

ובא בזמנו¹ ואמר פרעתיד תוך זמני אינו נאמן - And the מלוה came on time
and the לוה said I paid you during the time, he is not believed

OVERVIEW

There is a query later² in our גמרא whether a מיגו is effective when it opposes a חזקה. The case in question is if the מלוה approached the לווה after the due date. The לווה responded that he paid before the due date. On one hand there is the חזקה that אין אדם פורע תוך זמנו which would lead us not to believe the לווה. On the other hand the לווה should be believed for he has a מיגו that he could have claimed that I paid you after the due date (some time before the מלוה approached him). תוספות anticipates the suggestion that in the case of ר"ל itself there is a חזקה במקום חזקה. The ר"ל could have claimed that you never lent me any money, etc. The fact the ר"ל does not give credence to the לווה would seem to prove that ר"ל maintains that לא אמרינן מיגו במקום חזקה. Our תוספות will refute this proposition.

ונראה לי שיש עדים שחייב לו³ וקבע לו זמן –

And it seems to me that the ר"ל of דין is valid (only) if **there are witnesses** who can testify two things; a) **that** the מלוה **owed him money and** b) that the מלוה **set a time** when the loan is due. It is only under these circumstances that the לווה is not believed if he claims פרעתיך תוך זמני.

דאי לאו הכי ניהמניה שפרעו תוך זמן במיגו דאי בעי אמר לא הלוית לי כלום –

For if it were not so, if there are no witnesses that can testify that the לווה owed money and that a due date was established, then **we (could)⁴ believe** the לווה **that he paid** תוך זמנו, since he has a מיגו **that he could have said**, ‘**you never lent me anything**’, if there are no witnesses that the לווה owed the מלוה money. Had the לווה claimed that I never borrowed from you, the מלוה would not be able to collect.

או לא קבעת לי שום זמן –

Or even if there are witnesses that the לווה owed the מלוה, however if there are no witnesses that a due date was set, the לווה should also be believed to say פרעתיך תוך

¹ The words 'ובא בזמננו' do not appear in our גמרא texts. See *מסורת הש"ס* cited in *מהרש"ל*. See footnote # 14.

² דף ה,ב בסופו. This איבער is (only) according to the viewpoint of ר"ל; for according to אב"י ור"ב the ליה is believed regardless whether there is a מינן or not.

³ The language of תוספות is precise. The עדים are not (necessarily) testifying that they saw the loan; but rather they are aware that he לוה owed the מלוה money. See later in תוספות (bv) footnote # 11.

⁴ It would seem that whether we actually do believe him or not is dependent on the outcome of the **איבעיא** later in the **גמרא**, whether we say **מיגו במקום חזקה** or not. The following sentences have been translated to reflect the ruling if we were to assume that we do accept a **מיגו במקום חזקה**.

with a מיגו that he could have said **you have not set a date** when the monies are due. It is a סתם הלואה. In the previous תוספות, the ר"י maintained that by a סתם הלואה the לווה is believed to say תוך זמני.⁵

concludes his proof that ר"ל is discussing a case where there is no מיגו; for if ר"ל is discussing all types of cases even when there are no עדים that he owed him money and/or was קובע, then how can ר"ל maintain that the לווה is not believed -

ולקמן מיבעי ליה אי אמרינן מיגו במקום חזקה⁶ -

For later the גמרא queries whether a מיגו is effective in the face of a חזקה. If the דין of ריש לקיש that אאפת"ז is valid in all cases even when there is a מיגו, then what is the query?⁷

anticipates the following question. We have been forced to establish that there are עדים that the לווה owed money to the מלוה (otherwise the לווה has a מיגו of להד"ם). Why then does ר"ל maintain that the לווה is not believed to say תוך זמני (only) because of the חזקה of אאפת"ז; even without the חזקה the לווה should not be believed, since there are עדים that maintain that he owed money to the מלוה! Seemingly the only answer to this question is that ר"ל maintains that one who borrows money in the presence of עדים need not repay the מלוה in the presence of עדים. The לווה is believed to say פרעתי without עדים even if there are עדים who testify that he borrowed the money. This issue whether לפרועו בעדים צריך or המלוה את חבירו בעדים is a מחלוקת. We can seemingly derive from our discussion that ר"ל is of the opinion that המלוה את חבירו בעדים will refute this assumption.⁸

