

You could not have said 'I bought it' – לקוחה היא בידי לא מצית אמרת

OVERVIEW

מיגו of לקוחה היא בידי is not a valid מיגו, for you could not have claimed it, since there is a קול that the field belongs to the יתומים. The רשב"ם interprets¹ the גמרא to mean that if you would claim לקוחה היא בידי you would not be believed. תוספות (disagrees with the רשב"ם and) offers a different interpretation.

anticipates and responds to a difficulty:

אף על גב דאי הוה אמר לקוחה היא בידי הוה נאמן מכל מקום לא הוי מיגו –
Even though, if רב"ש would have claimed 'I bought it', he would have been believed, nevertheless the claim of לקוחה היא בידי cannot be considered as a מיגו – והכי פירוש דלא מצית אמרת–

And this is the interpretation of the phrase 'you could have not claimed it'; it does not mean that it is not an acceptable claim, for in fact לקוחה היא בידי would be an effective claim. Rather the phrase 'לא מצית אמרת' means -

לא היית יכול להעזי פניך ולומר כן כיון דנפק קלא ואין כאן מיגו² –

You did not have the capacity to act so brazenly and claim בידי since a rumor has been spread, that it is not your field and therefore **there is no מיגו here.** The rationale of a מיגו is that we should believe the present claim because he could have just as easily presented a more effective claim, which would be accepted. However in this case we cannot say that רב"ש could have just as easily stated that he bought the field, for there was a (persistent) rumor that the field belonged to the יתומים. רב"ש would be very uncomfortable in (lying and) claiming that it is his field. Therefore there is no מיגו. This is usually referred to as a מיגו דהעזה.³

will now cite a similar ruling:

וכענין זה יש בפרק שני דקדושין⁴ (דף נא) –

¹ ד"ה אמר.

² It would be much easier to (lie and) claim that their father still owes him money (especially since he has a שטר), than to claim that he bought the field where (he has no שטר and) the rumors persist that he never bought it.

³ The commentaries note that even though a מיגו דהעזה is effective by ממון; however it is not effective משבועה. See footnote # 7. Other claim that this is a העזה גדולה since the קול contradicts it. See סוכ"ד אות כח.

⁴ The גמרא there cites a משנה which states if a שליח was asked to bring something from the window and it turned out to be הקדש, the sender is מועל, not the שליח [by מעילה the rule is עבירה לומר עבירה]; even if the sender subsequently claims that in his mind he intended that another object be brought. The גמרא wanted to prove from this משנה that דברים שבלב אינם דברים. The גמרא rejected this proof, because perhaps the sender is lying, when he claims that he intended for the שליח to bring a different article. He may be lying because he does not want to be מחוייב במעילה. The גמרא replies we cannot assume that the sender is lying (when he claims that he wanted something else to be brought)

And there is something similar to this in the second פרק of קידושין, where the גמרא claimed that we must believe the sender –

ומה אם ירצה לומר מזיד הייתי⁵ –

for he could have said I was aware that it was הקדש. Therefore we have to believe him on account of this מיגו that he really intended to have the שליה bring a different object (and he is only because חייב במעילה (דברים שבלב א"ד). The גמרא rejects this argument, and claims that there is no מיגו, because –

לא משוי נפשיה רשיעא⁶ –

He will not make himself for a רשע, by claiming הייתי מזיד –

פירוש אינו אומר ברצון מזיד הייתי ואין כאן מיגו⁷ –

the interpretation of the phrase **לא משוי נפשיה רשיעא** does not mean that he will not be believed to make himself a רשע (as in the rule of 'אין אדם משים עצמו רשע'); but rather it means that **he will not willingly say 'I was a מזיד'**; a person does not want to incriminate himself (even if that will exempt him from a קרבן); he would rather maintain that he wanted something else to be brought, **and therefore there is no מיגו here** in the case of מעילה, and the sender is מחוייב במעילה (because we do not believe him; but not because of שבלב (דברים)).

אבל ודאי אם אמר מזיד הייתי פשיטא דמהימן :

However it is certain that if he actually said I was a מזיד in this מעילה it is obvious that he is believed and will not be obligated to bring a קרבן מעילה וכו'.⁸ We may derive from that גמרא that even if the מיגו is an effective claim, nevertheless if it is a העזה to make such a claim, the מיגו is invalid.

SUMMARY

A מיגו is not effective (לאפטורי משבועה [ומקרבן]) if it is a העזה.

THINKING IT OVER

1. Why does תוספות disagree with the פירוש הרשב"ם⁹?

in order to be פטור from מעילה; for if he wanted to be פטור he could have simply said I was aware that it is הקדש. There is no חיוב מעילה by מזיד; only by שוגג. The גמרא then rejects this refutation as stated in the text above.

⁵ The text in קידושין reads 'היה ליה למימר מזיד הייתי'.

⁶ The text in קידושין reads 'לא עביד איניש דמשוי וכו'. This seems to lend support to תוספות interpretation.

⁷ According to the commentaries in footnote # 3, it may be necessary to include that לא אמרינן מיגו דהעזה לאפטורי מקרבן.

⁸ The rule of אין אדם משים עצמו רשע will (perhaps) not apply here, since (among other reasons) according to his testimony he is not מחוייב in a קרבן; we will be causing him to bring לעזרה חולין. This is easily distinguishable from the actual case in the משנה where he claims that he meant for the שליה to bring something else; for there he is contradicting his initial statement and claiming that he did not mean it. In the case of מזיד הייתי, he is not contradicting; merely clarifying.

⁹ See footnote # 1.

2. Can we distinguish between the גמרא in קידושין and our גמרא; that even though in קידושין it is not a valid מיגו, nevertheless here it will be a valid מיגו?
3. Why is the קול not considered a מחאה, which should prevent רב"ש from claiming ¹¹ללקוחה היא בידי?

¹⁰ See נח"מ.

¹¹ See בל"י אות קפג.