

**כל האומר לא לויתי כאומר כולי –**

**Whoever says I did not borrow, it is if he said, etc.**

### **OVERVIEW**

The ברייתא states that if a לווה originally admits (in the presence of witnesses) that he owes money and then subsequently denies that he ever borrowed; the ruling is that he is liable to pay the debt. The גמרא cites the dictum of כל האומר וכו' as the reason for this ruling. Seemingly this dictum is not at all necessary to obligate the לווה. He is liable because he cannot contradict his previous admission of owing the monies. תוספות will be addressing this issue.

asks: תוספות

**הקשה הרב רבינו יצחק מה צריך כאן לטעם כל האומר כולי –**

**The ר"י asks: why is it necessary here to utilize the explanation of whoever says, etc.** I did not borrow is as if he said I did not repay. This idea is superfluous in the case under discussion. For in our case –

**הא ודאי כיון שכבר הודה תו לא מהימן לומר שלא לווה –**

**Since he already admitted** that he owes money, then **certainly he will not be believed to restate** and claim **that he did not borrow**. Once an admission is made, one cannot retract the admission.

will now explain where this dictum is necessary: תוספות

**דבשלמא בשבועות (דף מא,ב ושם דיבור המתחיל כל) צריך להאי טעמא –**

**It is understood that in this reasoning of כל האומר וכו' is necessary;** for there the גמרא is discussing a case –

**שאומר לו מנה לי בידך והלה אומר לא היו דברים מעולם –**

**Where the מלווה says to the לווה 'you owe me a מנה (a hundred זוז)'** [literally I have a מנה in your hand] **and this לווה responds: 'It never happened; you never lent me money' –**

**ואתו עדים ואמרי ראינו שלווה ופרע –**

**And witnesses came and testified that 'we saw that he borrowed money and subsequently repaid it' –**

**השתא הא דקאמרי סהדי שלווה מהימני והא דקאמרי פרע<sup>1</sup> לא מהימני –**

**Now we view this case as follows; that which the witnesses testify that the לווה borrowed, they are believed.** We have therefore substantiated that the לווה owed

<sup>1</sup> The שפרע amends this to read הגהות הב"ח.

money to the מלוה. **However that which they testify [that] he repaid the loan – they are not believed.** We assume that he still owes the money. The reason the witnesses are not believed that he repaid the loan, is –

**דהא איהו קמכחיש להו דאמר לא לויתי והאומר לא לויתי כאומר לא פרעתי דמי –**  
**for the מלוה himself contradicts them, since the מלוה said I did not borrow any money from this מלוה and one who says I did not borrow it is as if he said I did not repay the loan.** The מלוה by claiming לא לויתי it is as if he is admitting that he did not repay. Therefore even though that the עדים testify that he did pay, his inferred admission that he did not pay is stronger than the testimony of the witnesses. A person is believed for his detriment, even against the testimony of witnesses.

In מסכת שבוועות it is understood why it is necessary to use the rationale of 'כל האומר וכו'; otherwise he would be exempt from payment since the עדים are testifying that he repaid the loan (and he did not explicitly say that he did not pay) –

**אבל הכא לא צריך כלל –**

**however here** in our case where he originally admitted to owing the money **it is entirely not necessary** to depend on the rationale of 'כל האומר וכו'; for even without that reasoning he would still be obligated to pay, since originally he admitted that he owed the money, he cannot later retract and claim there was never such a loan.

answers: תוספות

**ואומר רבינו יצחק דאיצטריך לאשמועין דלא מצי למימר האומר<sup>2</sup> לא לויתי –**  
**And the ר"י says it is necessary to cite the rationale of 'כל האומר וכו', in order to let us know that the מלוה cannot argue and say [that which I subsequently stated] that I did not borrow from you anything -**

**לא שלא לוה<sup>3</sup> כלל אלא כאילו לא לויתי לפי שפרעתי –**

I did **not mean that [I] did not borrow at all** from you **but** rather I meant that **it is as if I never borrowed from you because I repaid** the loan. When I claimed לא לויתי, I meant to say that as of now it is as if I never borrowed money from you since I already repaid it. Therefore were it not for the rule that 'כל האומר וכו', he might be believed, since according to his interpretation of his subsequent claim of לא לויתי he is not contradicting his original admission of owing money. That is why –

**קא משמע לן דכאילו אומר לא פרעתי בהדיא:**

The גמרא **comes to let us know** by citing the ruling of 'כל האומר וכו', that when a person claims לא לויתי he cannot later reinterpret his statement to mean that I repaid you and it is as if I never borrowed. This is not so, but rather the statement of לא

<sup>2</sup> The הגהות הב"ח amends this to read הא דאמר.

<sup>3</sup> The הגהות הב"ח amends this to read לויתי.

לויתי is **as if he explicitly stated I did not** (borrow and certainly did not) **repay** the loan.<sup>4</sup> Therefore he cannot reinterpret his claim of לא לויתי; but rather we take it to mean לא לויתי ופרעתי.

### **SUMMARY**

The dictum 'כל האומר וכו' is effective in extracting a (tacit) admission from the לוה that he did not pay (even against conflicting testimony), and also preventing the לוה from reinterpreting לא לויתי to mean לויתי ופרעתי.

### **THINKING IT OVER**

1. תוספות maintains that without כל האומר וכו', the לוה could reinterpret לא לויתי to mean לויתי ופרעתי. However our גמרא states that the subsequent claim of the לוה was להד"ם. It would seem a bit far to reinterpret להד"ם to mean לויתי ופרעתי (even without כל האומר).<sup>5</sup>

2. Can we differentiate between what כל האומר accomplishes in שבועות to what it accomplishes here in our גמרא?<sup>6</sup>

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<sup>4</sup> If we were able to reinterpret לא לויתי to mean לויתי ופרעתי, then how come in מס' שבועות he is not believed; especially since there are עדים who testify that he paid, let us reinterpret his לא לויתי as לויתי ופרעתי which would make him in full accord with the עדים. Once I see that we do not reinterpret לא לויתי even when it is in accordance with עדים then we will certainly not reinterpret it to mean לוית ופרעתי when it is not corroborated by עדים. See 'Thinking it over' # 2

<sup>5</sup> See סוכ"ד אות ד.

<sup>6</sup> See footnote # 4.