

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

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 גמרא¹ interprets רשב"ם the לקוחה היא בידי to mean that if you would claim you would not be believed. (disagrees with the רשב"ם and) offers a different interpretation.

Even though, if he would have claimed – אף על גב דאי הוה אמר – 'I bought it', he would have been believed – לקוחה היא בידי היה נאמן – nevertheless the claim of בידי cannot be considered as a מיגו –

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 –

you did not have the capacity to act so brazenly and claim – לקוחה היא בידי – **לא היית יכול להעזיז פניך ולומר כן**

since a rumor has been spread, that it is not your field – **כיון דנפק קלא**

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 field². Therefore there is no מיגו. This is usually referred to as a מיגו דהעזה.³

will now cite a similar ruling:

and there is something similar to this in the second פרק of קידושין⁴ **וכעין זה יש בפרק שני דקידושין (דף נא,א)** **מסכת קידושין** **גמרא** claimed that we must believe the sender –

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 since the קול contradicts it. See footnote # 7. Other claim that this is a גזירה גדולה. לאפטורי משבועה.

⁴ The גמרא there cites a משנה that 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]; 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

⁵ **for he could have said I was aware** that it was **מזיד** **לומר** **מזיד הייתי** ⁵ **הקדש**. Therefore we have to believe him on account of this **מיגו** that he really intended to have the **שליח** bring a different object (and he is **חייב במעילה** only because **א"ד** (דברים שבלב א"ד). The **גמרא** rejects this argument, and claims that there is no **מיגו**, because –

מזיד **רשע**, by claiming **לא** ⁶ **הוא** **משיי נפשיה רשיעא** – **הייתי** –

the interpretation of the phrase **רשיעא** **משיי נפשיה** **לא** does not mean that he will not be believed to make himself a **רשע** (as in the rule of **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 **קרוב**), he would rather maintain that he wanted something else to be brought –

and therefore there is no מיגו here in the case of ⁷ **מעילה**, and the sender is **מחוייב במעילה** (because we do not believe him; but not because of **שבלב**). (דברים שבלב א"ד).

However it is certain that –

if he actually said I was a מזיד in this **מעילה** – **אם אמר מזיד הייתי**

it is obvious that he is believed and will not be obligated to bring a **פשיטא דמהימן** 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 **פירוש הרשב"ם** disagree with the **תוספות**?
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**?

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) 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 **חוב 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 עבד איניש דמשיי וכו'**. This seems to lend support to **תוספות** interpretation.

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

⁸ The rule of **עצמו רשע** will (perhaps) not apply here, since (among other reasons) according to his testimony he is not **מחוייב** in a **קרוב**; we will be causing him to bring **העזה**. This is easily distinguishable from the actual case in the **משנה** where he claims that he meant for the **שליח** 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.