ומכל מקום אין להוכיח מכאן דקסבר ריש לקיש -

However notwithstanding the above, we cannot prove from here that ר"ל maintains that -

המלוה את חבירו בעדים אין צריך לפרועו בעדים -

When one lends someone money in the presence of witnesses, the לווה is not obligated to repay him in the presence of witnesses; but rather the לווה is always

⁵ In either of these two cases had the לווה utilized the מיגו he would be believed. He should therefore also be believed if he claims תוך זמני. Therefore since ר"ל maintains that the לווה is not believed if he claims תוך זמני, we are forced to say that ר"ל is discussing a case where there are עדים that he owed him money and was קובע. In this instance there is no מיגו. There is only the חזקה of אאפת"ז; the לווה is not believed.

⁶ This איבעיא is (only) according to ר"ל. See footnote # 2.

⁷ Obviously we do not say מיגו במקום חזקה. We can, therefore, derive from the איבעיא, that the דין of ר"ל is (perhaps only) when there is no מיגו, i.e. that there are עדים that he owed money and there was a זמן קביעת זמן. When there are no עדים and there is a מיגו, then it will depend on the outcome of the איבעיא whether a מיגו is accepted חזקה, or not. See 'Thinking it over # 2.

⁸ לא אמרינן מיגו במקום חזקה. If there are no עדים, then we can derive that ר"ל maintains that המלוה את חבירו בעדים א"צ לפרועו בעדים. If there are עדים then we can derive that ר"ל maintains that המלוה את חבירו בעדים א"צ לפרועו בעדים.

⁹ In the case of ר"ל there are עדים that the לווה owed the מלוה money, nevertheless we cannot prove from here, wherein ר"ל maintains that the (only) reason the לווה is not believed is because it is תוך זמנו; and not because there are עדים who testify that he owed money, that לפרועו בעדים א"צ חבירו בעדים.

believed to say פרעתי without witnesses. This would explain why ר"ל maintains that the (only) reason the לווה is not believed is because it is תוך זמנו and not because there are עדים who testify that he owed money. For if ר"ל would maintain that המלוה את חברו בעדים צריך לפורעו בעדים, why does ר"ל say that the לווה is not believed on account that it is תוך זמנו, since תוספות has already ascertained that in this case there are עדים that the לווה owed money, the לווה would not be believed regardless if it is תוך זמנו or not, since המלוה את חברו בעדים צריך לפורעו בעדים.

תוספות refutes this attempted proof by explaining there are two different types of עדות concerning the לווה owing money to the מלוה.

דאפשר דמיירי הכא שהלוהו שלא בעדים¹⁰ אלא הודה לו בפני עדים –

For it is possible that here in the case of ר"ל we are discussing a situation that he lent him the money not in the presence of witnesses, however the לווה subsequently admitted in the presence of witnesses that he owes the מלוה money.¹¹

Now it is understood why ר"ל may maintain that המלוה את חברו בעדים צריך לפורעו בעדים and nevertheless maintain that in this case the reason he is not believed is only because it was תוך זמנו and not because there are עדים. תוספות explains:

דאפילו למאן דאמר צריך לפורעו בעדים –

For even according to the one who maintains that one who borrows in the presence of witnesses must repay in the presence of witnesses; otherwise he will not be believed to say פרעתי -

הני מילי היכא דהלוהו בפני עדים מעיקרא¹² דלא הימניה אלא בפני עדים¹³ –

These words are valid only where originally he lent him the money in the presence of עדים; in this instance the לווה cannot claim פרעתי, but must rather have עדים who can corroborate his payment. The reason for this is because the מלוה did not trust the לווה himself with the loan, only in the presence of עדים.

