

And the מלוה came on the date it was due, and the לווה said I paid you during the time before it was due, he is not believed.

Overview

There is a query later in our גמרא² whether a מיגו is functional 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 לווה תוך זמנו פרע אדם 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 לווה 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 מיגו במקום חזקה לא אמרינן. תוספות will refute this proposition.

And it seems to me that the דין of ר"ל is valid (only) if there are witnesses who can testify two things; a) -

that the מלוה owed him money³ 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 תוך זמנו פרע.

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 (could⁴) believe the לווה that he paid זמנו, since תוך זמנו פרע, 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.

Or even if there are witnesses that the לווה owed the מלוה, however there are no witnesses that a due date was set, the לווה can also be believed to say תוך זמנו פרע 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"ל maintained that by a הלואה סתם the לווה is believed to

¹ The words 'ובא בזמנו' do not appear in our גמרא texts. See מהרש"ל cited in מסורת הש"ס. See footnote # 10.

² דף ה,ב בסופו. This איבעיא is (only) according to the viewpoint of ר"ל; for according to רבא and אביי the לווה is believed regardless whether there is a מיגו 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 לווה owed the מלוה money. See later in תוספות (by) footnote # 7.

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 חזקה במקום חזקה.

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

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 זמן, then how can ר"ל maintain that the לוח is not believed -

queries - for later the גמרא ולקמן מיבעי ליה

חזקה⁵ is effective in the face of a מיגו - whether a מיגו is effective in the face of a חזקה.

If the חזקה of ר"ל is valid in all cases even when there is a מיגו, then what is the query? Obviously we do not say מיגו במקום חזקה. We can, therefore, derive from the חזקה, that the לוח 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 חזקה whether a מיגו is accepted, or not.⁶

anticipates the following question. We have been forced to establish that there are עדים that the לוח owed money to the מלוה (otherwise the לוח has a מיגו of "להד"ם). Why then does ר"ל maintain that the לוח is not believed to say פרעתיך תוך זמני (only) because of the חזקה of "אאפת"ז; even without the חזקה the לוח 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 לוח is believed to say פרעתי without עדים even if there are עדים who testify that he borrowed the money. This issue whether בעדים or צריך לפרוע בעדים מחלוקת. We can seemingly derive from our discussion that ר"ל is of the opinion that צריך לפרוע בעדים⁷ will refute this assumption.

however notwithstanding the above, that in the case of ר"ל there are עדים that the לוח owed the מלוה money

we cannot prove from here, wherein ר"ל maintains that the (only) reason the לוח is not believed is because it is זמנו; and not because there are עדים who testify that he owed money. This is no proof -

that ר"ל maintains that - דקסבר ריש לקיש

when one lends someone money in the presence of witnesses, the לוח is not obligated to repay him in the presence of witnesses; but rather the לוח is always believed to say פרעתי without witnesses. This would explain why ר"ל maintains that the (only) reason the לוח is not believed is because it is זמנו; and not because there are עדים who testify that he owed money. However if ר"ל would maintain that צריך לפרוע בעדים, why does ר"ל say that the לוח is not believed on account that it is זמנו, since תוספות has

⁵ This איבעיא is (only) according to ר"ל. See footnote # 2.

⁶ See 'Thinking it over # 2.

⁷ ממה נפשך. If there are no עדים, then we can derive that ר"ל maintains that לא מיגו במקום חזקה. If there are עדים then we can derive that ר"ל maintains that צריך לפרוע בעדים. Tosfos is arguing that ר"ל maintains that לא מיגו במקום חזקה.

already ascertained that in this case there are עדים that the לווה owed money, he would not be believed regardless if it is תוך זמנו or not, since המלוה את חבירו בעדים צריך לפורעו בעדים.

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

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. This would seem difficult; for תוספות explained previously that there are witnesses that the לווה owed the מלוה money. תוספות goes on to explain, that indeed there were no witnesses at the time of the loan -

however the לווה subsequently admitted in the presence of witnesses that he owes the מלוה money⁸. Now it is understood why ר"ל may maintain that המלוה את חבירו 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:

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

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. 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 paid⁹. 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 מיגו 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 חבירו בעדים צלפ"ב, 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

⁸ See footnote # 3.

