekeeper). The Chazon Ish replied, "he most certainly was a baal ha'bayis in every way – a baal ha'bayis in Kriyas Shema, and in all the chambers of the Torah – he was in perfect control of them all."