¹⁰ This is does not contradict that which תוספות explained previously that there are witnesses that the לווה owed the מלוה money. as תוספות goes on to explain,

¹¹ See footnote # 3.

¹² One may have mistakenly thought that the reason why המלוה את חברו בעדים צריך לפורעו בעדים is because since we know that the לווה certainly owed the מלוה money, therefore he is not free from this obligation unless the לווה can prove that he paid him. If that were the reason, then there would be no difference whether it was המלוה את חברו בעדים or the לווה was בפני עדים, in both case the לווה would not be believed to claim פרעתי without עדים. תוספות teaches us that this reason is not correct. The reason is as stated דלא הימניה וכו'. See also אילימא ד"ה תוספות on this (ב) עמוד.

¹³ By giving the loan only in the presence of עדים it is as if the מלוה is informing the לווה that he does not trust him and in effect is saying to the לווה you must have witnesses testify that you paid. However in our case where the loan took place without witnesses; the מלוה did trust the לווה, therefore even if subsequently the לווה (for whatever reason) admitted to witnesses that he owes the מלוה money, this admission does not preclude the לווה from subsequently saying פרעתי without עדים. We have now reconciled these two factors. On one hand the לווה has no מיוג of להד"ם since there are עדים to whom he was מודה that he owed the money. On the other hand even if ר"ל would maintain המלוה את חברו בעדים, the לווה would have still been believed to claim פרעתי since there were no עדים at the time of the loan. That is why ר"ל maintains that the only reason the לווה is not believed is because it is תוך זמנו.

תוספות asks an additional question:

ואם תאמר מכל מקום ניפשוט מהכא דלא אמרינן מיגו דאי בעי אמר פרעתין עתה¹⁴ –

And if you will say that notwithstanding that which was previously said that there are עדים that he owed him money and that there was a קביעת זמן for payment, which would preclude the ליה from having the מיגו of להד"ם or קבעת זמן; nevertheless **we can still prove from this** statement of ר"ל **that we do not say that a מיגו** can stand up in the face of an opposing חזקה. The ליה still has a different מיגו, **for the ליה could have claimed that I paid you now;** today before we came to ביי"ד.¹⁵

תוספות answers:

ואומר רבינו יצחק דהא לא חשיב מיגו כיון דמיירי דקיימי ביום אחרון של זמן –

And the ר"י says that this claim of פרעתין עתה is not considered a valid מיגו since we are discussing a situation that is taking place on the last day of the time; the day that the loan is due.

תוספות elaborates and explains:

ואף על גב דמסקינן בשילהי דהשואל (בבא מציעא דף קב,ב ושם) –

For even though the גמרא concludes in the end of פרק השואל –

דעביד איניש דפרע ביומא דמישלם זימניה –

That it is plausible that a person will pay on the day that the time has come; the due date. Therefore it is true that had the ליה actually claimed that he paid today on the due date he would have been believed –

מכל מקום אין זה מיגו דלא חציף איניש למימר פרעתין היום¹⁶ –

Nevertheless this is not a מיגו for a person does not have the audacity to say that I paid you today; when it is not true. A מיגו is that we believe what he claims now, because he could have offered a different claim which would have been accepted. Here however he would not have the gall to claim that I just paid you. That is too blatant a lie to say to the מלוה.

¹⁴ See the heading of תוספות where the גירסא is 'ובא בזמנו'. See footnote # 1.

¹⁵ Today is the due date. If the ליה would claim that he paid today on the due date, he would have been believed. Therefore even if the ליה claims that I paid you previously זמני תוך, he still has a מיגו of פרעתין עתה. The fact the ר"ל maintains that the ליה is not believed, even though he has this מיגו, proves that ר"ל maintains לא אמרינן חזקה. The גמרא should have cited this as proof to resolve the איבעיא.