⁹ One may have mistakenly thought that the reason why לפורעו 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 it would be no difference whether it was המלוה or the לווה was מודה 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 תוספות ד"ה עמוד (ב) on this אילימא.

You may ask that notwithstanding that which was previously said that there are עדים that he owed him money and that there was a זמן קביעת זמן for payment, which would preclude the לווה from having the מיגו of להד"ם or זמן; לא קבעת זמן; nevertheless -

we can still prove from this statement of ר"ל - **ניפשוט מהכא**

that we do not say that a מיגו can stand up in the face of an opposing חזקה. The לווה still has a different מיגו -

for the לווה could have claimed that - **דאי בעי אמר**

I paid you now; today before we came to בי"ד, Today is the due date¹⁰. If the לווה would claim that he paid today on the due date, he would have been believed. Therefore even if the לווה claims that I paid you previously זמני, תוך זמני, he still has a מיגו of פרעתיק עתה. The fact the ר"ל maintains that the לווה 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.

answers: תוספות

And the ר"י says that this claim of פרעתיק - **ואומר רבינו יצחק דהא לא חשיב מיגו** - **מיגו is not considered a valid** עתה

since we are discussing a situation that is **taking place on the last day of the time;** the day that the loan is due.

elaborates and explains: תוספות

for even though the גמרא **ואף על גב דמסקינן בשילהי דהשואל** (ב"מ דף קב,ב ושם) **concludes in the end of** פרק השואל -

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 לווה actually claimed that he paid today on the due date he would have been believed -

nevertheless this is not a מיגו - **מכל מקום אין זה מיגו**

for a person does not have the audacity to say that I paid you today; when it is not true. The idea of a מיגו is that we should 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.¹¹

¹⁰ See the heading of תוספות where the גירסא is 'ובא בזמנו'. See footnote # 1.

¹¹ 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 פרעתיק היום is so uncomfortable, compared to the lie of פרעתיק תוך זמני, that he prefers פרעתיק תוך זמני. If however he actually claims פרעתיק 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.

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

אבל רגיל הוא - however it is quite usual

to claim that I paid you yesterday¹² (i.e. some time ago); even though it is also a lie; however it not so brazen a lie for the מלוה will say to the מלוה – **ושכחת** - but **you** must have **forgotten** about the payment. This 'ושכחת' is not something the מלוה can say when he claims that I paid you today. We therefore suspect that the מלוה is lying. It is easier for him to say the lie that I paid you תוך זמני 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 מלוה does not possess the wherewithal to state such an outrageous claim.

Summary

We cannot infer from the דין of ר"ל, whether he maintains במקום חזקה מיגו or not; and similarly whether he maintains בעדים צריך לפורעו בעדים or not. The case of ר"ל may be in a situation where there are עדים that the מלוה owed the מלוה money and that the מלוה was קובע זמן. This precludes both the מיגו of להז"ם as well as קבעת לי זמן. On the other hand since the עדים merely testify that the מלוה admitted that he owed money (but not that they were present at the loan), everyone agrees that in this situation בעדים א"צ לפורעו בעדים. There is also no מיגו of פרעתיך 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 or if ר"ל maintains במקום חזקה לא אמרינן לפורעו בעדים?
2. Can we differentiate between the נאמנות of פרעתיך לאחר זמני במגו דפרעתיך לאח"ז and the נאמנות of פרעתיך תוך זמני במגו דלא הלוחיני (או שלא קבעת לי זמן)?¹³
3. According to the מסקנא of תוספות if the מלוה said that I paid you today on the due date, is he believed, or is it too much העזה on part of the מלוה to be believed?
4. Can we conclusively infer from this תוספות that לא אמרינן מיגו דהעזה?¹⁴

¹² מיגו may be referring to the גמרא of איבעיא concerning חזקה where the מלוה approached the מלוה (even one day) after the loan was due. The גמרא does consider the argument of אתמול as a valid מיגו (providing we say במקום חזקה).

¹³ See Footnote # 6.

¹⁴ See בל"י סי' קיג.