¹⁶ In every מיגו there is the טענה he is claiming and there is the מיגו which he could have claimed, which is obviously not true (he did not even claim it). The idea of a מיגו is that we believe what he is claiming in his טענה, for he could have *just as easily claimed the* מיגו. However if he could not have *just as easily claimed the* מיגו, as in our case, then there is no נאמנות of a מיגו. We assume that he is indeed lying but he claimed the lie which was the most comfortable lie. The lie of פרעתין היום is so uncomfortable, compared to the lie of זמני תוך, that he prefers זמני תוך to פרעתין היום. If however he actually claims פרעתין היום then he is believed, since there is no reason not to believe him. The fact that it is an uncomfortable lie, makes it all the more believable, for if it is not true, how is he claiming such an uncomfortable lie. It must obviously be true.

anticipates a question: If the **מיגו** of **היום** is not a valid **מיגו** since **לא חציף איניש**, why is the **מיגו** of **זמנו** **לאחר** any different. He is seemingly also claiming a blatant lie in the face of the **מלוה**. **תוספות** responds:

אבל רגיל הוא לומר פרעתין אתמול¹⁷ ושכחת¹⁸:

However it is quite usual to claim that I paid you yesterday (i.e. some time ago) but you must have **forgotten** about the payment;

SUMMARY

We cannot infer from the **דין** of **ר"ל**, whether he maintains **במקום חזקה** or not; and similarly whether he maintains **את חבירו בעדים צריך לפורעו בעדים** or not. The case of **ר"ל** may be in a situation where there are **עדים** that the **לוה** owed the **מלוה** money and that the **מלוה** was **זמן קובע**. This precludes both the **מיגו** of **להד"ם** as well as **לא קבעת לי זמן**. On the other hand since the **עדים** merely testify that the **לוה** admitted that he owed money (but not that they were present at the loan), everyone agrees that in this situation **לפורעו בעדים** **א"צ**. There is also no **מיגו** of **היום**, for that is a **דהעזה**.

THINKING IT OVER

1. What is of greater concern to **תוספות**: whether we can derive that **ר"ל** maintains **המלוה את חבירו בעדים א"צ לפורעו בעדים** or if **ר"ל** maintains **במקום חזקה לא אמרינן**?
2. Can we differentiate between the **נאמנות** of **לאח"ז** **דפרעתין** and **תוך זמני במגו דפרעתין** **לאח"ז** of **נאמנות** the **נאמנות** of **הלוותיני** (or **שלא קבעת לי זמן**)? ¹⁹
3. According to the **מסקנא** of **תוספות** if the **לוה** said that I paid you today on the due date, is he believed, or is it too much **העזה** on part of the **לוה** to be believed?
4. Can we conclusively infer from this **תוספות** that **לא אמרינן** **מגו דהעזה**? ²⁰

¹⁷ **תוספות** may be referring to the **איבעיא** of the **גמרא** concerning **במקום חזקה** where the **מלוה** approached the **לוה** (even one day) after the loan was due. The **גמרא** does consider the argument of **פרעתין אתמול** as a valid **מיגו** (providing we say **במקום חזקה**).

¹⁸ Even though it is also a lie; however it not so brazen a lie for the **לוה** will say to the **מלוה** 'you forgot'. This is not something the **לוה** can say when he claims that I paid you today. We therefore suspect that the **לוה** is lying. It is easier for him to say the lie that I paid you **תוך זמנו** and **שכחת**, than to claim I just now paid you today, where the **מלוה** knows that it is a blatant lie. There is no **מיגו** for it is assumed that the **לוה** does not possess the wherewithal to make such an outrageous claim.

¹⁹ See footnote # 7. See **בל"י** **אות קיב**.

²⁰ See **בל"י** **סי' קיג**.